



**TECHNICAL UNIVERSITY OF MOLDOVA**

# **JOURNAL OF SOCIAL SCIENCES**

**Scientific publication founded on June 1, 2018**

**2022**

**Vol. V (1)**

**ISSN 2587-3490**  
**eISSN 2587-3504**

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**„TEHNICA UTM” (PRINTING HOUSE)**

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[https://doi.org/10.52326/jss.utm.2022.5\(1\).01](https://doi.org/10.52326/jss.utm.2022.5(1).01)  
UDC 371.136.3:004.4



## THE ANALYSIS OF STUDENTS OPINION ABOUT THE TEACHERS SKILLS USING SUPERVISED LEARNING

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Received: 11. 22. 2021

Accepted: 01. 30. 2022

**Abstract.** The system for biannual teachers' evaluation made by students, acquires a large amount of information that becomes difficult to be analyzed by a manager. It is true that delivers a final score, but it is calculated based only on the answers to the questions with several pre-defined answer options. In their questionnaire, there are also open questions in which students can express themselves freely. These answers contain valuable information, but an educational manager needs a long time to read them all individually. In this paper is proposed an automatic module for interpreting the answers. The module will report to the educational manager only the answers that need to be analyzed. The module uses natural language processing techniques, and supervised machine learning for selecting the answers to be analyzed in a certain context.

**Keywords:** *degree of satisfaction, machine learning, supervised learning, natural language processing (NLP), sklearn.*

**Rezumat.** Sistemul de evaluare semestrială a cadrelor didactice realizat de studenți dobândește o cantitate mare de informații, care devine greu de analizat de către un manager. Este adevărat, că oferă un punctaj final, dar se calculează doar pe baza răspunsurilor la întrebările cu mai multe opțiuni de răspuns predefinite. În chestionar există și întrebări deschise, încare elevii se pot exprima liber. Aceste răspunsuri conțin informații prețioase, dar un manager educațional are nevoie de mult timp pentru a le citi pe toate individual. În această lucrare este propus un modul automat de interpretare a răspunsurilor. Modulul va raporta managerului educațional doar răspunsurile care trebuie analizate. Modulul utilizează tehnici de procesare a limbajului natural și învățarea automată supravegheată pentru selectarea răspunsurilor care urmează să fie analizate într-un anumit context.

**Cuvinte cheie:** *grad de satisfacție, învățare automată; învățare supravegheată, procesarea limbajului natural (NLP), sklearn.*

### Introduction

Monitoring the satisfaction of the beneficiaries of some services and products is a permanent concern of the management staff of any institution. With the rapid development of the industry, improving customer satisfaction has become an important task of a company [1].

This concern is also found in educational institutions at several levels, including universities. Within the “Stefan cel Mare” University of Suceava, the evaluation of teachers by students takes place twice a year. The students answer questionnaires that have questions with several answer options, but there are also two open-ended questions regarding the general impression that the teacher had and the suggestions for improving their activity. The result of this evaluation is expressed quantitatively based on the answers to the questions in which the students had to choose a certain answer option. The two open-ended questions are not considered when establishing the score, but each teacher reads and analyzes them carefully. Faculty and university managers must also analyze the results of staff evaluation by students.

The analysis is obviously based on quantitative results, but the educational manager is also interested in the free answers given by the students regarding the quality of the educational activity. But this task is difficult to accomplish due to a large number of evaluations (at the level of the Stefan cel Mare University of Suceava there are over 3000 evaluations every six months). A module for automatic analysis of students' free assessments, signaling, for example, negative evaluations for a teacher, would be very helpful. Then, the educational manager would analyze only the reported evaluations and will evaluate each one taking into account several aspects. Following this analysis, it will decide whether or not a discussion with the respective teacher is necessary in order to improve his / her activity. We emphasize that the role of the automatic text interpretation module is only to draw attention, not to make decisions. In the case of the inherent mistakes of current AI systems, the education manager will ignore the reported evaluation (for example as negative), but in the case of a low error rate, it is obvious that it will have much fewer evaluations to analyze.

The module for interpreting students' answers to questions without variants of predefined answers uses models based on natural language processing (NLP) and supervised learning for text analysis. In this first approach, we used algorithms where any word is very important for establishing the meaning of a text [2]. The answer given by a student is pre-processed in order to extract quantitative features and to represent the answers in a common feature space. Based on this representation, attempts are made to train models capable of extracting valuable information from text [2]. Specifically, we used k-NN, Multinomial Naïve Bayes, Logistic Regression, Support Vector Machine, Linear Discriminant Analysis, Random Forest, Multi-layer Perceptron, and Decision Tree classifiers to predict student opinions, positive or negative from an answer formulated in natural language. Model training takes place based on a training set, consisting of several answers given by students to assess the ability of teachers to explain various topics during class. For each answer, its meaning, positive or negative, was established by a human analyst and was indicated also in the training set.

The main issue of the module is to associate to a certain answer, a certain discrete meaning: positive, negative, or neutral. In machine learning, there are classification algorithms that may be trained to predict an associated discrete class [3] to the newly samples. In this paper, we studied the degree of satisfaction regarding the quality of educational activities performed by teachers using natural language processing techniques and supervised learning algorithms. We explored the performances in text processing of kNN, Multinomial Naïve Bayes, Logistic Regression, Support Vector Machine, Linear Discriminant Analysis, Random Forest, Multi-layer Perceptron, and Decision Tree classifiers. The analysis is based on the free answers given by the students where they evaluate the teachers' ability to explain various subjects during classes.

### Related work

Lessmann et al. [4] focused on customer relationship management by discussing the possibility to use supervised learning algorithms such as neural networks, support vector machines, random forest, or linear models. For example, Faisal et al. [5] studied customer satisfaction regarding the services provided by a company using the KNN algorithm. The accuracy obtained was 98% accuracy, and the input data consisted of single-answer multiple-choice questions and a 1 -6 rating scale. Xie et al. [1] studied the satisfaction degree of customers using a decision tree model that generated understandable results with a small computation cost. Zhou et al. [6] proposed an algorithm to analyze the online reviews of products. The model extracts even the sentiment intensity and is based on a fastText technique, latent Dirichlet allocation, and the Kano model. Tsami et al. [7] approached a tree classifier with the use of the algorithm C4.5 to study the satisfaction level of urban transport interchanges that provided highly accurate predictions; approximately 90%. Baydogan et al. [8] also studied the customers' satisfaction on products or services using NLP methods and machine learning algorithms such as Naïve Bayes, J48, Decision Table, 3NN, 5NN, Multiclass Classification, and SMO but the last two gave the best results. Singh et al. [9] studied the overall degree of satisfaction using the random forest supervised learning algorithm that gave an approximately 75% accuracy.

In the following sections, we will describe a method of studying the human language using NLP and supervised learning algorithms in order to identify the satisfaction degree of people, building a demo application.

### Methodology

One of the main goals of NLP libraries is to simplify text preprocessing [10]. Although there are many NLP Python libraries that are designed for various applications, such as NLTK, TextBlob, CoreNLP, Gensim, spaCy, polyglot, Pattern, in this paper we used the Scikit-learn library [11]. To preprocess the data, we used CountVectorizer() method from Scikit-learn library [11]. By definition, the method converts a text into a vector that contains the frequency of each word that occurs in the text. This process of feature extraction is called tokenization or encoding [12]. In Table 1 is the Python code for tokenization after which it is obtained the training and testing data [12].

Table 1

#### Tokenization of testing and learning data set

```
from sklearn.feature_extraction.text
import CountVectorizer
vocabular = CountVectorizer().fit(train_data)
bag_words = vocabular.get_feature_names()
train_code = vocabular.transform(train_data)
test_code = vocabular.transform(test_data)
```

More exactly, the method generates an array, vocabular that contains all the unique words from the entire data set. Each answer from the data set is converted in an array, \*\_code, having the same size as vocabular where each value from \*\_code[i] represents the frequency of the word from vocabular[i], as exemplified in [13].

In the classification stage, we used the tokenized data as input data for various supervised algorithms from the Scikit-learn library such as [11]:



- KNN algorithm determines the k nearest neighbors of an entry q using various distance metrics such in [14], and a variety of ways to vote the class [15].
- Multinomial Naïve Bayes is a probabilistic method that assumes that the features are generated from a multinomial distribution [16].
- Support Vector Machine [17] is a non-probabilistic search for a separation surface between classes with a maximum margin [18].
- Linear Discriminant Analysis searches a linear combination of features to separate two or more classes expected to be normally distributed [19].
- Decision Tree is an algorithm that generates a classification model by constructing a decision tree [20] using different features and decision rules at different stages of classification [21].
- Random Forest is based on an ensemble tree and each tree depends on a random variable collection, and binary recursive partition [22].
- Multi-Layer Perceptron belongs to the neural network's family. In the case of MLP, the information travels in one direction, more exactly from the input nodes to the output nodes [23].
- Logistic Regression is a linear classification model based on computing the probabilities to classify a sample in each class [11, 24].

## Results

In this study, we aimed to predict the degree of satisfaction of students who answer the question "What do you think is the defining personality trait for the teacher's teaching style?". In the demo application, we constructed the learning set with the answers classified in 2 classes, positive and negative opinions of the student about the teaching style; the data set was in Romanian, and in Annex 1 you will find its translation in English.

The learning set consists of free answers and numerical values, 1 for positive opinion and 0 for negative opinion (see Table 2). Trained on this learning set, a classifier will be able to analyze new opinions and recognizing them (see Table 3).

Table 2

| Learning data set |                                       |       |     |                                       |       |
|-------------------|---------------------------------------|-------|-----|---------------------------------------|-------|
| Nr.               | Answer                                | Class | Nr. | Answer                                | Class |
| 1                 | Un foarte bun profesor.               | 1     | 7   | Cursurile au prea mult continut       | 0     |
| 2                 | E interesat de ce preda               | 1     | 8   | Cursurile nu sunt interactive         | 0     |
| 3                 | E interesat ca studentul sa inteleaga | 1     | 9   | Explica foarte putin                  | 0     |
| 4                 | Cursurile sunt foarte interactive     | 1     | 10  | Asteapta pauza ca sa plece            | 0     |
| 5                 | Explica mult                          | 1     | 11  | Cursurile sunt plicticoase.           | 0     |
| 6                 | Explica foarte bine.                  | 1     | 12  | Nu asteapta ca studentul sa inteleaga | 0     |

Table 3

| Testing data set |                                   |       |     |                                     |       |
|------------------|-----------------------------------|-------|-----|-------------------------------------|-------|
| Nr.              | Answer                            | Class | Nr. | Answer                              | Class |
| 1                | Un profesor bun, bun              | 1     | 4   | Explica putin si nu inteleg.        | 0     |
| 2                | Prietenos, bun ascultator         | 1     | 5   | Cursurile nu sunt interesante       | 0     |
| 3                | Cursurile sunt foarte interactive | 1     | 6   | Nu explica bine cursurile teoretice | 0     |

### Features extraction

Once the testing data set has been established, we built the bag of words (see Table 4), and with its help the text will be transformed into feature vectors; using CountVectorizer() method from Scikit-learn [11].

Table 4

#### The bag of words of the demo application

['asteapta', 'au', 'bine', 'bun', 'ca', 'ce', 'continut', 'cursurile', 'de', 'explica', 'foarte', 'inteleaga', 'interactive', 'interesat', 'mult', 'nu', 'pauza', 'plece', 'plicticoase', 'prea', 'preda', 'profesor', 'putin', 'sa', 'studentul', 'sunt', 'un']

In Table 5 is depicted an example of numerical encoding as a dense vector of a student opinion from the learning data set. Because the number of words may be very large, the vector is represented as a sparse vector.

Table 5

#### An answer and its numerical encoding

|   |                              |
|---|------------------------------|
| <i>Input text:</i>                                  | <i>sparse vector coding:</i> |
| Un foarte bun profesor.                             | (0, 3) 1                     |
| <i>dense vector coding:</i>                         | (0, 10)1                     |
| [0 0 0 1 0 0 0 0 0 1 0 0 0 0 0 0 0 0 0 1 0 0 0 0 1] | (0, 21)1                     |
|   | (0, 26)1                     |

Using the bag of words, the testing data is encoded in the same way as learning data.

### Classification

Once the testing and learning data are pre-processed, we used them as input data for supervised learning algorithms from Scikit-learn library such as [11]:

- kNN: euclidean distance, k nearest neighbors;
- Multinomial Naïve Bayes;
- Support Vector Machine: one-versus-one coding, and linear kernel;
- Linear Discriminant Analysis: singular value decomposition solver;
- Decision Tree: length (vocabulary)-1 the maximal number of decision split;
- Random Forest: 100 trees in the forest, 2 maximum depth of the tree;
- Multi-layer Perceptron: (length of answers from training data, length of vocabulary) hidden layers, limited-memory BFGS solver;
- Logistic Regression limited-memory BFGS solver, one-versus-rest coding.

According to the results from Table 6, we obtained 100% accuracy for Multi-layer Perceptron, Support Vector Machine, and Logistic Regression classifiers. The smallest accuracy value was obtained by Linear Discriminant Analysis; therefore we can say that this data set is not linearly separated. Slightly above the medium level of accuracy values was obtained by 1NN, MNB, and RF, which are possible candidates for this data set. We can assume that if the bag of words is higher than these classifiers can get higher accuracy values.

Table 6

#### Comparison of used algorithms

| Classifier                    | Accuracy |
|-------------------------------|----------|
| 1NN                           | 83.33%   |
| 3NN                           | 50.00%   |
| Multinomial Naïve Bayes (MNB) | 83.33%   |
| SVM                           | 100%     |

Continuation Table 6

|                                    |        |
|------------------------------------|--------|
| Linear Discriminant Analysis (LDA) | 33.33% |
| Decision Tree (DT)                 | 66.66% |
| Random Forest (RF)                 | 83.33% |
| MLP                                | 100%   |
| Logistic Regression (LR)           | 100%   |

## Conclusion

The use of supervised learning algorithms allows the prediction of the degree of satisfaction of users that have opinions on different topics. Because the analysis of the degree of satisfaction can be automated through natural language processing techniques, decisions can be made on a significant amount of data in a short time. The study aimed to examine in a frame of a demo application the performance of supervised learning algorithms using the free answers of the students on the quality of the activities performed by their teachers. In this study, we used KNN, Multinomial Naïve Bayes, SVM, Linear Discriminant Analysis, Logistic Regression, Random Forest, Multi-layer Perceptron, and Decision Tree classifiers and for each model, we computed the accuracy value. According to the obtained results, for the data set used in this study, the most appropriate classifiers were MLP, LR, and SVM. Therefore, extending the training data set to a very large number of responses, classifiers that have obtained high accuracy values can be taken into account to predict the positive or negative opinions of the students about the quality of the activities performed by their teachers.

**Acknowledgments.** We acknowledge the financial support provided by the project "Center for knowledge transfer to enterprises in the field of ICT - CENTRIC", Contract no. 5 / AXA 1 / 1.2.3 / G / 2018, Subsidiary contract with MICS Software, no. 15.875 / 2021. According to the author's PhD Research, "Stefan cel Mare" University of Suceava, Romania. This paper work was presented at the International Conference on Electronics Communications and Computing, IC ECCO, 21-22 October, 2021, Chisinau, TUM.

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### Annex:

### Annex 1

#### Translation from Romanian into English of the learning and testing data set

|    | Romanian                              | English                                       |
|----|---------------------------------------|---|
| 1  | Un foarte bun profesor                | A very good teacher                           |
| 2  | E interesat de ce predă               | He's interested in what he teaches            |
| 3  | E interesat ca studentul sa inteleaga | He is interested in the student understanding |
| 4  | Cursurile sunt foarte interactive     | The courses are very interactive              |
| 5  | Explica mult                          | Explain a lot                                 |
| 6  | Explica foarte bine                   | Explain very well                             |
| 7  | Cursurile au prea mult continut       | The courses have too much content             |
| 8  | Cursurile nu sunt interactive         | The courses are not interactive               |
| 9  | Explica foarte putin                  | Explain very little                           |
| 10 | Asteapta pauza ca sa plece            | Wait for the break to leave                   |
| 11 | Cursurile sunt plicticoase            | The courses are boring                        |
| 12 | Nu asteapta ca studentul sa inteleaga | Don't wait for the student to understand      |
| 13 | Un profesor bun, bun                  | A good, good teacher                          |
| 14 | Prietenos, bun ascultator             | Friendly, good listener                       |
| 15 | Cursurile sunt foarte interactive     | The courses are very interactive              |
| 16 | Explica putin si nu inteleg           | Explain a little and I don't understand       |

[https://doi.org/10.52326/jss.utm.2022.5\(1\).02](https://doi.org/10.52326/jss.utm.2022.5(1).02)  
UDC 378:334.7:677[478+498]



## THE IMPORTANCE AND NECESSITY OF ENTREPRENEURIAL EDUCATION FOR STUDENTS WITHIN THE TEXTILE AND POLYGRAPHY FACULTY: RESEARCH STUDY

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Received: 01. 20. 2022

Accepted: 02. 24. 2022

**Abstract.** Entrepreneurial education is considered as one of the priority directions for the development of the education system both at international level and in the Republic of Moldova. Research has shown that investing in entrepreneurial education is one of the most profitable investments, and young people who have benefited from entrepreneurial education are more likely to start their own business at some point in their lives. Over the last decade, the governments of several states have paid particular attention to the aspects of legislative support for the entrepreneurial training process in the education system. Given the context of global change and the pronounced demographic decline in the Republic of Moldova, lifelong learning is considered an important concern of the education system. Thus, in recent years, various projects have been launched at national level to support the development of entrepreneurial education. The European Union funded and recently launched Collaborative Entrepreneurial Education project that aims to increase access to quality entrepreneurship training, development students' entrepreneurial skills, and train a new generation of entrepreneurs for the textile industry, which is a key industry in Moldova. Through this project, the importance and necessity of entrepreneurial education for students were identified based on a survey conducted at the Faculty of Textiles and Polygraphy in the Technical University of Moldova, and the results were compared with the results of the survey from the Faculty of Industrial Design and Business Management within the "Gheorghe Asachi" Technical University of Iași, Romania.

**Keywords:** *entrepreneurial education, education system, lifelong learning, textile industry, research study.*

**Rezumat.** Educația antreprenorială este considerată ca fiind una din direcțiile prioritare de dezvoltare a sistemului educațional atât la nivel internațional, cât și în Republica Moldova. Cercetările au demonstrat că investiția în educația antreprenorială este una dintre cele mai rentabile investiții, iar tinerii care au beneficiat de educație antreprenorială au șanse mai mari de a deschide o afacere proprie, într-un anumit moment al vieții. Pe parcursul ultimului deceniu guvernele mai multor state au atras o atenție deosebită aspectelor de susținere legislativă a procesului de formare antreprenorială în cadrul sistemului de învățământ

Reieșind din contextul schimbărilor globale și al declinului demografic pronunțat în Republica Moldova, învățarea pe tot parcursul vieții este considerată drept o preocupare importantă a sistemului educațional. Astfel, în ultimii ani la nivel național au fost lansate diferite proiecte de susținere a dezvoltării educației antreprenoriale. Proiectul "Collaborative Entrepreneurial Education", finanțat de Uniunea Europeană și lansat recent are drept obiectiv principal sporirea accesului la o instruire calitativă în domeniul Antreprenoriatului, dezvoltarea abilităților antreprenoriale ale studenților, formarea unei generații noi de antreprenori pentru industria textilă care este o industrie cheie a economiei Moldovei.

Prin intermediul acestui proiect au fost identificate importanța și necesitatea educației antreprenoriale a studenților în baza unui sondaj efectuat la Facultatea "Textile și Poligrafie" din cadrul Universității Tehnice a Moldovei, iar rezultatele au fost comparate cu rezultatele sondajului efectuat la Facultatea de "Design Industrial și Managementul Afacerilor" din cadrul Universității Tehnice "Gheorghe Asachi" din Iași, România.

**Cuvinte cheie:** *educație antreprenorială, sistem educațional, învățare pe parcursul vieții, industria textilă, studiu de cercetare.*

### **Introduction**

In the last decade, both in the European Union and the Republic of Moldova, especially young people are facing the problem of identifying a suitable job, thus achieving a perfect adjustment in the economic gear. Analyzes and statistical reports show that the unemployment rate among young people under age of 25 in the European Union is 22% [1] and in the Republic of Moldova the unemployment rate among young people (15-29 years) is even higher and ranges between 28,4% and about 31–33.3%. This value of the indicator differs depending on the variable "number of young people missing from the country for more than 12 months due to migration" [2].

These data have highlighted the need to adopt sustainable solutions for the prosperity of future generations. Thus, in 2006, the European Parliament set some recommendations on certain curricular disciplines that are considered key competences in the learning process, such as civic education and foreign languages, entrepreneurship education.

It should be mentioned that Entrepreneurship, as a study discipline has to contribute to the mentality changes, so that the person understands and accepts business principles and models. Therefore, entrepreneurship education needs to be developed from an early age, not even in school-age children, but earlier at primary school or at least in secondary school. Both high school children and especially students, need certain business skills to understand what a business is, from what sources it can be funded, how the costs and profits are formed, what reflects the break-even point and knowledge of the risks, etc. Emphasis should be focused not only on knowledge transfer, but also on the acquisition of general entrepreneurial skills, the development of the abilities to identify opportunities, make decisions and take responsibility for own decision, the stimulus of self-organization, including the formation of specific social skills. And success in this area depends on the optimal way to ensure efficient entrepreneurship education.

### **The international and national context of entrepreneurial education**

#### **The international context**

Entrepreneurship support and development is very important, because the implications of globalization are most obvious in the economy and including business and to

integrate into such a society, young people must cultivate specific skills and abilities that can help them to adapt to continuous change.

Research has shown that investing in education is undisputed, and entrepreneurial education is considered one of the most profitable investments, so young people who have benefited from entrepreneurial education are from 3 to 6 times more likely to start their own business and managed successfully at a certain stage of their life, compared to those who did not have the opportunity to benefit from entrepreneurial education. Entrepreneurial education provides students with additional knowledge and skills, which are much needed to be applied on the starting a new business [3]. It also develops and stimulates the entrepreneurial process, providing the tools needed to launch new businesses [4].

According to some researchers, entrepreneurial education is a deliberate intervention of teachers/trainers in students' lives to train them entrepreneurship, develop their knowledge and skills needed to work in business [5].

Grateful to that entrepreneurship plays a decisive role in economic development [6], the governments of different countries have started to encourage people to become entrepreneurs [7]. Particular attention has been paid to this process by the European Union. Over the last two decades, the European Union has attracted, and continues to attract a special focus on entrepreneurial education. The European Commission for the first time was mentioned the importance of entrepreneurial education in 2003 in the European Commission's Green Paper on Entrepreneurship.

In 2006, the European Parliament and the Council of the European Union adopted the Recommendation on Key Competences for Lifelong Learning. This Recommendation addresses the development of key competences for all members of society as a content of lifelong learning strategies, including strategies for achieving universal literacy, by applying the concept of "Key competences for lifelong learning - A European Framework" [8].

The spirit of initiative and entrepreneurship is one of the eight key competencies needed for all members of a knowledge-based society. The recommendation was a key reference document for policy-making in education, for the development of skills-oriented training and learning, including entrepreneurial competence. The European Commission recognizes entrepreneurial education as a proven tool that helps young people become more entrepreneurial. In addition to specific skills, entrepreneurship training contributes to the development of a general set of skills, applicable in all aspects of life. It encompasses the various forms of learning, education and training that through their synergy contribute to the creation of the spirit, skills and entrepreneurial behavior, with or without a business objective.

The European Union has always mentioned the need to promote entrepreneurial education. The Small Business Act for Europe was approved in 2008, the Communication about Rethinking Education was launched in 2012, and the Entrepreneurship 2020 - Action Plan was approved in 2013. Through the Entrepreneurship 2020 Action Plan, the European Commission emphasized that business and entrepreneurial skills and abilities are key competences in lifelong learning, important factors that would favorably influence the low growth rate and significantly reduce the large number of unemployed through firm measures in the short and medium term to promote Entrepreneurship and creating conducive conditions to its development, especially among young people [9].

And more recently, the "New Skills Agenda for Europe: Working together to strengthen human capital, employability and competitiveness" to address the skills challenges facing Europe, the Entrepreneurship Framework, also known as EntreComp, provides a tool for

improving the entrepreneurial capacity of European citizens and organizations. EntreComp defines "Entrepreneurship as a transversal competence, which applies in all spheres of life: from promoting personal development, to active participation in society, to (re) entering the labor market as an employee or as a self-employed person and also, until the creation of cultural, social or commercial projects. Entrepreneurship is when one acts on the basis of opportunities and ideas, turning them into value for others, and the value that is created can be financial, cultural or social" [10, 11].

Entrepreneurial education began in the United States in the 1970s, when the University of Southern California launched its first program MBA in entrepreneurship in 1971, followed by its first bachelor's degree program in 1972. In the early 1980s, more than 300 universities offered entrepreneurship and small business courses and in the 1990s this number increased to 1,050 schools. Therefore, the true emergence of entrepreneurial education took place in the 1980s [12]. Entrepreneurship continues to grow in business and academia. Currently, more than 1,600 colleges and universities in the United States offer entrepreneurship courses. In the United States, the development of entrepreneurial education is carried out extensively and based on various projects aimed at stimulating the initiatives of young people, which favors the context of bringing the business environment closer to the academic and professional environment. Among the largest projects implemented in the US in the field of entrepreneurship support can be mentioned the Global Business Challenge. This project allows students to work together to present a solution of a real-life business problem which is facing a number of companies participated in the project. In order to find the optimal solution to a problem, teams of students from all over the world are formed and compete to come up with the best solution.

### **The national context**

In the Republic of Moldova, the entrepreneurial environment is a developing process aimed at attracting young people to increase it, and entrepreneurship education has become an important element of initial and continuing training of specialists in various fields, due to the importance of its contribution to the development of entrepreneurship.

In the view of specialists, an entrepreneur can become any person, regardless of the profession or trade he embraces when is doing certain studies. We can say that there are certain professions or trades intended for the training of entrepreneurs. The entrepreneur can belong to any professional group and must be promoted as an alternative to the classic professional career. It is important to create entrepreneurial (transversal) skills for young people. They include a set of knowledge and skills such as initiative, creativity, risk-taking, a sense of responsibility, ability to identify and use opportunities that help young people to turn ideas into action. All these skills need to be developed in young people in vocational training with the help of entrepreneurship education, taking into account the fact that it favors the approach of future specialists to the labor market.

In this sense, the Education Code of the Republic of Moldova (Chapter II, art. 6) reorients the aims of education towards formation a system of competencies that allows active involvement of the individual in social and economic life. The Education Code emphasizes that "The educational ideal of the school in the Republic of Moldova consists in the formation of personalities with a spirit of initiative, capable to self-development, who possess not only a system of knowledge and skills necessary for employment, but also is independent in opinion and action, being open for intercultural dialogue in the context of



the assumed national and universal values”, and one of the key competencies indicated in art. 11 is entrepreneurial competence and initiative [13].

Also in the Strategy "Education-2020" of the Republic of Moldova, the goal was emphasis on changing the focus in education in favor of quality and skills that young people acquire in the educational process. The success of the individual depends on his ability to adapt to changes and lifelong learning, and the education system must provide an adequate environment for development of these skills. In the context of global metamorphoses and the sharp demographic decline, lifelong learning is becoming an important concern of the education system". Specific objective 2.4 of the Strategy also emphasized the need to "modernize the university curriculum from the perspective of focusing on skills, learning and the needs of the economic environment" [14].

The concept of the Education Development Strategy for 2021-2030 "Education-2030", including in the Implementation Program, states that the strategic goal in the field of education is to provide opportunities for all citizens of the Republic of Moldova to develop, from the earliest age and throughout life, skills needed to reach their full potential in personal and family life, as well as professional and social life, and to adapt as easily as possible to the imperatives of the time, in particular to those related to sustainable development ", which means the acquisition of transversal entrepreneurial skills [15]. Thus, in the Republic of Moldova, entrepreneurial education is supported in terms of legislation.

It should be noted that in recent years, various projects have been launched at national level to support the development of entrepreneurial education, promoted by various organizations and centers. Among the most important organizations can be highlighted: Junior Achievement, a public association whose activity is built around the mission of motivating and preparing students so that they can successfully assert themselves in the market economy; The Center for Entrepreneurial Education and Business Assistance (CEDA) supports education reforms, promotes entrepreneurship and income-generating activities as a foundation for quality vocational training and career education, with the aim of training and capitalizing on professional skills, individual initiative and entrepreneurship; Yep Moldova, Artcor, Ziphouse, Tekwill, Mediacor and other centers, whose mission is to promote entrepreneurial education. Students and entrepreneurs who are just starting out or who have businesses and want to introduce innovative products, or young people who are thinking of developing a start-up taking part in such centers. It is appreciated that the implementation by the mentioned centers of projects for the development of creativity, innovation, innovative culture, innovative business environment contributes significantly to the development of entrepreneurial education and will contribute to the formation and development of a prosperous nation.

Entrepreneurial education is also implemented and promoted by universities in the Republic of Moldova. We mention that several faculties have identified the entrepreneurship course as opportune, and this discipline is found in the bachelor's and master's degree curricula.

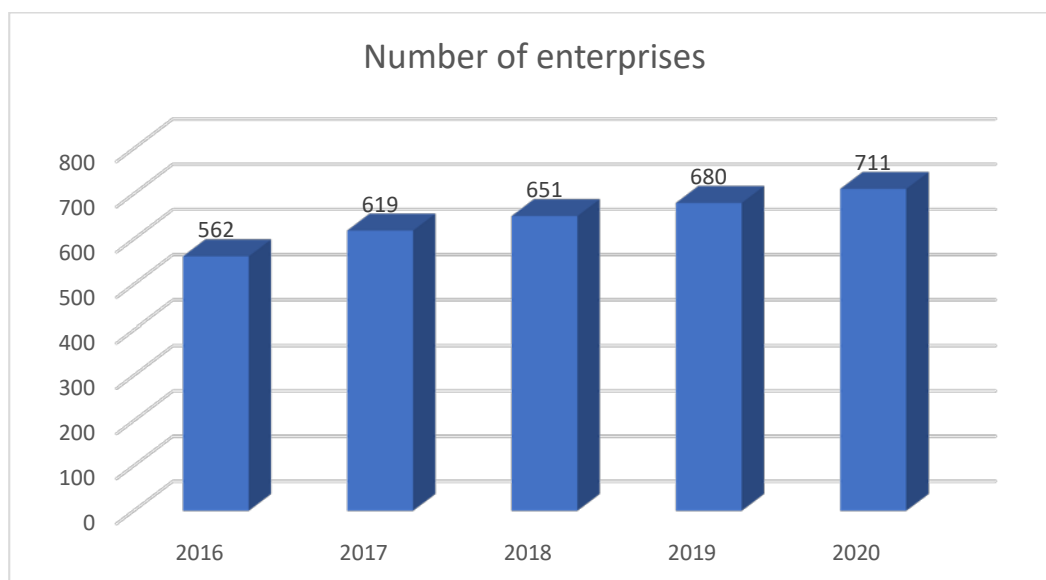
### **Identification of the needs for advanced entrepreneurial education in light industry The importance of light industry for the economy of the Republic of Moldova**

The light industry sector includes textile, clothing, leather, leather goods production, the manufacture of footwear and fashion accessories, it is among the key industries of the Republic of Moldova and contributes annually with approx 5% on gross domestic product. However, the importance of light industry for the national economy is due to its export.

Annually light industry is in the top three largest exporters and provides a share of over 14% of the country's total export. The main is the European market, which has a share of almost 80%. The light industry offered in 2020 jobs to approx. 24.3 thousand people, which constituted over 20% of the total number of employees in the industry of country [16].

The number of enterprises in this industry has a continuous growth trend (Figure 1).

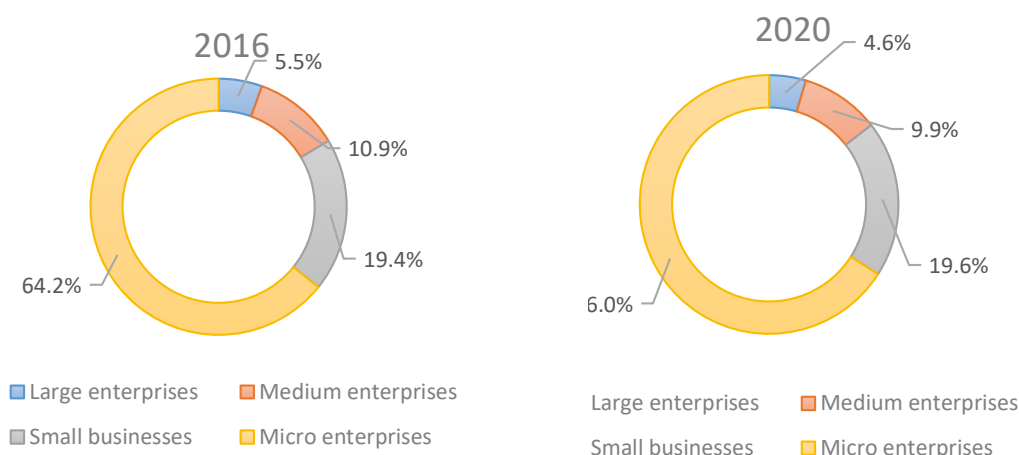
The data in Figure 1 show that over the five years the number of enterprises registered in the light industry increased by 149 enterprises or by 31.5% (from 562 enterprises in 2016 to 711 enterprises in 2020). It should be mentioned that in 2020, even despite the Covid-19 pandemic period, new enterprises were created in the branch, which conditioned the increase of the number of enterprises in 2020 by 31 units compared to 2019.



**Figure 1.** Dynamics of the number of enterprises in the light industry of the Republic of Moldova

*Source: Developed by authors based on [17].*

Figure 2 reflect the dynamics of the structure of light industry enterprises, which shows that within five years, the share of large enterprises decreased from 5.5% in 2016 to 4.6% in 2020, and the share of micro, small and medium enterprises increased from 94.5% to 95.4%.



**Figure 2.** Dynamics of the structure of enterprises in the light industry of Moldova

*Source: Developed by authors based on [17].*

The share of micro-enterprises increased during this period from 64.2% to 66%. The relatively large number of micro-enterprises, which is constantly growing (from 361 enterprises in 2016 to 449 enterprises in 2020) demonstrates an increased interest in entrepreneurship in this branch. Practice shows that more and more young people are getting involved in entrepreneurship, and every second business is run or owned by a lady.

### **Collaborative Entrepreneurial Education Project**

The importance and need for the development of light industry in the Republic of Moldova as a priority industry of the national economy is obvious. One of the main challenges in this context is the development of entrepreneurial skills of students at the Technical University of Moldova and training a new generation of entrepreneurs for the light industry.

The positive trends that have emerged in the light industry of the republic need to be sustained, and entrepreneurial education to be widely implemented, in order to motivate more and more young people to open businesses and stay at home for developing our country.

To this end, in 2020 the "Collaborative Entrepreneurial Education" project was launched, financed by the European Union through the Romania-Moldova Cross-Border Program, implemented by the Organization for Development of Small and Medium Enterprises Sector in RM in partnership with Technical University of Moldova, Gheorghe Asachi Technical University Iași and County Board of Small and Medium Enterprises, Iași Romania [18].

The main objective of the project is to increase access to quality training in entrepreneurship, develop students' entrepreneurial skills, train a new generation of entrepreneurs for the textile industry based on effective cooperation to identify and use existing best practices at Gheorghe Asachi Technical University (Iasi, Romania) and Technical University of Moldova in the field of entrepreneurial education.

In order to achieve the proposed goal, the following tasks have been formulated and performed:

- to find out the opinion and attitude of the students towards the entrepreneurial activity;
- to identify what opportunities for development, in the opinion of students, exist for entrepreneurship in light industry in Republic of Moldova;
- to understand the main barriers and risks that, in the opinion of students, prevent to start their own business;
- to identify the directions/areas of support needed to facilitate start of one's own business;
- to determine training needs in the field of entrepreneurship;
- to study good practices of European universities regarding the training in the field of entrepreneurship, in order to reapply them in the Technical University of Moldova.

### **Research methodology**

Entrepreneurial skills in general and for students from the Technical University of Moldova in particular are an underused area, giving priority to specialized engineering education, although the Council of Europe recommendations to the spirit of initiative and entrepreneurship emphasize their importance for integration and professional development.

Initiating students in accordance with current realities is a framework of maximum interest. In this regard, a study was conducted, based on the opinions and attitudes of students at the Technical University of Moldova, to identify their development needs in the field of entrepreneurship [19]. The study methodology for identifying the students needs and priorities in the field of entrepreneurial skills training aimed to bring conceptual and practical changes in the educational process.

In developing the methodology, the following specific objectives were taken into account:

- identifying the students' opinion on the knowledge and skills in the field of entrepreneurship that they accumulate during their university studies;
- establishing students' expectations regarding the knowledge, skills and attitudes intrinsic to the applied competence;
- identifying the training areas considered by students as necessary for their entrepreneurial development;
- preparing students to participate in lifelong learning.

The study methodology for identifying and assess the needs for training entrepreneurship for students of the Textile and Polygraphy Faculty of the Technical University was based on the method of questioning using the SPIN technique, which is among the most recognized techniques developed in recent years. It was designed to focus on the respondent, so that he/she can realize problems and feel the need to change the situation, in our case, to develop in the entrepreneurial field. This technique makes it possible to identify respondents' needs with a well-structured system of questions, arranged in a certain order [20]. Gratfull to cross-border cooperation between the "Gheorghe Asachi" Technical University of Iași, Romania and Technical University of Moldova, in order to increase students' access to quality entrepreneurship oriented education, the study was based on an identical common questionnaire.

Given that the questionnaire is the basic tool of the investigation, it was used in a quantitative approach to collect the data and information needed for research.

In preparing the questionnaire, the following conditions were taken into account:

- to allow the accumulation of the information necessary for a certain study, to be as short and simple as possible but to provide relevant information;
- to ensure the most complete answers possible;
- to eliminate insignificant information;
- to give answers without too much effort;
- contain filter questions;
- facilitate evaluations, analyzes and interpretations as relevant as possible.

The questionnaire included four blocks of questions, namely:

- situational questions;
- problematic questions;
- impact questions;
- solution questions.

Based on the initial analysis of the primary data and the context, taking into account the specific objectives of the study, the concept and structure of the questionnaire were established, and 18 relevant questions were formulated. The developed questionnaire was used to survey students by both universities in online format, based on Google Forms application.

### Sample and procedures

At Textile and Polygraphy Faculty of Technical University of Moldova, more than 260 students enrolled in two cycles of study (cycle I - License and cycle II - Master). The survey involved 130 students, or 50% of the total number of students from faculty.

The surveyed sample included students from all years of study, both from the first and second cycle, as well as from all the specialties of the faculty. The structure of the sample surveyed by years of study was as follows:

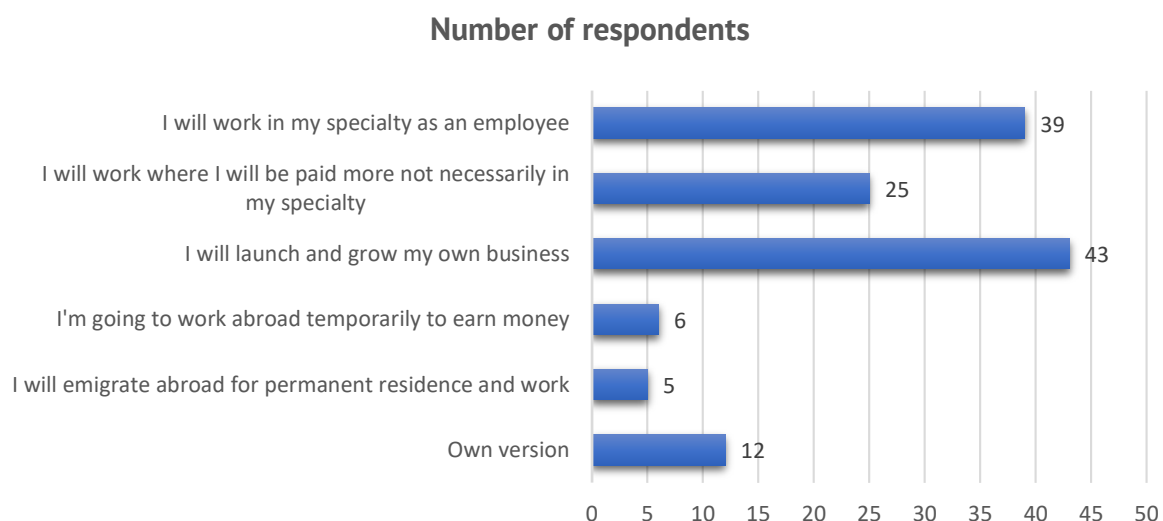
- Undergraduate studies, Year 1 - 39 students or 30%,
- Undergraduate studies, Year 2 - 23 students or 18%,
- Undergraduate studies, Year 3 - 32 students or 25%,
- Undergraduate studies, Year 4 - 27 students or 21%,
- Master studies - 9 students or 7%.

The survey was also attended by 100 students from the Faculty of "Industrial Design and Business Management" at the "Gheorghe Asachi" Technical University in Iasi, Romania. Thus, a total number is 230 students participated in the study from both universities.

### Results and discussions

One of the questions in the questionnaire was to understand the attitude of students towards entrepreneurship. It was referring to: *What will you do after graduating from university?*

Based on the analysis of the answers provided by the students of the Textile and Polygraphy Faculty of the Technical University of Moldova, it is observed that the largest share of respondents 33% (43 out of 130), focus on launching and developing their own business (Figure 3). The answers obtained to this question show that students are thinking about their future and more than a third are interested in entrepreneurship.



**Figure 3.** Respondents' answers to the question "What will you do after graduating from university?"

Source: [19].

The study also showed some focus points [19].

- For most students (58% of students surveyed), the term "entrepreneurship" means the opportunity to realize and put into practice their own ideas. These students are ambitious, full of ideas and aspirations.

- Most students plan to start their own business after graduation. Most of them have business ideas, but they don't know how to implement them. A large proportion,

approximately 90% of the students in the target group who took part in the study, have a clear view that their knowledge and skills in entrepreneurship are very useful for their future success, which indicates their interest in gaining new knowledge and skills for employment or starting your own business.

- Students find that there are many obstacles to transforming ideas into their own business, the main one being the lack of knowledge and entrepreneurial skills. 64% of respondents believe that the knowledge and skills they acquire in the university curriculum is not enough to implement a business idea, and 100% of respondents are aware of the need to acquire knowledge in the field of entrepreneurship. About 1/4 of the respondents consider that the lack of entrepreneurial experience is an essential obstacle to implementing ideas in their own business. Thus, students' responses reflect the fact that students opt for more in-depth entrepreneurial training.

- About 85% of students consider that such course modules as Basics of Entrepreneurship, Stages of setting up a business, Approaching business in crisis situations, How to attract and retain customers and Risks of entrepreneurship are strictly necessary to be taught in higher education institutions. Over 90% of respondents expressed an increased interest in being able to identify the sources of financing a business.

- Regarding teaching methods, a large number of students mentioned that it is necessary to apply teaching methods based on concrete examples, dialogue with successful entrepreneurs, practical activity and the use of modern technologies.

Comparing and analyzing the answers of the students from the partner universities, it can be concluded that the students answered very similar questions, expressing similar opinions, wishes and aspirations.

Among the important tasks of the study was to understand how students assess their level of knowledge and entrepreneurial skills that they acquire in the university program. The majority of students in the Republic of Moldova, as well as in Romania, 44% and 43%, respectively, consider that the knowledge and skills acquired during university studies in entrepreneurship are not enough to ensure their future success. Also, among the answer options, the largest share, 36% of Moldovan students and 40% of Romanian students, mentioned that more practice is needed to be able to apply the knowledge gained.

It should be noted that the desire of students to be trained in entrepreneurship is very high. Thus, 82% of Moldovan students and 73% of Romanian students want to acquire more knowledge and entrepreneurial skills. Students from both countries have shown a high degree of interest in attending a course, where they can gain basic knowledge and skills in business and entrepreneurship.

### **Conclusions**

In recent years, both internationally and at European level, there has been a strong emphasis on promoting and implementing entrepreneurial education, especially for young people. However, the implications of globalization are most evident in the economy and including business, and in order to integrate into such a society, young people need to cultivate specific skills and abilities that can enable them to adapt to continuous changes.

Practice has shown that entrepreneurial education is successful when the mentality is ready to accept business principles and models. Therefore, entrepreneurial education should be developed early to school-age children. This conclusion is supported and promoted by a series of legislative acts and programs of the European Union in which recommendations have been adopted on key competences for lifelong learning in Republic of Moldova.

A successful entrepreneurial education focuses not only on knowledge transfer, but on the acquisition of general entrepreneurial skills, the ability to identify opportunities, the ability to make decisions and take a risk of own decision, stimulate the capacity for self-organization, develop communication and work team skills etc.

At the international level, the development of entrepreneurial education is carried out extensively on the basis of various projects aimed at stimulating young people's initiatives, which favors the context of bringing the business environment closer to the academic and professional environment.

In the Republic of Moldova, the entrepreneurial environment is a developing process aimed at attracting young people to increase it, and entrepreneurial education became an important element of the initial and continuing training of specialists in various fields. It is supported and promoted by the Education Development Strategy and the Education Code in RM, which clearly states that one of the key competencies is entrepreneurial competence and initiative. Over the last few years, various projects have been launched on the national level to support the development of entrepreneurial education, promoted by various organizations and centers.

The project "Collaborative Entrepreneurial Education", financed by the European Union through the Cross-border Program Romania - Republic of Moldova, implemented by the Organization for the Development of the Small and Medium Enterprises Sector in RM in partnership with the Technical University of Moldova, the County Board of Small and Medium Enterprises from Iași and "Gheorghe Asachi" Technical University from Iași, Romania has as main goal to increase the access to a qualitative training in the field of Entrepreneurship, the development of students' entrepreneurial skills, the formation of a new generation of entrepreneurs for the textile industry, which is a key industry of Moldova.

At the first stage of the project, a study was conducted to identify and assess the training needs in the field of entrepreneurship for students of the Faculty of Textiles and Polygraphy in the Technical University of Moldova and students of the Faculty of Industrial Design and Business Management in the "Gheorghe Asachi" Technical University from Iași, Romania. The study aimed to identify training needs in entrepreneurship and formulate recommendations on entrepreneurial education of students, which will be included in the entrepreneurship course implemented in the project and possibly in the curriculum, in order to bring about conceptual and practical changes on the training of students' knowledge and skills, applied on the market.

The study highlighted an increased interest of students in entrepreneurial education. Most students are attracted to the idea of starting their own business and have demonstrated the need to gain more knowledge in the field of entrepreneurship to implement their own ideas. The level of knowledge and skills that students acquire in the university curriculum is not enough to stimulate entrepreneurship. Thus, in addition to the university study program, students need entrepreneurial training, based on specific and practical aspects, for professional development in the entrepreneurial field. Students also believe that teaching methods need to focus on practicality on modern teaching tools and interactive technologies. They are interested in case study of successful businesses, business simulation and business process modeling, working in a team and especially interacting with experienced entrepreneurs.

**Acknowledgment.** The research was conducted within the cross-border project "Collaborative Entrepreneurial Education" no. MS ENI Code 2SOFT/1.1/1.

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## DIGITAL RESOURCES IN FINANCIAL EDUCATION: PREMISES FOR IMPLEMENTATION IN PRIMARY EDUCATION

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Received: 12.06.2021

Accepted: 01.23.2022

**Abstract.** The digital resources available online provide quality teaching material so that students become familiar in a pleasant, simple, fun and playful way at the same time with elements of economic culture, so that they can easily enter the exciting world of money. From asking for money to making money is a distance that can be covered if certain basic, elementary information is acquired, which leads to certain financial skills that result in certain financial behaviors necessary in the attitude of tomorrow's adult - today's student. As the online environment is very accessible to most people, we consider that spending time in virtual learning new things, assimilating some notions in the financial field is a method available to anyone to inform themselves so as to avoid financially unpleasant situations in time, such as "loans", "card overdrafts", "mortgages", "guarantees", etc., especially when these are not necessarily necessary. The proposed study describes the current situation of the subject taught in the traditional school, analyzes the financial skills of students in contrast to the financial skills of students who do not study this subject. The research problem is related to the inability of students to intelligently manage a sum of money due to poor and insufficient training in the use of useful digital resources that can train their early financial skills.

**Keywords:** *digital education; digital resources; financial education; new education; open educational resources.*

**Rezumat.** Resursele digitale disponibile online oferă material didactic de calitate, astfel încât elevii să se familiarizeze într-un mod plăcut, simplu, distractiv și ludic, concomitent cu elemente de cultură economică, astfel încât să poată intra cu ușurință în lumea incitantă a banilor. De la a cere bani până la a face bani este o distanță care poate fi parcursă dacă se dobândesc anumite informații de bază, elementare, ceea ce duce la anumite abilități financiare care au ca rezultat anumite comportamente financiare necesare în atitudinea adultului de mâine - studentul de azi. Întrucât mediul online este foarte accesibil pentru majoritatea oamenilor, considerăm că petrecerea timpului în virtual învățând lucruri noi, asimilarea unor noțiuni din domeniul financiar este o metodă la îndemâna oricui de a se informa astfel încât să evite în timp situații neplăcute din punct de vedere financiar, precum „împrumuturi”, „descoperi de cont de card”, „ipotecă”, „garanții” etc., mai ales când acestea

nu sunt neapărat necesare. Studiul propus descrie situația actuală a disciplinei predate în școala tradițională, analizează abilitățile financiare ale studenților în contrast cu abilitățile financiare ale elevilor care nu studiază această materie. Problema de cercetare ține de incapacitatea studenților de a gestiona în mod inteligent o sumă de bani din cauza pregătirii slabe și insuficiente în utilizarea resurselor digitale utile care le pot forma abilități financiare timpurii.

**Cuvinte cheie:** *educație digitală; resurse digitale; educație financiară; educație nouă; resurse educaționale deschise.*

### Introduction

Education, according to the dictionary, presupposes "a fundamental social phenomenon of transmitting the life experience of adult generations and culture to generations of children and young people", but it also means the formation of the individual in a person capable of thinking and carrying out actions of a certain culture. This phenomenon resides "in a set of methods, measures that are applied in a systematic, organized way, in order to form and develop intellectual, moral, physical characteristics of individuals" [1]. In the case of our research, the segment we are referring to considers the financial education of the little ones, more precisely, of the young school age students.

Studies in the field specify that around the age of 9, the child begins to create his own universe through the prism of what he knows or can learn about money. It is the age when the general perception changes, especially the personal perspective.

Hermann Koepke develops a true theory around the age of nine of the child, a period when very interesting transformations take place in human development, both from an anthropological / biological point of view, but also from a psychological point of view. The thinking of the nine-year-old child reaches the stage of asking questions, of problematizing certain situations, but also of interpreting in a personal way some aspects of real life. For this reason, of the turning point from the age of 9, "teaching is not allowed to contain anything strictly delimited, as it is never allowed to give the child ready-made representations, which have the ability to transform" [2], because the child is able to act in such a way as to be always an active learning, in constant growth with his own development.

Private providers of financial education are directly interested in the education of children from an economic point of view because the private environment notices more quickly the gaps of individuals, especially when it comes to employment or certain financial responsibilities that employees can not complete or are deficits in this regard [3]. Financial education is required at the level of primary education, but, for the time being, it is provided only in a private setting or in the form of an optional one in the traditional school.

Financial education in primary school means, in fact, the "ABC" in the world of money. At the age of small schooling, information is still assimilated in the form of a game - this is why the way of teaching information in such a serious field, such as economics, must be easy, for the little ones, but also adapted to the age of the little ones students, as well as their level of intellectual development.

If at the preschool and primary level - from kindergarten to the second grade, we are talking about the cycle of fundamental acquisitions, when students prepare for the specifics of schooling, with the acquisition of basic elements (reading, writing, counting), here at the next level - from the third grade to the sixth grade, it is about the developmental cycle, when the student's thinking is similar to that of the adult and becomes abstract, operating with

abstract notions, but can even develop theories about the world [4]. The student is characterized by curiosity and is able to solve a mental problem - according to Piaget, this is the highest form of thinking, and from this age the student can expand his knowledge, without being hindered by egocentrism or other such restrictions [5].

Hence the interest in implementing financial education starting at least with the third grade: both due to the psychological development of the 9-year-old child and the transition of students to another stage of development in their own educational training - they begin to express themselves correctly in various communication contexts, develops the ability to communicate using specialized languages, develops autonomous thinking, as well as the ability to integrate into the social environment.

The study proposed by us is descriptive in nature as it describes the current situation of this subject taught in the traditional school, as well as comparative in nature, as it exposes the financial skills of students studying this discipline in contrast to the less developed financial skills of students who do not study this subject. It is necessary to introduce this discipline since the period of early schooling, given the multilateral and harmonious development of students through integrated teaching, but also by introducing new education in the school curriculum.

The research problem we intend to analyze is given by the inability of students to intelligently manage a sum of money they have at a given time due to poor and insufficient training in using useful digital resources that can train them early financial skills, even when they don't have real money.

### **Digital resources in student financial education**

#### **A. New educations in the contemporary school**

Compared to the Industrial Age, characteristic of the period 19<sup>th</sup> – 20<sup>th</sup> centuries, when people were trained to become good executors of actions, in the 21<sup>st</sup> century, in which we carry out our existence, the emphasis is on the formation of a man adaptable to any situation, both socially and professionally. What you learned in school may no longer correspond, as training, to what your employer requires you to do in your new job. Many of the trades have disappeared, others have emerged, and even more trades have replaced the human workforce with high-tech machinery. That is why the emergence of new educations is welcome: they have the role of training modern man in adapting quickly, on the go, to the challenges related to the new.

New educations are, in fact, new objectives of the education of the individual and are generated by the context of the contemporary world. They correspond to social and pedagogical requirements, being both cumulative and integrative, because they involve implications and intersections of several different fields. We mention here some such educations: education related to the environment, education for peace and cooperation, education for participation and democracy, education for population, education for a new international economic order, education for communication and media power, education for change and development, nutrition education, modern economic and domestic education, leisure education. In the Industrial Age of the last century there was no question of the existence of such educations because the purpose of society was different, both in terms of its development and the existence of the individual.

As things have changed relatively quickly due to the amazing advancement of technology, education has also undergone some changes, so that, in fact, everything that happens in terms of training leads to progress.

In the context of new education, modern economic and domestic education involves the formation of an economic consciousness and conduct for a balanced life, but also an easy integration into social life. "Knowledge and understanding of economic facts in their causal substratum helps to increase the quality of production of goods and thereby improve the quality of life" [3]. At the same time, it is considered the formation of a positive attitude towards goods, the formation of a spirit of cooperation, but also respect for work, as well as the ability to participate directly in the realization of economic projects of society.

New educations are a very current and constantly debated topic, both as a delimitation and as a methodology for implementation. Being educations at the intersection of various fields, they must be maximized. The implications of the new educations lie, in fact, in the formation of the individual on the five dimensions through the process of formation-development of the personality: intellectual, moral, aesthetic, technological and physical.

Financial education is part of the sphere of new education, being part of modern economic and domestic education, as a complete phrase of this education. However, it falls, conceptually speaking, within the social disciplines, although it also has grades in the field of mathematics. We can say that financial education is an integrated discipline because it contains elements from different fields and disciplines: mathematics, economics, romanian language, civic education, personal development, fine arts and even religion. Specifically: when it comes to money, you must know how to count, but also how to express yourself correctly in order to send a certain message (financial or not); the implications of money in social life are known through the different banking products for the population, with emphasis on the differences between the social classes given by wealth and well - being, between those who have and those who do not - hence the contribution of civic education; religious life itself is influenced by money, both by exposing religious writings, parables, and by Christian teachings on acts of charity, volunteering, and good deeds – religious education being especially important when it comes to thinking, speaking and acting Christian; the field of the arts meets the needs of the talented, so as to encourage them to act in the direction of obtaining an income from the native talents - through work, perseverance and discipline.

As it is desired that the individual be multilaterally developed, the appearance of this education - financial education - is also due to the fact that, more recently, a much more special importance is given to the formation of man from all points of view. This individual training of man begins early, but our research considers financial education at the level of primary education - an essential element in the formation of financially sound behaviors.

Through this discipline, learning should not only be a difficult process of assimilating knowledge and information, but a game through which the student becomes familiar with terms that may seem, at first glance, very difficult to understand or assimilated.

## **B. Digital education in the current historical context**

We believe that the process of training an individual is about three different types of educational resources, with different applicability, but with the same common goal: educating the individual and training him for society, perfectly adapted and prepared for any kind of challenge.

The three types of educational resources are:

- Physical: with reference to any material on physical support (books, magazines, monographs, encyclopedias, CDs, etc.). These resources are easily accessible from libraries or

bookstores, but require a long time to be selected, viewed, analyzed to have immediate applicability in everyday life. These resources require time and space.

- Human: with reference to the experience of individuals who, through personal example, can influence the training of other people. Learning from another's experience is a learning with a low degree of mastery, especially since the new generation wants to experience, feel, see, live on their own skin certain sensations or emotions that cannot be experienced just by their simple story or verbal presentation.
- Digital: comprise the set of materials located "one click away", so that learning is facilitated by the library on the phone or the electronic device in the immediate vicinity. Online dictionaries, tables, lists with various information, financial resources, applications of all kinds (in the field of health, personal budget, efficient time management, etc.) are in one device: simple, fast, smart, small. These resources save time, space, nerves and money.

Digital education is the education that teaches man to use digital in his personal interest, for his own benefit. It is desirable that the electronic device be a human termination, and not the other way around. For example, the application with a road distance, from point A to point B, exposes only the simplest and fastest route to follow, but does not provide details about the landscape that could delight the human soul.

The COVID 19 pandemic period is a beneficial and prolific period for digital creation, experimentation, implementation and results in online learning. Manufacturers of digital materials are the ones who have crafted an effective learning path.

The current context is a context of active and proactive learning: the world of tomorrow belongs to those who are up to date with the news, are informed and always on the verge of action. Information flows at an astonishing speed and connecting to technology as well as real-time communication are paramount so that you are at the heart of the problem that is bothering you.

The European Union is developing in the period 2021-2027 an Action Plan for digital education [7], which aims to reset education and training for the digital age. This action plan provides a long-term strategic vision, addresses the challenges and opportunities created by the pandemic and aims to strengthen cooperation at EU level. To achieve these goals, two priority areas have been established:

1. encouraging the development of a high-performance digital education ecosystem;
2. developing digital skills and competencies relevant to digital transformation.

The second area is of great interest to us because it involves, in addition to training other skills, both "basic digital skills and competences from an early age" and "digital literacy, including to combat misinformation".

Even before the COVID 19 pandemic, digital had a major impact on society, the economy and education. Moreover, today, the times we are going through show us that it is essential to have a system of education and training prepared for the digital age, regardless of the level of education (from preschool to university), the social environment (urban or rural), but also by the educational disciplines (both for the subjects from the common, compulsory trunk, and for the optional subjects - in this case: financial education).

Returning to our subject, Open Educational Resources (OER) are materials for learning, teaching, assessment, research that can be used, adapted and redistributed freely or with minimal restrictions related to copyright. These materials can be accessed freely or for a moderate fee, being on physical media or in digital format: textbooks, books, lesson plans, courses, presentations, questionnaires, games, tests, audio or video resources.

Digital resources, in general, have the role of providing elements of education in the online environment. They can be accessed from anywhere in the world, from any type of digital device: phone, tablet, computer, laptop. The multitude of variants regarding the access and availability of the supply offers a real support in the instructive-educational process, both for the teachers and for the students. It has now become very easy to access a learning platform, a site with educational materials, an application or even an entire online library to support the training activity, so that everything is at a "click distance".

If we refer to the school field, we could classify digital resources according to the level of addressability, as well as the degree of difficulty that some forms or platforms propose. Some platforms are so well made that the materials are divided on each level of education, but they also have different degrees of complexity. Interestingly, it goes from simple to complex, from small to large, from "micro" to "macro", from easy to difficult, from "beginner" to "advanced" - so that the student is not overwhelmed by complicated learning tasks, but easily adapts to increasingly difficult learning tasks.

A learning program based on the use of new technologies must have certain characteristics, listed by R.C. Clark and R.E. Mayer [5] as follows: to contain a concept with a content relevant to the learning objectives and purposes, to use various teaching methods (exemplification, practical activities) so as to optimally support learning, to use multimedia elements (text, images, animation, films, audio files) as a support to make learning content accessible and to diversify teaching methods, to build knowledge and to develop skills in a direct relationship with the individual objectives of the learner, being a "solution for personalized learning paths".

„Forbes Magazine” provides us with the study conducted by the Orange Foundation, conducted between March 28 and April 8, 2020, in the midst of the COVID 19 pandemic, wanting to identify the digital resources used in the classroom by teachers, so that school courses can continue [4]. According to this study, the most used resources were communication platforms: Zoom, WhatsApp, Google Classroom and Facebook. Subsequently, many teachers participated in Digital Instrument Use (CRED) courses, as well as webinars and distance learning platforms.

### **C. Financial education through digital resources**

As we live in an unprecedented historical period, when everything is digitized, including the teaching-learning-assessment process, even financial education is achieved through technology [6]. Students have long been familiar with money, its value, as well as the actions they observe with their own parents: ATM transactions, online payments, online shopping, card payments at the store, etc. Students are no longer absent from financial-banking life: they are aware of elements of finance in a connected way because not only are they very smart, but they also realize certain values, products or services provided for a sum of money [6]. At the same time, students become aware of their power to speculate on their parents' emotions when it comes to desires, not needs.

In Romania, one of the providers of digital resources in youth financial education is Junior Achievement Romania (JA Romania), the largest international organization for economic and entrepreneurship education, which is part of Junior Achievement Europe and Junior Achievement Worldwide, being a non-profit organization, established in 1993, which aims to develop learning by doing and project based programs. These courses are attended annually by over 200,000 pupils and students from over 1700 educational institutions in

Romania and are conducted in partnership with the Ministry of Education, educational institutions and the business community [6]. Globally, the programs are followed in 40 countries in Europe and over 100 worldwide. The purpose of this organization is "to inspire and prepare the young generation to succeed in life, by encouraging initiative, professionalism and the development of skills essential for personal and professional life."

Another provider of digital financial education materials is the Association for Promoting Performance in Education, which began in 2013 [7]. This association provides primary school students and their teachers with textbooks, workbooks, and a learning platform, where there is the entire proposed financial program, in digital format, so that it can be accessed by anyone and from anywhere, anytime. Against the background of the COVID 19 pandemic, the material resources were digitized and thus made the access to quality, professional materials, made by professionals, accessible to all those involved in the project. It is hoped that in the near future to implement an accredited course so as to train as many teachers as possible to teach financial education to children - from primary education and even pre-primary education.

All digital financial materials provided are made to high standards, regardless of the educational provider [8]. It is true that financial education is desired in primary school, but the legislative framework, as well as the traditional education system, which sometimes seems frozen, only facilitates this type of education in an optional, non-compulsory form, but which is "required" by parents and students. Everyone knows money, everyone uses money in different aspects of their daily lives, from a very young age - when the child asks for something that costs money. Everyone likes money, everyone wants money - as much as possible and as soon as possible, so in conclusion, how nice and useful it would be if they learned about money at school [9]. The program of the optional financial education contains basic elements of the economic area, the students getting acquainted with introductory notions.

The digital resources offered by the [www.investory.app](http://www.investory.app) application, for example, train students with more concrete and practical notions. Being a phone or tablet application, through this game children learn about "barter", "investment", "profit", "interest", "credit", "ATM", "card" etc. The big advantage is that it does not operate with real money, so no one loses anything and is not illegal with the virtual financial actions they do in the game.

The site [www.twinkl.ro](http://www.twinkl.ro) is a site that offers a wide range of teaching materials. The educational materials provided are from all disciplines and are presented in several languages, thus adaptable in several countries. The financial education factsheets on this site are very interesting and useful.

From the point of view of materials in the field of financial education for primary school children, we tried to structure the offer of suppliers, so as to create a possible choice for those who want more information in this field:

1. Junior Achievement Romania, [www.jaromania.org](http://www.jaromania.org), it was founded in 1993; it is the largest international organization for economic and entrepreneurship education -activities by learning by doing and project-based, available in school and online
  - materials on physical support
  - addressability: 6 - 19 years
  - year of debut in financial education in primary education: school year 2012 - 2013
2. Association for the Promotion of Performance in Education, [www.appe.ro](http://www.appe.ro), initially started through a partnership between MENCS and BNR

- textbooks for everyone in primary school
- auxiliary notebooks for students
- teacher guide + CD
- SchoolMate learning platform
- addressability: 6 - 19 years
- year of debut in financial education in primary education: 2013 - 2014
- 3. [www.investory.app](http://www.investory.app), use game-based learning, by solving tasks with applicability in real life
  - video game through application installed on mobile or tablet
  - addressability: 7 - 10 years
  - year of debut in financial education in primary education: 2019
- 4. [www.twinkl.ro](http://www.twinkl.ro), currently provides more than 525,000 digital educational resources worldwide in several international languages
  - educational resource platform for all disciplines and levels of education
  - addressability: 3 - 12 years
  - year of debut in financial education in primary education: 2010

What we have set out in the table above are just a few resources from the range of digital resource providers in financial education, but, we believe, they are the most important actors in this stage of financial education in the primary cycle.

In the research developed on the subject of digital resources in the financial education of primary school students we will address several online sources, we will observe their concrete applicability and we will try to develop a model applicable to children, so that their training from an economic point of view is a serious process, carried out early, even if the information is assimilated through play and practice [10].

### **Conclusions**

Financial education through digital resources involves the implementation (introduction and application) of those resources in technology that facilitate the learning of elements in the economic field. Within this discipline, didactic games, role-playing games can be made, financial operations adapted to the level of young school students can be mimicked - didactic activities that facilitate learning. The didactic game familiarizes students with the world of money and through this method they acquire financial knowledge, so that they will be better prepared to face reality - that is, when they will operate with real money.

The impact of digital resources in financial education is especially important because students assimilate some abstract notions through play and in a way that is very accessible and very much appreciated by them - digital devices. Digital resources make it easier for students to enter the exciting world of money, so that, knowing in advance the mechanisms of how money works in society, they will be able later, as an adult, to make the right decisions and have a relationship healthy with their own finances.

In the knowledge society, when so much emphasis is placed on what is done with what is known (*savoir faire*), in a world where the training of the individual becomes multidimensional, training in finance is of major importance. This training can be achieved through digital resources starting at an early age, from childhood, at the level of primary education, when the child becomes more aware of the surrounding reality and begins to understand the phenomena around him, regardless of their nature. This is also the theme of our research, so as to demonstrate that financial education through digital resources is a way to train the man of tomorrow - prepared not only theoretically, but also through practical-



applied activities, so that when it will be put in the face of a certain situation, everyone should be able to behave correctly financially in relation to personal and social aspects.

**Acknowledgments.** This paper work was presented at the “*International Conference on Electronics Communications and Computing, IC ECCO*”, 21-22 October, 2021, Chisinau, TUM.

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[https://doi.org/10.52326/jss.utm.2022.5\(1\).04](https://doi.org/10.52326/jss.utm.2022.5(1).04)  
UDC 811.133.1:792



## EXPLOITATION DIDACTIQUE D'UNE PIÈCE DE THÉÂTRE EN CLASSE DE FLE – APPRENDRE LE FRANÇAIS PAR LE THÉÂTRE

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Received: 11.28.2021

Accepted: 01.22.2022

**Abstract.** Learning French through theater is one of the modern methods of learning, methods that are put at the service of a new didactics of teaching French. Theater performances can be a real motivation for students when used as a teaching aid for foreign language courses. Used as a teaching tool, theater has the ability to raise awareness and encourage students, as well as the strength to bring them effectively closer to the roots of the language studied. Theater means symbols that include characters, makeup, costumes, music, colors, soundtrack, painting. According to his vision, each person has an illusion about the world of theater performance - poetic, sentimental, cheerful, sad or melancholic illusion. With the help of all the artistic processes they have learned and which are at their disposal, each spectator and each actor transforms, in one way or another, into authors of the show, whose mission is to faithfully reproduce his own kind of illusion.

**Keywords:** *théâtre, méthodes modernes d'enseignement, symboles, liberté.*

**Rezumat.** Învățarea limbii franceze prin teatru reprezintă una dintre metodele moderne de învățare, metode care sunt puse în slujba unei noi didactici a predării limbii franceze. Spectacolele de teatru pot fi o motivație reală pentru studenți atunci când sunt folosite ca suport didactic pentru cursurile de limbi străine. Folosit ca instrument didactic, teatrul are capacitatea de a sensibiliza și de a încuraja studenții, precum și puterea de a-i apropia de rădăcinile limbii studiate. Teatrul presupune simboluri care includ personaje, machiaj, costume, muzică, culori, coloană sonoră, pictură. Conform viziunii sale, fiecare persoană are o iluzie despre lumea spectacolului teatral - iluzie poetică, sentimentală, veselă, tristă sau melancolică. Cu ajutorul tuturor procedeele artistice pe care le-au învățat și care le stau la dispoziție, fiecare spectator și fiecare actor se transformă, într-un fel sau altul, în autori ai spectacolului, a căror misiune este de a reproduce cu fidelitate propriul tip de iluzie.

**Cuvinte-cheie:** *teatru, metode moderne de predare, simboluri, libertate.*

## Introduction

Le professeur est celui qui fait une classe de langue française attractive ou ennuyeuse et pour cela il doit utiliser toutes sortes de moyens, de méthodes et de matériels didactiques pour attirer les étudiants vers la connaissance d'une langue étrangère. Une autre raison est celle de souligner que les techniques audio-visuelles utilisées dans l'apprentissage de la langue française, peuvent faciliter le processus d'enseignement.

Apprendre le français par le théâtre fait partie des méthodes modernes d'apprentissage, méthodes qui sont mises au service d'une nouvelle didactique de l'enseignement du français.

Les pièces de théâtre peuvent représenter une réelle motivation pour les étudiants quand elles sont utilisées comme support didactique pour les cours de langue. Utilisé comme outil didactique, le théâtre, a la capacité de sensibiliser et d'inciter les étudiants, ainsi que la force de les rapprocher efficacement des racines de la langue étudiée.

D'une part, le théâtre représente un véritable support pour acquérir de nouvelles informations sur les traditions et l'histoire d'un peuple si son étude est intégrée dans les cours de français langue étrangère, et d'autre part, le théâtre encourage les étudiants à réfléchir aux idées qu'ils apprennent pour partager ces expériences avec d'autres futurs étudiants en vue de les encourager à se rapprocher de la langue étrangère en créant leurs propres stratégies de compréhension et de perception. Le théâtre signifie des symboles qui incluent des personnages, du maquillage, des costumes, des décors, de la musique, des couleurs, du fond sonore, de la peinture. Selon sa vision, chaque personne a une illusion sur le monde du spectacle de théâtre- une illusion poétique, sentimentale, gaie, triste ou mélancolique. À l'aide de tous les procédés artistiques qu'ils ont appris et qui se trouvent à leur disposition, chaque spectateur et chaque acteur se transforment, d'une manière ou d'une autre, en auteurs du spectacle, dont la mission est de reproduire fidèlement son propre type d'illusion.

## Exploitation didactique d'une pièce de théâtre en classe de FLE

Le texte théâtral, comme tout texte littéraire, offre la possibilité de confronter l'apprenant avec la langue écrite, en lui offrant des ressources riches pour l'apprentissage du lexique, de l'orthographe et de la grammaire. Il constitue un outil adéquat pour l'acquisition des éléments particuliers pour les niveaux de langue. De même, on peut ajouter que l'enseignement du français présente la particularité de l'emploi des extraits provenant non seulement de la littérature française, mais aussi des littératures francophones. En enseignant la littérature, on enseigne aussi la culture et la civilisation d'une nation parce que, selon *Le Petit Robert*, la culture constitue l'ensemble des aspects intellectuels d'une nation et la civilisation renvoie à l'ensemble des phénomènes sociaux (religieux, moraux, esthétiques, scientifiques, techniques) communs à une grande société. La littérature *sert de moyen d'acquisition d'une compétence linguistique et communicative et, quand ce n'est pas le cas, constitue une somme d'informations factuelles à apprendre* [1].

Il est important de souligner que les textes littéraires authentiques présentent de nombreux avantages, mais y recourir, oblige l'enseignant de prendre des précautions pour obtenir les meilleurs résultats avec ses étudiants.

Utilisé comme nouvelle méthode d'enseignement pour les langues étrangères, même le texte dramatique peut avoir plusieurs interprétations selon la capacité de chaque enseignant à guider ses étudiants. Par exemple, *les enseignantes sont plus proches de leurs*

*étudiants, plus chaleureuses et plus positives dans leur vision de vie, toujours prêtes à donner le meilleur d'elles-mêmes au lieu de travail [2].*

On ne pourra pas en faire le support principal du cours, on doit les intégrer dans un ensemble cohérent d'apprentissage et les choisir attentivement pour qu'ils répondent aux besoins des apprenants et pour qu'ils les attirent. Parfois, comme on l'a déjà dit, il est nécessaire d'adapter ces documents du point de vue de la longueur ou du contenu, pour qu'ils servent au but que l'on s'est proposé.

*Dans le milieu universitaire, le rôle du tuteur est crucial. Le tutorat est considéré comme un processus de développement circulaire, où le dévouement est mutuel, le tuteur et les étudiants bénéficient également, de ce type de collaboration [3].*

Par exemple, pour les classes de philologie ou de sciences humaines et sociales, l'enseignant peut introduire un cours optionnel ayant comme thème un sujet tiré de la littérature française: poésie, théâtre ou roman et alors, le temps sera suffisant pour que le professeur parcoure les étapes et les démarches proposées.

*Victor Hugo disait que le théâtre n'est pas le pays du réel : il y a des arbres en carton, des palais de toile, un ciel de haillons, des diamants de verre, de l'or de clinquant, du fard sur la pêche, du rouge sur la joue, un soleil qui sort de dessous la terre. C'est le pays du vrai : il y a des cœurs humains dans les coulisses, des cœurs humains dans la salle, des cœurs humains sur la scène [4].*

Le théâtre signifie illusion, les gens le comprennent selon leurs propres perceptions, leur expérience philologique, leur imagination, ou la façon dont ils perçoivent le monde en général.

*Le théâtre est fait pour apprendre aux gens qu'il y a autre chose que ce qui se passe autour d'eux, que ce qu'ils croient voir ou entendre, qu'il y a un envers à ce qu'ils croient l'endroit des choses et des êtres, pour les révéler à eux-mêmes, pour leur faire deviner qu'ils ont un esprit et une âme immortels [5].*

Le théâtre encourage les apprenants à utiliser leur imagination et leur sensibilité. Ils doivent percevoir une expérience à travers les rôles qu'ils interprètent, qui diffèrent de leur personnalité. Dans ces pièces, ils ont la possibilité de comprendre et d'inter-agir avec les sentiments des autres. Cela développe la capacité des étudiants d'émphatiser, parce qu'ils apprennent de voir autour d'eux. Donc, le théâtre peut être utilisé comme un outil éducationnel qui développe les qualités morales et sociales de l'apprenant.

*Par exemple, tout comme la déesse de la sagesse dans la mythologie grecque, Athéna, qui a pris la forme d'un vieillard sage pour se faire comprendre, de même le théâtre a la capacité de transfigurer les attitudes de ceux qui le jouent [6].*

*Le théâtre a charge de représenter les mouvements de l'âme, de l'esprit, du monde, de l'histoire [7].*

Le théâtre étant un art public, exerce une fonction publique. Sa fonction visuelle est la fonction la plus importante du théâtre. *Le cerveau a la capacité de percevoir la diversité qu'il filtre jusqu'à ce qu'il se familiarise avec les images qu'il voit et qu'il corrèle avec d'autres déjà connues [8].*

*C'est le public qui fait du théâtre un véritable forum politique, qui prend possession de la pièce et qui l'actualise, aussi bien dans le sens premier du terme, d'un passage à l'acte, que dans celui, plus récent, d'une mise à jour, attribuant ainsi à la pièce une portée aussi inédite qu'inattendue [9].*

Le théâtre ne politise pas au sens propre du terme. Il met une loupe sur des enjeux, il permet de voir ce que, dans la vie réelle, n'est pas visible et il laisse penser aux contradictions de l'humain. La politique se concentre sur des contradictions.

*L'éducation comprend toutes les influences qui ont lieu en dehors de l'école ou à travers des activités optionnelles ou facultatives [10].*

Le théâtre met en évidence ces contradictions: la haine et l'amour, la liberté et la soumission, l'acceptation et le refus, et pourquoi pas, la vie et la mort. Au milieu scolaire, la politisation du théâtre doit être entendue comme motivation des élèves ou des étudiants de changer leur statut d'observateurs passifs en participants actifs aux activités de l'école et aux activités sociales aussi.

Donc, le théâtre peut créer des conditions où les apprenants peuvent faire des découvertes, où ils peuvent s'analyser comme personnes, où ils peuvent changer leur manière d'écouter et d'entendre les enseignants, où ils découvrent que les paroles ont des sens différents et que les gens sont différents. Par le théâtre, l'intelligence des étudiants va se développer par des procédés logico-déductifs. De plus, il aidera le professeur à établir les règles de la communication selon lesquelles on met en relation ce sur quoi l'on parle et ce que l'on en dit.

*Il existe plusieurs circonstances pour former et informer les jeunes. La presse et les autres facteurs: l'église, l'école, la famille, les institutions culturelles doivent agir simultanément, en imbriquant leurs fonctions, et cela doit être fait pas du tout indépendamment ou de manière isolée. Il est important qu'entre ces environnements éducatifs s'établissent des relations de réciprocité et de cohérence et pas de relations de concurrence [11].*

L'unique chose qui peut empêcher les apprenants sur leur voie vers le théâtre c'est la difficulté de lire. Ils trouvent, en général, beaucoup de mots inconnus et les structures grammaticales sont, souvent, trop compliquées, des facteurs qui mettent des barrières dans la compréhension d'une pièce. C'est pour cela qu'ils doivent commencer avec des lectures faciles pour ne pas être obligés à s'arrêter et à chercher tout le temps des mots dans le dictionnaire, fait qui les conduit à ne plus comprendre ce qu'ils ont lu. Les apprenants doivent sentir le plaisir de lire mais aussi voir l'utilité de la lecture. Les recherches ont démontré que les étudiants qui lisent en français se développent plus dans toutes les zones du processus d'apprentissage de cette langue que ceux qui ne le font pas.

*Le but de l'éducation en ce qui concerne les valeurs est représenté par l'accès de l'être humain à l'autonomie et à la compétence professionnelle [12].*

Lire c'est mettre en relation, c'est déchiffrer dans la linéarité. Gilles Aillaud parlait de l'existence des pièces qui ne sont pas à *représenter mais à lire*. Un lecteur actif peut intervenir dans le texte et participer à son élaboration, il peut arrêter le temps de l'action, fait ce qu'un spectateur ne peut pas faire, parce que la scène a la possibilité de compléter le texte, le redoubler, le superposer et même le nier. Alors, le théâtre devient art total et totalitaire.

On ne peut pas concevoir la compréhension d'une pièce de théâtre sans la lire correctement.

*Les changements se font sur la base des visions innovantes, et le progrès ne se réalise pas en respectant les traditions, mais, au contraire, en défiant les sentiers battus [13].*

Pour travailler sur le texte d'une pièce de théâtre, il faut le connaître et l'approprier. Le premier pas est de lire plusieurs fois la pièce en entier et d'une seule traite, fait qui aura des bénéfices aussi sur l'acquisition de la langue.

Pour notre activité on a choisi la pièce de théâtre « *Le malade imaginaire* », acte III, scène 10 écrite par Molière.

<https://www.youtube.com/watch?v=s3qoPUFu07E>

### **Le déroulement des activités**

*Niveau* : B1

*Durée* : 50 min

*Objectifs* : s'exprimer à l'oral, analyser, enrichir le lexique, l'orthographe, les structures grammaticales, le jeu de scène.

*Matériel* : l'enregistrement de la pièce, la fiche avec les répliques de la pièce de théâtre, scène, décor créé par les étudiants.

Molière, de son vrai nom, Jean-Baptiste Poquelin, a été dramaturge, metteur en scène et acteur. Son génie créateur a marqué toute la dramaturgie française et universelle. Il a mis à jour dans une manière magistrale les défauts de l'espèce humaine : l'égoïsme, l'injustice, l'hypocrisie, l'hypocondrie, l'avarice. Son héritage artistique est impressionnant et les thèmes et les moyens artistiques sont actuels et modernes. Il a trouvé son fin, interprétant le rôle d'un *malade imaginaire*, le 12 février 1673.

<https://fr.wikipedia.org/wiki/Moli%C3%A8re>

### **Activité 1**

Le professeur propose aux étudiants d'apprendre le français d'une manière tout à fait ludique, ayant comme support une pièce de théâtre, une comédie d'après Molière. Premièrement, le professeur discute avec ses étudiants sur la personnalité de ce grand dramaturge français, sur ses chefs d'œuvres et sur le fait qu'il a été aussi metteur en scène et acteur.

- Qui a été Molière ?

„Molière a été un grand créateur des formes dramatiques, il a interprété le rôle principal de la plupart de ses pièces. Molière a exploité les diverses ressources du comique : verbal, gestuel et visuel, de situation et il a pratiqué tous les genres de comédie, de la farce à la comédie de caractère.”

- Combien d'œuvres a-t-il écrit ? Quelles sont les plus importantes ?

„Molière a créé environ trente comédies en vers ou en prose. Les comédies les plus appréciées sont : *L'Avare*, *Le Bourgeois Gentilhomme*, *Les précieuses ridicules*, *Le Misanthrope*, *Le Tartuffe*, *Le Malade Imaginaire*.

### **Activité 2**

On fait une première lecture de la pièce jusqu'à la dernière phrase : *Je viendrai...* pour comprendre globalement la pièce.

Le professeur corrige les erreurs de prononciation et explique les mots inconnus en aidant ses étudiants à se fixer le lexique, l'orthographe et la structure grammaticale. Les étudiants répètent la prononciation correcte des répliques et lisent plusieurs fois la pièce en entier.

- Quels sont les personnages ?

„Les personnages sont : Argan, le malade imaginaire, Toinette, sa servante (déguisée en médecin) et Béralde, le frère d'Argan.”

- Où se passe la scène ?

„La scène se passe dans la chambre d'Argan.”

- Est-ce que vous pouvez faire un court résumé de cet acte ?

„Bref, Argan, un riche bourgeois, se croit malade. Le «héros» de la pièce est entouré des médecins et s'invente toutes sortes de maladies. Béralde, son frère, tente de lui parler de ses maladies imaginaires et lui conseille de se méfier des médecins. C'est finalement Toinette, la servante, qui se déguise en médecin pour duper son maître.”

### Activité 3

Le professeur distribue les rôles et encouragent les étudiants à se bouger, à jouer, à se connaître, à travailler en équipe. Ils doivent s'impliquer du point de vue émotionnel, d'entrer dans la peau des personnages, de travailler en harmonie les uns avec les autres ainsi que les étudiants changent leur statut d'observateurs passifs en participants actifs.

Les activités qui supposent des jeux de rôle, sont très appréciées par les étudiants. Pour moi, en qualité de professeur de français, les pièces de théâtre ont toujours été une bonne occasion de sortir de la routine pédagogique.

### Conclusions

En conclusion, une pièce de théâtre se transforme dans un manuel de grammaire et d'orthographe, dans une mine de vocabulaire, de conjugaison et dans un facteur de communication. Le théâtre fait le lien entre réalité et l'illusion. Les étudiants adorent regarder des pièces de théâtre dont ils pourront ensuite discuter en français. Stimuler les étudiants à se rapprocher de la langue française à travers une pièce de théâtre, fait partie de nouvelles méthodes didactiques. Visionnées sur un vidéoprojecteur ou dans la salle des spectacles, les pièces de théâtre sont un bon moyen de sortir du quotidien et de regarder le monde d'une autre perspective.

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## LINGUISTIC ANALYSIS OF ENGLISH PHOTOGRAPHY TERMINOLOGY

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Received: 11.16.2021

Accepted: 01.15.2022

**Abstract.** The purpose of the present investigation is to perform a linguistic analysis of the English vocabulary of photography as a means of professional communication. The research includes a brief historical introduction to the progress of photography (diachronic approach) to study the (co)relationship between the development of photographic science and enrichment of its specialized lexical fund based on newly formed scientific concepts. The concept and quantitative analysis of the studied corpus established the predominance of the terminological units that are part of the conceptual groups, denoting the photo camera and its settings, photo editing and printing, lighting, photography metering, and issues. The ways of formation of English terminology of photography were investigated using structural, morphological, and componential analyses. The data acquired showed a variable number of terminological units formed according to various structural models. In the process of photographic terminology formation, substantive type of terminological combinations predominates, followed by the derivative units, simple and compound terminological units. Photography abbreviations as a form of language, time, and space economy were also structurally and semantically studied.

**Keywords:** *photographic art, term, diachronic approach, conceptual classification, structural analysis, means of formation, terminological combinations of terms, simple terms, derivatives, compounds, abbreviations.*

**Rezumat.** Scopul prezentei investigații este de a efectua o analiză lingvistică a vocabularului în limba engleză ce ține de domeniul fotografic ca mijloc de comunicare profesională. Cercetarea include o scurtă introducere istorică în domeniul fotografiei (abordare diacronică) în vederea studierii (co)relației dintre dezvoltarea științei fotografice și îmbogățirea fondului său lexical specializat în baza conceptelor specializate nou formate. Analiza conceptuală și cantitativă a corpusului studiat a demonstrat predominarea unităților terminologice ce fac parte din grupurile conceptuale, cum ar fi: „camera foto și setările acesteia”, „foto editare și printare”, „luminozitate”, „foto contorizare”, precum și „dificultăți fotografice”. Analiza structurală, morfologică și componentială a corpusului terminologic studiat a condus la determinarea modalităților de formare a terminologiei engleze din domeniul vizat. Datele obținute au demonstrat un număr variabil de unități terminologice ce sunt formate conform diferitor modele structurale. În procesul de creare a terminologiei vizate predomină îmbinările terminologice de tip substantival, urmate de unitățile derivate, termenii simpli și unitățile terminologice compuse. De asemenea, au fost supuse studiului structural-semantic abrevierile foto drept mijloc de economie lingvistică, temporală și spațială.

**Cuvinte cheie:** *arta fotografică, termen, abordarea diacronică, clasificarea conceptuală, analiza structurală, mijloace de formare, îmbinări terminologice, termeni simpli, derivați, compuși, abrevieri.*

### **Introduction and description of the field under investigation**

It is difficult to imagine the life of a modern person without photography. Photography as a visual information language reliably serves humanity. It has taken a firm place on the pages of newspapers and magazines, books and stands, Internet resources, and has become an independent method of research introduced into practically all spheres of human activity. With the development of digital technologies, photography is available to almost everyone. People always wanted to capture the beautiful moments of their lives, the phenomena of nature, and to express a sense of beauty through a material form. Currently millions day-to-day share their private, original, sentimental interpretation of the world to an extensive public, including family members, friends and foreigners. Social networks (Instagram, Facebook, Flickr, VKontakte, etc), numerous blogs, and sites invite others into their private lives. Almost 350 million photos are uploaded to Facebook daily, the total number being more than 250 billion photos [1]. As the prominent Canadian photographer and artist, James Wilson (who has been working in photography for more than 40 years) mentioned, *"In the world of photography, you get to share a captured moment with other people"* [2]. Thus, photography has an irreplaceable position in today's society. To understand the process of photography vocabulary contents and formation, it is proper to investigate the definition of the term and to perform a virtual trip to the history of this fascinating art. However, it would be more accurate to talk not about the history of photography, but about the technical evolution of photographic images, which at the very beginning were not considered as pieces of art [3].

Photography belongs to the group of fine arts, i.e. those perceived visually; painting, sculpture, cinema are associated with the same group of arts called plastic or elegant ones as they can be viewed and touched, existing in material expression (in space and time). The word photography means "drawing with light." The British scientist Sir John Herschel supposedly first coined it in 1839 from the Greek words *phos* (genitive: *phōtós*) meaning "light", and *graphê* meaning "drawing or writing", i.e. light writing [4].

### **Diachronic Approach to Photography Development**

The advent of photography, as a technique, is closely linked to various technological discoveries. However, the emergence of modern photo camera predecessor (proto photo camera) is much discussable. According to some sources, the history of photography began about 1000 years ago when the Arab mathematician and scientist Alhazen (Ibn al-Haytham) from Basra, interested in the behavior of light, noted the effect created by a pinhole camera: in a partially lit room, an inverted image of external objects is obtained. In his *"Book of Optics"*, written in Cairo between 1012 and 1021, Ibn al-Haytham used the term *Al-Bayt al-Muthlim*, translated into English "a dark room" [5].

Others consider it was the Chinese philosopher Mo Di/Zi (ca. 470-391 BCE), who discovered and developed the fundamentals of optics and mentions the principle of camera obscura operation, later independently described by Aristotle and Euclid. The term *camera obscura* originates in Latin meaning "a dark room." The first description of the darkroom belongs to Leonardo da Vinci (1504), representing a box with a hole in it that allows light to pass through and create an image on the piece of paper [6].

In 1604, German astronomer Johannes Kepler discovered the mathematical laws of light reflection in mirrors. These laws later laid the foundation for the theory of lenses, following which the Italian physicist Galileo Galilei invented the first telescope for observing celestial bodies. The principle of rays' refraction was established.

In 1822, French scientist Joseph Nicéphore Niépce received the first image, the prototype of modern photography. The first photo is considered "View from the window at Le Gras", a heliographic image and the oldest surviving camera photograph (1826). Using asphalt varnish, the image took shape and became visible. Thus, for the first time in the history of photography, a picture was created not by an artist, but by incident rays of light in refraction [7].

William Talbot's first experiments, beginning in the spring of 1834, involved coating common writing paper with silver nitrate both alone and in combination with sodium chloride. He produced his first "photogenic drawings" in 1834 and the following year made his first camera negative. On January 31, 1839, Talbot's paper "On the Art of Photogenic Drawing" was read to the Royal Society in London. When Daguerre's process was disclosed in August of 1839, it revealed that there was no overlap between the two processes [8, p. 1377].

January 7, 1839, is considered the beginning of the photography era when the French Academy of Sciences announced the invention of a completely new kind of art, or rather the technique of image production in the form of a dubbed daguerreotype. The French scientist Louis Jacques Mandé *Daguerre* discovered a method for obtaining a fairly high-quality image on a copper plate coated with silver and named it *daguerreotype*. Thus, photography came to the world thanks to the happy meeting of optics (a pinhole camera) and chemistry (photosensitive substances contribute to image creation). In the first cameras, silver and its compounds were used as a photosensitive substance [3].

In 1861, British photographer Thomas Sutton invented the first single-lens reflex camera. Three photographic plates of a tartan ribbon, taken in 1861 by Thomas Sutton through red, green, and blue filters, were used by James Clerk Maxwell to demonstrate that photography in colour could be a practical proposition [8, p. 906]. From that moment on, the development of photography as a form of art. Consequently, the history of photography is the history of the field's technology and that was just the beginning.

Dictionaries tell us that photography is "the act, process, or job of taking photographs or filming something" [9]. While the definition provides a general framework for photography, it does little to distinguish photography from other forms of visual communication. Photography pursuit is just an interest in the everyday life of a person, a concern to the communicative features of photography and in its social nature, the latter expressed in its functioning. Photography performs the functions of social control, social integration, socialization, manipulation of mass consciousness; it acts as a means of forming social identity and has innovative characteristics. Photography is not only a reflection of reality but also its creation [10, p. 51]. Here is appropriate to remind the words of one of the great photographic innovators of the last century Duane Michals *asserting that "photography deals exquisitely with appearances, but nothing is what it appears to be"* [2].

Photo communication is a complex and multifaceted phenomenon. On the one hand, there are certain subject-object relationships between the photographer and the photographed (object/ subject) in the process of the photographing act itself, being an indirect act of communication. The photographer creates a photo image based on his own beliefs, self-actualization needs, and the value system adopted in society. He acts in front of

the lens, as he wants to be seen by the others. On the other hand, based on the social interaction of the subject and the object of photographing, a photo image is shaped which in the context of communication practices will be read by "viewing" the picture, i.e. by the "others." The "analyzed" image encounters the photograph(er) and contributes to the formation of the inner "I" through the "others", i.e. a system of social values, needs, norms [10, p. 52]. The same concept is rendered by the photographer Ansel Adams while stating that "*there are always two people in every photo: the photographer and the viewer*" [2]. We are interested not only in photography, the interaction of subjects and objects of photographic communication but also in its presentation as a social fact, the social meaning of photographic images arising in culture and their further impact on society.

### Conceptual Analysis of Photography Specialized Lexis

The following step of our research involves linguistic analysis of the glossary consisting of 160 English photography terms selected by the method of continuous sampling from the specialized dictionaries and online sources [11, 12, 13], as well as 98 abbreviated forms [14]. According to Halliday and Matthiessen, quoted by Sadia Irshad, the corpus of a language helps to theorize the language as it provides authentic, representative, and quantitative data [15, p. 76].

Specialized terminology is a key component of the general investigation and documentation process. The central concern of terminology is *concept analysis*, which involves the description of concepts by enumerating their characteristics, properties, and descriptions of relations held within the systems of concepts [16]. As Susan Myburgh states "a concept is a theoretical term referring to a property or construct (often a complex entity or phenomenon) which suggests the role it plays in a theory, or in relation to other concepts: it is the idea represented by a term or word, while conceptual analysis in practice concerns distinguishing terms, analyzing the understandings they refer to, and representing this" [17, p. 133]. According to the conceptual criterion, seven groups of terminological units can be determined in the framework of analyzed terminology: photo camera and its setting, photo lightening, photo-editing printing, photography equipment, photo metering, and photography problems, various notions. A detailed discussion of each conceptual group follows; sample English photography terms are given with their Romanian equivalents.

Photo Camera and its Setting. A camera is an optical instrument used to capture an image. At their most basic, cameras are sealed boxes (the camera body) with a small hole - the *aperture* (apertură/ diafragmă) that allows light to capture an image on a light-sensitive surface. Cameras have various mechanisms to control the light falling onto the light-sensitive surface. *Lenses* (lentilă/ obiectiv) focus the light incoming the camera, the size of the aperture can be widened or narrowed to let more or less light into the camera and a shutter mechanism determines the amount of time the photosensitive surface is exposed to the light. This group comprises the majority of selected terms of the glossary (66 units - 41,3%): *flash* (bliț), *autophocus* (sistem automat de focalizare), *aspherical lens* (lentilă asferică), *bulb* (buton), *depth of field* (adâncime de focalizare), *large format cameras* (camera de format mare), *lens distortion* (distorsiunea obiectivului), *wide range lens* (lentilă grand-anghiulară) etc.

Lighting. Light in photography refers to the natural or artificial position of light source concerning the subject. The position and quality of light can affect the final photo quality, from clarity to tone to emotion and so much more. By paying attention to how light

plays off the angles and curves of the subject, and which parts of the subject are illuminated and which are in darkness, one can become a stronger photographer. The group includes 20 terms (12,5%) of the corpus: *bounce lighting* (iluminare prin sărituri), *ambient light* (lumină ambiantă), *existing light* (lumină naturală), *high-key lighting* (iluminare în "cheie-înaltă"), *side lighting* (iluminare laterală) etc.

Photo-editing and Printing. Editing photographs enables the reproduction, publication, and distribution of all printed images; to be precise editing occurs by "sorting pictures." Editing is the stage when pictures are chosen as part of a specific photo project [12]. Photographic printing is the process of producing a final image on paper for viewing, using chemically sensitized paper. The group includes 27 terms (16,9%) of the analyzed corpus, e.g.: *cropping* (decupare), *dye print sublimation* (tipărire prin sublimare a culorilor), *file size* (mărime fișier), *gelatin silver print* (imprimeu argintiu cu gelatină), *photogravure* (fotogravură), *processing* (procesare), *negative* (negativ), etc.

Photography Equipment. To get the image through the process of making pictures, a photographer needs certain equipment: camera, lens, scanner, printer, and so on. The analyzed group comprises 6 terms of the corpus (3,7%) as *enlarger* (amplificator), *reflector* (reflector), *unipod* (monopied), *tripod* (trepied), *lens hood* (parasolar foto) etc.

Photography metering. Metering is how a camera determines what the correct shutter speed and aperture should be depending on the amount of light that goes into the camera and the ISO. Back in the old days of photography, cameras were not equipped with a light "meter" which is a sensor that measures the amount and intensity of light [12]. The group embraces 14 terms (8,8%) of the corpus as *dots per inch* (puncte per inci/inch), *exposure meter* (exponometru), *focal length* (distanță focală), *megapixel* (megapixel), *metering* (contorizare), *light meter* (fotometru) etc.

Photography issues. There are certain photography problems and mistakes that commonly occur for new photographers as well as the more experienced, many of these faults are easily eliminated. This group is not so numerous consisting of 7 terms, making 4,3% of the analyzed corpus, e.g.: *chromatic aberration* (aberație cromatică), *graininess* (granulozitate), *low resolution* (rezoluție scăzută), *diffusing* (în difuzie), *vignetting* (vignetare), *red eyes* (ochii roșii).

Various notions. The group includes 20 terminological units (2,5%) expressing various concepts from the field of photography art, e.g.: *manual* (modul "manual"), *time exposure* (timpul de expunere), *scene modes* (moduri de scenă), *background* (fundal), *ton* (nuanță), *tonal range* (gamă tonală), *watermark* (filigran).

Therefore, the quantitative analysis of terminological units included in the analyzed corpus shows that the majority of terms denote the notions of the photo camera and its setting (41,3%), followed by those expressing the notions of photo editing and printing (16,9%), photo lightening (12,5%), various photography terms (12,5%), and photo metering (8,8%); the groups of photography equipment (3,7%) and photography problems (4,3%) are less productive.

### **Ways of Photography Art Vocabulary Formation**

The strategy of this investigation relies on the ideas of systemic functional grammar to examine the paradigmatic and syntagmatic relations of the terms or components making terminological units in the framework of the selected corpus. According to Irshad S., paradigmatic and syntagmatic relations define the lexicogrammatical structure of a lexeme

(i.e. terminological unit). The lexemes/terms operate by establishing the relationship between paradigmatic lexical sets and paradigmatic grammatical systems [15, p. 77].

In linguistics, word formation refers to how new words are formed based on other words or morphemes. Word formation can denote either a state or a process, and it can be viewed either diachronically (through different periods in history) or synchronically (at a particular period in time). Most English vocabulary arises by making new lexemes out of old ones: either by adding an affix to previously existing forms, altering their word class, or combining them to produce compounds [18, p. 45].

In the present research, the photography terms are divided structurally into simple, derived, compound, and terminological combinations. The analyzed terminological corpus consists of single terms and terminological units. Quantitatively, single terms represent 70 units (43,7%) of the whole corpus of the glossary: 68 substantival and 2 adjectival terms.

The first group to be analyzed is one of the **simple** terms, being represented by 14 terms (20%): *bulb* (buton), *contrast* (contrast), *flash* (bliț), *lens* (lentilă/obiectiv), *print* (imprimare), *slide* (casetă foto), *bokeh* (bokeh), *film* (film/ peliculă).

**Derivative terms.** Derivation is the process of creating a new word. The new, derived word is related to the original one; it has some new components of meaning and often belongs to a new category. One of the most common ways that English enriches its vocabulary is by affixing a derivational morpheme to a base. English is known to form new words by prefixing, and while adding a derivational prefix a new word is coined, its grammatical category often is not changed [18, p. 64]. Having analyzed the glossary from the point of view of derivation, it was found out that the derivative terms represent 43 units (61,4%), i.e. the majority of the single terms and 26,9% of the whole corpus of the glossary, e.g.: *exposure* – expunere (verb *expose* + suffix *-ure*), *metering* – măsurare (noun *meter* + suffix *-ing*), *reflector* – reflector (verb *reflect* + suffix *-or*), *underexposure* – subexpunere (prefix *sub* + verb *expose* + suffix *-ure*), *resolution* – rezoluție (verb *resolute* + suffix *-tion*), *shutter* – obturator (verb *shut* + suffix *-er*).

In English grammar, **compounding** is the process of combining two words (free morphemes) to create a new word (a noun, verb, or adjective). Also called “*composition*” it comes from the Latin “put together” [9]. Compounds are written sometimes as one word (*sunglasses*), from time to time as two hyphenated words (*life-threatening*), and occasionally as two separate words (*football stadium*). Though compounding is the most common type of word-formation in English, in the framework of the studied terminology it is not productive; just 13 terms are formed by composition, they represent 18,6% of the single terms and 8,1% of the whole corpus of the glossary, e.g.: *background* (fundal), *darkroom* (camera obscură), *backlighting* (lumină de fundal), *watermark* (filigran).

According to Halliday and Matthiesen, quoted by Irshad S., the word-classes can be viewed semantically and at their level where they enter paradigmatic relations about the choices and the syntagmatic relations entailing the company they keep. The paradigmatic analysis of lexical items (i.e. terms) reveals their semantic features whereas common patterns of terminological combination would be revealed through syntagmatic relation [15, p. 79].

**Terminological combinations** include two/three and four-member terms, being the largest group represented by 90 terms (56,3% of all terms).

The group of *two-member terms* is the predominant among the syntagmatic terms (80 units – 88,9% of terminological combinations and 50% of all terms) and consists of units following the operational formulae:

Noun + Noun (47 units/29,4% of all terms): *frame integration* (integrarea cadrelor), *file size* (mărime fișier), *lens shade* (obiectiv de nuanțare), *motor drive* (antrenare mecanică), *shutter speed* (viteza obturatorului);

Adjective + Noun (33 units/ 20,6% of all terms): *blue hour* („oră albastră”), *automatic camera* (camera automată), *polarizing screen* (film polarizant), *dynamic range* (interval dinamic), *high contrast* (contrast înalt), *optical zoom* (zoom optic), *soft lighting* (iluminare moale).

Some terminological units include in their structure a compound component as a *charged-coupled device* (dispozitiv cuplat la încărcare).

The group of *three-member terms* is composed of 9 terms (10% of syntagmatic terms and 5,7% of all terms) which have the most commonly met structures:

Noun+Noun+Noun (4 terms/ 2,5% of all terms): *dye sublimation print* (tipărire prin sublimare a coloranților), *medium format camera* (camera de format mediu), *gelatin silver print* (imprimeu argintiu cu gelatină), etc;

- Adjective+Noun+Noun (5 terms/ 3,2% of all terms): *low contrast image* (imagine moale), *chromogenic color print* (amprenta cromogenică), *high rate scanning* (scanare cu rata ridicată), *soft focus lens* (obiectiv foto cu rezoluție atenuantă), *large format cameras* (camera de format mare), etc.

The group of *four-member terms* comprises just one terminological unit (0,6%) *digital single-lens reflex camera* (camera reflexivă digitală cu un singur obiectiv), built according to the formula Adj.+Adj.+N+N; the second component of the syntagm *single-lens* is a compound unit.

The results of our investigation show the prevalence of terminological combinations in the analyzed glossary making 56,3% (the majority of terms being nouns). The derived units (26, 9%), simple terms (8,7%), and compound (8, 1%) terminological units follow them. Modern photography terminology embraces a much more varied number of lexical units formed according to various structural models.

On analyzing the terminological units in the field of photography, some **abbreviated forms** were selected. There is a compilation of 98 abbreviations making the corpus of the present research [14]. Abbreviations have been recently extremely popular in all fields of the English vocabulary formed by using just the initial or any other letter from a group of words. All types of abbreviations are present in the scientific and technical specialized languages and are applied frequently among professionals and technicians in the photography field. Structurally, selected 98 photography abbreviations are composed of 1-4 signs:

- 1 sign abbreviations have the form of shortenings (4 units/ 4,1%): *A* – *aperture* (diafragmă), *B* – *bulb* (buton), *M* – *manual* (mod manual) etc.;

- 2 signs abbreviations (39 units/ 40,2% of the corpus): *EV* – *Exposure Value* (valoarea expunerii), *KB* – *kilobyte* (kylobite), *MB* – *Megabyte* (megabyte), *OZ* – *optical zoom* (zoom optic), *TV* – *Time value* (valoarea temporală), etc.;

- 3 signs abbreviations constitute the majority (45 units /45,9%): *OOF* – *Out of Focus* (în afara obiectivului), *FOV* – *Field of View* (câmp de vedere), *LCD* – *Liquid Crystal Display* (ecran cu cristale lichide), *CSC* – *Compact System Camera* (camera compactă), *TTL* – *Through the Lens* (prin obiectiv) etc.;

- 4 signs abbreviations make 10 units (10,2%): *JPEG* – *Joint Photographic Experts Group*, *DSLR* – *Digital Single Lens Reflex*, *SDHC* – *Secure Digital High Capacity* etc.

An abbreviation is defined as a shortened form of a word or phrase spelt according to the rules of a particular language. There are different types of abbreviations like clipping, blends, truncations, shortenings, acronyms, and initialisms. Although some differences when

defining acronyms and initialisms can be determined, most authors coincide that both terms are applied to describe a lexical entity formed from one to several uppercase initial letters. However, *acronyms* are pronounced as one word and form a new word, while *initialisms* are articulated as separate sounds according to the rules of the alphabet [18, p.98]. This is the standpoint taken in the present investigation. 94 abbreviated capitalized units (four single letter shortenings are not included) are classified as:

Initialisms represent the majority of abbreviated units, making 63 units (65,9% of the corpus): *DNG* [di: əndʒi:] - *Digital Negative Graphic*, *IR* [ai a:] - *Infrared*, *IQ* [aikju:] - *Image Quality*, *MS* [əməs] - *Memory Stick*, *PQ* [pi: kju:] - *Picture Quality*, *SS* [əsəs] - *Shutter Speed*, *VR* [vi: a:] - *Vibration Reduction*, *PP* [pi: pi:] - *Post Processing*.

30 abbreviated units have the form of acronyms (30,9%): *LED* [led] - *Light Emitting Diode*, *TOG* [tog] - *Photographer*, *FOV* [fov] - *Field of View*, *BIF* [bif] - *Bird in Flight*, *EXIF* [ekzif] - *Exchangeable Image File Format*, *GIF* [gif] - *Graphics Interchange Format*, *EF* [əf] - *Electronic Format*, *DOF* [dof] - *Depth of Field*, *EV* [əv/ i:v] - *Exposure Value*, etc.

While studying the process of functioning of abbreviated forms in the language of photography art, the polysemantic nature of some abbreviated units was determined, abbreviated forms have multiple meanings in the framework of the same scientific field. For instance, the abbreviation *PP* in digital photography communication is applied to introduce the word *Photoshop* shortly. It comes out from the first and the last letters of the word - P [p]. Normally the Photoshop software is in use by professional photographers, it offers many possibilities for picture optimization and getting higher images quality. Other uses for *PP* by the photography staff are *Post-Processing*, *Photographic process* (the processing, developing photograph), *Photo Paper*, *Print Processing*, *Photo Printer*, *Pocket Pouch* (for digital cameras), *Passport Photo* and *pages*.

Therefore, the language of photography art is rather rich in the means of lexical units' formation including derivation, compounding, terminological combinations, and abbreviations.

## Conclusion

Therefore, the technology of creating a photographic image changed our world forever becoming a truly mass phenomenon accessible to everyone. As a means of visual communication, photography performs applied, artistic, social, and communicative tasks. Photographers make expressive pictures by keeping the viewers in the mind. Selection of exposure, frame, and composition are among the means the photographers use to render an instant visual message as a piece of art.

Photography terminology develops on the ground of scientific progress and globalization. It became the instrument of professional communication and (de)codification of cultures, languages, and specialized concepts. Hence, there is a forceful trend of the denominative and conceptual terms standardization promotion. Standardization of photography terms contributes to conceptual accuracy, communicative ease, and terminological management. The language of photography embraces a structural and semantic variability of terminological and lexical units. The image-making terms of various structural types (simple, derivative, and compound terms as well as terminological combinations and abbreviations) are created to fill the denominative gap for a new concept, replace an out-of-date term of a preexisting notion, and substitute a terminological unit for a more suitable one.



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## STRATEGIES FOR PROFESSIONAL DEVELOPMENT OF STAFF IN ECONOMIC ENTITIES IN THE FIELD OF ICT

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Received: 12. 05. 2021

Accepted: 02. 01. 2022

**Abstract.** The rapid pace of change in society has significantly influenced the evolution of economic entities in the field of ICT, which has led them to change their development strategy. The article analyzes the implementation of modern technologies in the production process, the service delivery process, as well as the implementation of progressive management methods in the fields of activity of economic entities. Staff development becomes a necessary premise to be able to react quickly and as flexibly as possible to change, this being possible only through a close correlation of the professional development strategy and the organizational strategy in the economic entities in the field of ICT.

**Keywords:** *management, professional development, creative development, strategies, skills.*

**Rezumat.** Ritmul rapid al schimbării din societate a influențat considerabil evoluția entităților economice din domeniul TIC, ceea ce le-a determinat să își schimbe strategia de dezvoltare. Articolul analizează implementarea tehnologiilor moderne în procesul de producție și în procesul de prestare a serviciilor, precum și implementarea unor metode progresive de administrare în domeniile de activitate ale entităților economice. Dezvoltarea personalului devine o premisă necesară pentru a putea reacționa rapid și cât mai flexibil posibil la schimbări, acest lucru fiind posibil doar printr-o strânsă corelare a strategiei de dezvoltare profesională și a strategiei organizaționale în entitățile economice din domeniul TIC.

**Cuvinte cheie:** *management, dezvoltare profesională, dezvoltare creativă, strategii, competențe.*

### Introduction

Economic entities in order to become competitive must invest not only in quality products and services, but also in people, ie in that element that can make those products and services competitive. It is relevant for the managers of economic entities to be aware of

this fact and to consider the professional development activity as a strategic activity for the organization.

Professional development includes the entire staff of economic entities, but refers more to the management staff of economic entities (managers at all hierarchical levels), as well as some specialists with technical skills.

The professional development of the staff aims to increase and diversify the professional skills of employees in order to involve them in more complex activities and with a much greater responsibility. Also, staff development involves changing the attitude regarding the involvement of employees in various activities within the organization and applying the best reasoning in order to make innovative decisions. Personnel development also involves the formation of responsibility for the activity carried out, as a personal quality of each employee.

The human resources development activity must be performance-oriented, being designed to ensure the specified level of growth of the performance of economic, functional, team and individual entities, making a significant contribution to the profitability of the organization. Human resources development plans and programs must be integrated into all economic and human resource strategies that they must support.

### ***Staff development strategies***

Personnel development must be seen as a strategic activity, which takes into account the development objectives of the economic entity.

The long-term development strategy of the economic entity in order to be successful will have to include the human resources strategy which, the only source of added value over time, which will aim at the professional development of human resources as a separate strategy. Thus, the human resources development strategy will have to take into account both the possibilities of the employer and the employee [2].

Based on the above, the author proposes a model of staff development strategy through the prism of the economic entity and the employer as a component part of the human resources strategy.

Based on the proposed model, it can be mentioned that staff development through the prism of the economic entity implies its ability to be aware of the important role of each employee and the need to develop its potential.

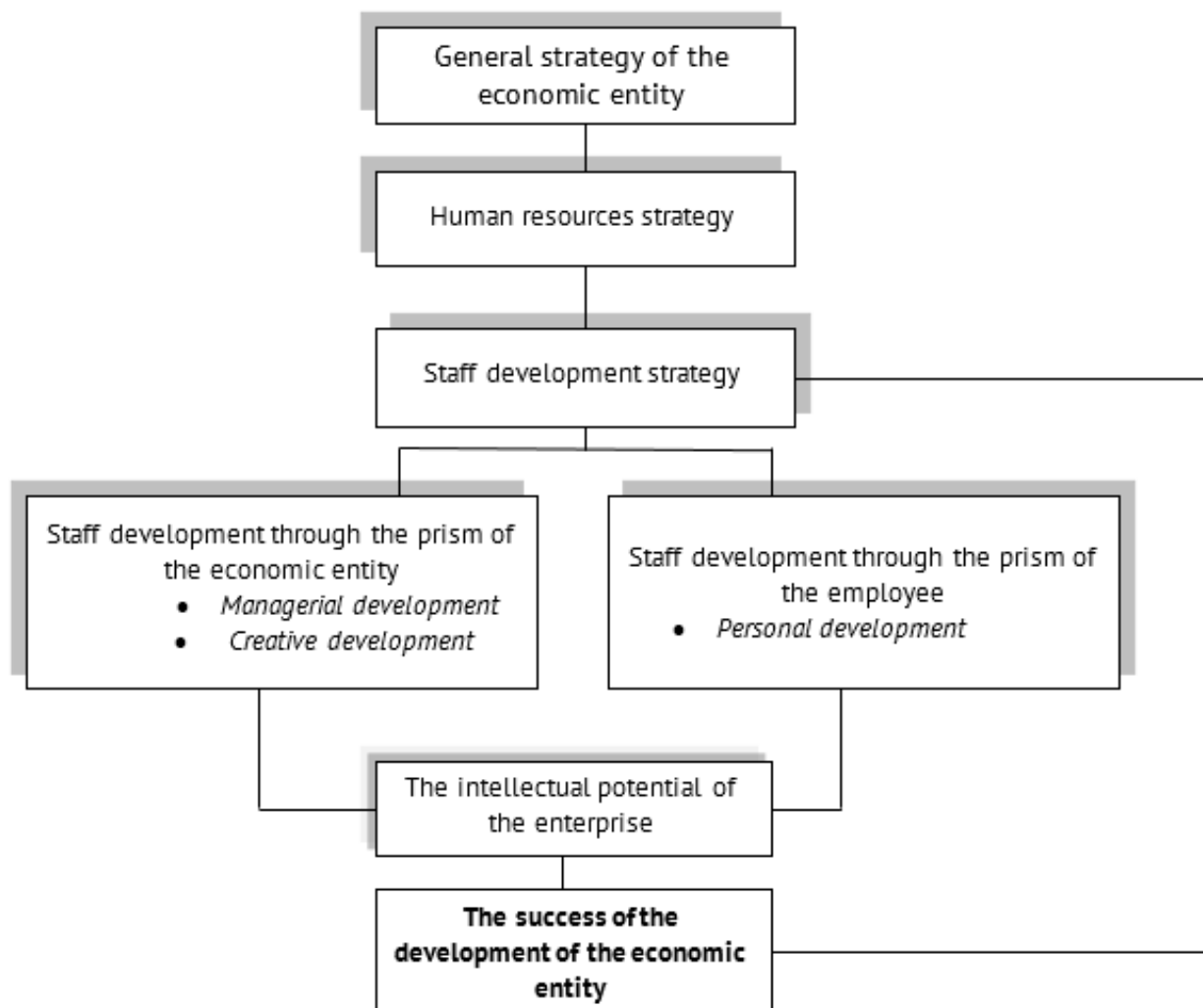
Professional development through the prism of the employee is based on the awareness of each employee to be continuously trained through lifelong learning, to meet the new requirements, increasingly larger and more challenging.

Considering the complexity of this strategy, the senior management of the economic entity must first identify the possibilities of the economic entity to ensure the professional development of employees and, at the same time, assess the intellectual potential of each employee and the professional development needs of employees.

### ***Staff development through the prism of the employee***

From the point of view of the economic entity, staff development is a much more complex activity, requires the consideration of several aspects and requires the implementation of several actions that have a higher or lower tangent.

In order to identify areas where professional development is required, it is first necessary to carry out an assessment of employees' professional skills.



**Figure 1.** Employee development strategy from the point of view of the economic entity and the employee.

However, the evaluation of performances serves as a basis for making decisions on professional development for certain categories of staff or for employees of one or another subdivision of the organization.

Second, the economic entity must know the development potential, at least for certain categories of employees. For this it is necessary to evaluate the capacities of the employees and to identify the possibilities of their development. In this case, the economic entity needs to know what the maximum level of professional development is, especially for "key" employees.

Third, the economic entity must identify the individual objectives of employee professional development. In this case, the personal development objectives of the employees must coincide with the development objectives of the economic entity. The main objectives of professional development of the employee are: professional promotion, recognition, improvement of one's own image, taking on greater responsibilities, etc. The achievement of these objectives by the employee are also attractive for the organization because the employees with outstanding performances are attached and interested in its development.

**Managerial development**

Managerial development refers to improving the performance of managers in their current positions and preparing them for strategic decisions in the future.

According to the "Statement of Principles on Managerial Development", "the managerial statement is any effort to improve managerial effectiveness through a planned and deliberate learning process" [8].

In the opinion of the scientist Mumford, in order for the managerial development system to be efficient, it is necessary to combine three elements:

- self-development is based on the idea that the individual can learn and that the initiative for development must belong to him;
- development initiatives at the level of the economic entity – the formal systems and programs for the development of managers must be developed by the specialists of the human resources department;
- development initiatives taken by superiors – the actions undertaken by senior managers regarding the development of managers at lower levels focused on real work issues.

The economic entity must conceive a philosophy of managerial development that ensures the performance of constant activities, meant to improve the way management is learned. For the economic entity in the field of ICT, the study of management can be done as a result of formal training, through courses organized within economic entities or outside it.

For managers under the age of 40 we consider it appropriate to use different modalities of managerial development, taking into account the fact that they already have a certain level of managerial training obtained in higher education institutions, both in the Republic of Moldova and beyond its borders. In this sense, for young managers, managerial development can be achieved by rotating positions, participating in teams or project groups, detachment outside the organization, which would allow them greater opportunities to accumulate managerial experience.

Lately, there is more and more talk about managerial development focused on skills requirements that must include the following fundamental elements:

- strategic capacity. This involves: a good understanding of the changing economic environment, an understanding of product and market development opportunities, and the acquisition of the strengths and weaknesses of one's own organization;
- capacity to manage change. It considers the identification of the need for change, the design of change programs, attracting the participation of other employees in the implementation of changes, etc.;
- ability to work in a team. It involves facilitating the collaboration in good conditions of people with specialized and different skills.

**Creative development**

An essential element for the existence and progress of society in general and of economic entities in particular is the creative theoretical and practical development of human resources, as a superior form of manifestation of their potential. The recent changes in local organizations, characterized by: accelerating the process of change, increasing the role and value of information, diversifying the tools and techniques used by managers, etc., have

determined the need for a creative development of staff, especially managers at all hierarchical levels.

The need to create can be determined by the existence of a dysfunction (there is a real problem), but also by the desire to progress, without real dysfunctions, to strengthen the position in relation to competing organizations, in a spirit of competition, etc.

Considering the importance and complexity of creativity in organizations, it is necessary to focus from the beginning on those aspects that could have a favorable impact on the further development of creativity [1]. The analysis of the theoretical research highlights that the premises of creativity at the level of the organization can be:

1. The training of staff for creative development depends, first of all, on the quality of the human resources selection. By selecting a person who meets the requirements of the job and in terms of creativity, the chances of achieving organizational goals increase considerably.

2. Socio-economic premises. The need for creativity is often the result of the forces acting for change, namely: technical progress, competitive pressure, accelerated moral wear and tear of products; major changes in the workforce, etc.

3. Organizational premises. Any activity must be coordinated to achieve its goal. Or, creative development is an activity that involves a greater involvement of more people.

Starting from the stated premises, in order to stimulate the creative development, the activity of senior management must be oriented towards:

- creating a good climate of communication both internal (own staff, marketing department, research and development department) and external (inventors, research institutions, creativity centers), taking into account the principle that "all people have the creative potential";
- identification, recruitment and selection of persons to meet the requirements related to creativity;
- ensuring the permanent training and improvement of the staff (one step before the technical progress);
- ensuring conditions for a better development of group work, through an adequate management (for example, contributory management);
- creating an organizational framework conducive to creativity (for example, the idea box), as well as temporary or permanent creativity teams, such as quality circles;
- the belief that the most appropriate methods of stimulating creativity are used.

The result of the diagnosis of the professional development activity of the staff in the ICT field, allows us to generalize a SWOT analysis, which offers us a deeper understanding of both the strengths and weaknesses, as well as the opportunities and threats [9].

As a result of combining these four elements of the SWOT matrix, we can make several decisions regarding the professional development of the staff. The most conclusive can be considered the combination of strengths with opportunities and threats and that of weaknesses with opportunities. And the most risky and unwanted would be the combination of weaknesses with threats.

We can conclude that all decision-making options must focus on the elaboration and implementation of strategies and policies whose materialization will lead to the improvement of the professional development management of the staff.

Table 1

| <b>SWOT Matrix</b>   |  |
|--|--|
| <b>Strengths</b>   | <b>Weaknesses</b>  |
| <ol style="list-style-type: none"> <li>1. Ensuring the knowledge and professional skills that the economic entity needs to carry out the activity;</li> <li>2. Increasing the value of human capital of the economic entity;</li> <li>3. Ensuring high professional competencies for all employees in order to perform the tasks and responsibilities related to the jobs they hold;</li> <li>4. Employees' participation in the process of elaborating personal and managerial development plans;</li> <li>5. Achieving organizational objectives, both short-term and long-term, with the help of highly qualified employees.</li> </ol> | <ol style="list-style-type: none"> <li>1. Lack of staff training and development policies and strategies;</li> <li>2. Lack of managerial development objectives for employees holding management positions;</li> <li>3. Insufficient allocation of financial resources for training and professional development of staff;</li> <li>4. Lack of initiative on the part of employees to participate in professional development;</li> <li>5. Lack of technical-material base, centers for continuous development within economic entities for training and professional development of staff economic entities.</li> </ol> |
| <b>Opportunities</b>   | <b>Threats</b>   |
| <ol style="list-style-type: none"> <li>1. Changing the mentality of senior managers, in the sense that human resources must become an element of investment for the further development of the economic entity;</li> <li>2. Awareness of the senior managers of the economic entity, establishing the objectives of implementing the professional development strategies of the specialized personnel;</li> <li>3. Awareness by staff of the need for continuous training and personal development.</li> </ol>   | <ol style="list-style-type: none"> <li>1. Resistance to change from senior managers of the economic entity;</li> <li>2. The risk of not covering the expenses incurred by the economic entity with the professional development activity of the staff;</li> <li>3. Difficulties in developing and implementing staff development strategies and policies;</li> <li>4. The unwillingness of employees to participate in various professional development programs.</li> </ol>   |

### Conclusions

The professional development of employees has become necessary with the continuous development of new technologies and their implementation in economic activity.

If in the past people who acquired a profession or trade managed, based on the knowledge gained during school, to practise it throughout their lives, today knowledge expires very quickly, which leads to non-performance rather than performance by those employees.

The existence of some employees who no longer manage to keep up, professionally, with the changes that take place in the way of carrying out the activities in the competitive economy is a problem that worries more and more organizations. In the organizations of the Republic of Moldova, the activity of training and professional development is perceived as a necessity, but it is not yet a priority. In the current period of rapid change that ICT

organizations in the Republic of Moldova are going through, training and professional development must become a continuous and organized process that takes into account all the changes that take place in organizations, as well as possible external challenges that could affect the subsequent work of organizations.

Taking into account the above, we can formulate the following *recommendations*.

1. The need to implement the staff development strategy in the general strategy of the economic entity. The strategy will detail all the actions that must be taken so that economic entities do not suffer from the lack of knowledge and professional skills in order to achieve the proposed objectives.

2. Inclusion of the staff development strategy in the human resources strategy, in particular, and in the strategy of economic entities in general. This means that staff development becomes a necessary premise in order to be able to react quickly and as flexibly as possible to changes in the truly competitive environment.

The close correlation of the professional development strategy and the organizational strategy in the economic entities in the field of ICT, will amplify the need of the economic entities for an overview or an integrated approach to the respective issue, in which more and more must be taken into account the fact that human potential cannot always be adapted only in the short term. Achieving this goal requires a change of attitude or a change of behavior on the part of senior managers.

3. Awareness of senior managers and managers of functional subdivisions of economic entities in order to address the issues of professional development of staff by including in the job description the tasks and obligations in question. This will increase the responsibility of these specialists.

**Acknowledgments.** This paper work was presented at the “*International Conference on Electronics Communications and Computing, IC ECCO*”, 21-22 October, 2021, Chisinau, TUM.

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## THE REASON AND PRAGMATIC KNOWLEDGE: RETRIEVING THE INTEGRATIVE MEANING

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Received: 10. 22. 2021

Accepted: 01. 12. 2022

**Abstract.** The article discusses the social responsibility of scientists in the context of practical work. Knowledge has a major role, both in the development of an individual and of society as a whole. Today's society is a society of knowledge. Knowledge cannot evolve separately from information. The amount and quality of information depends to a large extent on its processing by artificial intelligence. The involvement of knowledge in the field of artificial intelligence is not possible without critical thinking. A knowledge society is not perceived without the involvement of researchers. They are the ones who promote and develop scientific knowledge. This type of knowledge is found in all areas of society.

**Keywords:** *pragmatic knowledge, meaning, understanding, reason, critical thinking.*

**Rezumat.** Articolul prezintă o discuție despre responsabilitatea socială a oamenilor de știință în contextul activității practice. Cunoașterea are un rol major, atât în dezvoltarea unei persoane, dar și a întregii societăți. Societatea de astăzi este o societate a cunoașterii. Cunoașterea nu poate evolua separat de informație. Cantitatea și calitatea informațiilor depind în mare măsură de procesarea acestora de către inteligența artificială. Implicarea cunoștințelor în domeniul inteligenței artificiale nu este posibilă fără gândire critică. O societate a cunoașterii nu este percepută fără implicarea cercetătorilor. Ei sunt cei care promovează și dezvoltă cunoștințele științifice. Acest tip de cunoștințe se regăsește în toate domeniile de activitate ale societății.

**Cuvinte cheie:** *cunoaștere pragmatică, sens, înțelegere, rațiune, gândire critică.*

### Introduction

The pragmatic competence manifested in philosophy is related to an expressive manifestation of the thoughts that human thinking manifests, in the same way the pragmatic competence refers to the study of the ways in which thinking is involved and interacts with language. In this sense, the cognitive experience, the cognitive capacity, the communicative competences are of great importance. The specificity of the pragmatic competence valid for knowledge is fully found in the communicative competence [1]. It is difficult to dissociate between cognitive competence and communicative competence. Both are found and constitute an integral whole. These types of skills help us to better understand human

behavior through its acts of communication and how certain extra linguistic elements have a decisive persuasive role in determining the senses and meanings that people transmit to others. The transmission of the meanings in question is done depending on the ability of the participants in a communication situation to understand at a fair value the meaning of what is heard. Of course, the subjective capacity to understand and explain what is heard is different from case to case. There are largely factors involved in the individuality of each person. The transmission of information in the communication process also depends on the conditions of truth that a statement must meet, but this criterion is not exclusive [2]. The pragmatic factor is also very important, not only for the truth of the statements, for the correspondence of their content with the things in reality, but also for the intention of the one who issues the statements, the way he issues them, the evaluation being a practical-instrumental one.

### **Knowledge related to communication**

The specificity of knowledge has always been characterized by the increase of added value in relation to what has been known up to the moment about an object, human being, process or event. From a metaphysical perspective, knowledge is oriented towards an abstract reality, guided by the foundations of a transcendental metaphysics [3]. This type of knowledge relates to the search for information about the object itself, about the limits of pure reason. Pure reason, absolutely, characterizes everything related to this type of metaphysics. Kant has created a string of interrogations and problematization situations regarding this type of knowledge. He was the philosopher who by excellence interrogated knowledge both from a metaphysical perspective and from a pragmatic perspective. The system of transcendental idealism created by Kant is a transcendental logic, as well as relating to a practical philosophy. In the plane of metaphysical knowledge, attention is paid to the full extent to the thing itself, which is researched within a system of knowledge. In the plane of practical knowledge, attention is paid to something in itself real and transcendental, outside the system. Knowledge in a pragmatic perspective is a matter of truth and justification. We can speak in this sense of a pragmatic theory of truth [4]. This theory concerns the truth that is determined by the contexts of action of people. In contexts where people direct their actions, existence is perceived in its practical way. This type of pragmatic view of realities goes beyond a kind of relativism generated by a number of changes that can intervene in any type of reality. „In sciences found on opinions and dogmas it is right to make use of anticipations and logic, if you wish to force assent rather than things” [5].

The speaker's intention is of great importance, because depending on this intention the statements are structured, their senses, meanings and finalities are created in the perspective of the subsequent actions at the level of verbal behavior. The understanding of the language depends directly on the acts of language through which the communication is made, on the real purpose of the communication, implicitly on the intention of the speakers, but also on the real context in which this communication situation is made. It is important that during the communication actions, depending on what is transmitted, the behaviors of the people participating in the communication situation are influenced or modified. Cognitive and communicative pragmatics appreciates communication and language as forms of human interaction. Language is of great importance in this context. Language comprehension depends on the acts of language through which the communication is made, the real purpose of the communication and the context in which it takes place. Pragmatics highlights

everything that hides beyond textuality, because the deep meanings are in pre-text, con-text and sub-text. Thus, the person who reads or participates in direct communication must pay attention to the multitude of meanings of words that are found in one context or another. The meaning of the words transmitted in the communication acts influences the message of the transmitted ones, influencing the acts of practical conduct, the behavior of the people in the communication interaction.

The stake of the pragmatic approach is to explain how the behavior of people is influenced, even modified, through acts of communication. In the communication process, a series of factors interact that have the role of influencing the evolution of this process. Thus, the spectrum of pragmatic approaches also includes elements related to rhetoric, such as, for example, persuasion. Equally, there can be changes in values, attitudes, behaviors. In the communication, the implicit, the presuppositions are also fully manifested. All this leads to the field of metacommunication. Thus, the dialogue can always evolve depending on the series of assumptions related to the interlocutors participating in the dialogue. Human nature is formed in such a way that participation in communication acts is a creative act. A true hermeneutic game is established in communication and understanding of all its aspects. We can say that it is a true art of interpreting the intentions, presuppositions and implicit, these factors present in the context of communication situations. The communication situation is the basic element of social life. Beyond the finite number of words, which creates infinite meanings, people also resort to a series of significant and constant gestures. The gestural code represents a special semiotic language, which aims to complete the verbal language. Through this code, people strengthen their statements or negations. Semiotic language adds expressiveness to the series of words that people use in the communication process. We can say that between the participants in a communication situation a pragmatic relationship is created between the signs and the users of the signs. The ultimate goal in the communication process is to get people to act. These actions belong to the sphere of changes at the level of attitude, mentality, and direct action in the context of the public sphere. We can deduce that communication is based on two competencies: the first refers to the ability to process the linguistic forms of expressions in order to reach their literary meaning, and the second competency refers to the ability to interpret the meanings of information transmitted in relation to those who they emit them and last but not least the context in which these communication situations occur. We can say that each linguistic statement contains two classes of meanings: a linguistic meaning and a pragmatic meaning that derives from the determining conditions of the context in which the communication situation takes place. It is important for people to develop both these two types of skills throughout their lives, if the first type of competence, the linguistic one, is developed during institutionalized education, then pragmatic competence is most developed in the process of gaining experience, i.e. by virtue the multitude of communication situations that life generates, in all its complexity. Knowledge of the appropriate contextual use of the linguistic resources of a language is of great importance in the communication process. If there are shortcomings in this regard, then it will have to bear the consequences of the whole communication process, respectively the meanings that are transmitted.

### **Thinking and language - necessary interactions in the process of knowledge**

Knowledge, implicitly the process of rationalizing ideas, is not done in the absence of a language. From this point of view, a connection is created between thinking and language,

a connection that represents a reference system between the reality of human language expressed in spoken or thought words and direct thinking, responsible for elaborating reasoning. The field that studies how our language gets involved and interacts with our thinking is represented by the philosophy of language. A mutual interdependence is created between thinking and speaking. Depending on the quality of spoken language, we can also appreciate the quality of thinking that underlies speech acts. Respectively, depending on the quality of thinking, we can also talk about the quality of speech. In this system of reference established between thought and speech, man is aided by logic. Studying logic, but also the relationship between logic and speech with certainty helps people to better structure their own arguments and to criticize the arguments of others. The meanings of the senses of words are due to the linguistic conventions established in the context of the space where one language or another is spoken. Equally important is the individual pragmatic competence, which makes the meanings and senses to acquire individual characteristics. The ways in which language interacts with the world are called reference theories. The sense of a sentence is the thought it expresses. The thought in turn is expressed in words. "A use of language, whether ordinary or complex, is not itself a feature or property of language acts any more than the type horse is a feature or property of horses" [6]. The senses determine the reference and are also the ways of presenting the objects to which the expressions refer. References are the objects in the world that the words speak of. Understanding language manifested in direct action, interpreting the multiple meanings that language has in different contexts, the connection between thinking and speaking is studied within the philosophy of language. This field explores the relationship between language and reality, especially the philosophy of language study issues that cannot be addressed by other fields. A great interdependence is created between the philosophy of language and philosophical logic. Thus, the nature of the sense rendered by the words we use in our internalized and externalized language represents the basic basis that is in the episteme of the philosophy of language. Language and the surrounding reality are the topics that are of major interest for the philosophy of language.

Knowledge, from this point of view, refers both to the ontic sphere that includes the entire objective reality, with all its components, but also to the sphere of language. The connection between language and reality represents a tandem of major importance for human existence, because man is characterized by his representation through language, respectively through his particular language and which renders the subjective matrix of the human being. We can rightly consider that language represents for man its system of reference, its spiritual axis and its cognitive matrix, logical alike. Apart from these determinations that naturally derive from the use of language, it is difficult to imagine human existence. We think and speak through language. We know through language. We interpret through the use of language. We have access to meanings transposed into and through language. The reality in which we live may be difficult, or impossible to perceive outside of language. We can say that language represents a different kind of reality; a subjective one thought and lived by the speaker. As is the nature and thought of the speaker, so is his language. Sensitivity, the refinement of human nature is represented through language, as well as the brutality, the marginalization of some people. The limits through which I represent this world to me are represented by language, and we can also say that the limits of our language represent the limits to which human thought has access through knowledge. The limitation given by language is also conditioned by the limitation given by knowledge. So,

language and knowledge are mutually conditioned, they are two factors that depend on each other. Knowledge develops through language, and language in turn contributes to the rendering of everything that is assimilated new in the process of knowledge. As long as knowledge evolves, so will language. In general, the idea that a language is constantly evolving is valid, because it keeps pace with the process of knowledge, respectively does not stagnate. „An interpreter knows the conditions under which utterances of sentences are true, and often knows that if certain sentences are true, others must be” [7]. You know a society by the language it speaks, respectively by the linguistics they speak, respectively the researchers, the great creators of artistic and scientific language, resort to them. A language is put to work, respectively a language becomes, transforms in time, acquires new valences of use. Pragmatic competence is what helps us to use language efficiently in an appropriate context. This type of competence is a fundamental aspect of a communicative competence. One type of competence influences the other. So, pragmatic competence helps us to use language effectively to achieve a specific goal and to understand a language in context. A language is always used intentionally. The recourse to linguistic acts is always based on one intention or another. Pragmatic competence places language within the institutional framework of its use. The linguistic means to which we resort help us to realize our intentions at the level of language. So, a language offers us its linguistic tools for knowledge. This forces those who use one language or another to know not only the structure of that language, but also to know how to use it.

The pragmatic competence of the language is related to the recourse to a series of strategies related to the capacity of adaptability, evidence, dynamism, negotiation at the level of language. So, we can speak of a pragmatic communicative competence that comes with the presupposition that we have to adapt to the communication register of the other. Adaptability, flexibility in the context of dialogue has a great significance, because it targets the sphere of connection between the actors participating in the dialogue. During the communication, respectively the issuance of linguistic acts by one speaker for another speaker, there is a change in the mind of the other under the influence of the information transmitted by the corresponding linguistic acts. In the communication process, information is always transmitted that influences the dynamics of the other's mind. So, in this sense we can talk not only about pragmatics, but also about neuropragmatics. Speakers often aim to use language to achieve a specific purpose, depending on the topic, the communication register, the language tools. A communication register in which a communication situation takes place always has unlimited possibilities, because there is the possibility to negotiate pragmatic choices every time as the interaction takes place in order to fulfill the communicative intentions. Equally, the communicative interaction develops over time, because it requires adaptability and flexibility from the participants in the dialogue, but also the ability to understand how the other's mind works. The effects that a language has on one's mind is very great. Words produce major effects on the minds of those who hear, read these words, hence a series of effects - changes in moods, attitudes, actions, etc. So, the word-thought relationship is not only in the focus of the philosophy of language, but also a problematic situation for the philosophy of mind. Thus, spoken or written words, rendered or tacit thoughts, emotions that appear as an impact of these influences are basic components of the philosophy of language, as well as of the philosophy of mind. It is very important in this way to understand and appreciate at fair value everything that happens in the frame of reference of the philosophy of language and the philosophy of mind. Hermeneutics and

semiotics, which aim to interpret the meanings transposed in and through language, also enter this frame of reference. Aspects of the context in which a communication situation takes place are of great importance and relevance for understanding the intentions projected in the messages transposed in the communication.

Communicative pragmatics relates more to understanding meanings, to understanding research compared to the production of language. The pragmatic approach in the case of semiotic analyzes of communication is made from the perspective of analysis of communication as a mode of action. Meanings in the context of communication arise from the use of words through language games. The use of words in communication is a real art, it involves creativity and authenticity. The meanings are created ad-hoc, by interweaving the meanings that in turn contribute to the emergence of ideas. When we talk about meanings, we must consider both the use of denotative language and the use of connotative language. There are two types of languages used in communication. If in the case of the use of denotative language the meanings are ordinary, banal, they relate directly to the immediate ontic sphere and do not bring any add of creative value for the enrichment of the language, then in the case of the connotative language the meanings are creative, they derive from the context, from the personal experience of the speakers, respectively the connotations enrich the linguistic, hermeneutic universe of the speakers.

### **Critical thinking as a mode of action in the context of knowledge**

Critical thinking is very important in communication situations. Proper understanding and reception of messages requires the use of critical thinking tools. These tools allow a mapping of how each person thinks in relation to their own decisions. Those decisions can affect his life, attitude, mentality, behavior not least. Most of the time we appreciate, for better or worse, the choices, the human behaviors. Each person develops during his life a certain mental pattern, which determines everything he thinks, the way a certain person acts in one situation or another. Beyond certain elements that are universally valid for all people, each of them has developed a certain way of being, of rationalizing. These things are related to the construction and dynamics of the human brain, but also to the educational context in which that person was formed, to the external influences that influenced him during his life in one situation or another. Critical thinking is, in fact, authentic thinking based on judgments of appreciation, on reasoning. We can speak in this sense of the existence of a mental map that would ensure a good functioning of the human thinking system. And this mental map would represent both at an objective level and at a subjective level the entire human experience accumulated up to that moment. The importance of critical thinking in human life is overwhelming, because only in totalitarian societies this type of thinking has been rejected, its formation is not accepted. The consequences of the lack of this type of thinking at the level of society, or at the level of individual life are obvious. Rationalization and critical thinking are creative and imaginative processes in developing the arguments needed to support a cause, they involve emotional attitudes, but also communication skills. Critical thinking contributes to the fact that the information, respectively the meaning of what is communicated is not distorted. This type of thinking aims to promote the development of a matrix of thinking that would contribute to the fact that human thinking is as evolved as possible, authentic. Practicing critical thinking is also a practice of developing argumentation skills. It is very important to develop critical thinking skills because this involves developing the skills to be creative in developing new opportunities to think freely, to see beyond the

limits imposed by the social context, implicitly the acceptances of others, their own prejudices and stereotypes. thinking. So, critical thinking aims at a mental activity to acquire knowledge about the world around, to base on rational arguments decisions about the world of things and actions, different from emotional attitudes towards human things or actions.

We can say that critical thinking is a metacognitive skill, a kind of thinking about thinking. This type of thinking is thinking more deeply about thinking, or thinking thinking. Correct thinking is very important in the process of knowing. The ability to think critically is acquired like many other skills. Three important elements are needed to develop this ability: knowledge, skills and attitude. Correct thinking is formed along the way, following a series of exercises in thinking operations. Critical thinking is needed to gain more objective knowledge. During correct thinking, the exact rules of thinking are followed, such as logical laws, methods of scientific reasoning. During critical thinking, knowledge is validated, it is subject to verification, proof, doubt. The principle of doubt has a great significance because it subjects knowledge, the process of knowing to an interrogation. Resistance to this interrogation means true knowledge, respectively truthful knowledge. It is also very important to detect errors that are encountered in a natural way in the process of knowledge. Critical thinking also requires the ability to engage in a reflective and independent thinking process. A person with critical thinking skills should be able to understand the logical connections between ideas; identify and build the necessary arguments; to reflect on what motivates personal beliefs and values. Developing good critical thinking skills requires more than just knowledge and practice. It also requires motivation and personal attitude to persevere in the development of critical thinking. There are also certain obstacles that hinder the natural development of critical thinking. These obstacles are represented by prejudices, stereotypes, false beliefs. There are enough cases when some people refuse to think too much about personal decisions, he says and that it is based more on personal intuition. It is also difficult when people refuse to analyze the mistakes they have made. All this is just an impediment to correct thinking. It is very important for people to be aware of these mistakes and to avoid them in order to advance towards new ascents of authentic knowledge, respectively of authentic thinking.

The development of critical thinking is directly related to the development of imagination. In turn, the imagination is about creativity, respectively we need critical thinking to guide and moderate it. Creative thinking skills are important because they help to develop more ideas. Thus, when there are several ideas about one fact or another, there are more chances for there to be the best idea among several ideas. We can say that creative thinking skills are those that stimulate the critical, implicit and creative thinking process. When we refer to the development of critical thinking, we mean problem solving; finding solutions that require creativity; identifying ways that have not been considered; changing the interpretation of our perception of an event, a situation, a behavior, a person; the mapping of the mind which thus allows the generation of ideas in an associative way and which will represent an integral whole. Fundamental critical thinking strategies such as comparison, contrast, analysis, classification and evaluation can help and guide us to make the right decision. These strategies are both tools for critical thinking and help develop critical thinking skills. This type of critical thinking is in fact authentic thinking, able to contribute to the development of the human being in general, implicitly to the development of the mentality. The whole society is at an advantage when people are concerned with the development of

this type of thinking. The level of development that a society has can be appreciated according to the level of thinking that the people who represent that society have.

### **Knowledge and reality of the present time**

In recent decades, knowledge relates to a series of realities related to the relationship between science and technology. All ongoing processes are related to advances in information knowledge. We can say that science and technology have emphasized their systematic character. A series of achievements of the reality related to the sphere of information sciences have become applications in different fields, valid both for the sphere of exact, empirical sciences, but also for the sphere of socio-humanities. Today, there are almost no delimitations between research categories, between research issues. The degree of interdisciplinarity in the fields of research has increased. In this sense, it has become important to increase the obvious interest for a series of inter and transdisciplinary research. We can say that scientific knowledge is currently seeking to solve problems that society proposes to solve. From here, it naturally derives the social responsibility that scientists have when they assume the right to solve the problems that arise. "The search for hidden assumptions and fundamental premises is actually part of a larger enterprise" [8]. Knowledge has acquired new meanings and meanings compared to the paradigms that dominated knowledge in previous eras. Knowledge is not only a mental process, but also a process of artificial intelligence systems, industrial, economic and social organizations. "I want to suggest that this provides a perfectly ordinary model for explaining the puzzling relationships between the mind and the brain" [9]. One of the most interesting and current aspects of knowledge today is the artificial knowledge of expert systems, intelligent agents, ie artificial intelligence systems. Such elements have not yet been integrated into a new and appropriate theory of knowledge. Artificial intelligence has become one of the types of intelligence that is of particular interest to researchers. This type of intelligence is of interest to computer scientists, mathematicians, but also to biologists, philosophers, psychologists, etc. Knowledge today is impossible to represent outside of all that is involved in artificial intelligence. Natural and artificial intellect are for many researchers the stake of research in current and future projects. The intellect is the main means used by man to survive and, especially, to advance in relation to his own self-knowledge. In the absence of the intellect man would be unable to survive.

We can say that there is no human activity from which intellectual activity would be excluded. This type of activity is an activity with several levels of complexity. At the first level it means knowledge, and at the second, creative thinking. Knowledge is one of the fundamental needs of man and aims to explain the world, and increasing knowledge brings value to society as a whole. Research activity, based on creative thinking, is the main factor of intellectual activity. The materialization of creative thinking contributes to the realization of new technologies or to the continuous improvement of all categories of technical means, to the continuous improvement of all categories of technical means, to the increase of the degree of competitiveness on the international market. Knowledge brings with it new knowledge, theories, paradigms that contribute to a better interpretation of the world. To have knowledge means to possess explicit knowledge about facts, events, actions, theories, paradigms. In this sense, knowledge can be archived through sign systems, transmitted in different scientific and social contexts to be used. „Mind is a word. It belongs to everyday speech rather than the vocabulary of science and the most relevant branch of science - human



psychology - has placed a peculiarly strong taboo upon its use" [10]. Knowledge, respectively knowledge is the reference system of people, in the absence of this reference system it is impossible to imagine people's lives. The implementation of the knowledge society involves both the use of existing knowledge and the expansion and deepening, through new means, of scientific knowledge and the truth about existence, as well as the dissemination of knowledge to all people. In the situation where knowledge is not only a mental process, but, with certain specific limits, it is also a process of artificial intelligence systems, it is necessary for man to substantiate knowledge by thinking, based on valid arguments.

### Conclusion

Contemporary society is characterized by type of pragmatic knowledge. This knowledge also relates to pragmatic competence. Pragmatic competence is cognitive and communicative. There is a close interdependence between knowledge-communication-action. The process of rationalization of ideas has a great importance for knowledge, respectively for the transmission of ideas, explanation and understanding of their meanings. Critical thinking is a mode of action for the context of knowledge. We can speak in this sense not only of pragmatics, but also of neuropragmatics. There is a direct connection between the level of thinking of people and the level of development of a society. Knowledge always brings with it novelty, originality and creativity. The value of new knowledge lies in its ability to contribute to the development of the problems that a society puts forward. Research based on critical and creative thinking is equally the strength and energy of any society.

**Acknowledgments.** This paper work was presented at the "International Conference on Electronics Communications and Computing" 21-22 october, 2021, Chisinau.

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## WHY WE HAVE UNEMPLOYMENT?

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Received: 12.30.2021

Accepted: 02.06.2022

**Abstract:** The article examines the issue of unemployment, which affects the quality of life in all countries, regardless of their level of development. In some countries, many people have to earn a living through long hours of hard and tiring physical work, perhaps even through dangerous and poorly paid work. Until recently, many people in other countries were sure that once they joined a large company or a state-owned enterprise, they would have a job until retirement. Today, however, it seems that there are too few companies or corporations that can provide a convenient and safe job for employees. The causes of the problem, its magnitude for different social categories, the magnitude and some ways of combating the phenomenon of unemployment are elucidated.

**Keywords:** *Causes of unemployment, solutions, theories of unemployment, Keynesian unemployment, Great Depression, Keynes, post-war boom, Hartz reforms.*

**Rezumat.** Articolul examinează problema șomajului, care afectează calitatea vieții în toate țările, indiferent de nivelul lor de dezvoltare. În unele țări, mulți oameni trebuie să-și câștige existența prin ore lungi de muncă fizică grea și obositoare, poate chiar prin muncă periculoasă și prost plătită. Până de curând, mulți oameni din alte țări erau siguri că, odată ce se alătură unei companii mari sau unei întreprinderi de stat, vor avea un loc de muncă până la pensie. Astăzi, însă, se pare că există prea puține companii sau corporații care pot oferi un loc de muncă convenabil și sigur pentru angajați. Sunt elucidate cauzele problemei, amploarea acestora pentru diferite categorii sociale, amploarea și unele modalități de combatere a fenomenului șomajului.

**Cuvinte cheie:** *Cauzele șomajului, soluții, teorii ale șomajului, șomaj keynesian, Marea Depresiune, Keynes, boom postbelic, reforme Hartz.*

### Causes of the problem

Some believe we have already reached the limits of prosperity. And if there are fewer employees, there are fewer buyers. In this way, the market produces more than can be consumed. No longer economically viable, large companies, built to achieve the expected increases in production, are closing or being repurposed. Such changes claim victims: the unemployed. In times of economic crisis, the need for labour declines, and jobs lost during the crisis are unlikely to be re-created in good times. Clearly, unemployment has more than one cause [1].

### **An age-old problem**

The "discovery of unemployment" took place in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. In 1895 special government committees were set up to examine and deal with the problem, just as the Select Committee of the House of Commons of Great Britain dealt with "the unhappy plight of those seeking work". Joblessness had become a social blight.

This new worrying situation increased dramatically particularly after the First World War. The conflict, with its frenzied arms production, virtually eliminated unemployment. But in the early 1920s, the Western world faced a series of crises culminating in the Great Depression that began in 1929 and affected all the world's industrial economies. After the Second World War, many countries experienced a new period of economic prosperity, with falling unemployment. But "the current unemployment problem has its origins in the mid-1960s," says the Organisation for Economic Cooperation and Development [3]. The labour market took a further hit from the oil crises of the 1970s and the computer information explosion and its subsequent layoffs. Unemployment began its relentless rise, even penetrating the ranks of civil servants and those in positions of responsibility, jobs that were once considered secure.

### **A social plague**

Both the employed and the unemployed are increasingly protesting about job problems. But while the unemployed are looking for a job, the employed are trying to defend their position, two goals that are not always compatible. Those who have a job are always being called in for overtime. Those without a job remain unemployed. There is a risk that society will split in two on the one hand the over-employed and on the other the marginalised unemployed, who depend almost entirely on the goodwill of the former. In Europe, experts believe, the results of economic prosperity have been felt more by those already working than by those without jobs [4, 5].

In addition, unemployment depends on the local economic situation, so in some countries, such as Germany, Italy and Spain, there are huge differences between the needs of one area and another [6]. Are workers willing to learn new jobs or even move to another area or country? This can often be a deciding factor.

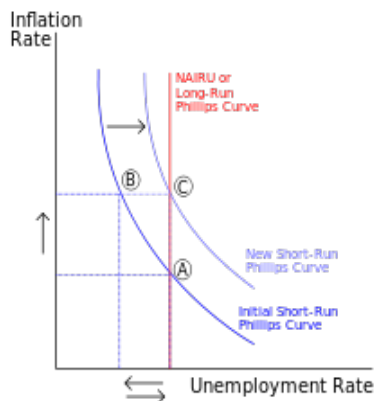
### **Is there a solution in sight?**

Economic recovery does not necessarily imply lower unemployment. As long as growth is insignificant, employers prefer to use the employees they have rather than hire others, which means "prosperity without jobs". And then, usually, the number of people out of work grows faster than the number of new jobs created.

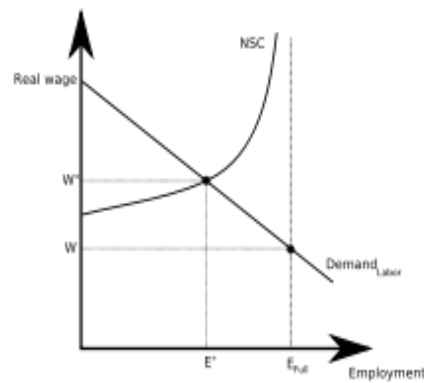
Experts have suggested many recipes for fighting unemployment. Some even contradict each other; it depends on whether those who suggested them were economists, politicians or even workers [7, 8]. There are some who propose some tempting offers to companies: increase the need for workers by cutting taxes. Some believe that major state intervention is needed. Others suggest a new division of labour and shorter working hours. This has already been put into practice by some of the big companies, although since the last century in all industrialised countries the working week has been gradually reduced, without this helping to reduce unemployment. Over time, each method proves ineffective, with the costs outweighing the benefits.

Let's be under no illusions: the problem is difficult [9, 10]. Too difficult to solve? Is there a solution to the unemployment problem?

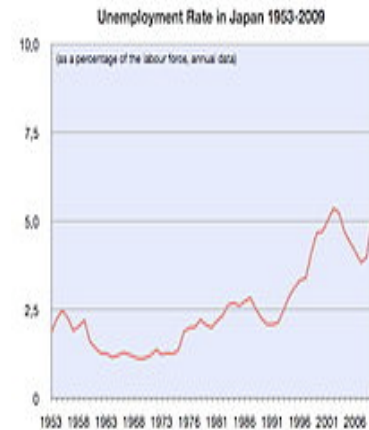
Economically, in post-World War II Germany, there was hardly any talk of poverty. Over time, the proportion of low wages increased and poverty and precariousness grew (Figures 1, 2, 3).



**Figure 1.** Short-Run Phillips Curve before and after expansionary policy, with Long-Run Philips Curve (NAIRU). Note, however, that the unemployment rate is an inaccurate predictor of inflation in the long term.



**Figure 2.** The Shapiro–Stiglitz model of efficiency wages, workers are paid at a level that dissuades shirking. That prevents wages from dropping to market clearing levels.



**Figure 3.** Unemployment rate in Japan (1963-2009).

### The exception of the post-war boom

Since the economic miracle, Germany has been considered one of the countries where poverty played only a marginal role [11]. In view of the euphoria about "the new full employment", however, it is easy to overlook how great social inequality has become, how strongly the low-wage sector has grown and precariousness has increased. Beneath the surface of a seemingly stable society, the pillars of social integration have been eroding for a long time, crashes and descents are multiplying [12].

Another aspect relevant to the assessment of the generation and manifestation of unemployment refers to the fact that the release of labour for reasons of restructuring in various branches and economic units has increased, while the demand for jobs has stagnated due to economic uncertainty and the slow restructuring of the economy. The improvement of this situation requires a series of major actions such as: the firm implementation of a scientific, realistic and coherent strategy for the development of the national economy and its branches; the implementation of privatization, restructuring and modernization of economic units on the basis of economic and social efficiency; the improvement of professional training, in accordance with the requirements of the retraining of the workforce; the development of managerial capacity from the microeconomic to the macroeconomic level [13, 14]. From an examination of the main aspects of the genesis of unemployment, several significant features can be drawn. Such features can be systematized as follows: the significant increase in the number of unemployed throughout the transition to a competitive market economy.

Full employment in the labour market, with the gap between labour demand and labour supply in favour of the latter. There are also subjective causes, which have to do with the reluctant behaviour of economic agents to hire young people, either because of their lack of experience or because they do not fit into the work discipline. Unemployment among young people also occurs as a result of the tendency to seek higher-paid jobs, which delays their active integration. Technical progress - in the short term - it generates unemployment, to a greater or lesser extent, depending on the financial capacity of countries to assimilate new scientific research. In the long term, it generates new needs, which are met by products resulting from new job-creating activities [15, 16]. Economic crisis - characterised by declines or stagnation in economic activity - increases the number of unemployed, their integration is at a low level. The absorption of a larger number of unemployed depends on the real possibilities of each country to stimulate economic agents to increase capital investments.

Changes in the structure of economic branches and sectors - under the impact of the diversification of the demand for goods, of the energy crisis - lead inevitably for a long period to a reduction in the demand for labour [16]. The immigration of part of the working population for employment in different countries will increase the supply of labour in those countries. Emigration has the opposite effect, decreasing the labour supply in the area of origin [17, 18]. Unfavourable international economic and political environment - due to fluctuations in the pace of economic growth - armed conflicts, the promotion of embargo policies negatively influence economic relations concerning import-export, deteriorating economic activities in the countries of the area and contributing to the increase in unemployment [19]. An important cause underlying the downward trend in unemployment is, on the one hand, the emigration of a large part of the labour force and, on the other hand, the return of a large number of people who have exceeded the period of unemployment benefit to register with the Employment Agency.

### **Measures to combat unemployment**

Active policy measures to reduce unemployment are [20 - 23]:

- New employees are given a probationary period, during which they receive lower pay, flexible working hours, easier termination of employment contracts and flexible wage rates according to the economic situation;
- The unemployed are trained and coached in how to look for a job;
- Those who live in the country and have a foreign nationality are included in the process;
- The level of qualifications and training in schools is raised.

The removal of all barriers on the labour market (specific labour law rules) would eliminate all forms of involuntary unemployment, increase competition between employees for the best jobs (higher wages and better working conditions), increase competition between employers for the best employees, with the effects of increasing labour productivity, reducing red tape, increasing people's real incomes across the board, and stimulating people's desire for education. The unemployed are those in the available labour force who want to work and are looking for paid work because they do not currently have such a job. The unemployed include people who have lost their jobs and new job seekers who cannot find work. Not every person who is not working can be considered unemployed (for example military personnel on leave or housewives). Unemployed is - according to the *International Labour Office* (ILO), an organisation of the United Nations system - anyone who is 15 years of age, able-bodied

and not working, looking for work and can be employed in part or in full in paid or unpaid work.

### **The problem of measuring unemployment**

Measuring unemployment is a problem of estimating its proportion, structure, intensity and duration. In all countries with a competitive market economy, specialised institutions operate and specific methods are applied to record unemployment, about which information is systematically collected: level, increase or proportion at a given time; intensity or severity of occurrence; average duration; structure or composition.

### **Unemployment and capitalism**

As modern economics has shown, it is quite possible to create full employment if the state takes the appropriate economic policy measures. Unemployment arises from a lack of purchasing power, its ultimate root being the fact that capitalism is not inclined to give the workers a larger share of the national income so as to ensure the consumption of the goods produced. This can be remedied if the state injects additional purchasing power into the masses in some form. For example, by reducing mass taxes, by subsidizing essential goods, by providing child allowances from public funds, by providing new housing at low interest rates, etc. The financing of additional state expenditure (through bonds or taxes on profits) is a technical question that can be solved without difficulty, and the increase in state debt does not pose an insurmountable problem either. Modern economics has shown exactly how to achieve permanent and stable national employment, yet why is it not done? [15]

Capitalism suffers from the fact that it does not want to give the workers enough purchasing power; the policy of full employment means that the state provides the workers with additional purchasing power so that it can sell the otherwise unsalable production. It thus amounts to capitalism outwitting itself, so to speak, and having the state transmit to the worker the purchasing power that the entrepreneurs themselves do not want to grant him directly. Can the self-surveillance succeed? There are serious political reasons against this. If the capitalists were to assign to the state the task of consistently pursuing a policy of full employment, they would thereby strengthen the influence and power of the state in a way that seems to them unwelcome and dangerous [16, 17]. Capitalism generally seeks to keep the state weak enough to prevent any danger that it could become independent of the owners of capital. This is the basis of every parliamentary regime and of democratic capitalism.

If the state were now given the task of ensuring full employment and if it were also enabled in terms of personnel and organisation to fulfil this task, then its influence would increase considerably. It would be a much stronger state, which would achieve something, which would realise a purposeful concept of economic policy, instead of merely taking over the orders of special interests. The consciousness of its performance would make it less dependent on the owners of capital. The second main reason for the aversion to full employment is unabashedly put forward by the representatives of capitalism itself. Full employment would free the worker from the constant threat of unemployment and the entrepreneurs would thus lose the decisive means of disciplining the workers.

That is a bankrupt view of life, but that is how they are. We can no longer be surprised that in the Western countries (England, America) there has been a storm of protest in recent years against the new-fangled ideas of full employment [18, 19]. It is extremely important for progressive socialists to know, that the owners of capital will never grant the demand... although it is within their power to do so. But we must not stop raising this demand loudly

in concrete form, because only from this constant demonstration of the evil will of capital can come for us the moral force to create change.

### **Hartz reforms; consequences and criticism**

The Hartz reforms are the labour market reforms that took place in Germany between 2003 and 2005 under the mandate of Chancellor Gerhard Schröder (SPD) [19]. The inspiratory for these reforms, Peter Hartz, was the personnel director at Volkswagen, where he negotiated agreements on flexible working hours. The aim is to strengthen the fight against voluntary unemployment and to improve the return to work of benefit recipients. These controversial reforms, officially, aim to adapt German (labour, tax) law to the new economic situation in the service sector.

*Intended consequences:* (a) shorter vacancy periods; (b) rising employment rate; (c) promotion of reintegration into the labour market; e.g. through shorter placement times (d) increased flexibility; (e) reduction of labour costs; (f) impairment of status security; (g) social security systems come under pressure; (h) displacement of employment subject to social security employment; (i) reduction of active labour market policy; (j) reduction of further training measures; (k) concept of demanding and promoting is not target group oriented.

*Non-intended consequences.* (1) Impairment of status security; (2) social systems come under pressure; (3) displacement of employment subject to social security employment; (4) reduction of active labour market policy; (5) reduction of further training measures; (6) concept of demanding and promoting is not target group oriented.

### **Conclusion**

From Keynesian theory to what will be disseminated as Keynesianism, the difference is not negligible. The Cambrian current, made up in part of the members of the "circus", who inspired Keynes, criticised him, forced him to clarify his thinking on a number of points and who would continue it after his death. Keynesianism reduced to a mechanics of global quantities was then disseminated. The temporal dimension and the role of uncertainty are evaded, as well as anticipations and part of the monetary phenomena. At the same time, economic policies were largely inspired by Keynesian precepts, albeit with varying degrees of distortion. Among the recent epigones we should mention the current that developed during the 1970s in France with the "neo-Keynesians" preoccupied with the microeconomic foundations of macroeconomics, known for their developments on the "theory of imbalances". Finally, the so-called "post-Keynesian" current, is essentially American. This line of research focuses on the problem of forecasts that can influence the volume of employment, a crucial problem today as it was in Keynes' time. The school of regulation can be linked to this current.

For monetarists, inflation is always a monetary phenomenon [25]. Therefore, in the event of a cyclical problem, the State intervenes by means of a budgetary policy that can lead to a deficit; making up for this deficit by creating money has the effect of triggering inflationary pressure. But in addition, this policy changes real income and the exchange rate, so that - if an increase in the money supply temporarily reduces unemployment - it permanently increases the inflation rate. Conversely, an anti-inflationary policy will be sanctioned by an increase in the unemployment rate.

Unemployment is a major phenomenon in most industrialised countries, it is a daily reality for many people today, it is also the object of debates among economists [26]. There is no problem without a solution, but there are no miracle solutions or cures immediate or without considerable effort.

Unemployment is a flaw in the capitalist system.

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## ACADEMIC RESEARCH: THE NIGERIAN PRISON EXPERIENCE

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Received: 12. 22. 2021

Accepted: 01. 24. 2022

**Abstract.** Conducting research in the prisons has its ups and downs. Majority of time, researchers face stress, rigor and challenges. It is documented that data collected in the prison shows poor response and high attrition rate. This article intends to share practical experience from the research carried out titled: Minnesota Multiphasic Personality Inventory -2- Restructured Form (MMPI-2-RF) profile of prisoners in Southwestern Nigeria and to show how attrition rate and research bias can be managed and how prisoners can be recruited without the use of coercion. It was found that the factors that cause a high rate of wear and tear analyzed the questionnaire at length, the cause being the ambiguity of the questions and the desire of the respondents to thank the researchers. Therefore, it is necessary for researchers to use questionnaires with fewer items, the language of the questionnaire should be easy to understand and researchers should be careful of being sentimental with the prisoners.

**Keywords:** *Data collection, MMPI-2-RF, practical experience, prisoners, Southwestern Nigeria.*

**Rezumat.** Efectuarea cercetărilor în închisori are suşuri şi coborâşuri. De cele mai multe ori, cercetătorii se confruntă cu stres, rigoare şi provocări. Este documentat, că datele culese în închisoare arată un răspuns slab şi o rată mare de uzură. Acest articol îşi propune să împărtăşească experienţa practică din cercetarea efectuată intitulată: Minnesota Multiphasic Personality Inventory -2- Profilul restructured Form (MMPI-2-RF) al prizonierilor din sud-vestul Nigeriei şi să arate cum pot fi gestionate rata de uzură şi părtinirea cercetării, dar şi cum prizonierii pot fi recrutaţi fără utilizarea constrângerii. S-a constatat că factorii care provoacă o rată ridicată de uzură au analizat îndelungat chestionarul, cauza fiind ambiguitatea întrebărilor şi dorinţa respondenţilor de a le mulţumi cercetătorilor. Prin urmare, este necesar ca cercetătorii să folosească chestionare cu mai puţine itemi, limbajul chestionarului ar trebui să fie uşor de înţeles şi cercetătorii ar trebui să aibă grijă să fie sentimentali cu deţinuţii.

**Cuvinte cheie:** *Colectare de date, MMPI-2-RF, experienţă practică, prizonieri, Sud-Vestul Nigeriei.*

## Introduction

Academic research is a careful and systematic investigation aimed at seeking truth and new knowledge for the purpose of development which can be carried out anywhere, the prisons inclusive. Academic research in the prison is to inform practice, increase safety, support rehabilitation, and understand behavioural and psychological changes. The basic components of an academic research in the prison are good approach, good logistics and intent to ensure good outcome but conducting research in the prison is of no easy task [1]. In many situations, individuals collecting data in the prison often complain about the protocol, rigor and uneasiness of the process. More complaint is given due to the poor response and high attrition rate of data collected in the prisons from the inmates.

The prison setting has been documented to be a sensitive and special environment [2] while the Nigerian prison is not left out. The Nigerian prison has its peculiarity and many things seem to go wrong with the system. There are prison overcrowding, inadequate health care service (physical and psychological), poor quality food, lack of toiletries and household items, financial constraint, incidence of missing case files, sexual immorality, recidivism and extortion. These and more make the prisoners vulnerable population at risk for psychological illness, violence, substance abuse and infectious diseases. As a result, the prisons are important sites for public and mental health research [2]. Consequently, academic research in the prison seems to be difficult and stressful and could result in few valid response questionnaires. With a good approach and logistics, the stress may be reduced. Taking from the experience of the authors in academic prison research on the thesis titled: Minnesota Multiphasic Personality Inventory -2- Restructured Form (MMPI-2-RF) profile of prison inmates in Southwestern Nigeria, the following suggestions on the process to take include and not limited to getting ethical approval to collect data; knowing the rules guiding data collection like no pictures; no video or voice recording; the cross-checking of the instruments/questionnaire by officials of the correctional services to be sure it does not contain any information they may not be comfortable with. The ability of the prisoners to participate voluntarily and respond adequately to interviews and/or questionnaires as prisoners may not read the questionnaire before answering, and the use of incentives [3].

## Ethical considerations

The Nigerian prisoners are under the supervision and protection of the government by Nigerian Correctional Services under the Ministry of interior, so it becomes imperative for the government to do everything within its power to secure and prevent prisoners from both internal and external challenges and also protect the researcher from harm from the prisoners.

There are certain steps that need to be followed to make access into the prison yard easy. First, the investigator has to take the research proposal to any government approved ethical board (like the Ministry of Health or Nigerian Defense Academy) to evaluate for any ethical issues, advice accordingly and issue a certificate of approval. Then, it is expected that the researcher obtains a letter of introduction from the department of the institution he or she is from. This letter is typed and signed on a departmental letter head and addressed to the Controller of the prison of interest. A new policy in the prison service allows researchers to get approval almost immediately. Though, before getting the approval the information on what you want to research on, the methodology, procedure intended to take and research

tool/instrument/questionnaire will be clearly stated in the letter, it will be good if a copy of the proposal of the research is submitted alongside the letter to facilitate quick approval.

Also, the investigator will be interviewed by the prison service and the response given will determine the readiness, need and importance for the research. An approval letter will be given to the investigator from the office of the Controller stating their terms of approval. On taking the letter to the prison yard, the days, time and avenues for the research will be communicated to the investigator. Prison officers will be attached to the investigator for protection from possible harm and to assist with the process. Many a times, the investigator may not have more than two to three hours with the inmates, depending on the scope of research and how lengthy the questionnaire, time management becomes imperative.

The time allocated incorporates opening up of some prisoners because not all of them will be unlocked at the same time. It is done this way to enable control of prisoners by the officers. Also, the meeting with prisoners to encourage them to participate, addressing them and administering or interviewing them falls within this timing. It becomes obvious that an academic prison researcher needs to be patient when collecting data and conducting the whole research. Depending on the target sample, it may take months or year(s) to complete data collection from the prison. The Nigerian prison service is not so rigid and difficult if all protocols are duly observed and the researcher adheres to service rules. Ethical issues like respondents' consent, confidentiality, and debriefing are vital amongst others and they must be considered.

### **Research Bias**

Being heavily pregnant during data collection, many of the prisoners usually showed care and pity that I had to go through such rigor in my state. This recruited many prisoners for me and it may have also interfered with their answering pattern as one of them mentioned to me that "I will show you mercy by making sure I answer every question rightly". However, in the end I lost 65.18% of my data. The loss was because the profiles were invalid and uninterpretable according to the protocol validity screening of the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF). Though, one will wonder why such a large loss?

Prisoners produce high attrition rate as explained by Sudman & Bradbury [4]. They opined that this could be an act of social desirability bias. Social desirability bias is the respondents' desire to please the researcher, whether the researcher is there or not. It could also be with the aim of a secondary gain as mentioned by Ben-Porath & Tellegen [5]; they argued that offenders malingering or over-report for secondary gains, especially towards getting less severe criminal sentences, or simply to attract attention or sympathy. For this particular research, the secondary gain may have been the toiletries given to only those that participated to appreciate them for their time and participation. With the enticement, the recruited participants were many; it also increased the attrition rate.

Schwarz (1987) also identified another possible cause to be response effects which could have emerged from sample bias, ambiguity of questions or respondents' interpretation of questions [6]. The language style of the MMPI-2-RF contains some idioms and words that majority of Nigerians are not commonly used to or familiar with [3] which was a factor in the way the prisoners interpreted the questions which in turn affected their response. Some did not understand the questions at all. An Example was in question 1: "I like mechanic magazines", question 30 which states "most of the time I feel blue". Another was question

130 which stated “I brood a great deal”. Others are question 145: “I would like to be a florist”, question 148: “I very much like hunting”, question 162: “I seldom or never have dizzy spells”, question 217: “I very seldom have spells of the blues”. Though, one way to control for the ambiguity of some of the questions was to translate the instrument into Nigerian native languages. This was considered for the research as the MMPI-2-RF was translated by professional translators alongside the authors from English language to Hausa, Igbo and Yoruba languages and back to English and to validate. The translators grew up with these languages and are very conversant with the cultures. But with this, very many of the prisoners could not read their own languages. This proves that many of the prisoners were not literarily proficient. These have implications for the type of data collection method you may want to adopt. One way to solve this challenge is to acculturate standardized scales, use questionnaires with simple, clear languages and incorporate interview for broadness and debt of information.

### **Assessment tool**

The assessment tool to be adopted is very crucial for the success of research outcome. The assessment tool to be used must be well standardized with strong coefficient alphas and validity scales that can prove the usefulness of the answered questionnaires. The authors utilized MMPI-2-RF. MMPI-2-RF is a widely used personality and psychopathology tool in criminal justice system by forensic psychologists amongst other psychological tests [7]. The MMPI-2-RF is a 338 item inventory with countless empirical works from around the world and efficient validity scales. The validity scales can detect a test-taker approach [5]. The inventory has standard rules; it was these rules that helped with separating the useful from the faulty profiles which could have watered the final results. The rules were:

- (1) For a profile to be given consideration, 90% of the questions must be attempted. The authors lost 63 profiles due to incomplete answering pattern.
- (2) The t-scores on the validity scales VRIN and TRIN cannot be equal to or exceed 80. It was based on this rule that majority of the profiles were lost.

Nine hundred and eighty-two (982) prisoners were the initial participants. The samples reduced to nine hundred and nineteen (919) after removing profiles based on rule one. Five hundred and fifty-nine (599) were lost to VRIN and TRIN t-scores above 80 which brought down the total valid, interpretable and sound profiles to three hundred and twenty (320) which coincidentally is within the sample size needed as the total population of the prisoners in the Southwestern Nigeria was estimated 16,000 as at March 2017 when the data was collected. An explanation for the high attrition rate was that some prisoners approached the answer with consistent positive responses while some consistently gave negative responses [3, 8]. This is the outcome of using a world class, sophisticated and empirically rich research assessment tool much less if an ordinary assessment tool was used. The academic researcher needs to be careful with the tool to be used.

There is substantial evidence that data from surveys and interviews are problematic, prisoners answering surveys persistently underreport socially undesirable attributes and over-report socially desirable attributes [8]. This was the case of our research using the MMPI-2-RF, a good number of prisoners presented themselves in a favorable light by withholding any petty faults and shortcomings that most individuals endorse and they over reported their symptoms with the aim of getting pity and considerations [3] (see Table 1). Not that the symptoms were not present but they were exaggerated.

Table 1

| Patterns of offender over-reporting and under-reporting on Protocol validity |                   |              |              |              |             |              |              |             |
|--|-------------------|--------------|--------------|--------------|-------------|--------------|--------------|-------------|
|  |                   | F-r          | Fp-r         | Fs           | FBS-r       | RBS          | L-r          | K-r         |
| <b>T-Score</b>   |                   | ≥90          | ≥80          | ≥80          | ≥100        | ≥80          | ≥70          | ≥70         |
| <b>Over - under reporting</b>  | <b>N</b>          | 97           | 154          | 60           | 5           | 40           | 164          | 6           |
|  | <b>%</b>          | 30.3%        | 48.1%        | 18.8%        | 1.6%        | 12.5%        | 51.3%        | 1.9%        |
| <b>Over - reporting only</b>   | <b>N</b>          | 58           | 83           | 42           | 8           | 24           | 0            | 0           |
|  | <b>%</b>          | 18.1%        | 25.9%        | 13.1%        | 2.5%        | 7.5%         | 0.0%         | 0.0%        |
| <b>Under - reporting only</b>  | <b>N</b>          | 0            | 0            | 0            | 0           | 0            | 51           | 1           |
|  | <b>%</b>          | 0.0%         | 0.0%         | 0.0%         | 0.0%        | 0.0%         | 15.9%        | .3%         |
| <b>Normal</b>  | <b>N</b>          | 0            | 0            | 0            | 0           | 0            | 0            | 0           |
|  | <b>%</b>          | 0.0%         | 0.0%         | 0.0%         | 0.0%        | 0.0%         | 0.0%         | 0.0%        |
| <b>Total</b>   | <b>N</b>          | 155          | 237          | 102          | 13          | 64           | 215          | 7           |
|  | <b>% of Total</b> | <b>48.4%</b> | <b>74.1%</b> | <b>31.9%</b> | <b>4.1%</b> | <b>20.0%</b> | <b>67.2%</b> | <b>2.2%</b> |

The criteria for over-reporting are T-scores on F-r ≥ 120, Fp-r ≥ 100, Fs ≥ 100, FBS-r ≥ 100; while that of under-reporting are T-scores on L-r ≥ 80 and K-r ≥ 70. The percent of offenders that over reported were: F-r (48.4%), Fp-r (74.1%), Fs (31.9%), FBS-r (1.6%) and RBS (12.5%) respectively. The offenders who under-reported were: L-r (67.2%) and K-r (2.2%).

### Sampling Technique

The sampling technique of any research is one of the features that determines the methodology and has implication for the research outcome. Randomized sampling technique is usually of great interest to academic researchers because of its strong generalization feature but the reality of some settings makes it impossible to use, an example is the prison. A combination of probabilistic (simple randomization) and non-probabilistic sampling technique (purposeful or convenience or consecutive) may be used but the most common sampling techniques adopted in prison settings are usually non-probabilistic [9].

Using the research carried out by the authors as an example, the scope of the authors' research was in Southwestern Nigeria and with the aid of a simple random technique (that is, balloting), the researchers were able to pick Lagos, Ogun, Oyo and Osun amongst all other southwestern states. Thereafter, a purposeful selection of prison in each state was made after considering the logistics of proximity to the prisons, assistance, support from the prison officers and readiness of the prisoners to participate. A consecutive sampling technique was adopted at the participant selection stage. The consecutive sampling came to play after prisoners were gathered in a class, they were addressed by the authors and they participated in the research as they picked interest for as long as they met the inclusion criteria. This technique was adopted because few prisoners were unlocked at a particular timing; many of them were uninterested in the research. The population needed was a thousand and the time

allocated for the researcher by the authority was short for the type of instrument used. The instrument was the MMPI-2-RF, a 338 item questionnaire and was presented to participants alongside the demographics and criminal history index. This method was adopted for all the prisons visited. Consequently, because of the sampling technique adopted and the nature of the instrument used the resultant statistical analysis was non-parametric [3].

### **Incentives**

The issue of giving respondents incentives is highly argued by researchers: some are of the view that it will alter the response of the participant [10, 11]; some argue it may be given but the respondent should not be aware of it; some are of the opinion that they can be told because it is accepted by all that it is a way to enhance recruitment [10, 12, 13] and as a gratitude for their time and energy depending on the scope, rigor and time span of the research [14, 15]. The nature of the research and the participants may determine whether incentives will or will not be given [13].

Little or no motivation, cognitive impairment, poor reading and language knowledge, understanding skill and low intelligence level may affect a test-taker's ability to answer appropriately to the test items [5]. Motivation can be said to be synonymous to incentives in this regard. Specifically, giving prisoners incentives for participating is quite relative but most preferable. The reason is, in Nigeria, the prisoners are overwhelmed with hardship. There is prison congestion, insufficient food, little or no toiletries like bathing and washing soaps, tissues, tooth paste and even clothing. The welfare department of the Prison service usually solicits for these materials through NGOs, religious organizations amongst others. The government funds them but it is not sufficient.

Most of the time, the authors were always allowed to carry in incentives (bathing soap, detergents, toothpaste and biscuits). Only those that participated in the research were given. Usually the officers asked if the researcher had anything for the prisoners. At times, to make the work a whole lot easy prison officers attached to the researcher were given incentives too so as to encourage and appreciate them. In all, the more incentive given the more relaxed the prisoners were, the more friendly the atmosphere was and the more reliable and valid the profiles were. Prisoners in medium prisons were most interested and deserving of the incentives than prisoners in the maximum prisons [13], this I found to be so. Majority of prisoners in the maximum prison were quite well fed and they looked tidy. Probably because majority were lifer, on death-row or long term imprisonment so anything to make life quite easy for them was adopted while the medium facility was too congested, they smell out of little or no toiletries to wash and bath with and no extra clothes to wear.

### **Conclusion**

The prison is a beautiful sight for research as many more hypotheses arise when researching in the prison. Intending academic researcher need to take necessary ethical steps to have access into the prison yards. They have to understand the importance of an assessment tool that is viable to detect poor answering pattern and the need to use more than one assessment methods, understand that there are reported high attrition rate amongst inmates and possible ways to address it, and need for incentives because of the nature of the prison. Having catered for all of these factors, the researcher can therefore hope for a good outcome from the research.

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[https://doi.org/10.52326/jss.utm.2022.5\(1\).10](https://doi.org/10.52326/jss.utm.2022.5(1).10)  
UDC 658.89:004



## THE IMPACT OF INTERNET TECHNOLOGIES ON THE PRODUCER-CONSUMER-EATER RELATIONSHIP

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Received: 01. 15. 2022

Accepted: 02. 21. 2022

**Abstract.** The consumer is looking for good food and better nutrition. He understood very well that food and health are closely linked. What is confirmed today is the feeling of a change in the apparent balance of knowledge and power in relation to food, which requires some adjustment on the part of producers. This article, based on a review of the scientific literature, aims to understand how the use of the Internet changes the relationship between producer and consumer, resulting from the increase in the number of consumers of the Internet. According to the analysis, the development of food trade on the Internet contributes to changing this relationship between producer and consumer. The consumer no longer assumes the role of passive partner, but becomes more "empowered" or enters into more equal relations with brands thanks to digital devices.

**Keywords:** *Consumer-eater, food, power, health, empowered.*

**Rezumat.** Consumatorul caută mâncare bună și o nutriție mai bună. A înțeles foarte bine că hrana și sănătatea sunt strâns legate. Ceea ce se confirmă astăzi este sentimentul unei schimbări în echilibrul aparent de cunoștințe și putere în raport cu alimentele, care necesită o anumită ajustare din partea producătorilor. Acest articol, bazat pe o trecere în revistă a literaturii științifice, își propune să înțeleagă modul în care utilizarea internetului schimbă relația dintre producător și consumator, rezultată din creșterea numărului de consumatori a Internetului. Conform analizei efectuate, dezvoltarea comerțului cu alimente pe internet contribuie la schimbarea acestei relații dintre producător și consumator. Consumatorul nu își mai asumă rolul de partener pasiv, ci devine mai „împuternicit” sau intră în relații mai egale cu mărcile datorită dispozitivelor digitale.

**Cuvinte cheie:** *Consumator de alimente, alimentație, putere, sănătate, împuternicit.*

### Introduction

Academic literature has been quick to report on the change in the producer-consumer relationship resulting from consumers' increasing use of the Internet. The context of a food system where we no longer know who produces the food or how it is produced is no longer compatible with the economic context in the age of the Internet with the emergence of a



responsible consumer who knows what they are eating. And as [1] writes, "If we do not know what we are eating, will not it be difficult to know not only what we are becoming, but what we are? ". It is hoped that the relationship between consumer and eater will improve thanks to a well-informed consumer so that informed consent and shared decision-making will take on their full meaning. However, the obstacles are numerous: information asymmetry, consumer distrust of branded products, the will to take charge of one's own health, the obesity problem that has mobilized public actors and consumers, the comeback of feminine values and, more generally, the search for well-being and reassurance in a context of generalized anxiety [2 - 5].

The current agro-industrial model is often associated with anonymous exchanges between contractors and a distanced relationship between producers and consumers [6, 7] [8]. This has become a source of conflict between large corporations and consumers whose knowledge of the food world is increasing. The context of a food system in which we no longer know who produces the food or how it is produced no longer fits the economic context of the Internet age with the emergence of a responsible consumer who knows what he is eating. Today's consumers want to eat well and better. They understand very well that food and health are closely linked. The increasing use of the Internet by consumers and eaters to obtain nutritional information, while not yet sufficiently appreciated by food manufacturers, is having an indirect impact on the relationship between manufacturers and consumers. Several studies have shown that the goals of digital information include raising awareness of the impact of food on health [9, 10], reducing food waste [11], and the benefits of a balanced diet [12]. A large number of applications developed to help consumers better understand nutritional information on products: Yuka, Open food facts, Scan eat... Nutrition and wellness websites seem to coincide with consumers' desire to take more responsibility for their own diets. This increase in consumer responsibility for what they consume and changing their eating habits to benefit their health and the environment is due to the increase in nutritional information offered by Internet technologies. This fact should encourage manufacturers in the agri-food sector in their efforts to increase the transparency of their offer and strengthen the health positioning of their brands.

The redefinition of power between consumers and brands is the result of the emergence of new Internet technologies that have transformed the consumer from a passive consumer, unaware of his food GDL (good dominant logic) [13], to an active consumer, aware of what he eats and able to choose his food through his collaboration with brands SDL (service-dominant logic) [13]. Today, it is the consumer who signals to food manufacturers what products he wants to find in supermarkets and hypermarkets: he becomes the consumer stakeholder (SDL). Consumers are taking on an important role in shaping the food world of tomorrow. Thanks to digital devices, they have more and more power and are advocating for an equal relationship with brands.

## **State of Art**

### **1. Internet Technologies as a Source of Redefinition of Roles between Producer and Consumer-eater**

#### **1.1 The relation being jostled towards a dialogue between producers consumers/eaters**

Internet technologies have transformed how the consumer has access to nutritional information for food choices. This consumer is more and more informed and becomes an

actor in his diet. The consumer can now have access to multiple sources of information when buying a food product, in addition to the information provided by brand producers, distributors or any other food professional. The mass of nutritional and culinary information on the Internet is therefore now involved in the decision-making of the consumer and food producers must therefore take this into account.

As stated [14] in the pre-Internet economy, consumers do not have expert power because of information asymmetries; information being held mainly by brands. Many consumer-eaters do not fully understand the nutritional information provided on labels or how to interpret it when choosing a food offer. In addition, dietary characteristics have important effects on healthy consumption [15]. But various barriers to healthy eating include the ability to manage time and make healthy food choices [16].

Thanks to the strong pressure of Internet technologies, consumers are now surrounded by all kinds of nutritional information when choosing their products. But information alone is not enough to make a healthy choice. Therefore, consumers must take on the role of analyzing and interpreting nutritional information. He is asking manufacturers to share product attributes and not hide any of the information that is important in making a food choice. This is done through a nutrition rating system on packaging to help consumers make healthier food choices in stores [17]. Or use nutrition apps that provide summary information about the nutrient content of foods, sometimes using colour-coded labels such as the nutrition index on the packaging. They help users process the nutrition information.

The spread of the Internet is helping to reduce information asymmetries and improve market transparency for consumers [18 - 24]. Consumers can learn about brands, products, and services more cheaply and very quickly. The boom in social media, food websites, and nutrition apps has expanded the information available to consumers and contributed to the emergence of new practices for sharing culinary and nutrition information, leading to changes in attitudes, behaviours, and food culture [25 - 26].

### **1.2 The relationship between consumer/eater/producer is moving towards immersion**

As [27] says, people become what they eat. Today's consumers are oriented to foods that give them a sense of their appearance and identity and connect them to producers. They orient themselves to healthy products, responsible and ethical signs and symbols of their identity and belonging to a consumer society. Food is no longer a simple necessity of life but becomes a means of pleasure, a means of social integration and a reflection of one's image. "Tell me what you eat, and I will tell you what you are [28]. Food has always been part of the construction of religious, social, regional or national identities. The choice of food even defines the essence of a person and it would then be possible to define his identity by what he eats. The act of eating is involved in the construction of one's identity and connection with the environment through one's life experience.

The choice of food is considered as a means of communication [29] social bonding, a sign of distinction [30 - 32] and social integration [33, 34], as well as a transmission of collective norms [35]. "Food is no longer just an element for survival but becomes an instrument in the service of health, pleasure, social integration, appearance, or the expression of a certain ethic" [36].

In the agri-food sector, the management literature has often studied consumption in terms of consumer experience [37, 38]. This change has been observed since the late 1990s, which mark the emergence of a hedonistic consumer, more interested in subjective

parameters such as symbolic meaning, emotions, sensationalism, and more generally in the irrational and affective dimensions of consumer behaviour [39 - 42].

The importance of a healthy diet is increasingly part of the broader concept of well-being and goes far beyond the narrow notion of health and the search for a purely 'medical' outcome [43]. This observation allows food companies to clearly understand that this new consumer does not only want to talk about the environmental and health quality of the product, but also wants to live experiences full of emotions, a sense of identity and enjoyment through healthy food. So today's consumption is more focused on responsible, hedonistic and sociable enjoyment.

### **1.3 The relation between consumer/eater/producer is moving towards co-creation**

New Internet technologies have legitimized the power of consumers, manifested in their ability to directly influence brands. These technologies would further enhance the legitimate power of consumers by challenging the traditional division of roles within the market relationship [44]. Traditionally, it is the manufacturer who determines the characteristics of the product and is seen as legitimate for doing so. Returning to the three strategies of [45], consumer decisions are essentially about buying - or not buying - the product rather than defining the product itself.

The brand would then be legitimised to design a product and offer it at a certain price, the legitimate consumer could evaluate it and accept or reject the offer. This means that consumers have long been the second most important actors in food production, after industrialists and supermarkets. They are passive members of the production chain. This view has its roots in the prevailing logic of GDL, which sees consumers as passive actors who destroy value. Nowadays, with new Internet technologies, the producer/consumer/eater relationship is being rethought. The consumer has the right to participate in the creation of the product from the beginning of the production chain and is seen as a source of expertise that can create value together with brands [13]. This is very possible today as the Internet allows brands to build strong online communities where they can listen to and interact with thousands of customers around the world [46 - 49].

The new Internet technologies are turning the consumer who buys into a consumer who produces and who is able to engage and collaborate with brands. These new technologies are fostering the emergence of an empowered consumer who is rebalancing the exchange between brands and consumers, and the balance of power tends to be reversed [50]. In short, new Internet technologies are transforming the relationship between producer and consumer or eater from a silent one to an active one. This starts with consumers being able to open a dialogue with producers on a range of information about products that should extend from the production chain to consumption through lighting and transparency of product ingredients. Through clear, legible and understandable labels or through the targeted digital use of nutritional applications. Then, identifying their nutrition through immersion in experiences that are charged with meaning and emotion.

And finally, the ability to create their own product by participating in online platforms that are upstream of the food chain and focused on connecting with consumers whose goal is to consume healthy products. Producers are perplexed by the new practises of consumers, who are surrounded by a wealth of nutritional and culinary information that technology enables and gives back to them the power over their food choices. This gradual change in relationships has been defined by [51] as a state of consumer empowerment.

## **2. Internet technologies and empowerment**

In the logic of active consumer-eater-partner and collaborative food production decision SDL (service-dominant logic) [52], information is not only a means for more efficient nutrition and better health. It is also the medium for a change called empowerment. The term is difficult to translate because it encompasses several dimensions: Accountability, empowerment, facilitation or enabling, allocation of power [53]. To achieve these goals, the use of the Internet is an important platform. The concept of empowerment has become a strategic issue for food stakeholders, which is one of the goals of food prevention, promotion, and health protection.

Thanks to the Internet, the relationship between producer, consumer and eater has reached a higher level: consumers are better informed and make better use of food resources to find out which products should be consumed. Knowledge is better shared, which promotes information sharing in general. Consumers - eaters - feel empowered, responsible, have more control over their food, and are better able to make choices or actively participate.

The time you spend buying food is better spent because you have already learned the basics before you buy. There are other benefits as well: Online support groups are a source of encouragement and exchange between consumers and eaters; thanks to access to data on nutritional applications, to websites dedicated mainly to nutrition, and through exchanges with like-minded people, manufacturers improve the quality of their products and put more emphasis on them. The use of the Internet could also encourage consumer and eater participation in food production.

Today, consumers can choose which food producer they want to interact with. This aspect is very important given the new Internet technologies that promote the consumer's right to participate in food production online. There is also the possibility to visit the production facilities and see how the product is made from production to consumption: This strategy is followed by a group of brands whose goal is to involve consumers in the production of their own product, and has proven successful in the food sector: As in the case of the consumer brand "c'est qui le patron?". A new food brand launched in the French market at the end of 2016 that aims to involve consumers.

At the end of 2016, a new food brand entered the French market with the aim of empowering consumers. This brand stands out for its efforts to empower consumers. (On the brand's website, you can select the future products of the range and their main characteristics). As a result, the brand "dyalna" was launched in several countries around the world and finally in Morocco. In marketing, this process is called an empowerment strategy. This is a strategy initiated by companies to involve consumers in the development of new products. There are two main strategies used by these companies [54]: empowerment to create and empowerment to select. The use of online food information sources could help consumers better meet their own food needs. Indeed, consumption of online food information helps reduce information asymmetry between producers and consumers and encourages them to participate in the product development process. The notion that Internet use has an "empowering effect" on consumers is widespread in the academic literature [22], [55 - 57].

Empowerment is a force that can help consumers develop and maintain healthy behaviours related to chronic disease. It is a behaviour change process that focuses on the individual. Today's consumers clearly understand that food and health are closely linked. Maintaining good health requires good nutrition. Eating healthy is a major concern for them, but apart from the will, it takes knowledge and time to research and process all the

information about the many foods they compare and choose every day. In this context, the use of new Internet technologies seems to be a solution to simplify information processing and decision making. These Internet technologies help consumers make healthy food choices. And why? Because consumer behaviour has completely changed. For them, a healthy diet contributes to achieving important goals such as health and well-being.

Eating is the most important action of any person who pays attention to what he eats and the one that can have the greatest impact on his health. A healthy diet helps maintain health in a society of individualistic, thoughtful consumers who rely on their wits to make food choices. Indeed, the Internet has long been considered by various experts to be "one of the axes of individual responsibility" for one's health [58], [59]. In other words, individuals who are aware of the relationship between food consumption and health. This process is called psychological empowerment in marketing: It is defined by [60] as "a subjective state of consumers associated with the perception of having more power than before."

### Conclusion

This literature review suggests that the development of the food internet, and in particular the way consumers and producers use it, is helping to change the relationship between producers and consumers. The most important finding concerns the shift in the balance of knowledge and power in food. This shift requires a new attitude on the part of food producers: they must adapt to this new context. If the relationship is destabilised today, consumers' use of the Internet is not a threat. Rather, it is an opportunity for brands to reshape their relationship with their consumers. They need to show their commitment to healthier and more responsible food to meet the expectations of new consumers. These changes in consumer behaviour are mainly due to technological advances, the health crisis, distrust of food, etc. The result is a new postmodern, even "hypermodern" consumer. Also, the current mutation of food and the new demand, which has become more demanding, diverse and variable, are increasingly focused on the quality of products in terms of health.

The current agricultural and food market is characterised by a wide range of offers. Therefore, the professionals of the sector must offer good and healthy products that are increasingly specific. The new consumer seeks dialogue with producers about the quality of the product, he wants to have pleasant, unique and unforgettable experiences that involve sharing creations and sharing values with brands. And he wants to be involved with industrialists in the production of the product. This encourages manufacturers to adapt to this complex environment and go beyond the purely utilitarian dimensions of consumption. To gain a competitive advantage in food consumption, it is necessary to take into account the new consumer trends, which necessarily involve the experiential, symbolic, emotional and creative dimensions of the consumer who is aware of what he consumes, or rather, the "empowered" consumer.

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[https://doi.org/10.52326/jss.utm.2022.5\(1\).11](https://doi.org/10.52326/jss.utm.2022.5(1).11)  
UDC 336.77:332.834



## BEST PRACTICE METHODS FOR ESTIMATING SUSTAINABLE LONG-TERM VALUE FOR LENDING PURPOSE

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Received: 12. 16. 2021

Accepted: 01. 28. 2022

**Abstract.** Mortgage lending creates risks for consumers who resort to loans as well as for credit institutions that make lending decisions. One way to ensure that the potential risks associated with mortgage lending are properly managed is through the value and price of the mortgaged object. This article refers to the new requirements of the European Banking Authority, to determine a prudential value different from the market value as the security for a credit exposure, which takes into account the long-term sustainability aspects of real estate – Sustainable long term value (LTV-S or MLV). Value, which should become a credit risk management tool, and which would provide some protection over time.

**Keywords:** *real estate, credit risk, market value, mortgage lending value, valuation, sustainability.*

**Rezumat.** Creditul ipotecar generează riscuri pentru consumatorii care recurg la împrumuturi precum și pentru instituțiile de credit care iau decizii de creditare. O modalitate de asigurare că riscurile potențiale asociate creditării ipotecare sunt gestionate în mod adecvat îl reprezintă valoarea și prețul obiectului ipotecat. Prezentul articol se referă la noile prevederi ale Autorităților europene de supraveghere bancară și anume estimarea în scop de garantare a împrumutului a unei valori prudențiale diferite de cea de piață, care ia în considerare aspectele de durabilitate pe termen lung a proprietății imobiliare – Valoarea sustenabilă pe termen lung (LTV-S sau MLV). Valoare, care ar trebui să devină un instrument de gestionare al riscului de credit și care ar oferi o anumită protecție în timp.

**Cuvinte cheie:** *bun imobil, risc de credit, valoare de piață, valoare ipotecară, evaluare, sustenabilitate.*

### Introducere

Estimarea obiectivă a valorii bunului imobil – reprezintă fiabilitatea împrumutului pentru toți participanții pieței: stat, creditor, debitor, investitori. [1, p. 56].

După criza financiară post globală, autoritățile de reglementare și alte părți interesate acordă mai multă atenție evaluării bunurilor imobile în caz de creditare ipotecară.

Astfel, odată cu introducerea cadrului Basel III, în ceea ce privește măsurarea capitalului și standardele de capital, autoritățile europene de supraveghere bancară, recunosc



o nouă definiție privind valoarea proprietății - o definiție bazată pe principii prudențiale și care trebuia implementată de UE/EBA în 2020. Procesul de implementare însă fost perturbat de pandemia COVID-19, ceea ce a condus la amânarea acesteia.

Pe lângă Valoarea de piață Autoritățile Europene prin Regulamentele și Directivele elaborate acordă o atenție deosebită Valorii sustenabile pe termen lung, care se consideră că ar trebui să joace un rol central în practica evaluărilor în scop de garantare a împrumuturilor.

### **1. Conceptul de valoare pe termen lung**

Până în anul 2017 autoritățile de reglementare, permit 2 definiții ale valorii proprietății în caz de garantare a împrumutului. Articolul 4 din Regulamentul privind cerințele de capital (CRR) definește drept baza de evaluare - valoarea ipotecară (mortgage lending value) și valoarea de piață (market value) pentru prima dată într-un cadru UE. Articolul respectiv joacă un rol central în practica evaluărilor în scopuri de garantare a împrumuturilor.

**Valoarea ipotecară (MLV)** conform art. 4 par. 74 al Regulamentului reprezintă - „valoarea bunurilor imobile stabilită printr-o evaluare prudentă a valorii de piață viitoare a bunurilor, ținând seama de aspectele sustenabile pe termen lung legate de bunuri, de condițiile de piață normale și locale, de utilizarea curentă și de eventualele utilizări alternative ale bunurilor.” [2].

În anul 2017, Basel III a introdus o nouă definiție privind valoarea proprietății imobiliare în scop de garantare a creditului ipotecar, bazat pe principii prudențiale – Valoarea prudentă sau valoarea sustenabilă pe termen lung (Long-Term Sustainable Value – LTV-S) – definiția se bazează pe același concept ca Valoarea ipotecară (MLV). De altfel, în majoritatea surselor acestea sunt echivalate.

**Valoarea sustenabilă pe termen lung (LTSV)** - valoarea unui bun imobil determinată printr-o evaluare prudentă a vandabilității viitoare a proprietății, luând în considerare aspectele de durabilitate pe termen lung ale proprietății, condițiile de piață normale și locale, utilizarea curentă a acesteia și utilizările alternative adecvate ale proprietății [3].

Valoarea sustenabilă pe termen lung (LTSV) – constituie un concept științific metodologic, obiectivul căreia este de a depăși distorsiunile de aplicare a valorii ipotecare (MLV) care a fost introdusă prin Directiva 2006/48/CE5 și apoi cu Regulamentul (UE) 575/20136 și a evidențiat neajunsuri în faza de aplicare, întrucât nu există abordări generale asociate cu nevoile specifice ale creditorilor. Prin urmare LTSV ar trebui să fie funcțională în identificarea valorii celei mai probabile pe termen lung, în scopul garantării împrumuturilor [3].

Majoritatea țărilor Europene nu utilizează conceptul de valoare pe termen lung MLV sau LTSV, astfel, acestea nu sunt bine dezvoltate și nu există o metodologie unică de estimare.

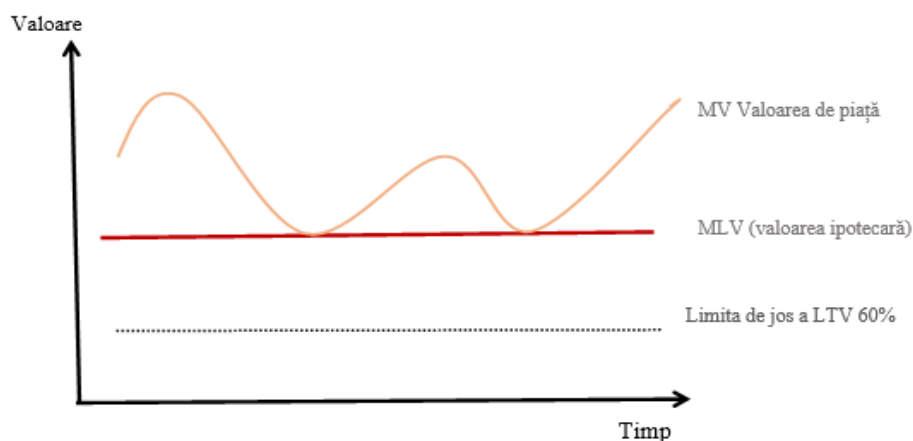
Reieșind din ultimele activități ale diferitor organisme Europene în domeniul evaluării pentru garantarea împrumutului se așteaptă evoluții semnificative în acest domeniu în diferite țări în viitorul apropiat. În prezenta lucrare cu referire la valoare prudentă pe termen lung se va utiliza noțiunea de valoarea ipotecară.

### **2. Deosebirea între Valoarea de piață și Valoarea ipotecară (MLV sau LTSV).**

Valoarea ipotecară se deosebește de valoarea de piață prin faptul că prima reflectă valoarea proprietății pentru o perioadă lungă de timp, pe când ultima – valoarea proprietății la data evaluării.

Valoarea de ipotecară nu trebuie confundată cu Valoarea de piață sau valoarea de lichidare. Ea nu se bazează pe corelația cerere-ofertă la data evaluării, precum valoarea de

piață nici nu corespunde situației de vânzare forțată a bunului la data evaluării ca în cazul valorii de lichidare.



**Figura 1.** Diferența între valoarea de piață și valoarea ipotecară.

*Sursa : Întocmit de autor în baza [4, 5].*

Astfel, dacă încercăm să analizăm mai detaliat problema, devine clar că valoarea ipotecară este un tip independent de valoare care reprezintă cea mai probabilă sumă de bani pe care o instituție de credit o poate primi ca urmare a vânzării garanției în orice moment al perioadei de creditare, luând în considerare scăderea valorii de piață odată cu sporirea riscurilor posibile, costurilor juridice și a cheltuielilor de realizare.

Considerarea unei perspective pe termen lung, acordarea creditelor pe baza valorii ipotecare, calculată printr-o metodă conservatoare asigură părților semnatare o rată a creditelor neperformante mult mai scăzută decât contractele bazate pe valoarea de piață. În al doilea rând, din cauza diferenței dintre valoarea de piață și valoarea ipotecară, fazele ciclului de piață devin mult mai transparente.

Valoarea ipotecară joacă un rol de nivelare a extremelor, mai ales pe piețele foarte volatile, asigurând atenuarea exagerărilor în ambele direcții și neafectarea directă a acțiunilor participanților pe piață. De asemenea, reflectă natura investițiilor imobiliare ca investiții pe termen lung [6, p. 36].

Valoarea unei proprietăți poate scădea considerabil din cauza fluctuațiilor de pe piață. De asemenea, fluxul stabil de numerar generat pe o perioadă determinată a creditului poate să însemne că riscul de non performanță pentru o anumită proprietate imobiliară poate fi contracarat și că proprietatea respectivă poate să supraviețuiască unei crize a pieței imobiliare, fără să genereze pierderi pentru bancă.

### 3. Practica Germaniei în determinarea valorii ipotecare

Cercetările efectuate legate de metodele de estimare a valorii ipotecare pentru garantarea creditului ipotecare ne arată că, una dintre cele mai bine stabilite seturi de linii pentru determinarea valorii ipotecare o are Germania.

În Germania creditul ipotecar se bazează pe o metodologie de determinare a valorii sigure ipotecare care datează de peste 100 de ani. Metodologia își are originile în Legea Băncilor Ipotecare din 1900 înlocuită în 2005 cu legea obligațiunilor ipotecare (legea Pfandbrief). Valoarea de garantare a creditului ipotecar a fost definită ca valoarea pe care o proprietate imobiliară o poate avea în orice moment pe durata creditului, dacă aceasta s-ar vinde într-o tranzacție nepărtinitoare pe piața liberă, fără exercitarea vreunei presiuni sau a

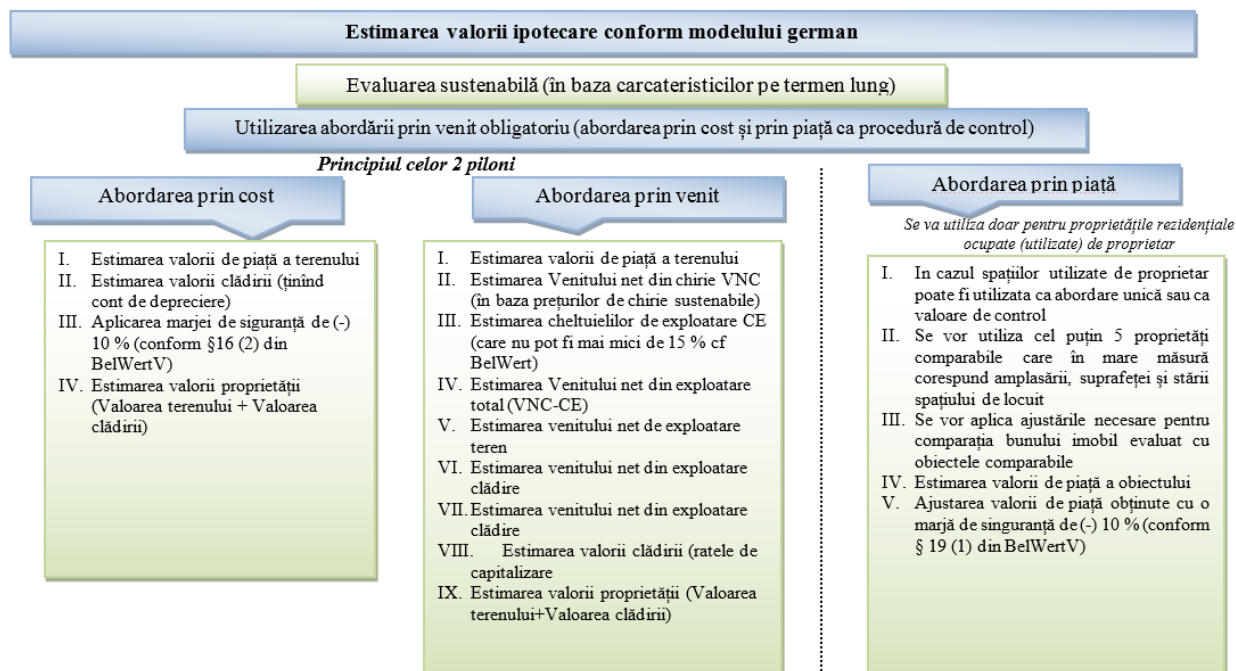
unor măsuri corective. De asemenea în Germania sunt definite proceduri speciale de calcul a acestei valori (Regulamentul BelwertV) în anul 2006.

Legea obligaţiunilor ipotecare în cadrul secţiunii 16 defineşte de asemenea valoarea ipotecară, ca o valoare care nu poate depăşi Valoarea de piaţă calculată în mod transparent şi în conformitate cu o metodă de evaluare recunoscută [5].

Reglementările germane prevăd că estimarea MLV nu trebuie realizată folosind o abordare derivată care necesită estimarea preliminară a valorii de piaţă a proprietăţii şi aplicarea ulterioară a unui coeficient de reducere - abordare utilizată de instituţiile de credit, însă are în vedere determinarea unei valori independente. Cu toate acestea au existat şi critici ale acestei abordări datorită unor constrângeri operaţionale [7 - 9].

În conformitate cu reglementările germane estimarea valorii ipotecare se va efectua prin metode conservative (Figura 2) ţinându-se cont de următoarele:

- ✓ Proprietăţile trebuie inspectate
- ✓ Valoarea ipotecară nu trebuie să fie mai mare decât valoarea de piaţă
- ✓ Proprietatea poate fi utilizată de către terţi
- ✓ Datele de piaţă obiective şi comparabile
- ✓ Caracteristicile pe termen lung (sustenabile) ale proprietăţii
- ✓ Utilizarea curentă
- ✓ Vandabilitatea proprietăţii (alte utilizări potenţiale)
- ✓ Transparenţa evaluării
- ✓ Independenţa evaluării [5, 6, 10, 11].



**Figura 2.** Estimarea valorii ipotecare conform modelului german.

*Sursa: Întocmit de autor în baza [5, 6, 10, 11, 12].*

### 3.1. Prevederile de bază ale metodologiei privind valoarea creditului ipotecar

Venit net din chirii (Venitul Operaţional Net): Fluxul de venit generat de proprietate nu ar trebui să fie mai mare decât venitul net sustenabil pe care respectivul tip de proprietate îl generează pe baza unei judecăţi a pieţei pe termen lung excluzând oricare fluxuri de venit extraordinare sau excepţionale. Va fi luat în considerare doar venitul pe care proprietatea îl

poate genera pe termen lung. Cheltuielile operaționale: Deducerea din venitul net din chirie a tuturor costurilor operaționale și administrative, alocările pentru depreciere, întreținere, reparații curente și capitale, modernizare riscul de neocupare, de neplată a chiriei și alte riscuri posibile care decurg din darea în chirie a proprietății. Regulamentul concretizează că aceste cheltuieli trebuie să fie de minim 15 %.

Rata de capitalizare: Aplicarea ratei de capitalizare trebuie să reflecte tendințele pieței pe termen lung și să excludă așteptările de recuperare a investiției în termen scurt.

Conform regulamentului BelWertW pentru clădirile rezidențiale rata de capitalizare nu poate fi mai mică de 5%, iar pentru proprietățile imobiliare comerciale rata de capitalizare nu poate fi mai mică de 6%. [6, 10, 12].

Pentru o mai bună înțelegere, a diferenței dintre valoarea ipotecară estimată în baza modelului german și valoarea de piață estimată prin abordarea prin venit, propunem în tabelul 1 un exemplu ipotetic.

Tabelul 1

### Diferență între Valoarea ipotecară și Valoarea de piață conform practicii Germane

| Valoarea ipotecară                                 | Notă                                      | Valoarea de piață                                  |
|--|---|--|
| 39 000 euro<br>650m <sup>2</sup> x 5euro x 12luni  | Venitul brut anual                        | 46 800 euro<br>650 m <sup>2</sup> x 6euro x 12luni |
| 5850 euro (15 % cheltuieli minime conform BelWert) | Cheltuieli de exploatare                  | 5304 euro  |
| Management   | 10 spații de birouri –                    | Management   |
| 15 % { + Riscul de neîncasare a chiriei            | 130 euro/birou -3 %                       | <b>11,34%</b>                                      |
| + Cheltuieli de întreținere                        | 4 euro/ m <sup>2</sup>                    | + Riscul de neîncasare a chiriei                   |
| + Riscul modernizării                              | În acest exemplu 0                        | + Cheltuieli de întreținere                        |
| 33 150 euro  | Venitul net din exploatare                | 41 496 euro  |
| 19 890 (397 800 euro x 5%)                         | - Venitul net din exploatare pentru teren | 17 901 (397800 euro x 4,5%)                        |
| 13260  | = Venit net din exploatare pentru clădire | 23595  |
| 18,93 (conform anexa 4 Belwert)                    | x multiplicator                           | 20,64  |
| Rata de capitalizare -5% (minimă acceptată)        |   | Rata de capitalizare -4,5%                         |
| Durata de viața utilă rămasă -60 ani               |   | Durata de viața utilă rămasă - 60 ani              |
| <b>251 011 euro</b>                                | = Valoarea clădirii                       | <b>487 000 euro</b>                                |
| 397 800 euro                                       | + Valoarea de piață a terenului           | 397 800 euro                                       |
| <b>648 811 euro</b>                                | <b>Valoarea proprietății</b>              | <b>884 800 euro</b>                                |
| Diferența: 37 % (235 989 euro)                     |   |  |

Astfel, pentru un bun imobil cu destinație locativă diferența dintre valoarea de piață și valoarea ipotecară estimată în conformitate cu prevederile practicii germane constituie 37%.

Abordarea prin cost (costul de înlocuire net) și abordarea prin venit sunt principalele metode specificate pentru determinarea valorii creditului ipotecar, pașii de calcul fiind analogici metodelor standarde de determinare a valorii de piață. Valoarea determinată prin cost și valoarea determinată prin venit trebuie estimate separat una de cealaltă. Secțiunea 4, §1 BelWertV evidențiază așa - numitul principiu al celor 2 piloni, exemplificat în Tabelul 2.

Astfel, valoarea determinată cu ajutorul abordării prin cost, servește drept „valoare de control” pentru valoarea determinată prin venit. Un alt punct reglementat în BelWertV se

referă la evaluarea proprietăți ocupate de proprietari și proprietăți utilizate în mod autonom, în acest caz valoarea determinată prin abordarea prin comparație poate înlocui valoarea determinată prin costuri. Și aici BelWertV se bazează pe practica îndelungată și permite utilizarea valorilor relevante pe metru pătrat de spațiu de locuit pentru obiecte comparabile (în special apartamente) atunci când se determină valoarea creditelor ipotecare a spațiilor ocupate de proprietari. Prin excepție, pentru simplificare, în cazul estimării valorii caselor de locuit pentru una sau 2 familii ocupate de proprietar, în cazul lipsei îndoielilor, se permite a nu determina mărimea venitului. [5, 6, 10, 11].

Tabelul 2

## Principiul celor 2 piloni

| Pilonul 1 Abordarea prin Venit   |                | Pilonul 2 Abordarea prin Cost                             |                |
|--|----------------|---|----------------|
| <b>Valoarea terenului</b>  | <b>2282500</b> | <b>Valoarea terenului</b>                                 | <b>2282500</b> |
| 550m <sup>2</sup> *4150 €/ m <sup>2</sup>                              |                | 550m <sup>2</sup> *4150 €/ m <sup>2</sup>                 |                |
| <b>Venitul Brut Anual</b>  | <b>540000</b>  | <b>Valoarea clădirii</b>                                  |                |
| 1500 m <sup>2</sup> *30€/ m <sup>2</sup> *12luni                       |                | Costul de construcție                                     |                |
| <b>Cheletuieli de exploatare</b>                                       |                | (7600m <sup>3</sup> *530€/ m <sup>2</sup> )               | 4028000        |
| Cheltuieli de management (3 % din Venitul Brut)                        | 16200          | Depreciere (0 % deoarece este o construcție nouă), 0      |                |
| Cheltuieli de întreținere (15 €/ m <sup>2</sup> )                      | 22500          | Costuri zona exterioara (3 %), euro                       | 120840         |
| Riscul de neîncasare a chiriei ( 3 % din Venitul Brut)                 | 16200          | Subtotal  | 4148840        |
| Total  | 54900          | Marja de siguranță (cf BelWert de 10 %), euro             | 414884         |
| Cheltuieli exploatare, %   | 10             | <b>Subtotal, euro</b>                                     | <b>3733956</b> |
| Cheltuieli de exploatare minime cf BelWert, (15 % din Venitul Brut), % | 15             | Cheltuieli neprevăzute clădire (cf BelWErt de 16 %), euro | 597433         |
| Cheltuieli de exploatare obligatorii (15% din Venitul Brut), euro      | 81000          |   |                |
| Venitul net din exploatare (VNE), euro                                 | 459000         |   |                |
| Rata de capitalizare 6%  |                |   |                |
| Venitul Net din exploatare teren, euro                                 | 136950         |   |                |
| Venitul net din exploatare clădire                                     | 322050         |   |                |
| Rata de capitalizare 6%  |                |   |                |
| Durata de viață utilă rămasă: 60 ani                                   |                |   |                |
| Multiplicator (cf BelWert)   | 16,16          |   |                |
| Valoare clădirii, euro   | 5204328        | Valoarea clădirii   | 4331389        |
| Valoarea terenului, euro   | 2282500        | Valoarea terenului  | 2282500        |
| <b>Valoarea proprietății, euro</b>                                     | <b>7486828</b> | <b>Valoarea proprietății</b>                              | <b>6613889</b> |

*Valoarea obținută prin abordarea prin cost este cu 11,6 % mai mică decât valoarea obținută prin abordarea prin venit, ceea ce reprezintă mai puțin de 20 %, astfel este respectat principiul celor 2 piloni*

*Sursa: Întocmit de autor în baza [5, 6, 10, 11, 12].*

Binert și Brauner [8] în cercetarea sa au analizat problemele modelului german. Cercetătorii pun la îndoială necesitatea calculului valorii ipotecare (MLV) independent de

valoarea de piață (MV). Rezultatele studiului indică că cea mai bună modalitate de a obține MLV este din MV estimată. Cu toate acestea, această așa-numită MLV derivată nu poate fi estimată prin deduceri de sumă forfetară din MV.

La nivel național (pentru Germania), noul PfandBG este apreciat pozitiv, spre exemplu pentru că a fost introdusă terminologia comună la nivel internațional. Însă, analiza metodelor de estimare a MLV a înregistrat mai puține progrese în noua reglementare. Autorii consideră straniu acest fapt, deoarece instrumente precum ratingul, simularea sau alte instrumente de gestionare a riscurilor sunt cunoscute în alte domenii ale activității imobiliare. Explică acest lucru prin faptul că în planificarea BelWertV, în cea mai mare parte, experții în evaluarea imobilelor nu au fost implicați. Datorită reglementării excesive și factoriilor de intrare parțial necorespunzătoare pieței, regulamentul este expus multor critici. Autorii pun la îndoială capacitatea noului sistem de legi de a realiza creditarea garantată și stabilitatea sistemului financiar. Dimpotrivă, datorită reglementării sporite, se creează stimulente pentru a nu analiza generarea riscurilor, ci a se baza doar pe intervalele date. Dacă rezultatele sunt în intervalele BelWertV, evaluarea este practic invulnerabilă.

#### 4. Practica Federației Ruse în viziunea Fedotova M.A și Minimulin D.V.

Un alt punct de vedere cu privire la valoarea garanției ipotecare este prezentat de cercetătorii ruși Minimulin D.V. și echipa condusă de Fedotova M.A.

Echipa dnei Fedotova M.A. este de părerea că Valoarea garanției are un caracter probabilistic și depinde atât de perioada de prognoză cât și de diferite scenarii pentru realizarea garanției.

Ca bază pentru determinarea valorii garanției este acceptată Valoarea de piață. Următoarea sarcină este de a anticipa posibilele fluctuații pe durata contractului de împrumut și perioada următoare de colectare a datoriilor, precum și evaluarea impactului condițiilor de vânzare. Reieșind din premisele menționate, modelul funcțional generalizat al valorii ipotecare poate fi prezentat sub forma expresiei: [15].

$$CV = F(MV, t, K_L, K_R, C, SCH) \quad (1)$$

Unde, CV (colateral value) – valoarea ipotecară; MV (market value) – valoarea de piață a bunului imobil ipotecat; t – timpul; SCH (schedule) – graficul anticipat de rambursare a creditului;  $K_L$  – coeficientul ce caracterizează modificarea valorii ca urmare a acțiunii factorilor de comercializare a ipotecii în condiții restrânse, ce sunt determinați de către cadrul juridic existent;  $K_R$  – coeficientul ce caracterizează o eventuală reducere a valorii obiectului legată de condiții atipice de exploatare; C (cost) – mărimea cheltuielilor (exprimată în unități bănești), ce țin atât de procedura de urmărire și comercializare a ipotecii, cât și de caracteristicile nemijlocite ale bunului ipotecat.

Coeficientul ipotecar (un termen nu tocmai corect, dar care deja se utilizează pe larg) este determinat prin corelația:

$$K = \frac{CV}{MV} \quad (2)$$

Astfel, coeficientul ipotecar indică cu cât diferă valoarea de piață a bunului la momentul evaluării față de valoarea ipotecară stabilită de bancă pentru tranzacția creditară concretă.

Dependența valorii de piață a obiectului ipotecat de timp este condiționată atât de factori externi (starea pieței, gradul de dezvoltare a tehnologiilor în domeniul dat etc.), cât și

de factorii interni (condiții de exploatare, caracteristici ale obiectului ipotecat). Numeric această dependență poate fi prezentată sub forma coeficientului de modificare relativă a valorii de piață în timp  $K_{MV}(t)$ .

Valoarea acestui coeficient poate depăși o unitate (de exemplu pentru piața imobiliară, care este în proces de creștere), însă poate fi și sub o unitate (de exemplu pentru mașini și echipament).

La determinarea coeficientului  $K_L$  apar întrebări legate atât de calculul valorii de lichidare, adică de evidența timpului limitat de expunere, cât și de evidența factorilor ce nu țin de timpul de expunere la vânzarea forțată a bunului, care reduc din valoarea bunului, însăși faptul de sechestru, precum și necesitatea vânzării bunului la licitație.

În cadrul lucrului nemijlocit al subdiviziunilor băncii, activitatea cărora vizează operațiunile cu gajul, determinarea acestui coeficient cel mai frecvent presupune apelarea la experiența empirică a experților în domeniul comercializării diverselor tipuri de bunuri. De regulă, specialiștii experimentați sunt capabili să estimeze adecvat atât perioada necesară de marketing, cât și reducerea respectivă la preț condiționată de vânzarea rapidă a bunului.

Cheltuielile aferente procedurii de urmărire a bunului ipotecat includ mai multe componente eventuale. Astfel, cheltuielile generale cuprind:

- a. Taxele de stat în conformitate cu legislația fiscală;
- b. Taxă de executare în mărime de 7% din suma încasată în urma comercializarea bunului;
- c. Comisionul RFFI (Fondul bunurilor federale al Federației Ruse) - organizație care desfășoară licitațiile publice (constituie de obicei 5% din suma încasată în urma comercializării bunului).

Iar cheltuielile specifice cuprind:

- d. cheltuielile de publicitate, evaluare, servicii de consultanță;
- e. cheltuielile de întreținere a bunului în perioada desfășurării procesului executoriu și a comercializării (paza, arenda încăperilor, achitarea serviciilor comunale etc.);
- f. cheltuielile de transport
- g. cheltuieli neprevăzute.

Pentru diferite tipuri de bunuri structura și mărimea cheltuielilor poate fi diferită.

Modelul funcțional al valorii ipotecare în cazul comercializării obiectului ipotecat la licitație publică este propus în forma următoare:

$$CV(t) = MV \times K_{MV(t+t_p)} \times K_L \times K_R - \frac{C}{MV} \quad (3)$$

Unde,  $t_p$  – timpul necesar pentru desfășurarea etapelor procedurilor judiciare, a procesului executoriu, precum și a comercializării bunului (e caracteristică o perioadă de 6-18 luni); C – mărimea cheltuielilor;  $K_{MV}(t)$  – coeficientul ce caracterizează modificarea în timp a valorii de piață a bunului.

Respectiv formula coeficientului ipotecar va arăta în felul următor:

$$K(t) = 1 - K_{MV(t+t_p)} \times K_L \times K_R + MV \quad (4)$$

Modelul dat poate fi aplicat și în cazul comercializării benevole a bunului ipotecat de către debitor, desfășurat sub controlul băncii. În acest caz se reduc semnificativ atât intervalul de timp, cât și cheltuielile aferente.

*Un împrumut poate fi considerat ca asigurat (cu riscuri minime) de facto, în cazul în care mărimea obligațiunilor aferente acestui împrumut nu depășește valoarea ipotecară.*

După cum ne demonstrează modelul examinat mai sus, valorile unui șir de componente ce influențează mărimea valorii ipotecare și respectiv cea a coeficientului ipotecar, se calculează cu un anumit grad de convenționalitate, din acest motiv și determinarea mărimii coeficientul ipotecar implică un grad anumit de relativitate. Totuși acest lucru nu știrbește din valoarea practică a modelului, din moment ce în cadrul practicii bancare existente discreditația coeficienților ipotecari de regulă nu este mai joasă de 10%.

O altă tehnică de determinare a coeficientului ipotecar, care este aplicată mai frecvent în cadrul practicii bancare ruse a fost generalizată de către dl. Minulin D.V. Tehnica este bazată pe principiul de calcul al valorii ipotecare a garanției în baza evaluării de piață [1, 16].

$$HV = MV \times (1 - D) \quad (5)$$

Unde, HV – valoarea ipotecară, MV – valoarea de piață, D – rata coeficientului ipotecar.

Astfel, are loc transformarea valorii de piață în valoare ipotecară prin prisma mărimii coeficientului, valoarea căreia este determinată în mod individual în conformitate cu regulamentele și prevederile intra bancare aprobate. În cadrul acestui proces parametrii coeficientului ipotecar pentru bunurile ipotecate urmează a fi determinate ținând cont de conjunctura curentă a pieței și de tendința predictibilă de dezvoltare.

Tehnica general acceptată de calcul intra bancar al valorii ipotecare prin aplicarea coeficientului ipotecar în baza mărimii de evaluare a valorii de piață rezidă în stabilirea valorii parametrului coeficientului ipotecar (al intervalului de valori admisibile) pentru fiecare tip de active gajate (grup de active gajate). Determinarea mărimii coeficientului ipotecar pentru obiectele de gaj se efectuează în cadrul regulamentelor și prevederilor intra bancare aprobate, fapt ce presupune corespunderea necondiționată a parametrilor indicați strategiei și tacticii optate de dezvoltare a organizației creditare.

În cadrul practicii bancare ruse [16] mărimea coeficientului ipotecar este determinată prin intermediul a doi parametri:

- primul parametru reprezintă estimarea costului cheltuielilor anticipate pentru comercializarea obiectului garantat;
- cel de-al doilea parametru este marja de siguranță sau componenta extraordinară.

Altfel spus, aceasta este suma reducerii valorii în legătură cu necesitatea de comercializare forțată și rapidă a obiectelor de gaj.

$$D = \frac{C}{MV} 100\% + M_s \quad (6)$$

Unde, D – rata coeficientului ipotecar; C – cheltuielile anticipate de comercializare a gajului; MV – valoarea de piață a obiectului ipotecat;  $M_s$  – marja de siguranță.

Astfel, prin aplicarea coeficientului ipotecar la valoarea de piață a bunului se realizează transformarea ultimei în valoare ipotecară, care ia în calcul cheltuielile anticipate pentru comercializarea bunurilor, precum și cheltuielile legate de necesitatea de comercializare forțată și rapidă a obiectelor ipotecate.

În cadrul procesului de formare a valorii ipotecare coeficientul ipotecar se manifestă în calitate de sistem de filtre, care sunt agregate pentru realizarea unei sarcini comune și diferențiate conform destinației lor funcționale. Fiecare parametru inclus în valoarea coeficientului ipotecar lansează un mecanism propriu de protecție în caz de materializare a tipului de risc corespunzător lui.

În cadrul estimării valorii ipotecare coeficientul ipotecar joacă un rol de airbag (dispozitiv de siguranță), din motiv că funcția de asigurare a gajului este realizată anume prin



intermediul valorii coeficientului ipotecar, și anume a componentei sale – marja de siguranță. Să facem o detaliere a noțiunii de marjă de siguranță, adică a gradului de reducere a valorii gajului în caz de comercializare forțată a lui. Practica bancară rusă de creditare, asigurată prin grevare de bunuri și drepturi de proprietate a condus la elaborarea unei abordări individuale față de determinarea marjei de siguranță bazate pe opinia experților. Pentru fiecare tip de garanție a fost stabilită mărimea proprie a marjei de siguranță.

Prin agregarea argumentelor aduse mai sus, calculul mărimii coeficientului ipotecar în cadrul realizării practice a gestiunii se poate efectua în modul următor:

$$D = \left( \frac{C}{MV} + \frac{L}{MV} \right) 100\% = I_C + M_S \quad (7)$$

unde: D- rata coeficientului ipotecar ; C- cheltuielile anticipate de comercializare; MV- valoarea de piață a ipotecii; L – mărimea pierderilor din valoare; I<sub>C</sub> - cota cheltuielilor anticipate de comercializare în valoarea de piață a bunului; M<sub>S</sub>- marja de siguranță.

Totuși estimarea gradului de reducere a valorii bunului ipotecat în situația de materializare a riscului de credit pe împrumutul acordat se efectuează de către comunitatea bancară cu admiterea unui șir de prevederi:

- lipsa unei crize sistemice a sistemului financiar;
- prezența pieței de desfacere pentru activele ipotecate;
- situația financiară a băncii creditoare se estimează ca fiind una bună.

Din moment ce parametrii de calcul ai formulei 7 reprezintă în sine niște mărimi prognozate în baza estimărilor experților, calculul coeficientului ipotecar se efectuează întotdeauna cu o anumită marjă de eroare și este evaluat prin intermediul modelului de regresie:

$$D_i = \beta_0 + \beta_1 \times I_C + \beta_2 \times M_S \quad (8)$$

unde: D<sub>i</sub> – coeficientul ipotecar pentru ipoteka "i"; I<sub>C</sub> - ponderea cheltuielilor anticipate de comercializare a ipotecii "i" în valoarea de piață; M<sub>S</sub> - marja de siguranță stabilită pentru ipoteka "i".

Metodele descrise mai sus iau în calcul o mulțime de parametri, determinarea cărora ține de experiența practică acumulată de bănci și de statistica pe tipuri de garanții, pe modificările în timp a valorii, pe influența diverșilor factori asupra acestei valori etc. Nu există abordări universale în cadrul acestui subiect. Mai mult ca atât, în cadrul organizațiilor de credit se admite aplicarea coeficienților ipotecari proprii. În Tabelul 3 sunt prezentate dezavantajele acestor modele.

*Tabelul 3*

**Dezavantajele de bază a modelelor de calcul a coeficientului ipotecar**

| <b>Modelul valorii ipotecare prezentat de<br/>Minimulin D.V. [47]</b>  | <b>Modelul valorii ipotecare prezentat de Fedotova M.A. [25]</b>  |
|--|---|
| Riscurile incluse în categoria "marjă de siguranță" reprezintă niște indicatori prea generalizați, care nu sunt evidențiați separat, fapt ce la rândul său nu permite analiza factorilor care acționează asupra acestui indicator. | Modelul dat examinează într-o măsură mai mare modificarea valorii bunului gajat ca urmare a acțiunii condițiilor de comercializare a gajului din afara pieței, care sunt determinate de cadrul juridic existent privind cheltuielile de urmărire și comercializare a bunurilor ipotecate. |

Această mărime se calculează pe calea expertizei în baza opiniei evaluatorului sau a specialistului intern, care la rândul său poate fi una subiectivă.

El însă nu ia în considerație eventualele riscuri legate de tipul bunului imobil, de segmentul de piață și starea lui. Coeficientul obținut în urma aplicării acestui model poate fi definit mai degrabă ca coeficient de lichidare, și nu ca coeficient ipotecar.

Sursa: elaborate de autor în baza [1, 15, 16].

În baza modelelor examinate putem concluziona, că nici unul din modele nu ne prezintă o viziune clară a tehnicii de calcul a coeficientului ipotecar. În ambele modele figurează noțiuni generale, fapt ce le face destul de dificile pentru aplicarea în practică.

### 5. Estimarea valorii ipotecare conform Alianței Proprietăților Industriale din Marea Britanie

O analiză asupra alternativelor metodologice de estimare a valorii ipotecare (valoare pe termen lung) a fost efectuată de către Alianța Proprietăților Industriale din Marea Britanie în anul 2017 (*Property Industry Alliance*) în continuare API, din care fac parte: Association of Real Estate Fund (AREF); British Council for Office (BCO); British Prosperat Federațiune (BPF); Comercial Real Estate Finance Council Europe (CREFC Europe); Investment Prosperat Forum (IPF); Revoc; Royal Institution of Chartered Surveyors (RICS); Urban Land Institute (ULI) [17].

API consideră că împrumuturile garantate cu bunuri imobile ar trebui să constituie o activitate destul de simplă deoarece valorile lor pot fi estimate și riscurile identificate. Concluzia principală a studiului efectuat de API este că Valorile pe termen lung pot furniza semnale atunci când piața imobiliară poate fi supraestimată sau pot prevedea riscul modificării valorii bunurilor imobile în timp. Acest studiu a fost efectuat pentru Instituțiile de creditare pentru a încuraja să ia în considerare faptul că doar Valoarea pe termen lung poate avea un rol central în sistemul de gestionare a riscului de credit.

Grupul de lucru API a luat în considerare 3 abordări alternative care ajută la determinarea Valorii pe termen lung

- ✓ Valoarea de piață ajustată (AMV)
- ✓ Valoarea investițională (IV)
- ✓ Valoarea ipotecară (MLV)

#### 5.1. Valoarea de Piață Ajustată (AMV- de la Adjusted Market Value)

AMV reprezintă o abordare empirică care pornește de la supoziția că valoarea imobilelor (în special comerciale) urmează o tendință pe termen lung. Se presupune că devierea de la această tendință nu cauzează corecții ulterioare ale pieței, însă poate fi observat faptul că o asemenea deviere are o *corelație strânsă* cu ajustările ulterioare ale pieței. În cadrul abordării AMV, valoarea de piață a bunului este ajustată în direcția descreșterii (sau a creșterii) sale pentru a reflecta gradul în care piața imobilelor comerciale se situează deasupra (sau sub) nivelul tendinței de lungă durată a pieței - cea ce și reprezintă în sine "ajustarea pieței". Linia tendinței de piață se bazează pe istoricul setului de date statistice ajustate cu mărimea inflației. Se pornește de la premisa că, fiind ajustată la inflație, analiza tendințelor din trecut a fluctuației valorilor pe parcursul unui ciclu, poate fi utilizată pentru identificarea și anticiparea tendințelor viitoare.

Deși AMV este mai mult analizată și articulată la nivelul macro al pieței decât la nivelul bunului individual, ea poate fi la fel de ușor operată și la nivelul bunului individual în tandem cu valoarea de piață a proprietății individuale.

Tabelul 4

## Calculul AMV

| Formula de bază  | Varianta simplificată  |
|--|--|
| $AMV = MV \times \frac{Ae^{(-bt)}}{\frac{CVI_t}{RPI_t}}$ <p>Unde:<br/> MV = valoarea de piață (market value);<br/> A și b = parametrii pentru cea mai bună potrivire exponențială<br/> CVI<sub>(t)</sub> = Indicele costului capitalului (în momentul de timp t);<br/> RPI<sub>(t)</sub> = indicele inflației (în momentul de timp t).</p> | $AMV = MV \times (1 - MA)$ <p>Unde:<br/> MA- este factorul de ajustare a pieței, care reflectă diferența dintre valoarea de piață și tendința de lungă durată a valorii ajustate la inflație, calculate trimestrial.</p> |

Sursa: [17].

Necesitatea determinării unei mărimi eficiente a valorii de piață ajustate AMV implică aplicarea unui indice al prețului de piață sau a unui set de date pe termen lung. În Marea Britanie acestea există pentru un anumit șir de segmente de piață și poate fi desfășurată o analiză de regresie pentru un șir de cicluri majore. Disponibilitatea acestor date face posibilă ca AMV să fie testată în cel mai ușor mod, anume prin prisma capacității sale de a prognoza supra- și sub-evaluarea pieței, având o perioadă de acoperire a ciclurilor de piață de aproape un secol și conținând date trimestriale care permit efectuarea avertizărilor timpurii.

## 5.2. Valoarea de Investiție (IV)

Valoarea de Investiție (IV) este definită în Standardele Internaționale de Evaluare (IVS) și este cel mai frecvent interpretată ca prețul pe care investitorul *trebuie* să-l plătească pentru o investiție, fiind distinct de prețul pe care investitorul *trebuie* să-l plătească pieței (prețul de piață). În definiția curentă IVS, Valoarea de investiție este identificată prin referirea la circumstanțele investitorului individual, care ar putea achiziționa bunul ("valoarea aferentă individului").

Definițiile anterioare IVS, includeau conceptul de "valoare aferentă pieței".

Noțiunea de IV este abordată de obicei la nivelul proprietății individuale, deși în studiul API, principiile au fost aplicate față de piață ca un tot întreg și (în măsura posibilităților) față de sectoarele și sub sectoarele proprietăților investiționale. Valoarea investiției reprezintă o funcție al fluxului de numerar net, pe care îl va genera bunul și a rentabilității sale solicitate de către investitori. Abordarea comună în cadrul piețelor de bunuri constă în aplicarea modelului standard al fluxului de numerar actualizat (DCF – discounted cash flow) cu utilizarea mărimii curente și a mărimilor anticipate pe viitor ale valorilor de locațiune, de transmitere în chirie și a profitului sumat de investire la sfârșitul unei perioade presupuse de deținere. Fluxul net de numerar este actualizat pe parcursul acestei perioade la o rată de rentabilitate.

$$IV = R \frac{1 - (1 + r)^{-n}}{r} + \frac{R(+g)^{\Delta n}}{k(1 + r)^{\Delta n}}$$

Unde: R = valoarea chiriei în anul 0, n = perioada chiriei, r- rata de actualizare, k = rata de vânzare a bunului la sfârșitul perioadei de chirie, g = prognoza anuală a modificării prețurilor de chirie.

### 5.3. Valoare ipotecară (MLV)

MLV reprezintă o valoare sustenabilă. În cadrul cercetării, abordarea germană a servit ca model primar pentru determinarea valorii ipotecare. Scopul valorii ipotecare este de a stabili o valoare pe care activul este susceptibil să o mențină, cu un grad înalt de certitudine, pe parcursul perioadei luate în considerare (de obicei perioada de împrumut), pentru a asigura un nivel înalt de încredere că împrumutul poate fi rambursat din valoarea activului. Valoarea ipotecară (MLV) se aplică în mod normal la nivelul proprietății individuale. Cu toate acestea, adoptarea unor valori de bază similare pentru valoarea de piață și valoarea investițională, înseamnă că MLV poate fi comparată cu acestea și poate fi utilizată și pe alte piețe cu careva modificări și adaptări (în cadrul studiului făcând-se referință la piața Marelui Regat Unit).

În mod normal MLV este aplicată la nivelul bunului individual. Totuși prin adoptarea intrărilor similare ale valorii de bază în cazul valorii de piață și IV înseamnă că MLV poate fi comparată cu ele și poate, de asemenea, fi evaluată la nivelul pieței agregate sau la nivel de portofoliu. În urma studiului s-a constatat că pentru a adapta prescrierile versiunii germane de determinare MLV în cadrul Regatului Unit, unele din intrări necesită modificări, după cum se relatează mai jos.

- Chirie sustenabilă: Abordarea germană permite utilizarea valorii de închiriere curente de piață în calitate de mandat pentru o chirie sustenabilă. Acest lucru nu este pe deplin satisfăcător pentru Regatul Unit. În Germania majoritatea piețelor bunurilor imobiliare au fost în mod tradițional mai puțin volatile decât piețele din Regatul Unit. Adoptarea unei asemenea metodologii în cadrul Regatului Unit necesită muncă detaliată suplimentară (care este recomandată mai jos ca o etapă următoare) pentru identificarea unei abordări alternative, mai potrivite de definire a valorilor de închiriere sustenabile. Între timp cel de-al doilea element "nepotrivit" pentru piața Regatului Unit (vezi punctul mai jos) a fost folosit pentru a-l face să funcționeze corect.

- Cheltuieli operaționale: metodologia Pfandbrief prescrie o deducere de minim 15% din Venitul net din chirie. În contextul realităților Regatului Unit acest nivel minim cu greu poate fi justificat deoarece în cadrul multor tranzacții de închiriere din Regatul Unit are loc transferul obligațiilor de reparare sau de asigurare a bunului către chiriași. Totuși, acest element a fost păstrat în pofida tendinței sale de a subestima valoarea de închiriere în cadrul Regatului Unit, din motiv că el parțial compensează supraestimarea valorii ce apare în legătură cu utilizarea prețurilor curente de închiriere (după cum a fost evidențiat în itemul de mai sus).

- Valoarea terenului: în Germania valoarea terenului a rămas relativ stabilă și datele respective sunt disponibile în baza de date, fapt ce face separarea valorii pământului de cea a edificiului un lucru simplu. Aceasta însă nu este și cazul Regatului Unit, unde valoarea loturilor de pământ este mult mai volatilă și nu există o bază de date a valorii lor curente de piață. În baza datelor studiului desfășurat de Crosby, Devaney și Wyatt în cadrul acestei analize s-au făcut următoarele ipoteze privind proporția pământului și clădirii: 50:50 pentru obiectele de tip retail, 30:70 pentru oficii și 10:90 pentru cele industriale.

- Deprecierea clădirilor: actul Pfandbrief stabilește o perioadă maximă de decontare de 60 ani pentru Oficii și pentru Obiectele Retail (clasificate ca "Imobile Comerciale"). În scopul acestui studiu este utilizat termenul de 50 ani pentru Oficii, 30 ani pentru Obiecte Industriale și 70 ani pentru Obiectele Retail. O perioadă atât de lungă pentru Obiectele Retail este justificată prin predominarea Obiectelor Retail din blocuri etajate. La nivelul tuturor bunurilor imobiliare analiza utilizează termenul de 50 ani. De asemenea e necesar de

menționat că analiza a fost desfășurată fără a lua în calcul loturile de pământ pe care sunt amplasate imobilele: s-a făcut separarea edificiilor de pământ. Trezește interes faptul că în rezultat nu a fost remarcată o diferență semnificativă în ce privește nivelul sau forma MLV pe parcursul perioadei de timp.

- Rentabilitatea: Ratele de capitalizare preconizate de Actul Pfandbrief sunt în intervalul 6% - 7,5% pentru Oficii și obiecte comerciale și pentru Obiectele industriale – în intervalul 7% - 9%. Activele primare (care totuși nu sunt definite pe larg) pot beneficia de un discount de până la 0,5% sub nivelul minim aplicat. Modelul MLV din cadrul studiului realizat de API utilizează cea mai înaltă din ratele de capitalizare actuale de 7,5% pentru Oficii și pentru Obiectele Retail și de 9% pentru Obiectele Industriale. Pentru toate bunurile imobiliare model analizat utilizează rata de 7,5%.

- Durata și ponderea: Pământul este capitalizat pe durată nedefinită, iar edificiile sunt capitalizate pentru durata de viață rămasă. Valorile sunt apoi ponderate prin raportul teren: construcție (conform ponderii indicate mai sus) și însumate pentru a ajunge la MLV. În scopul acestui studiu valoarea MLV a fost adaptată și aplicată pentru toate categoriile de imobile, sectoarele și sub sectoarele. În rezultat această abordare față de MLV german ignoră „cel de-al doilea pilon” al abordării germane MLV, care este bazat pe cost și care este destul de specific.

Concluzia de bază a studiului este că estimarea valorii pe termen lung poate furniza semnale utile, atunci când piața imobiliară riscă de a fi supraevaluată și să fie expusă riscului ridicat de scădere semnificativă a valorii.

Dintre toate metodele analizate MLV (Valoarea ipotecară) este cea mai fiabilă cu toate că sunt necesare unele adaptări și îmbunătățiri tehnice pentru a putea fi utilizată pe piața Marei Britanii sau pe alte piețe.

Instituțiile de creditare sunt încurajate să ia în considerare modul în care activitatea de garantare a împrumuturilor, estimarea valorii pe termen lung poate avea un rol central în sistemul de gestiune a riscului. În prezent sunt efectuate studii suplimentare pentru a finaliza analiza diferitelor abordări și a analiza modul în care acestea ar putea fi utilizate cel mai bine de către instituțiile creditoare și de autoritățile de reglementare [17].

## 6. Modelul spaniol de determinare a valorii ipotecare

Un alt model practicat care consideră Valoarea ipotecară este **Modelul Spaniol**. Ordinul Ministerului Economiei, ECO/805/2003 [18] din 27 martie, privind standardele de evaluare a bunurilor imobile și anumite drepturi în scopuri financiare, stabilește principiile detaliate de evaluare. Acest ordin vine ca un amendament la o ordonanță anterioară din 1994, iar unul din motivele majore pentru noul ordin era să ia în considerare valoarea pe termen lung a proprietăților.

Ordinul definește Valoarea ipotecară (VH) sau valoarea creditului ipotecar ca fiind „valoarea proprietății determinată printr-o evaluare prudentă a posibilității viitoare de tranzacționare a proprietății, luând în considerare aspectele durabile pe termen lung ale acesteia, condițiile normale și locale ale pieței, utilizarea acesteia în momentul evaluării precum și cea mai bună și eficientă utilizare. Evaluarea nu va conține elemente speculative.

Această definiție este apropiată cu definițiile din Legislația Europeană. Articolul 2 și 45 sunt deosebit de relevante, deoarece definesc domeniul de aplicare a ordinului și detaliile privind modul în care trebuie aplicate modelele de valoare pentru evaluarea obiectelor ipotocate și ale fondurilor de pensii. Ordinul nu efectuează o distincție esențială între

Valoarea de piață și Valoarea ipotecară, prin urmare abordarea valorii ipotecare este mai puțin prescriptivă față de abordarea germană de determinare a valorii ipotecare.

Regulile de bază pentru estimarea valorii ipotecare în modelul spaniol cuprind:

**a. Pentru clădirile aflate în proces de construcție sau reabilitare:**

- Valoarea estimată va fi valoarea de înlocuire netă. În cazul în care lucrările de construcție au fost paralizate și nu se prevede reluarea lor în termen scurt, valoarea considerată va fi cea mai mică dintre valoarea de înlocuire și valoarea reziduală a terenului și a clădirii.
- În cazul clădirilor la faza de proiect, în construcție sau reabilitare estimarea valorii se va face pe baza ipotezei lucrărilor finalizate la data planificată.

**b. Pentru clădirile finalizate**

- Pentru bunurile imobile exploatate în cadrul unei activități economice, valoarea se va estima în primul rând prin abordarea prin comparație ajustată și, dacă este posibil, se va estima valoarea de înlocuire netă și valoarea prin abordarea prin venit (tehnica de actualizare). Valoarea cea mai mică rezultată va fi considerată drept valoarea ipotecară.
- Pentru bunurile imobile închiriate cu excepția spațiilor de locuit, se va estima valoarea cu ajutorul metodei de actualizare și abordării prin comparație (dacă este necesar ajustate), în baza presupunerii că este liberă de chiriaș și cea mai mică dintre ele va fi acceptată în scop de garantare a creditului ipotecar.
- Pentru bunurile imobile locative care sunt închiriate la data evaluării, valoarea va fi calculată cu ajutorul abordării prin comparație și tehnicii de actualizare ținând-se cont de fluxurile de venit generate de proprietate la data evaluării conform contractelor de închiriere existente în vigoare, luând în considerare clauzele contractuale ale acestora, iar perioada de calcul va fi perioada contractului rămasă în vigoare. În cazul în care fluxurile de numerar ale bunurilor supuse evaluării sunt superioare altor proprietăți comparabile, vor fi înlocuite cu prețurile de piață ale proprietăților comparabile, cu condiția că diferența poate fi atribuită elementelor speculative.
- În cazul altor tipuri de proprietăți, ca de exemplu clădiri destinate pentru uz propriu, clădiri libere, care nu au o destinație concretă, valoarea se va estima prin abordarea prin comparație ajustată. Atunci când nu este posibil se aplica abordarea prin venit tehnica de actualizare (în cazul în care există piață de închiriere pentru obiectul evaluat conform art. 28.)
- Fluxurile de venit se vor estima pentru întreaga durată de viață utilă, luând în considerație toți factorii care ar putea afecta valoarea. Vor fi luate în considerare doar circumstanțe sau situațiile care probabil se vor menține pe termen mediu și lung. Calculul cheltuielilor va include orice tip de cheltuială curentă sau previzibilă, care trebuie suportată de proprietar, fie direct atribuite proprietății (întreținere, administrare, impozite, taxe, etc.) În cazul în care nu este posibilă nici estimarea acestei valori, valoarea va fi cel mult valoarea de înlocuire netă a proprietății.

Cu privire la metodologia propriu zisă, în conformitate cu cele menționate mai sus, pentru estimarea valorii ipotecare se vor aplica cele 3 abordări în conformitate cu prevederile art.45. Abordarea prin comparație va fi aplicată pentru toate tipurile de proprietăți ori de câte ori va fi posibil.

**Principiile de bază în cadrul Abordării prin comparație:**

- 🌈 Se va utiliza pentru evaluarea tuturor tipurilor de bunuri imobile cu condiția:

- ✓ existenței unei piețe reprezentative pentru proprietățile comparabile;
  - ✓ existenței datelor suficiente privind tranzacțiile sau ofertele obiectelor comparabile (cel puțin 6 comparabile);
  - ✓ disponibilitatea datelor adecvate (tranzacții, oferte) pentru a estima evoluția prețurilor obiectelor comparabile cu cel puțin 2 ani înaintea evaluării;
  - ✓ furnizării informații corespunzătoare (date proprii, publicații sau alte date cu privire la indicii de evoluție a prețurilor);
- ✚ Se va estima valoarea propriu zisă prin ajustarea comparabilelor. Valoarea estimată va ține cont de cheltuielile necesare pentru vânzarea proprietății.
- ✚ În cazul clădirilor la faza de proiectare, construcție sau reconstrucție valoarea se va determina pe ipoteza clădirii viitoare finalizate. Se vor utiliza prețurile de piață existente la data evaluării pentru obiectele finalizate. Aceasta valoare poate fi corectată în funcție de tendința pieței pentru perioada de finalizare a lucrărilor.
- ✚ Valoarea obținută prin abordarea prin piață va fi ajustată (cu un coeficient de ajustare) de către entitatea de evaluare, pentru a obține valoarea de ipotecă (MLV) bazată pe supoziția că valoarea estimată va înregistra o reducere semnificativă nominală, în termen de un an de la data evaluării, reducere care durează cel puțin 3 ani.
- coeficientul de ajustare se bazează pe capacitatea tehnică a evaluatorului de analiză a pieței;
  - atunci când nu sunt disponibile date cu privire la comportamentul pieței evaluatorul aplică o reducere de 10-15 %.

***Principiile de bază în cadrul Abordării prin venit:***

- ✚ Abordarea prin venit, metoda fluxului de numerar actualizat, se va aplica în conformitate cu prevederile art.45 și va fi aplicat tuturor tipurilor de proprietăți capabile să producă chirii.
- ✚ Pentru utilizarea metodei de actualizare este necesar să fie îndeplinite cel puțin una din următoarele condiții:
- existența pe piață chiriilor a obiectelor comparabile (cel puțin 6 obiecte comparabile), pentru a reflecta în mod adecvat situația actuală a pieței;
  - existența unui contract de închiriere a bunului supus evaluării, sau obiectul evaluat aduce sau poate aduce venit din activitatea economică, sau există suficiente date contabile sau informații adecvate privind ratele medii în ramură din activitatea corespunzătoare;
  - să se dispună de date adecvate (tranzacții oferte) pentru a estima evoluția prețurilor chiriei obiectelor comparabile cu cel puțin 2 ani înaintea evaluării;
  - să se dispună de informații adecvate (date proprii, publicații sau alte date cu privire la indicii de evoluție a prețurilor), asupra comportamentului istoric al prețurilor proprietăților similare.

- ✚ Procedura de calcul a valorii prin metoda fluxului de numerar actualizat (conform art. 26) este analogică cu cea prevăzută în IVS, obligatoriu se va ține cont și de Valoarea cheltuielilor actualizate legate de proprietate în momentul evaluării.

***Principiile de bază în cadrul Abordării prin cost:***

- ✚ Abordarea prin cost, va fi aplicabilă în evaluarea tuturor tipurilor de clădiri și elemente ale clădirilor aflate în faza de proiect, în construcții sau reconstrucții, finalizate.
- ✚ Cu ajutorul abordării prin cost se va determina valoarea de înlocuire (brută sau netă).
- ✚ Procedul de calcul presupune că la valoarea terenului (determinată prin metoda comparației fie metoda reziduală) se vor adăuga costul lucrărilor de construcție sau de

reabilitare (care vor include totalitatea cheltuielilor generale de execuție, materiale, cheltuielile de regie și beneficiul constructorului) precum și cheltuielile necesare pentru înlocuire (taxe, pentru proiect, licențe, taxe de construcție, asigurare, inspecție tehnică, cheltuieli de administrare, marketing etc).

- ✚ In cazul obiectelor aflate în faza de proiect sau în construcție/reconstrucție, valoarea se va determina pe ipoteza construcției finalizate la data evaluării cu corectarea prețului în dependență de evoluția prețurilor până la data finalizării lucrărilor.
- ✚ Pentru estimarea valorii de înlocuire nete se va deduce din valoarea brută mărimea deprecierii (fizice și funcționale) acumulate.
- ✚ Deprecierea fizică va fi calculată în baza duratei de viață utilă totală și reziduală estimată de evaluator. În cazul conferirii diferitelor durate de viață utilă elementelor constructive ale clădirii, se va efectua o justificare adecvată. Mărimea deprecierii se va determina prin tehnica de amortizare liniară prin împărțirea vârstei proprietății la durata de viață utilă totală estimată de evaluator dar care nu poate depăși:
  - Pentru clădirile locative – 100 de ani
  - Pentru clădirile de birouri – 75 de ani
  - Pentru clădirile comerciale – 50 de ani
  - Pentru clădirile industriale – 35 de ani.
- ✚ Deprecierea funcțională se va determina prin estimarea tuturor costurilor și cheltuielilor necesare transformării clădirii actuale într-o clădire nouă cu caracteristici similare.

### Concluzii

Autoritățile de supraveghere bancară atenționează asupra faptului că valoarea care va asigura un credit ipotecar trebuie să fie un instrument de gestionare a riscurilor unde sunt luate în considerare doar aspectele pe termen lung și lipsesc speculațiile.

Pe lângă Valoarea de piață, Autoritățile prin Regulamentele și Directivele elaborate acordă o atenție deosebită Valorii ipotecare (MLV și SLTV), care se consideră ca ar trebui să joace un rol central în practica evaluărilor în scop de garantare a împrumuturilor. Astfel, se consideră că, de fapt Valoarea ipotecară (MLV și SLTV) este un instrument de management al riscului care oferă o anumită protecție în timp.

În contextul celor enunțate, reglementările UE, ar trebui să stabilească anumite principii generale care ar servi drept bază întru estimarea valorii prudente a proprietății imobiliare, sprijinite de ghiduri și standarde de evaluare, dar cel mai important aplicabile în mod egal pe toate piețele imobiliare naționale. Implementarea acestui concept, va produce modificări în cadrul profesiei de evaluator și a practicilor bancare, astfel sunt necesare studii amănunțite, care ar facilita implementarea definiției din Regulamentul Basel III, care ar contribui la o implementare fără probleme a acesteia.

Totodată vom atenționa asupra faptului că piețele emergente diferă considerabil de cele dezvoltate, respectiv nu toate recomandările viabile pentru unele sunt aplicabile pentru altele. Respectiv aspecte urmează a fi cercetate și structurate într-o metodologie practică aplicabilă și pentru condițiile Republicii Moldova.

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## SOME REFLECTIONS UPON THE SUBJECTIVE RIGHT AND THE ABUSE OF RIGHT DOCTRINE

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Received: 12. 05. 2021

Accepted: 01. 28. 2022

**Abstract.** The purpose of the article is an analysis of the theoretical aspects of the subjective right doctrine. Starting from the idea that the subjective right is something different from the positivist norm, the legal thinking was permanently concerned about giving a definition to it, about determining its features and legal nature, elements that differentiate it from the positive right, as well as establishing the principles of its exercise. In the following article we tried to highlight the fact that the exercise of a right by its holder contrary to the principles of exercise, as well as the fulfillment of the obligations assumed by him gives rise to a phenomenon called abuse of right.

**Key words:** *abuse of right, objective right, subjective right, positive right, external limit, lawful purpose, good faith, public order.*

**Rezumat.** Scopul articolului este realizarea unei analize a aspectelor teoretice ale instituției dreptului subiectiv. Pornind de la ideea că dreptul subiectiv este ceva diferit de norma pozitivă, gândirea juridică s-a preocupat permanent de a-i da o definiție, de a determina trăsăturile și natura juridică a acestuia, elementele care îl diferențiază de dreptul pozitiv, precum și de a stabili principiile exercitării acestuia. În articolul ce urmează s-a încercat a se evidenția faptul că exercitarea unui drept de către titularul acestuia, precum și îndeplinirea obligațiilor corelate asumate de acesta contrar principiilor de exercitare dă naștere unui fenomen numit abuz de drept.

**Cuvinte cheie:** *abuz de drept, drept obiectiv, drept subiectiv, drept pozitiv, limită externă, scop rezonabil, bună-credință, ordine publică.*

**Introduction.** Under the subjective right, the person is conferred certain competencies, powers and prerogatives, which are not absolute and must be exercised taking into account the limits of exercise, in the sense that the holder of the subjective right must exercise this right and perform his collateral duties in good faith, in accordance with the law, the contract, public order and good moral values. These limits of the exercise of the rights and of the fulfillment of the obligations are enshrined in art. 10 Civil Code of the Republic of Moldova and art. 55 of the fundamental law of the country - the Constitution of the Republic of Moldova, which establishes the principles of exercising subjective rights.

It is obvious that subjective rights are organically related to the objective right, because the subjective rights do not exist without being stipulated in legal norms. The objective right existence would remain meaningless too, if the requirements of its norms would not be achieved through subjective rights in interhuman relationships. Therefore, the objective and subjective rights, as fundamental notions of law, are not only contradictory ones, but they are interdependent: the objective rights correspond, in legal plan to the subjective rights [1].

The scientist Mircea Djuvara asserts the same: the subjective right could not exist without the objective one and vice versa, and the problem of prioritizing one of them is an artificial one, but the perspective from which it is treated is decisive on the conclusion which we are going to formulate. If substantiating the analysis in terms of generalization, there are no doubt that the objective law would be generator of subjective rights, the legal documents, are in this sense, the source of human rights. But if we refer to the individual's point of view, the situation changes, for its right is manifested and exercised real life - in some cases - even independently of legal norm.

The romanian scientist Gheorghe Mihai considers that the objective right appears like a part of positive law consisted of legal norms [2], at the same time, it does not limit the objective law only when referring to legislation and circumscribing to the last the customary law and jurisprudence in those legal systems where they are considered otherwise.

Alluding to the significance explanation of the objective right the distinguished Romanian jurist Ion Deleanu said: "Adjectivizing the term of "right" by equating it to the word "objective", entangles its meaning, opposed to simplifying it. The term "objective" additionally has different implications, getting from the methods of relating the subject to the object (ontological, gnoseological, psychological, etc.). Right isn't an objectivity in itself. It will address the generalized pith of a composite interest inhering in a marginalized social group or a commonality.

Substantially, right, which likewise infers the requirement for conduct guideline, albeit objective, is the result of individuals' action and acts just through them. *Voluntas facit legem.*". Furthermore, the aforesaid jurist asserts: "The right in its ontological importance, has not a objective complexion, but rather a qualities framework nature, which once made because of individuals' volition and communicating their inclinations, reflect subjective measure of these inclinations, earning a general autonomy towards them" [1].

**Methodological part.** This article is based on an analysis of the scientific literature and national and foreign jurisprudence in the field. Likewise, a series of normative acts, both national and foreign, were subjected to research. Regarding the research methods used, we mention that the study used the analytical method, the logical method, the hermeneutic method and the systemic method, as well as the comprehensive method in order to consolidate the act of understanding the materials subject to research.

**Results and discussions.** Clearly, the objective right takes part along with the subjective right in shaping and changing the law, just as its substance, yet the positive law can be dissected both, as far as its objective aspect and as far as its subjective aspect, or: as Ion Deleanu says "ab origin, the freedoms and obligations are unbiased. They are subjectivized through their circulation to certain fixed people. Then again, since there are emotional or subjective privileges and obligations emerging straightforwardly from legitimate standards, without a settled connection, it appears to be that it isn't of

embodiment of abstract freedoms and obligations that they emerge from a substantial lawful connection." [1] namely, the law principles are dictated by those two components, in such a way presenting a particularity to the positive right.

The well known romanian scientist Ion Deleanu in his endeavor to give a meaning of subjective rights, begins from the meaning of the legitimate circumstance just like the entirety of freedoms and commitments which each citizen has, as per the law[1], accepts it would be best not to characterize the term of legal objective right, yet that of lawful objective circumstance, an idea which signifies every one of the lawful standards which make up the law, standards which manage the freedoms and obligations. In this unique setting, subjective rights would become abstract lawful circumstances that would mean the emerged privileges and obligations on the record of a few law people. We yield in such a manner, the creator affirms, an incorporating outline of crafted by creation and utilization of the law" [1].

The legislation of Republic of Moldova does not define the subjective right, it just invokes this notion in art. 13, art. 311, art. 359, art. 409, art. 2671 and others of the Civil Code, which defines the meaning of the abuse of law, the act of preservation (an act which aims to prevent the loss of a civil subjective right), legal acts concluded under condition and the statute of limitations of subjective civil rights. Consequently, the doctrine has formulated several definitions of subjective right. We will present some of these definitions below.

Mircea Djuvara's definition sets up that the subjective right assigns a lawful individual workforce of a person towards someone else, a privilege that has as premise the lawful standard that gets from it and has a place settled in the subject of law.

Subjective right – as a privilege - may have a place or not to a particular person of law, to the extent this one has the legitimate ability to have that trait. Along these lines, the genuine right makes the lawful system, by explicit business standards for a person to secure abstract freedoms related to the partner nature of an organization (business society). Be that as it may, these abstract privileges can be acquired exclusively by people with full legitimate limit who have not been sentenced for fake administration, maltreatment of trust, fraud, utilization of imitation, trickery, feebleness, prevarication, giving or accepting incentives.

A subject of law can be both individual and lawful individual. There are no broad limits for specific classifications of individual or legitimate people to have subjective rights. Specifically, stateless people, for instance, have no democratic rights, and judges are not be partner to organizations. Additionally, on account of legitimate substances, these have an exceptionally wide field of subjective rights, every person of law has various privileges, position of sanctified rule of the utilization capacity claim to fame of the lawful individual.

So, the subjective right shows up as a benefit on the recuperation or the guard of one's own buries, as a benefit made or perceived by the lawful standards in power, which is reasoned and promoted by the subject of law [3].

In this manner, the emotional right includes an interest. This axiom is set up officially in various parts of law. Along these lines, the Civil Procedure sets up the rule that specifies that there is no activity without interest. The main condition for somebody to sue an activity is to have an interest, yet its nonappearance has thus the activity excuse. The common law cherishes, in its turn, the rule that specifies that there is no substantial show with practically no interest [1]. However, few out of every odd interest is law, just the one that is ensured by law, whose question of law has the legitimate means to pursue the court to underwrite and perform law.

Assuming the law is the one that gives authenticity and lawfulness to the interest, the inquiry is whether the legislature – obliged to make laws fitting to a coordinated society – comprehends that it is his commitment to do the errand, having some place, at the opposite finish of legitimate connection, the reporter of a law to have the best freedoms to imagine. Assuming we think about the authoritative power as an undertaking, a mission, as an obligation of the assembly, it implies that its assignment turns into an obligation [4].

In a word, the two notions, the one of subjective right and that of adroitness are subsumed under the so-called "power of law." Both subjective right, a prerogative about the provision of a value, as well as the adroitness, a prerogative about the execution of a certain function or power, are powers of law [5].

The subjective right is a fundamental concept of law. If the objective right, investigated as far as its all universality, perceives and cherishes major human subjective rights, then, at that point, the subjective right is "the power that every individual needs to imagine as their resources, their abilities and their powers that are not limited by law, would be regarded, however upheld by the general public, when they were deciphered in innovative volition acts through its legitimate bodies to brought to realization impacts of made relations" [6]. The universality issue of the objective right is connected with fleetingness, yet the objective right in power characterizes between the past and future a recommended and approved present.

The rights are presented distinctly to satisfy an ideal of the right holder, being totally in opposition to the explanation that those freedoms are given to fulfill individual pitiful interests contradicting to an ethical system and embodiment of law.

"In all cases a right ought to be practiced in such a style that the consequence of the activity stays inside a degree judged sensible in the light of the common social ethics. At the point when a direct by one who implies to do as such neglects to show social sensibility and when the noteworthy harms to others surpass the cutoff which is for the most part expected to be borne in the public activity, we should say that the activity of the right is no longer inside its passable extension. Along these lines, the individual who practices their right in such a style will be held obligated on the grounds that his lead establishes an abuse of right." [7]

When the holder of the subjective right exercises his right within its external limits, we are in the presence of an act of exercising the right, but if the use exceeds the external limits of the subjective right, we are in the presence of an act committed outside the law, i.e. a circumstance characterized by the non-existence of subjective right.

In the light of the above, the following principles of exercising subjective rights can be deduced:

***a) The exercise of the subjective right by its holder must be carried out according to a lawful purpose, regardless of the nature of the right.***

Article 1 of the Civil Code of the Republic of Moldova regulates the principle of free exercise of civil rights, establishing that civil law is based on the recognition of equality of participants in relations regulated by it, protection of privacy, private and family life, recognition of inviolability of property, contractual liberty, protection of good faith, consumer protection, recognition of the inadmissibility of interference in private affairs, the need for the free exercise of civil rights, the guarantee of the restoration of the person's rights in which he has been harmed and their defense by the competent courts. This principle guarantees

natural and legal persons the opportunity to exercise their civil rights in the manner and under the conditions best suited to their interests. At the same time, it must be borne in mind that there is no absolute freedom to exercise civil rights.

***b) Exercising in good faith the subjective rights.***

The norm contained in art. 55 of the Constitution of the Republic of Moldova obliges the citizens of the country to exercise their fundamental rights and freedoms in good faith, without violating the rights and freedoms of others. Article 10 Civil code of the Republic of Moldova establishes that the natural and legal persons participating in the civil legal reports must exercise their obligations in good faith, which is presumed until proven otherwise. Good faith is a *sine qua non* condition both for the exercise of a right by its holder and for the fulfillment of an obligation, whether we are referring to a natural or a legal person. If the person in the exercise of his rights or in the performance of his obligations has acted in good faith, the legal acts concluded by such a person may not be declared null and void. On the contrary, if he acts in bad faith, consciously of the abusive nature of his conduct, the holder of this right may be sanctioned. For example, if the employer orders the dismissal of an employee in bad faith, this may result in material, misdemeanor or criminal liability, as the case may be. Thus, we conclude that it is inadmissible to exercise in bad faith the rights and obligations of a part of the legal relationship. A sensitive issue for the theory and practice of law is to determine to what extent a person, exercising a right, can be considered in good faith has been reported by doctrinaires over time. A possible solution is revealed by the romanian researcher Dimitrie Gherasim, who states that in the situation where a person acts with malicious intent - commits an act of gross negligence assimilated to deceit - he is in bad faith. In this case, good faith is defined by the antithesis: whenever the subject uses malicious maneuvers as well as in the case of an intentional omission assimilated to malice, we are in the presence of bad faith and in the absence of good faith.

***c) The exercise of the subjective right by its holder takes place in compliance with the law, public order and morality.***

A protected right is one that is not contrary to public order and morality, one that is not part of a legal relationship contrary to the law. Explaining this principle encounters certain difficulties due to the fact that it involves a multitude of theories and arguments. What is the connection between the legal order, the social order and the moral order? The answer is simple: the legal and moral order is the cornerstone of the social order. Moral norms are mechanisms that trace a certain behavior typical of a certain society in a certain period, and the legal norms codify this behavior, harmoniously combining the individual interests with the general ones of the whole society. This indissoluble link between law, public order and morality is accentuated by the norm introduced by the local legislator at paragraph (1) and paragraph (3) in art. 334 of the Civil Code of the Republic of Moldova. This principle finds its applicability in other norms of the Civil Code of the Republic of Moldova, as follows: art. 182 paragraph (4), art. 224 paragraph 1 letter (d), art. 249 paragraph 2 letter (b), art. 774 paragraph 3, art. 1918 and others. The exercise of the rights and the execution of the obligations according to the principle of legality presupposes that the actions of the holder of the rights are not contrary to the legal norms. Likewise, the means of exercising rights must be legal.

The presentation of these principles proves that subjective law is at the same time a basis for claiming certain subjective rights from other holders of certain rights, as well as a

limitation on the exercise by its holder of the exercise of civil rights recognized and guaranteed by law. The exercise is not unrestricted, but must naturally fit within certain limits.

### Conclusions

The deviation of the right from its intrinsic reason, expressed in the purpose for which it was recognized and guaranteed, or, in other words, the "use" of the right for purposes other than those considered by the legal norm underlying it - purposes considered incompatible with the public interest and the requirements of the norms of social coexistence - represent not the use, but the abuse of right, the transition from the exercise of right from normal to abnormal, removal from legal protection and exposure to sanction. It is the phenomenon designated by the concept of abuse of right. Analysing the principles of exercise of subjective rights, we conclude that subjective rights are conferred in order to achieve the ultimate purpose of the right holder, being absolutely contrary to the idea that rights are conferred to fulfill interests contrary to the spirit and essence of right. In this context, we formulate the opinion that the abuse of law presupposes the exercise of the subjective right within its external limits, but by disregarding, exceeding its internal limits. Only the exceeding of the internal limits of a concrete subjective right by diverting it from the social and economic purpose for which it was established, constitutes an abuse of law and attracts the civil liability of the author, being an aspect that differentiates the abuse of right from the wrongful act, which is committed in the absence of a subjective right or by exceeding its material limits. The distinction between these two notions is often difficult to make, and civil legal doctrine has expressed various views on the legal nature of abuse of law. In other words, the abuse of right implies the observance of the letter of the law, but the violation of its spirit.

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## LEGALITY AND LEGITIMACY OF LAW PROMULGATED WITHOUT PRESIDENTIAL RATIFICATION IN THE PRESIDENTIAL GOVERNMENT SYSTEM

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Received: 12. 22. 2021

Accepted: 02. 05. 2022

**Abstract.** After the first amendment to the 1945 Constitution, there was a shift in power to form laws from the President to the DPR. The power of the DPR to form laws is shared with the President because each bill is discussed jointly by the DPR and the President for mutual approval. The joint approval of the DPR and the President is the binding point for the two state institutions that produce material laws. However, there are several bills that have been mutually agreed with the DPR and the President that have not been signed by the President. After a period of thirty days has been lapsed, the mutually agreed Bill by the DPR and the President shall become Law, even without the ratification of the President, and must be promulgated. This phenomenon raises question of why the President does not ratify the Bills he has approved. This research is a normative research with a statutory, conceptual, historical and comparative approach, which is expected to provide coherence and continuity to constitutional theories, so that the process of forming laws with outputs at each stage to be with more measurable results.

**Keywords:** *Legislation, Government system, Representative institutions.*

**Rezumat.** După primul amendament la Constituția din 1945 a avut loc o schimbare a puterii de a forma legi, de la Președinte la DPR. Puterea DPR de a formula legi este împărțită cu președintele, deoarece fiecare proiect de lege este discutat în comun de către DPR și președinte pentru aprobare reciprocă. Aprobarea comună a DPR și a Președintelui este punctul obligatoriu pentru cele două instituții ale statului care produc legi materiale. Cu toate acestea, există mai multe proiecte de lege care au fost agreeate de comun acord cu DPR și Președintele, dar care nu au fost semnate de Președinte. După expirarea unei perioade de treizeci de zile, proiectul de lege convenit de comun acord de DPR și Președinte devine Lege, chiar și fără ratificarea Președintelui, și trebuie promulgat. Acest fenomen ridică întrebarea: de ce președintele nu ratifică proiectele de lege pe care le-a aprobat? Această lucrare este o cercetare normativă cu abordare statutară, conceptuală, istorică și comparativă, care se



așteaptă să ofere coerență și continuitate teoriilor constituționale, astfel încât procesul de formare a legilor să aibă rezultate măsurabile.

**Cuvinte cheie:** *Legislație, Sistem guvernamental, Instituții reprezentative.*

### Introduction

The People's Consultative Assembly (MPR) in the discussion of the first amendment to the 1945 Constitution argued that it was necessary to empower the People's Representative Council (DPR), to limit the President's powers, and strengthen the presidential system. Prior to the amendment to the 1945 Constitution, the DPR's authority was only to approve or disapprove of the draft law (RUU) that came from the President. The first amendment to the 1945 Constitution gave the House of Representatives (DPR) the power to make laws, and together with the President and the Regional Representatives Council (DPD) (for certain matters) discussed the Bill. Continuation of the level I discussion, a mutual agreement was reached between the DPR and the President. The momentum for achieving mutual agreement between the DPR and the President on a bill has resulted in a material law. The bill that has been mutually agreed upon will then enter the stage of ratification by the President. If within thirty days it is not ratified by the President, the Bill becomes a law and must be promulgated in accordance with Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

During the Reformation era, there were seven bills that were not ratified by the President, which were agreed by the DPR and the President at the second level plenary session of the DPR, and then promulgated, namely: Law No. 25 of 2002 concerning the Establishment of the Riau Archipelago Province, Law No. 32 of 2002 concerning Broadcasting, Law No. 18 of 2003 concerning Advocates, Law No. 17 of 2003 concerning State Finance, Law No. 24 of 2014 concerning the Election of Governors, Regents and Mayors, Law no. 2 of 2018 concerning the Second Amendment to Law No. 17 of 2014 concerning the MPR, DPR, DPD and DPRD, Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission.

On the other hand, there are Laws that were ratified by the President, but in the material and formal review it was stated by the Constitutional Court was contrary to the 1945 Constitution and the Laws as a whole were declared to have no binding legal force, such as: Law No. 20 of 2002 concerning Electricity, Law No. 9 of 2009 concerning Educational Legal Entities, Law no. 7 of 2004 concerning Water Resources, Law no. 17 of 2012 concerning Cooperatives, and the last conditionally unconstitutional for two years is Law no. 11 of 2020 concerning Job Creation.

In the Decision of the Constitutional Court of the Republic of Indonesia No. 17/PUU-XVI/2018, regarding the review of Law no. 2 of 2018 concerning the Second Amendment to Law No. 17 of 2014 concerning the MPR, DPR, DPD and DPRD against the 1945 Constitution, the Government provided an explanation why they did not ratify Law no. 2 of 2018 as follows:

".. the law is a norm that has been mutually agreed upon by the Government and the DPR in accordance with Article 20 paragraph (2) of the 1945 Constitution, and that in its development the Law was not ratified by the President, then it is the choice of the President's policy which is the constitutional authority of the President as stated above. regulated in Article 20 paragraph (5) of the 1945 Constitution".

The President can choose to ratify or not to ratify the Bill according to the President's subjective considerations in accordance with the corridor provided by Article 20 paragraph

(5) of the 1945 Constitution of the Republic of Indonesia. If this is the case, it raises the question of what was the original intent of the MPR to include Article 20 paragraph (5) of the 1945 Constitution in the second amendment to the Constitution 1945, what is the function of ratification in the lawmaking process, how is the legality and legitimacy of laws promulgated without the approval of the President. This is a normative research method, the approach taken is a statutory approach, a conceptual approach, a historical approach and a comparative approach.

Based on the background described above, it can be formulated the problem to be studied as follows:

1. What is the legislative ratio of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia?
2. What is the background of the Bill which was not ratified by the President?
3. What is the legality and legitimacy of a Law that is not ratified by the President?

## **Results and Discussion**

### ***Legality and Legitimacy***

Legality and legitimacy are two different concepts but are intertwined with one another. The development of the rule of law concept in the nineteenth century gave birth to the principle of legality which is fundamental to legal or procedural positivism. Legality in English is strict adherence to law prescription or doctrine, the quality of being legal, the validity of an action. The principle of legality is one of the main principles of the rule of law and is the basis for every government and state administration, especially for the rule of law in the continental system. Often formulated specifically in the expression "Het beginsel van wetmatigheid van bestuur". Sjachran Basah, as quoted by Ridwan (2007), said that the principle of legality means an effort to create a harmonious integral duet between the understanding of the rule of law and the understanding of people's sovereignty based on the monodualistic principle as pillars, which are essentially constitutive in nature [1].

The concept of the rule of law in the 1945 Constitution was originally contained in the Elucidation of the 1945 Constitution, not in the body of Law. After the third amendment, the concept of the rule of law became a constitutional norm as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Thus, the principle of legality is a constitutional norm in the administration of the state. Constitutional Court in Decision No. 25/PUU-XIII/2015 regarding the review of Law no. 30 of 2002 concerning the Corruption Eradication Commission, explains the concept of the rule of law, as follows:

".. three substances that become the basic principles of the rule of law, namely (1) that in a state of law the government (in a broad sense) is limited by law, (2) that in a state of law formal legality applies, and (3) that in a state of law, the law governs, not people."

As the opinion of Sjachran Basah, thus, in the formation of laws at the same time also involves legitimacy. Legitimacy is lawfulness [2]. Schmitt (2004) adds to the idea of legitimacy with "consent" or approval. He formulated consent not in terms of active compliance but in the negative connotation of "right to resistance" [3]. Rousseau (1999) said that every law requires the citizen's consent to every law, even though the passage of the law is met with resistance, and even though the law punishes every citizen who violates it [4]. So that public participation in the process of forming laws is important in order its implementation does not get rejected. Habermas in his discourse theory opens space for public participation through intersubjective communication that is reflective in nature

demanding rational and argumentative reasons. Habermas interprets the classical principle of democracy as the reciprocal relationship of administrative and communicative power [5]. Deliberative democracy or also called discursive democracy in the Indonesian constitution basically has a strong constitutional basis in the fourth principle of Pancasila, namely: Democracy led by wisdom in deliberation/representation.

Just as the rule of law is a constitutional norm, so the people's sovereignty is a constitutional norm which before the amendment to the 1945 Constitution was carried out entirely by the MPR, after the changes were carried out according to the Constitution. These two constitutional norms are also intertwined, providing an understanding that Indonesian democracy is carried out according to the provisions of the applicable laws and regulations.

### ***Legality and Legitimacy of Legal Norms***

Norm is a measure that must be obeyed by a person in relation to others or with the environment [6]. Joseph Raz (2002) in *Practical Reason and Norms* said that the equivalent of the word norm is a rule. In social life there are many norms that regulate a person's behavior and actions, such as religious norms, moral norms, legal norms and so on. There is a difference between legal norms and other norms, where legal norms are heteronomous, namely legal norms that come from outside a person, while other norms are autonomous, where these norms come from within a person [7]. Legal norms contain orders that are abstract, addressed (addressat) or binding on everyone (general), and apply continuously (dauerhaftig), not limited by time, until the regulation is revoked or replaced with a new regulation. Legal norms that are abstract, general and apply continuously are legal norms that are included in statutory regulations. Constitutional Court in Decision No. 85/PUU-XI/2013 regarding the review of Law no. 7 of 2004 concerning Water Resources to the 1945 Constitution, explains that:

“Legal norms recognize the existence of a hierarchy or arrangement of norms, in which the 1945 Constitution occupies the highest position. In the perspective of the arrangement of legal norms, the 1945 Constitution is a measure of the validity and legitimacy of the laws and regulations beyond.”

According to Kelsen (2005), law is a system of norms, a dynamic legal order. Law as a system of dynamic norms (nomodynamics) is formed and abolished by the competent institutions or authorities, not seeing the content of the norm but seeing the aspect of its application or formation [8]. Law is valid if it is made by an institution or authority authorized to form it and is sourced and based on higher norms, so that lower norms (inferior) can be formed by higher norms (superior), and the law is tiered and layered to form a hierarchy. The hierarchical system shows the levels of norm abstraction. As a result, basic norms are at the highest level of abstraction, which play in the border area between law and morals [9].

Adolf Merkel argued that a legal norm always has two faces (*das Doppelté Rechtsantliz*). A legal norm upwards is sourced and based on the norms above it, but downwards it also becomes the source and becomes the basis for the legal norms below it, so that a legal norm has a relative validity period (*rechtskracht*), because of its validity period a legal norm that depends on the legal norms that are above it. Hans Nawiasky, in addition, said that the legal norms of a country are also grouped, and the grouping of legal norms in a country consists of four major groups, Group I: State Fundamental Norms (*Staatsfundamentalnorm*) , Group II: Basic Rules of the State (*Staatsgrundgesetz*), Group III:

Formal law (Formell Gesetz), Group IV: Implementing Rules and Autonomous Rules (Verordnung & Autonome Satzung) [6].

In the history of the Indonesian state administration, the hierarchy of laws and regulations from 1950 to 2011 is presented in the following Table 1:

Table 1

| Hierarchy of Legislation                                     |                                |                             |                     |                           |
|--|--------------------------------|-----------------------------|---------------------|---------------------------|
| Law No. 1 of 1950  | MPRS Decree No. XX/MPRS/1966   | MPR Decree No. III/MPR/2000 | Law No. 10 of 2004  | Law No. 12 of 2011        |
| Law and Government Regulations Substituting for Laws (Perpu) | 1945 constitution              | 1945 constitution           | 1945 constitution   | 1945 constitution         |
| Government regulations (PP)                                  | MPR Decree                     | MPR Decree                  | Law/Perpu           | MPR Decree                |
| Ministerial regulation (Permen)                              | Law                            | Law                         | PP                  | Law/Perpu                 |
|  | Perpu                          | Perpu                       | presidential decree | pp                        |
|  | PP                             | PP                          | local regulation    | presidential decree       |
|  | presidential decision          | presidential decision       |                     | provincial regulations    |
|  | local regulation               | local regulation            |                     | district/city regulations |
|  | Other Implementing Regulations |                             |                     |                           |
|  | Permen                         |                             |                     |                           |
|  | Minister's Instruction         |                             |                     |                           |
|  | etc.                           |                             |                     |                           |

Besides the validity of a legal norm, there is also efficacy. A legal norm can have validity by following the procedure for its formation, but on the other hand it has no efficacy. The efficacy in question is whether the legal norms are implemented effectively or not, whether they are obeyed and implemented. According to Hans Kelsen, the validity of an ineffective legal norm can be revoked by *desuetudo*. *Desuetudo* is a negative legal consequence of a habit. In a legal order that is as a whole effective, a separate norm that is valid but ineffective can occur, that is, it is not obeyed and is not applied even though the stipulated conditions have been met for its application. If the norm is permanently invalidated, it loses its validity by *desuetude* [10].

### **Lawmaking Formation in a Presidential Government System**

Before discussing the formation of laws, we will first discuss the system of government. Discussing the system of government is talking about how the division or separation of powers between the legislature, executive and judiciary, as well as the relationship between state institutions in exercising their power in the context of carrying out the interests of the people, is discussed [11]. In an established democracy, the executive can be categorized into three main groups of government systems, namely presidential government systems, parliamentary systems of government, and semi-presidential government systems. There are three characteristics of a presidential government system, namely (1) the president is elected through general elections, (2) a fixed term of office for

the President and the DPR, neither of them can overthrow the other, (3) there is no overlapping of positions between the executive and the legislative [12]. Besides that, the difference with the parliamentary system of government is that in a presidential system of government the head of state and head of government are combined in one person, or in other words there is no separation between the functions of the head of state and head of government in the position of the President as chief executive. Quoting the opinion of Rogelio Alicor Labalan Pano (2014), [13] that the essence of a presidential system of government is separation of power. Manan (2003), quoting Montesquieu, said that the power to form laws is legislative power, because it (only) belongs to the legislative, the law-making body/organ. The executive body does not have the power to make laws [14].

In the formation of laws, Montesquieu (1989) said executive power, as we have said, should take part in legislation by its faculty of vetoing [15]. In the United States presidential system of government, the Constitution gives legislative power to the Congress which consists of the Senate and the House of Representatives. After a Bill is passed by Congress, it is submitted to the President for signature [16]. If the President vetoes a Bill by refusing to sign it stating the reasons for his objection, the Bill will not become Law and be returned to Congress. If Congress still wants the Bill to become Law, a two-thirds (2/3) vote in favor of each chamber in Congress overpowers the President's veto. If within ten days after the Bill is submitted to the President, the President does not sign, veto, or return the Bill to Congress, the Bill becomes Law as if the President had signed the Bill.

### ***Comparison of the Formation of Laws in the Government System***

In a parliamentary system of government, the executive organically has a link with the legislature. Lijphart (2012) provides three things that distinguish a parliamentary system of government from a presidential system. First, the head of government, who may have different official titles such as Prime Minister, Chancellor, Minister-President, or, somewhat confusingly, even "President" (as in Botswana), but is generally referred to as Prime Minister, either Prime Minister and their cabinets are accountable to the legislature in the sense that they rely on the trust of the legislature and can be removed from office by a vote of no confidence or legislative criticism [17]. Second, the Prime Minister is elected by the legislature. The third difference is that in a parliamentary system there is a collective or collegial executive. In decision-making there is a high degree of collegialism, where decisions on important issues are taken by the cabinet as a whole, not only by the Prime Minister. In contrast to the presidential system of government, there is a separation of the head of state and head of government in a parliamentary system of government, as stated by Hague and Harrop (2004): Where presidential systems combine the head of state and the head of government in one person, parliamentary rule separates the two roles. Efficient leadership rests with the cabinet, premier and ministers but dignified or ceremonial leadership lies with the head of state.

The British government is a classic example of a parliamentary government based on a single party with a guaranteed majority (Westminster Model). In accordance with Article 52 paragraph (1) of the British Constitution that the power to make laws rests with Parliament. The British Parliament with a bicameral representation system, pursuant to Article 57 paragraph (1) of the British Constitution, consists of the Head of State, the House of Commons (Lower House) and the House of Lords/Second Chamber (Higher House) [18]. In the British system of government there is a difference between the Head of State (Head of State) and

the Executive. The Head of State is held by the Queen/King. One of the obligations of the Head of State is to ratify (assent) laws that have been approved by Parliament. Executive power is exercised by a government consisting of the Prime Minister and members of Parliament who are appointed as Ministers in the government.

Presidential and parliamentary systems of government provide a pure model of the executive's position in politics. Executive semi-presidential refers to both formats, combining the elected President with the Prime Minister and the Cabinet reporting to Parliament, so that with a semi-presidential government we enter a more varied area. The French political scientist, Duverger (1980), gives three characteristics of semi-presidential political regimes as follows: (1) the president is elected by universal suffrage; (2) the president has considerable power; (3) behind the president there is a prime minister and a minister who has executive and government powers and can remain in office only if the parliament shows no resistance to them. The executive semi-presidential system is arguably a hybrid system, seeking to marry the executive in the national focus of an elected president with a prime minister who understands all the interests represented in the assembly [19].

The Fifth French Republic (1958) is an example of an executive semi-presidential. There are two types of executive bodies in France, namely the President of the Republic and the Prime Minister. The President of the Republic, as Head of State, is elected by majority vote for a certain period of five years. The President of the Republic appoints the Prime Minister (Head of Government) who is responsible to the Parliament, and based on the recommendation of the Prime Minister, the President appoints and dismisses members of the government. The President of the Republic presides over the Council of Ministers. The French government consists of the Prime Minister and Ministers.

In law making, the 1958 French Constitution mandates that Parliament pass laws. However, according to Article 11 of the 1958 Constitution, Parliament does not have a monopoly on making laws, as the President of the Republic may propose a referendum on a Government Bill on the recommendation of the Prime Minister during the session of Parliament. In general, the right to initiate legislation rests with the Prime Minister and members of Parliament. Bills initiated by the Prime Minister are called Government Bills, and Bills initiated by members of Parliament are called Private Member's Bills. The procedure for the formation of a law has three main stages, namely the submission of a bill, examination by the Parliament and its announcement by the President of the Republic (after possible referral to the Constitutional Council for examination of its conformity with the Constitution) (Service Des Affaires Internationales Et De Defense, 2013).

### ***Formation of Laws in a Presidential Government System Based on the 1945 Constitution***

The 1945 Constitution, prior to the amendment, did not explicitly state (expressive verbis) that the state government system was a presidential system of government. In the BPUPKI meeting on July 15, 1945, Sukiman said: "...after studying the draft laws of our country, then as a final conclusion I state, the language of this draft has its own system, different systems from the laws of some of the leading countries in the world such as Dai Nippon, America, Rusland, France, and others." The founding fathers used the term "own system" because in 1945, "semi-presidential" systems such as in France, "semi-parliamentary" as in Portugal or hybrid systems such as in Sri Lanka were not yet known. The system itself is a hybrid system in which the power is dominated by the President (President dominant presidentialism). Basically, in the 1945 Constitution there is no difference between the Head

of State and the Head of Government. The difference between the Head of State and the Head of Government is contained in the General Elucidation of the 1945 Constitution.

As a consequence of the formation of the 1945 Constitution that does not refer to the Trias Politica theory, power is divided between the executive and the judiciary as stated in Article 4 paragraph (1): The President of the Republic of Indonesia holds government power according to the Constitution, Article 5 paragraph (1): The President holds the power to make laws with the approval of the House of Representatives, and Article 24 paragraph (1): Judicial power is exercised by a Supreme Court and other judicial bodies according to law.

The procedure for the formation of laws is regulated in Article 5 paragraph (1), Article 20 and Article 21 of the 1945 Constitution. In addition to the Presidential initiative Bill which must be approved by the President, the DPR initiative Bill which has been approved by the DPR must be ratified. This is a consequence of the power to form laws rests with the President. According to Saragih (1988), that the function of ratification in Article 21 paragraph (2) is as a legality that a law is valid after being signed by the President as head of state in the presidential government system adopted by the 1945 Constitution [20].

During the Reformation era, the 1945 Constitution underwent four fundamental changes in a relatively short period of time (1999-2002). There are five points of basic agreement in the process of discussing the amendments to the 1945 Constitution, one of which emphasizes the presidential system of government. This basic agreement indirectly recognizes that the Indonesian government system is a presidential system of government. It should be underlined that according to expert opinion in a presidential system of government, there is no distinction or no need to make a distinction between the president as the position of head of state and the president as head of government. The president is the president, namely the position that holds the power of state government according to the constitution.

In the first amendment to the 1945 Constitution, there was a shift in power to form laws to the DPR (Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia), and together with the DPD (for certain matters) and the President to discuss the Bill. The continuation of the discussion of this Bill, if approved, will result in a joint agreement between the DPR and the President. In accordance with the provisions of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, within thirty days the President ratifies the Bill, if the President does not ratify the Bill within thirty days, the Bill becomes a law and must be promulgated. In the event that the Bill is valid after the thirty day period the Bill is not signed by the President, the sentence for ratification reads: This law is declared valid based on the provisions of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia. promulgation of the text of the Act into the State Gazette of the Republic of Indonesia.

Jimly Asshiddiqie said that it is not clear what the purpose of the constitutional arrangement regarding the thirty day deadline is. Quoting Saldi Isra's opinion that the presence of Article 20 paragraph (5) weakens the provisions contained in Article 20 paragraph (4). With the existence of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, the President's constitutional obligations are reduced to constitutional rights in the ratification of the Bill into Law. With the shift from constitutional obligations to constitutional rights, the President is not worried about not ratifying the Bill into Law.

In contrast to the provisions in the 1945 Constitution (before the amendment), the 1949 RIS Constitution and the 1950 Constitution, the President's ratification of the Bill is to

obtain the power of law or what is also known as legality. The function of ratification in the 1945 Constitution after the second amendment is not clear and only depends on the expiration of the thirty day period and the Bill is valid to become law and must be promulgated. There is no obligation for the President to give reasons for not signing the bill, which is different from the presidential system of government in the United States, if the President does not approve the Bill that has been approved by Congress, the President gives reasons for his objections as to why he does not sign the Bill.

### ***Legality and Legitimacy of Lawmaking***

In the view of legal positivism that the only law that is accepted as law is the legal system, because only this law can be ascertained in reality. Further consequences of this view are (1) law only applies because the law gets its positive form from an authorized agency, (2) in studying law only its judicial form can be seen, in other words, law as law only has a relationship with its formal form, the juridical form of the law is separated from material legal rules, (3) the legal material content does exist, but it is not seen as legal science material, because this content is considered variable and arbitrary, the legal content depends on the ethical and political situation of a country.

In order for the statutory regulations to be valid as law from a juridical point of view, these statutory regulations must be made by the competent authority. Authorized agencies are also called state institutions in Article 1 number (2) of Law no. 12 of 2011. The state institutions that make laws in accordance with the 1945 Constitution of the Republic of Indonesia are the DPR and the President. DPD has the right to submit Bills related to certain matters. However, the enactment of a law materially after obtaining joint approval from the DPR and the President.

Constitutional Court Decision No. 91/PUU-XVII/2020 regarding the formal review of Law No. 11 of 2020 concerning Job Creation, explains the formal defects in legal considerations as follows:

the requirements for the assessment of the formal examination as set out in the Constitutional Court Decision Number 79/PUU-XVII/2019, namely:

1. examination of the implementation of the procedures or procedures for the formation of laws, both in the discussion and in making decisions on the draft of a law into law;
2. examination of the form or systematic law;
3. examination regarding the authority of the institution that makes decisions in the process of forming the law; and
4. testing of other things that do not include material testing.

All stages and standards as described and considered above, will be used to assess the validity of the formalities of the formation of laws that are attached to or associated with the principles of formation of laws and regulations. The Court needs to emphasize that the assessment of the stages and standards referred to is carried out accumulatively. In this case, if at least one stage or one standard is not met from all stages or all existing standards, then a law can be said to be formally flawed in its formation. That is, a formal defect of the law has been sufficiently proven if there is a defect from all or several stages or standards of all stages or standards as long as the defect can be explained with arguments and undoubted evidence to assess and state the existence of a formal defect in the formation of the law.

From the explanation of the Constitutional Court above, the President's ratification of the Bill is not a formal defect, as also explained by the Constitutional Court in Decision No.



79/PUU-XVII/2019 regarding the formal review of Law no. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution of the Republic of Indonesia:

"... the legal existence of a Bill becoming law is a "mutual agreement between the DPR and the President in level I and level II discussions" which juridically the legality of obtaining legality starts from the discussion at level I and ends at level II discussions. So "President's endorsement" or "President's signature" is no longer a process of obtaining the legality of a law but is one of the administrative processes for the enactment of a law which is the duty and responsibility of the President as head of state to carry out promulgation and disseminate a law so that it can be known publicly. general;"

The ratification referred to in Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia is only an administrative process that does not have any legal consequences. With the presence of Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, the President's ratification of the Bill no longer provides validity as previously intended in Article 20 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

### ***Legality and Legitimacy of Laws Enacted Without Presidential Ratification***

During the Reformation era, there were seven bills that were promulgated without the approval of the President. These seven bills have become laws and are the object of cases in both material and formal examinations at the Constitutional Court. The President issues implementing regulations for the seven Laws. In Table 2 below, the petition for review to the Constitutional Court and its implementing regulations is presented.

*Table 2*

### **Implementing Regulations and Material and Formal Examinations of Laws Enacted Without Presidential Ratification**

| <b>Law</b>   | <b>Implementing Regulation</b>   | <b>Material and Formal Examinations at Constitutional Court</b>  |
|--|--|--|
| Law No. 25 of 2002 concerning the Establishment of the Riau Archipelago Province | <ul style="list-style-type: none"> <li>Riau Islands Provincial Regulation No. 4 of 2005 concerning the Stipulation of September 24 as the Anniversary of the Riau Islands Province</li> <li>Riau Islands Provincial Regulation No. 09 of 2005 concerning the Establishment of the Organization and Work Procedure of the Pakong Praja Police Unit of the Riau Islands Provincial Government</li> </ul> | No. 48/PUU-X/2012<br>No. 62/PUU-X/2012   |
| Law No. 32 of 2002 concerning Broadcasting                                       | <ul style="list-style-type: none"> <li>PP No. 11 of 2005 concerning the Implementation of Broadcasting for Public Broadcasting Institutions</li> <li>PP No. 12 of 2005 concerning the RI Radio Public Broadcasting Institution</li> <li>PP No. 13 of 2005 concerning the Republic of Indonesia Television Public Broadcasting Institution</li> <li>PP No. 49 of 2005 concerning</li> </ul>             | No. 005/PUU-I/2003<br>No. 031/PUU-IV/2006<br>No. 6/PUU-VII/2009<br>No. 78/PUU-IX/2011<br>No. 71/PUU-XI/2013<br>No. 62/PUU-XIV/2016<br>No. 81/PUU-XIV/2017<br>No. 39/PUU-XVIII/2020 |

Continuation Table 2

|   |   |   |
|---|---|---|
|   | <ul style="list-style-type: none"> <li>Guidelines for Foreign Broadcasting Institutions Covering Activities</li> <li>PP No. 50 of 2005 concerning the Implementation of Private Broadcasting Institutions</li> <li>PP No. 51 of 2005 concerning the Implementation of Community Broadcasting Institutions</li> <li>PP No. 52 of 2005 concerning the Implementation of Broadcasting by Subscription Broadcasting Institutions</li> </ul> |   |
| Law No. 18 of 2003 concerning Advocates   | PP No. 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Aid   | No. 019/PUU-I/2003<br>No. 006/PUU-II/2004<br>No. 009/PUU-IV/2006<br>No. 014/PUU-IV/2006<br>No. 015/PUU-IV/2006<br>No. 101/PUU-VII/2009<br>No. 66/PUU-VIII/2010<br>No. 71/PUU-VIII/2010<br>No. 79/PUU-VIII/2010<br>No. 26/PUU-XI/2013<br>No. 103/PUU-XI/2013<br>No. 40/PUU-XII/2014<br>No. 112/PUU-XII/2014<br>No. 140/PUU-XII/2014<br>No. 32/PUU-XIII/2015<br>No. 36/PUU-XIII/2015<br>No. 84/PUU-XIII/2015<br>No. 95/PUU-XIV/2016<br>No. 89/PUU-XV/2017<br>No. 35/PUU-XVI/2018<br>No. 52/PUU-XVI/2018<br>No. 56/PUU-XVI/2018<br>No. 79/PUU-XVI/2018 |
| Law No. 17 of 2003 concerning State Finance   | <ul style="list-style-type: none"> <li>PP No. 90 of 2010 concerning the Preparation of Work Plans and Budgets of State Ministries/Agencies</li> <li>PP No. 71 of 2010 concerning Government Accounting Standards</li> </ul>   | No. 28/PUU-IX/2011<br>No. 41/PUU-X/2012<br>No. 35/PUU-XI/2013<br>No. 62/PUU-XI/2013<br>No. 95/PUU-XI/2013   |
| Law No. 24 of 2014 concerning the Election of Governors, Regents and Mayors                                   |   | No. 97/PUU-XII/2014<br>No. 102/PUU-XII/2014<br>No. 98/PUU-XII/2014<br>No. 99/PUU-XII/2014<br>No. 103/PUU-XII/2014<br>No. 104/PUU-XII/2014<br>No. 105/PUU-XII/2014<br>No. 111/PUU-XII/2014   |
| Notes:<br>Revoked by Government Regulation in Lieu of Law (Perpu) No. 1 of 2014                               |   |   |
| Law no. 2 of 2018 concerning the Second Amendment to Law No. 17 of 2014 concerning the MPR, DPR, DPD and DPRD | <ul style="list-style-type: none"> <li>MPR RI Decision No. 7 of 2018 on the Addition of MPR Leadership for the 2018-2019 Department</li> <li>Regulation of the House of Representatives of the Republic of Indonesia No. 1 of 2020 on Discipline</li> </ul>   | No. 16/PUU-XVI/2018<br>No. 17/PUU-XVI/2018<br>No. 21/PUU-XVI/2018<br>No. 25/PUU-XVI/2018<br>No. 26/PUU-XVI/2018<br>No. 28/PUU-XVI/2018  |

Continuation Table 2

|  |   |  |
|--|---|--|
|  | <ul style="list-style-type: none"> <li>• DPD Regulation No. 2 of 2019 on Discipline.</li> </ul>   | No. 34/PUU-XVI/2018<br>No. 37/PUU-XVI/2018<br>No. 39/PUU-XVI/2018<br>No. 17/PUU-XVII/2019<br>No. 42/PUU-XVII/2019  |
| Law no. 2 of 2018 concerning the Second Amendment to Law No. 17 of 2014 concerning the MPR, DPR, DPD and DPRD, Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission | <ul style="list-style-type: none"> <li>• Presidential Regulation No. 102 of 2020 concerning the Implementation of Supervision on the Eradication of Corruption Crimes</li> <li>• Government Regulation No. 4 of 2020 concerning Procedures for Appointing the Chairperson and Members of the Supervisory Board of the Corruption Eradication Commission</li> <li>• Presidential Regulation No. 91 of 2019 concerning the Implementing Organs of the Supervisory Board of the Corruption Eradication Commission</li> </ul> | No. 57/PUU-XVII/2019<br>No. 59/PUU-XVII/2019<br>No. 62/PUU-XVII/2019<br>No. 70/PUU-XVII/2019<br>No. 71/PUU-XVII/2019<br>No. 73/PUU-XVII/2019<br>No. 77/PUU-XVII/2019<br>No. 79/PUU-XVII/2019<br>No. 84/PUU-XVII/2019 |

In addition to laws promulgated without ratification by the President, there are also laws which the Constitutional Court had declared in its entirety to be contrary to the 1945 Constitution and have no binding legal force. These five Laws were ratified by the President, namely: (1) Law no. 20 of 2002 concerning Electricity vide Constitutional Court Decision No. 001-021-022/PUU-I/2003, (2) Law no. 9 of 2009 concerning Educational Legal Entities vide Constitutional Court Decision No. 11-14-21-126-136/PUU-VII/2009, (3) Law no. 7 of 2004 concerning Water Resources vide Constitutional Court Decision No. 85/PUU-XI/2013, (4) Law no. 17 of 2012 concerning Cooperatives vide Constitutional Court Decision No.28/PUU-XI/2013, and (5) the last conditionally unconstitutional for two years is Law no. 11 of 2020 concerning Job Creation vide Constitutional Court Decision No. 91/PUU-XVIII/2020.

### Conclusion

1) Ratio legis or reason of law in modern law is associated with interpreting legal texts. Article 20 paragraph (5) has begun to be discussed in the first amendment to the 1945 Constitution, but has not reached an agreement at the time of ratification of the first amendment. Article 20 paragraph (5) which was ratified in the second amendment to the 1945 Constitution is a solution to the existence of Bills that have been approved by the DPR such as the Broadcasting Bill and the Handling Danger State (Penanggulangan Keadaan Bahaya) Bill, but were not ratified by the President. Taufieqqurochman from the F-TNI/Polri believes that if the President has already discussed the Bill with the DPR, then there is no reason for the President not to ratify the Bill, no matter what happens. The discussion of Article 20 paragraph (5) of the 1945 Constitution, as well as the entirety of Article 20 of the 1945 Constitution, shows a variety of changing logics of thought. Finally, the formulation of Article 20 paragraph (5) is one manifestation of the exercise of power to form laws that are in the hands of the DPR. Although the bill was not signed by the President, it did not reduce the commitment of all parties, especially state officials, to implement the law, including the President. This is because the law has previously been jointly approved by the DPR and the President.

2) Of the seven Bills that were not ratified by the President, three Bills were proposed by the President, namely the Bill on Advocates, the Bill on State Finances, and the Bill on the Election of Governors, Regents and Mayors. In submitting these three Bills to the Speaker of the DPR, the President appoints the Minister of Justice and Human Rights to represent the Government in the discussion of the Law on Advocates, and the Minister of Finance to represent the Government in the discussion of the State Finance Bill. Likewise, the four Bills proposed by the DPR, namely the Bill on the Establishment of the Riau Islands Province, the Bill on Broadcasting, the Bill on the Election of Governors, Regents and Mayors, the Bill on the Second Amendment to Law no. 17 of 2014 concerning the MPR, DPR, DPD and DPRD, the Bill on the Second Amendment to Law no. 30 of 2002 concerning the Corruption Eradication Commission, the President in a reply to the Chairman of the DPR appointed each Minister representing the Government to discuss the five bills with the DPR. The President's view on the concept of ratification can be seen from several decisions of the Constitutional Court No. 005/PUU-I/2003, No. 17/PUU-XVI/2018, No. 79/PUU-XVII/2019. From the three decisions of the Constitutional Court above, it can be concluded that the President's views on the ratification are as follows:

- a) There is no problem with the President's ratification of the Bill that has received mutual approval, because it will remain valid in accordance with Article 20 paragraph (5) of the 1945 Constitution of the Republic of Indonesia.
- b) It is the President's policy choice to ratify or not to ratify a bill.
- c) Ratification of the President on a bill that has been mutually agreed upon is one of the administrative processes for the enactment of a law. The legality of a bill becoming a law is subject to the joint approval of the DPR and the President.

3) Legality and legitimacy are two different concepts but they are intertwined in the process of forming laws. This is the same as the principle of popular sovereignty (democracy) and the rule of law (nomocracy) which are intertwined and should be implemented simultaneously like the same coin with two sides. The seven bills that were promulgated without the approval of the President, in terms of the principle of the hierarchy of norms, quoting Attamimi's opinion, are *das Sollen* for the regulations under them, are provisions that must be followed by lower norms. The seven laws have also undergone several material and formal trials at the Constitutional Court, as summarized in Table 2.

In addition to Bills that were not ratified by the President but were valid as objects of cases in the judicial review of the Law at the Constitutional Court, there are five laws passed by the President which became the objects of cases in the judicial review, namely: (1) Law no. 20 of 2002 concerning Electricity, (2) Law no. 9 of 2009 concerning Educational Legal Entities, (3) Law no. 7 of 2004 concerning Water Resources, (4) Law no. 17 of 2012 concerning Cooperatives, (5) Law no. 11 of 2020 concerning Job Creation. These four laws were declared by the Constitutional Court to be contrary to the 1945 Constitution and all of these laws did not have binding legal force, where Law no. 11 of 2020 is conditionally unconstitutional. So it can be understood that the President's ratification of the Bill does not have any impact on the legality and legitimacy of the formation of laws.

### **Recommendation**

1) MPR need to revisit the grand design of the law-making mechanism that is in line with the original intent of the MPR to empower the DPR. The power to form laws and the legislative function of the DPR which is an inseparable unit raises the question of whether

the President's ratification of the Bill is still relevant. The shift of power to form laws to the DPR should also be followed by changes to the mechanisms that follow it so that there is coherence and consistency in the selection of constitutional doctrine in executive-legislative relations in a presidential government system. The President's ratification of the bill, which is only an act and does not have any legal consequences, does not need to be included in the law-making procedure.

2) In strengthening the system of checks and balances in the Indonesian legislative system, MPR is necessary to reorganize the institutional relationship between the legislative-executive bodies, where after the third amendment to the 1945 Constitution a new legislative body emerged, namely the Regional Representative Council (DPD). Thus the system of representative institutions shifted to bicameral. The DPD as a regional representation that does not come from a political party is expected to act as counteract in the DPR-President relationship which is dominated by political parties that have the potential to create oligarchy or despotic. This can be a strengthening of representative institutions to become strong bicameralism. So that the resulting law is more aspirational and inclusive, especially for people who are vulnerable to the law. Broader political participation will increase political efficacy.

The shift in power to form laws to the DPR will of course also bring changes to the legal framework (*kervorm*) of the Law. The position of legislator who has been with the President should be shifted to the DPR, or the DPR and DPD if there is a strengthening of the legislative function of the DPD that is balanced with the DPR. The legislator body should make an amendment to the preamble of the Law. Likewise with legislation, to be in the legislative environment which is monitored by the Legislative Body (*Badan Legislasi*) whose existence is an embodiment of the spirit of the Constitution which stipulates that the DPR as the holder of the power to form laws

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### **Laws and Regulations**

1. Association of Secretaries General of Parliament, Constitutional and Parliamentary Information, 3<sup>rd</sup> Series, No. 16911st Half-year-1995, Forty-fifth year, p. 5: The Government comprises the Prime Minister, the Ministers and, as the need arises, the Secretaries of State. The Prime Minister is appointed by the President of the Republic. The Ministers and the Secretaries of State are appointed by the President of the Republic on the proposition of the Prime Minister.
2. British Constitution, Article 52.1, The legislative power in the United Kingdom is vested in Parliament and the Assemblies.
3. British Constitution, Article 34.1.1, There is established by this Constitution the office of Head of State of the United Kingdom, which is held by Her Majesty Queen Elizabeth II and Her Heirs and Successors.
4. British Constitution. Article 36, Duties of the Head of State. 36.1 The Head of State shall – (4) signify Assent to all Bills which, in accordance with this Constitution and the law and custom of Parliament, have passed through their stages in Parliament and are presented to the Head of State for Assent;
5. British Constitution. Article 40, The executive power in the United Kingdom. 40.1 The executive power for the United Kingdom is vested in, and, subject to this Constitution, shall be exercised by, the Government of the United Kingdom. 40.2 There is established by this Constitution a Government for the United Kingdom, which shall comprise – (1) the Prime Minister; and (2) the members of Parliament appointed as the Ministers of the Government.
6. French Constitution 1958, Article 6, The President of the Republic shall be elected for a term of five years by direct universal suffrage. No one may hold office for more than two consecutive terms. The manner of implementation of this article shall be determined by an Institutional Act.
7. French Constitution 1958, Article 8, The President of the Republic shall appoint the Prime Minister. He shall terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government. On the recommendation of the Prime Minister, he shall appoint the other members of the Government and terminate their appointments.
8. French Constitution 1958, Article 20 The Government shall determine and conduct the policy of the Nation. It shall have at its disposal the civil service and the armed forces. It shall be accountable to Parliament in accordance with the terms and procedures set out in articles 49 and 50.
9. French Constitution 1958, Article 0, The President of the Republic shall preside over the Council of Ministers.
10. French Constitution 1958, Article 24, Parliament shall pass statutes.
11. Indonesia, Decision of the Constitutional Court of the Republic of Indonesia No. 17/PUU-XVI/2018.
12. Indonesia, Putusan Mahkamah Konstitusi No. 25/PUU-XIII/2015.
13. Indonesia, Constitutional Court Decision No. 85/PUU-XI/2013.
14. Indonesia, Decision of Constitutional Court RI No. 91/PUU-XVII/2020
15. Service Des Affaires Internationales Et De Defense, The National Assembly In The French Institutions, Paris, Februari 2013, p. 205: Bills initiated by the Prime Minister are called “projets de loi” or Government bills, whilst those initiated by parliamentarians are referred to as “propositions de loi” or Members’ bills.
16. US Constitution, Article I. Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
17. US Constitution, Article 1, Section 7, para 2: Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.



## RIGHT AND OBLIGATIONS OF NOTARIES AS PROTOCOL HOLDERS IN PROVIDING COPIES OF DEEDS TO INTERESTED PARTIES

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Received: 12. 17. 2021

Accepted: 01. 27. 2022

**Abstract.** Notary protocol is part of the notary office administration which has a very important function and role so that notaries can carry out their positions properly. Notary protocol is a collection of documents constituting state archives which must be kept and maintained by a notary in accordance with statutory regulations. This research raises the formulation of the problem as follows: 1) What are the rights and obligations of the notary holder of the Protocol in providing a copy of the deed to interested parties? 2) What is the legal consequence, for the Notary holding the protocol in issuing a copy of the deed, whose minimum document is not fully signed by the parties, and/or witnesses, and/or the Notary Public? This research uses normative legal research, because there is a vacuum of norms regarding the Rights and Obligations of Notary Protocol Holders in Providing Copies of Deeds to Interested Parties. Research using this normative juridical method using the statutory approach, the Conceptual Approach and the Case Approach. Legal materials used are primary, secondary, and tertiary legal materials. An analysis of legal materials is also carried out using several analysis techniques, namely: identifying facts, collecting legal materials, analyzing legal issues, arguing, and providing prescriptions. The results of this study indicate that the Rights and Obligations of the Notary Public Protocol Holder in Providing Copies of Deed to Interested Parties, the Notary is entitled to receive honoraria for legal services rendered to interested parties, both the parties and one of the parties. The amount of honorarium for the notary holder of the protocol is not specified in the applicable regulations, this usually refers to the type of deed he makes.

**Keywords:** *Rights and obligations, protocol holder notary, copy of deed, incomplete signatures of the parties or witnesses, and/or notary public.*

**Rezumat.** Protocolul notarial face parte din administrarea biroului notarial care are o funcție și un rol foarte important pentru ca notarii să-și poată îndeplini funcțiile în mod corespunzător. Protocolul notarial este o colecție de documente care constituie arhivele statului care trebuie păstrate de către un notar în conformitate cu reglementările statutare. Această cercetare ridică formularea problemei astfel: 1) Care sunt drepturile și obligațiile

notarului titular al Protocolului în furnizarea unei copii a actului către părțile interesate? 2) Care este consecința juridică pentru Notarul care deține protocolul în eliberarea unei copii a actului, al cărui document minim nu este semnat în totalitate de părți, și/sau de martori, și/sau de Notarul Public? Această lucrare utilizează cercetarea juridică normativă, deoarece există un vid de norme privind drepturile și obligațiile titularilor de protocol notarial în furnizarea de copii ale actelor către părțile interesate. Cercetarea aplică abordarea statutară, abordarea conceptuală și abordarea cazului. Sunt utilizate materiale juridice primare, secundare și terțiare. O analiză a materialelor juridice este, de asemenea, efectuată în baza mai multor tehnici de analiză, și anume: identificarea faptelor, colectarea materialelor juridice, analiza problemelor juridice, argumentarea și furnizarea de prescripții. Rezultatele acestui studiu indică Drepturile și Obligațiile Notarului Public Deținător de Protocol în furnizarea de copii ale actului către părțile interesate. Notarul este îndreptățit să primească onorari pentru serviciile juridice prestate părților interesate, atât părților, cât și uneia dintre părți. Quantumul onorariului pentru notarul titular al protocolului nu este specificat în reglementările aplicabile, acesta se referă la tipul de act pe care acesta îl face.

**Cuvinte cheie:** *Drepturi și obligații, notar titular de protocol, copie act, semnături incomplete ale părților sau martorilor și/sau notar public.*

### **Introduction**

As we have seen, the provisions in Article 1868 of the Civil Code (KUHPerd) are the basis for public officials, namely Notaries who are authorized to make authentic deeds. Evidence in general according to the provisions of Article 1866 KUHPerd is also stated in Article 1867 KUHPerd that proof by writing is carried out in authentic writings or by handwriting. A rule of law has the principle of guaranteeing certainty, order and protection of the law which has the essence of truth and justice. The existence of legal certainty, order and protection can be seen in the traffic of laws of life in society which requires evidence that clearly determines the rights and obligations of a person as a legal subject in society. Laws were made to regulate human life as social beings. In society the law has an important role to play in creating and maintaining security and order.

In social life, legal certainty is needed, including in the public service sector which is currently growing along with the increasing need for the community itself for the existence of a service, this has an impact on the increase in the field of notary services. In the service sector, Notaries are given part of the authority by the State to serve the public in the civil sector, especially the making of authentic deeds, and are also given the obligation by the State to become holders of Notary protocols who have entered retirement, Notaries who have passed away, Notaries who have been dismissed with respect or not with respect. Notaries have been entrusted with assisting the public in making authentic deeds in accordance with their functions and objectives.

Generally, the retirement period of a profession, which ends at an average age of 65 years, also applies to the notary profession. Notary who is about to enter retirement, is obliged to notify in writing to the Regional Supervisory Council (MPD) the expiration of the term of office and at the same time propose another notary as the protocol holder within 180 (one hundred and eighty) days or no later than ninety (90) days before the notary public. The person concerned has reached the age of sixty-five (65) years and cannot be extended (regulations of the ministry of Law and Human Rights No. M.01-HT.03.01 Year 2006,



concerning Terms and Procedures for the Transfer and Dismissal of Notary Public, Article 28 paragraph (1).

The Regional Supervisory Council (MPD) appoints another notary as the protocol holder and submits a letter of appointment to the Minister cq. Director General within fourteen (14) days from the date of receipt of the proposal. If the Regional Supervisory Council (MPD) does not receive a letter of proposal for the appointment of another notary as the protocol holder within fourteen (14) days, the Regional Supervisory Council (MPD) has the authority to propose another notary as the protocol holder to the Minister cq. Director General (regulations of the ministry of Law and Human Rights No.M.01-HT, 03.01, 2006 concerning Requirements and Procedures for the Transfer and Dismissal of Notaries, Article 28 paragraph (2) Paragraph (3) Paragraph (4) and Paragraph (5) [1].

Another notary public notary protocol recipient who is obliged to keep the deed is not responsible for the content of the notary protocol deed he receives. Notaries are directly obliged to the Notary protocol. The death of a notary, apart from leaving problems related to pending work, of course, will also leave other problems related to the notary protocol.

Deeds have the power of proof as deeds under hand with regard to the evidentiary value of a piece of evidence. Underhanded deeds have the power of proof as long as the content and signature included in them are acknowledged by the parties. If one of the parties denies it, the value of proof is left to the judge. A Notary Deed that has the power of proof as an underhand deed can occur if it does not fulfill the provisions as referred to in Article 1869 BW, namely because:

1. The public official concerned is not authorized.
2. Do not have a public official concerned.
3. Defects in shape.

Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN) which states that a Notary is a public official who is authorized to make authentic deeds and has other powers as referred to in Article 15 UUJN. In carrying out his duties and positions, a notary must be guided normatively by the rules of law relating to all actions to be taken which will then be stated in a deed [2]. Acting based on applicable legal rules will certainly provide legal certainty to the parties, that the deed made before or by a notary is in accordance with the applicable legal rules, so that if there is a problem the Notary deed can serve as a guideline for the parties.

Notary is a profession that has special expertise in a special education and training, this requires the Notary to have extensive knowledge and responsibility to serve the public interest. A Notary has guidelines or guidelines in carrying out his position, namely the Code of Ethics and UUJN. The professional code of ethics regulates Notary internally and UUJN externally. In the Code of Ethics, every Notary who carries out his position must not conflict with the regulations made by the competent authority. The Notary Code of Ethics is a moral code determined by the association of the Indonesian Notary Public Association based on a congress decision of the association and/or which is determined and regulated in laws and regulations and is applicable and must be obeyed by individuals and all members of the association and all people who carry out the duties and positions of a Notary. When carrying out their duties, the Notary must uphold and uphold the dignity of his profession as a position of trust and honor.

In the case of a Notary as the protocol holder who has been appointed by the local Regional Supervisory Council (MPD) and the Notary on his own accord and voluntary. The storage of protocols by the Notary who holds the protocol is an effort to maintain the legal age of the Notary's deed as perfect evidence for the parties or their heirs regarding all matters contained in the deed. So that if there is a Notary who is retired or dies, it is still kept through the Notary protocol [3]. The definition of the Notary protocol in Article 1 number 13 UUJN: "Notary Protocol is a collection of documents which is a state archive that must be kept and maintained by a Notary in accordance with the provisions of the legislation. In the storage of the notary protocol, a careful process is needed so that the notary protocol is not scattered, lost or damaged. The obligation to keep the notary protocol for a period of 25 (twenty five) years. The next obligation of the notary is to submit a report on a list of activities related to the preparation of deeds, letters, and documents which are the authority of the notary every month to the Regional Supervisory Council (MPD) in the work area of the notary concerned and specifically regarding wills to be reported to the Central Register. The will of the Ministry of Law and Human Rights of the Republic of Indonesia.

The protocol belongs to the community, does not belong to the notary who made the deed, and also does not belong to the notary who is assigned/appointed by the Minister of Justice to keep it. A person who keeps a document in the protocol of a notary public generally knows that a document is safe in the hands of a notary public [4]. The large number of recording activities by the notary raises its own problems in terms of storage. The retention period for these archives if they comply with the regulations regarding company documents is at least 30 years. This period of time is not short and along the way there is often a risk of damage or even loss.

There are so many deed archives (*minuta*) that must be kept and maintained by the Notary Public, has created separate problems for the Notary, not only the Notary who is still in his service period but also up to the next successor notary. The Regional Supervisory Council is not able to store thousands of notary protocols that are over 25 years old in the Regional Supervisory Council office because the Supervisory Council itself does not have an office to store these documents because the MPD has to provide facilities for that and of course it will cost a lot of money so that the notary's protocols are kept at the office of the notary concerned. Constraints faced by protocol holders, namely the issue of where to store protocols, lack of time for MPD to go directly to monitoring the activities of notaries in each of its offices which are spread quite a lot in its area. It is an obligation for the MPD to check the notary protocol periodically at least 2 times a year. The concept of transferring the notary protocol to the protocol holder is in accordance with what is mandated in the Notary Position Regulation (PJN) by producing a Notary Protocol Handover Report witnessed by the local Regional Supervisory Council (MPD). With the rights and obligations of Notary protocol holders not yet regulated in the laws and regulations, the authors are interested in proposing the formulation of the problem as follows:

1. What are the rights and obligations of the notary holder of the Protocol in providing a copy of the deed to interested parties?.
2. What is the legal consequence, for the Notary who holds the protocol in issuing a copy of the deed, whose minimum deed is not complete, the signatures of the parties, and/or witnesses, and/or Notary?

## Research Methods

Research is a principal means of developing science or technology. This is because research aims to reveal the truth systematically, methodologically, and consistently. The research method is one of the important factors that support a research process, namely in the form of solving a problem to be studied, where the research method is a procedure or steps that are considered effective, efficient and generally for collecting, processing and analyzing data in order to answer problems that are will be researched [5]. The function of the research method is a tool to find out a problem to be studied, both social sciences, law science, and other sciences. Therefore, the objects and types of research will determine the function of a study [6]. The type of research used to solve this problem is a type of normative legal research or doctrinal legal research, also known as library research or document study. This research departs from the absence of norms in UUJN in the absence of regulations governing the rights and obligations of Notary Protocol Holders.

The types of approaches used in this research are:

The statutory approach (The Statute Approach), which is an approach carried out by examining all laws and regulations relating to the issues discussed, the Conceptual Approach, which is an approach that departs from the views and doctrines developed in In law, the Case Approach is used to build legal arguments against cases that are related to the rights and obligations of Notaries as Notary Protocol Holders and their legal consequences.

Sources of legal materials used in this paper use three sources of legal materials, namely: primary sources of legal materials, sources of secondary legal materials, and sources of tertiary legal materials. The legal materials used in this paper were obtained through the collection of legal materials which were carried out by means of library research techniques. Literature study is the study of written information about law that comes from various sources and is widely published and is needed in normative research.

Legal construction analysis is used because of the absence of norms in UUJN, namely the absence of regulating the rights and obligations of notary protocol holders. The need for legal construction that has not been formed in the UUJN and the legal consequences of the protocol holder in terms of issuing a copy of which the minuta deed is incomplete, the signatures of the parties, and or witnesses, and or a notary.

Associated with the legal construction produced based on a judge's decision is a concrete event that can fulfill the demands of justice and benefit justice seekers. Even though the value of the sense of justice and benefit is a very relative measure. The fair value requires that legal events be treated equally, while the measure of the usefulness value lies in the usefulness of law for both justice seekers, law enforcers, legislators, government administrators and the wider community [7].

According to Rudolph von Jhering, as quoted by Ali, there are 3 main requirements for carrying out legal construction, namely: first, legal construction that must be able to cover all areas of positive law. secondly, in the making of construction there should be no logical contradiction in it or it should not refute itself. Third, the construction reflects the beauty factor, namely the construction is not something that is made up and the construction must be able to provide a clear picture of something [8].

The construction of this law can be done using logical thinking:

1. *Argumentum per analogy* or often called analogy. In analogy, different events are similar, similar or similar which are regulated in the same law.

2. Legal narrowing/legal concretization. In a legal narrowing, general regulations are applied to specific legal events or relationships with characteristic explanations or constructions.

3. Argumentum a contrario or often called a contrario, namely: Interpreting or explaining laws based on the notion of concrete events governing events regulated in law. Based on this, it is related to the problems that the author took, in terms of notary protocol obligations, firm and clear laws and regulations that govern it are needed so as to provide a legal theory. The theories used in this thesis research are:

proven legally and correctly in making the deed fulfills the elements of civil error and criminal act. Specifically, criminal sanctions against Notaries are not regulated in UUJN, because the duties and functions of a Notary's office are basically in the realm of administrative law and civil law.

Kranenburg and Vegtig argued that regarding the issue of official accountability there are two underlying theories, namely:

1. The theory of fautes de service, which is a theory which states that losses to third parties are borne by the agency of the official concerned. In its application, the losses incurred are also adjusted for whether the error committed is a serious error or minor errors, where the severity of an error has implications for the responsibility that must be borne [9].

2. The theory of fautes personnelles, which is a theory that states that losses to third parties are borne by officials who because the action has caused losses. Liability is also determined for violations committed and the legal consequences that result. Criminal liability can also be imposed on the notary if he commits an administrative error, it is a consequence of the violation that has been committed.

## **Literature Review**

### ***Authority Theory***

Philippus M. Hadjon, presented three types of authority that originate from statutory regulations. This authority includes [10]:

1. **Attributive Authority**

Attributive authority is usually outlined or derived from the distribution of state power by the constitution.

2. **Mandate Authority**

The mandate authority is the authority that comes from the process or procedure of delegation from a higher official or agency to a lower official or agency.

3. **Delegative Authority**

Delegative authority is an authority that originates from the delegation of a government organ to another organ on the basis of statutory regulations.

Regarding the authority in the power of law in a government, Max Weber has the view that "in legal authority, legitimacy is based on a belief in reason, and laws are obeyed because they have been enacted by proper procedures" (In legal authority, legality is based on reasons belief, and obeyed the law because it has been enforced with proper procedures). In essence, sources of authority can be obtained from statutory regulations, either directly (attribution) or delegation (delegation and sub-delegation), as well as on the basis of assignment (mandate). From the theory presented above, the authority to make decisions can only be obtained in two ways, namely by attribution or by delegation. Attribution is the authority inherent in a position.

### **Legal Certainty Theory**

In theory, the state still guarantees legal certainty for the parties in the future in the event of a civil or criminal dispute as stipulated in Article 184 of the Criminal Procedure Code (KUHP). The principle of a rule of law is to guarantee certainty, order and protection of the law which has the essence of truth and justice.

The theory of legal certainty contains 2 (two) definitions, namely:

1. The existence of general rules makes individuals know what actions may or may not be done.
2. In the form of legal security for individuals from government abuse because with the existence of general legal rules, individuals can know what the State may impose or do against individuals. In relation to legal certainty, according to Gustav Radbruch, law has 3 (three) objectives oriented, namely:
  1. Legal certainty,  
Legal certainty by everyone can be realized by enacting the law in the event of a concrete event.
  2. Justice  
Justice is an expectation that must be fulfilled in law enforcement. Based on its characteristics, justice is subjective, individualistic and does not generalize.
  3. Benefits  
Likewise, on the other hand, if the emphasis is on the value of benefit while legal certainty and justice are put aside, then the law does not work.

### **Results and Discussion**

The notary whose term of office has ended, notifies the Regional Supervisory Council (MPD) in writing of his term of office and proposes another notary as the holder of the protocol. The transfer of the notary protocol certainly results in the transfer of legal responsibility from the old notary to the notary holding the new protocol. When a notary public retires or resigns from his position as a notary public, the notary deed must be held or kept by another notary as the holder of the notary protocol, and the notary holding the protocol cannot take any action, such as changing the contents of the deed. The transfer of the notary protocol certainly results in the transfer of legal responsibility from the old notary to the notary holding the new protocol.

The rights as holder of the Notary protocol are as follows:

1. The right to receive an honorarium

In issuing a copy at the request of the parties whose names are in the deed or their heirs, the Notary holding the protocol is entitled to receive an honorarium for legal services provided by the parties concerned, whether the parties, one of the parties, the heirs or their proxies. As the holder of the notary protocol, he is indeed entitled to receive an honorarium or compensation for making copies of the deed as requested. The amount of honorarium for a notary as a protocol holder is not specified in the applicable regulations.

2. The Right to Refuse Being a Witness

The holder of the Notary protocol has the right to refuse to be a witness in the trial because the notary granting the protocol has already issued a copy of the previous deed, unless there is permission from the Regional Supervisory Council (MPD) to attend the trial as

a witness, because in general testimony, it must be a judge or lawyer from both parties. ask to show the deeds that have been made previously by the notary granting the protocol.

### 3. Right to apply for a protocol deed to be destroyed

In relation to the protocol (the Notary document giving the protocol), the holder has the right to request the Regional Supervisory Council (MPD) to destroy deeds that are more than twenty-five (25) years old. Because the Regional Supervisory Council (MPD) does not have an office for storing State archives (documents), the Notary only follows the existing provisions which require that the Notary Protocol be held by a Notary Public who receives the Protocol at the Notary's office who is appointed as the holder of the Protocol.

### 4. Right to Refuse to Issue Copies

It is possible that the notary providing the protocol has previously issued a copy.

## ***Obligations of Notaries as Protocol Holders***

1. Provide a copy when someone asks for it according to the provisions

2 Store and care for it in an appropriate place.

3 The holder of the notary protocol is obliged to maintain the security and confidentiality of the deed and its existence (existence).

4 Come and face it if there is a lawsuit (civil or criminal) against the Notary who made it, which is addressed to the Notary holding the protocol as a witness to show his minuta in court with the permission of the Regional Supervisory Council (MPD).

## ***Show Minuta Deed in Court***

In the case of issuing a copy of the deed, if there is a lawsuit from an interested party, the holder of the protocol is obliged to show the minimum amount of the deed at the Court with the permission of the Regional Supervisory Council (MPD). Therefore, the Notary holding the protocol really needs to get legal protection in accordance with their authority.

## ***Facing a Suit***

In practice, notaries and protocol holders are often made or appointed as defendants by other parties, who feel that the legal actions stated in the deed are categorized as legal actions or legal actions of a notary or a notary together with other parties that are also mentioned in the deed. In this matter, is it appropriate to occupy or place a Notary as a defendant in connection with the Notary deed made before or by the Notary concerned and the protocol holder as co-defendant.

As a protocol holder, in issuing a copy of the deed to an interested party it can lead to a lawsuit, namely: Civil Sector: if there is a lawsuit and charges against the protocol holder, the Judge will consider this based on the evidence submitted by both the plaintiff and the protocol holder (defendant/co-defendant ). Criminal Sector: Criminal responsibility to each party for any misuse that is threatened based on criminal provisions (for example: letter forgery, false testimony, illegal access, illegal interception, data and/or system interference, falsification of data, misuse of equipment, distribution of content, illegal, and so on).[11]

Everyone shall be presumed innocent until proven guilty in a free and honest trial in public. This human right is one of the principles in law enforcement mandated by the Criminal Procedure Code, namely: [12]

1. Presumption of innocence or presumption of innocence;

2. A person's guilt must be proven in a fair trial and impartiality;

3. The trial must be open to the public.

4. The trial must be held without interference from the government or any socio-political power

Prodjodikoro, responsibility for a person's actions usually only means that if that person commits an act that is not permitted by law and most of these acts are an act which in the Civil Code is called an act of breaking the law [13]. A Notary Public, if in carrying out his/her duties deliberately commits an act that is detrimental to one or both of the parties that are present in the drawing up of a deed and it can be known that something that is done by the notary for example is contrary to law, then the notary is not can be held accountable under Article 1365 of the Civil Code [14].

The Protocol Holder also cannot be sued based on default because the legal relationship that occurs between the protocol holder and the parties requesting a copy of the deed is not a legal relationship that occurs because of something agreed upon as is usually done by the parties in making an agreement. A notary holding a protocol is a notary who is legally authorized by the Regional Supervisory Council to keep the protocol from a notary. In practice, due to the public's ignorance of the notary holding the protocol and to what extent their responsibility has resulted in several notaries holding the protocol as witnesses, as well as defendants and defendants in court. If the notary holding the protocol is proven to have negligent acts of all his actions, then he is obliged to provide compensation to the injured parties, all of which must be accompanied by strong and accurate evidence.

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Protocol Holder Notary As a Witness, is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case which he has heard himself, has seen and experienced himself. Whereas witness testimony is one of the evidences in a criminal case in the form of testimony from the witness regarding a criminal event that he himself heard, and he experienced himself by mentioning the reasons for his knowledge (Article 1 point 27 of Law No. 8 of 1981). The notary holding the protocol is made or appointed as a witness and then upgraded to suspect status by the investigator, because the legal action that has been taken in providing a copy of the deed does not match the minimum deed or the signature of the parties, and/or witnesses, and/or notary is complete.

Notary as a Protocol Holder as a Suspect, In determining the Notary holder of the protocol as a suspect in issuing a copy of the deed, the police as an investigator must be careful, have a strong legal basis, both criminal and civil, and the public report cannot be seen with one eye, must see the legal substance of the deed made before the Notary before by the parties as a whole (agregate) and comprehensiveness as well as the position of the protocol holder who only serves as the depositor of the deeds and documents.

Notary Protocol Holder As a Convict, the Convict is "a person who is convicted of a crime and crime by a court" or "a person who has served a sentence." What is meant by a decision that has obtained permanent legal force is a court decision that decides a criminal case at the first level. that is not filed for appeal or cassation, a court decision that decides a criminal case at the appeal level that is not filed for cassation, or an appeal decision.

If a notary or protocol holder is found guilty of committing a criminal act, the Regional Supervisory Council (MPD) will propose to the Minister of Law and Human Rights to revoke his operational license. The sanctions given to the rogue protocol holders are not only those who commit serious crimes, because if they are sentenced to probation, they will be punished firmly, namely revocation of the license. The dismissal of a notary or protocol holder not only violates the law, but can also be the result of committing other disgraceful acts, such as violating religious norms, moral and customary norms, all of which will undermine the honor and dignity of the notary's office.

The elements of a criminal act include:

- a. Deeds (human)  
Actions are actions and events caused by these acts, human actions in the elements of a criminal act is behavior plus events caused by the behavior [15].
- b. Fulfill the formulation of the law (formal requirements)  
An action can be said to be a criminal act if it has fulfilled the formulation or elements contained in the regulation. This comes from the legality principle "nullum delictum nulla poena sine pravia lege poenali"
- c. It is against the law  
In addition to the two elements above, in order to be categorized as a criminal act, it must also fulfill the third element, namely the element against the law, this element is an absolute element of a criminal act.

#### Indemnity for Negligence

Compensation is to pay all losses due to the destruction or damage of goods belonging to the creditor due to the negligence of the debtor. To demand compensation, there must be a collection or (summons) in advance, except in certain cases that do not require a warning. If the notary holding the protocol is proven to have negligent acts of all his actions, then he is obliged to provide compensation to the injured parties, all of which must be accompanied by strong and accurate evidence. There are several things that the holder of the protocol can be asked for compensation for negligence in keeping the notary protocol, including:

1. Loss of deed minuta;  
As a result, the storage place for the minuta deed is not good and inadequate, resulting in the loss of the certificate.
2. Minuta deed is in a damaged condition so that the substance cannot be read;
3. In issuing a copy there is a possibility that the substance (content) does not match or equals the essence;



4. The holder of the protocol in providing a copy is not careful in issuing a copy where the minimum amount of the act is not signed by the parties or witnesses or a notary.
5. Employees who hold the protocol sometimes make copies of the protocol and give it to unauthorized persons.

In accordance with Article 1365 of the Civil Code, it is explained that every act violating the law, which brings harm to another person, obliges the person who due to his wrongdoing the loss, to compensate the loss. In connection with what is explained above, the protocol holder should pay attention to the above matters to reduce negligence so as not to be trapped by this article.

### Conclusion

From the results of the discussion of this thesis research, it can be concluded several things regarding the rights and obligations of the notary holder of the protocol in providing a copy of the deed to interested parties, which in the provisions of the Law on Notary Position have not been regulated so that there is a norm vacuum. The rights of the Notary Protocol Holder are as follows: Refusing to be a witness in the event that the notary concerned has submitted a copy of the deed, Receiving an honorarium in handing over a copy of the notary's minuta, Refusing to issue a copy, if it is the signature of the parties/one of the parties and/or witnesses and/or incomplete notaries, refuse and ask the MPD to issue a copy of the incomplete signature of the Minuta, have the right to no longer hold the protocol and return the notary protocol to MPD for certain reasons. Meanwhile, the obligations of the notary protocol holder: care for and maintain the protocol and show the minimum deed of a notary in court if necessary in a civil trial, keep and care for it in an appropriate place, maintain security and confidentiality of deeds and documents, face a lawsuit (civil or criminal) against a Notary who make it, which is addressed to the protocol holder. The legal consequence for the Notary who holds the protocol in issuing a copy of the deed, whose minimum deed is not complete, the signature of the parties or witnesses or Notary, namely the notary holder can be a defendant, witness, suspect or convict.

From the problems that the author has conveyed, the authors submit suggestions regarding this writing to: the government together with the People's Representative Council of the Republic of Indonesia (DPR RI) in terms of making a Law on Notary Position (UUJN) in the future must be able to provide legal protection for protocol holders because protocol holders only keep documents (minuta deeds) and their documents, so as to avoid civil lawsuits and criminal reports, the Regional Supervisory Council (MPD) should coordinate with the Ministry of Law and Human Rights (HAM) both in the region and in the ministry. (the center) should provide facilities for storing state deeds (documents), especially notary deed documents, so that the confidentiality of the minimum amount of the deed is maintained, safe from natural disasters and the existence of such state documents.

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## EFFICIENCY CONCEPT REGARDING LAW ENFORCEMENT ACTIVITY BY THE PUBLIC AUTHORITIES

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Received: 01. 10. 2022

Accepted: 02. 14. 2022

**Abstract.** A complex approach in the field implies exploring, on a theoretical level, of determining components which influence the efficiency mechanism of law enforcement activity by public authorities. Therefore, the objective of this article is to determine a coordinated and well-organized mechanism of law-appliance process, which would generate a higher efficiency of law enforcement activity by public authorities, as well as defining its concept. Thus, the implementation of the analytic method, along with the comparative one, led to a study of the highlighting various meanings of the notion of “efficiency”, mandatory components of efficient law enforcement activity, distinguishing principles, such as general ones. As a result, the concept of Efficiency of law enforcement activity by public authorities was defined. Law-appliance efficiency is attained due to the qualitative achievement of the complete set of actions regarding application of law, thus, in case any of the constituent elements of this activity certain drawbacks are allowed, then even the most efficient and appreciated norm will not produce the necessary effect.

**Keywords:** *law-appliance, public authorities, efficiency, concept, correctness, law enforcement, objective.*

**Rezumat.** O abordare complexă în domeniu presupune o cercetare la nivelul teoretic al componentelor determinate, care influențează mecanismul eficienței activității de aplicare a dreptului de către organele autorităților publice. În acest context, scopul articolului este de a determina acel mecanism coordonat și bine organizat al procesului realizării prevederilor juridice, ce ar contribui la eficientizarea activității de aplicare a dreptului de către autoritățile publice și formularea nemijlocită a conceptului acesteia. Astfel, prin intermediul metodei analitice și celei comparative a fost realizat un studiu cu elucidarea diverselor interpretări ai termenului „eficiență”; componentelor obligatorii ale unei activități eficiente de aplicare a dreptului; evidențierea principiilor ca factorii principali ce influențează activitatea de aplicare a dreptului etc. Ca rezultat, a fost formulat conceptul Eficienței activității de aplicare a dreptului de către autoritățile publice. În urma celor relatate, concluzionăm că eficiența aplicării dreptului este obținută rezultatului realizării calitative a întregului complex ale activității de aplicare a dreptului, dacă într-un anumit element constitutiv al acestei activități

se admit careva neajunsuri, atunci chiar și cea mai eficientă și reușită normă nu va aduce efectul necesar.

**Cuvinte-cheie:** *aplicarea dreptului, autoritățile publice, eficiența, concept, corectitudine, aplicarea legii, obiective.*

### Introduction

Law enforcement activity is regulated within a permissive legal regime via imperative legal means of executive value and protection in a strictly determined manner. The legal aspect of law enforcement is reflected in law-appliance forms which make use of special procedural legal means of strictly formal nature. Such a formal way of law enforcement is directed, primarily, to ensure observance of participants' subjective rights and obligations in the field in compliance with material law norms, and secondly, to efficiently enforce law-appliance within strictly determined legal procedures and procedural norms in order to reach rapid and just solutions for legal issues.

In a democratic environment, application of law by public authorities needs to be both efficient and legal, and these characteristics cannot be accepted separately as they are indispensable. Thus, law-appliance efficiency cannot be favored to the detriment of legal standards.

The application activity is a means for achieving goals set for the law. Thus, "the goals of law-appliance activity, as mentioned by E.P. Shikin, are predetermined by the regulatory basis of legal regulations mechanism, which cannot have any goals disallowed by law" [1, p. 9]. Thus, law efficiency, along with law-appliance efficiency, are generally and specially correlated.

While exploring the concept of *efficiency*, it needs to be noted that it belongs to a number of more general and frequently-stressed features used in any field of social activity, is also applied in various scientific fields, and is part of politicians', sociologists', philosophers', and lawyers' vocabulary. The notion of *efficiency* is regarded by the contemporary doctrine as a relation between the obtained result and its grounds, and thus it is possible to compare the given result with the costs covered to reach it – *economic efficiency*, or with the envisioned goal – *social efficiency* [2, p. 29].

In legal literature, law efficiency is interpreted as regularity, correctness, promptness, reasonability, fairness of legal norms; law optimization; level of achieving necessary legal options; level of achieving legal provisions' objectives or relation between the de-facto outcome and the social goal for which law was passed; law enforcement activity, maximum use of all methods and means within the legal norms to fully achieve goals in legal practice, etc. The majority of authors who have studied this issue accept to determine law-appliance efficiency as the level of achieving the goals set by the legislator in respect to law, criminal charges, law enforcement activity [3, p. 121]. Law efficiency is its potential capacity. Due to this fact, it is worth discussing about its initial programming within the structure and direct objectives of the law. This very aspect, being a general feature, mandatory and permanent, stays unchanged and constant in both static and dynamic states, for the entire time period until the value of the law itself changes or becomes void.

Furthermore, any activity implies motion, evolution, and its success depends not only on law quality, but also heavily relies on possibilities and abilities of a given person (or group), in our case the subject of law-appliance, who creates the main element of law-appliance system. Of course, the potential of those dealing with application of law differs, thus the

efficiency range of law-appliance is dynamic and by no means permanent, stable, or constant. The organic bind between law and law-appliance practice is described by the fact that “law and law enforcement authorities can be regarded as two models of interaction: logics and dynamics (of running, activity), each of them ensuring the other’s activity” [4, p. 171].

Thus, law enforcement activity, along with application of a given law, also includes establishing of grounds for its application, carrying out a number of actions, methods and means to ensure exact and productive application of law. All of these are also linked with efficiency. Furthermore, their correct combination and choice will influence the efficiency of law-appliance in a given situation. With this in mind, it is safe to conclude that efficiency of law-appliance depends not only on special aspects of a given law, but also on the result of qualitative achievement of a complete set of actions related to law enforcement: should one constituent element of this activity lack sufficient quality level, allowing some omissions, then even the most efficient and elaborate law will not produce the necessary effect.

### **I. Law-appliance mechanism as a general phenomenon**

The circumstances described above create grounds to consider law-appliance efficiency a more general phenomenon; these being the result of law efficiency and all means, methods, processes and forms executed by the subject who applies the law according to described activity. Thus, it is not a simple sum of terms, but rather an objective synthesis of possibilities which are interdependent and interconnected.

At the same time, it is wrong to draw an impractical line between law enforcement efficiency and law efficiency, or to opt for their absolutization. As elements, constituent portions of a whole – the entire law enforcement activity, they interact with each other. The unity of these concepts can be conveyed through the fact that both law efficiency and law enforcement efficiency are established as a result of analyzing and evaluating the same consequences, the factual modification caused by the application of law. Both the content of the law and law enforcement activity are aimed towards obtaining a result of maximal efficiency.

Thus, *efficiency*, as viewed from qualitative-quantitative standpoint, deals with the outcome of law enforcement activity by public authorities, which can be disclosed during practical and general theoretic research. Therefore, according to recommended notions for the concept of *efficiency*, one can distinguish three mandatory components:

- 1) objective set to be achieved;
- 2) costs related to achieving the objective;
- 3) activity’s final result.

In other words, *efficiency* can be regarded as a certain consecutive order, in which the result defines activity’s value, with the objective being the main initial concept that describes activity’s trend and direction, while the final result is based on the initial objective [2, p. 31]. It must be stressed that the more successful the final result in the evaluation of law-appliance activity is, the higher is its *efficiency* level, and vice-versa. The objectives of legal regulations must be known not only to establish *efficiency*, but also to determine its level. Only by exploring the relation between law-appliance results and their direct objectives one can appreciate the efficiency of law enforcement activity. In legal literature it is mentioned that “Main measurement unit for evaluating law efficiency is that objective, for the achievement of which the law was passed” [5, p. 6].

In our opinion, such position is relevant for law enforcement activity. The efficiency of this activity derives from achieving its objectives because the foundation for law enforcement activity and also for that of law creation lies in strictly determined objectives, helpful to society and imposed by objective needs of social evolution. It is when a model or an ideal comes true that one can state that the positive effect was achieved: the more complete is achieving such a result, the higher is the *efficiency*. Efficiency level can be equally related to law and law enforcement activity. The reason behind it is that within law enforcement activity, the real values of the law are not denaturated, reduced, but rather an optimal version of legal means intervenes to bring along positive influence.

Laws are enacted for their further application. When elaborating laws, the lawmaker takes into consideration major social interests, aims to ensure a positive development of interpersonal relations, to protect social values [6, p. 175]. Laws are elaborated for their further application, thus there is the same intention of meeting major social interests, protecting established values and strengthening interpersonal relations by ensuring their enforcement by means of state guarantees [7, p. 107]. The three action categories of law (time, space and subject-oriented) define law efficiency, law in general, while the level of achieving the objective of legal enforcement is the result of social and politic influence of law, etc. Discordance among these criteria, urgent application of certain bulky legal norms of major importance may create multiple difficulties in public authorities' activity, while in solving certain practical issues there may appear unfavorable situations for a number of subjects of law, etc. [8, p. 253].

Law-appliance activity has its own objective, a rather determined one, and namely – ensuring correct and timely application of the law that would suggest an optimal solution and a beneficial influence on adequate social relations. Thus, law-appliance activity has its specific objectives, which contribute to objective achievement for a given law, in conditions of private manifestation.

## **II. Law-appliance efficiency**

The objectives which the lawmaker has to achieve are being legally materialized depending on the corresponding duties of public authorities. Thus, fighting crime and maintaining public order are part of the duties of preventing, investigating and discovering crimes. This objective, of current importance for the entire community, was attributed legal norms by the lawmaker and was allocated into duties of certain public authorities. For as long as this legal system is in force, we can discuss about law enforcement efficiency. In case of failure or lack of coordination of public authorities' activity with the new objectives, their activity will have a lower *efficiency*, namely the law-appliance activity, regulated by the bylaws of the abovementioned public authorities.

It is worth noting the complexity of establishing law-appliance efficiency by the public authorities. This is because the state mechanism has a complex structure, where each public authority has its own clear objectives; therefore, it becomes necessary to coordinate various objectives among each other, as well as with the common objectives of the administrative system in general. Thus, establishing hierarchy of objectives is one of the conditions of evaluating law-appliance efficiency. The objectives of law-appliance efficiency can be conventionally divided in social and legal ones, and they may not always coincide. Such a division, to some extent, will be a conventional one; however, with this in mind, it does

considerably simplify solving issues related to separating legal and social efficiency of law-appliance activity.

During the evaluation of law-appliance efficiency one must also take into account quantity of resources used within the process of law-appliance (material, social, human resources, etc.) The concept of *efficiency* also implies a certain comparative element. At any time it is necessary to know which methods and means will generate the maximal result with a minimal input of resources. Therefore, it is relevant to include in the *concept of law-appliance efficiency* the element which determines the *necessary means* for achieving the objectives, and establishes the *evaluation* of obtained results in achieving them.

The means necessary to achieve the objectives are diverse. A part of them represent fund expenses, without them the concept of *efficiency* cannot correspond to its destination. Moreover, fund expenses must be directly proportional to achieved results, meaning that vital importance will be placed upon the *principle of achieving maximal effect with minimal expenses*. That is why, the *economy*, being a factor of choice “among the options granted by law” of the most reasonable and economically sound for the state means and methods for achieving legal objectives, must be viewed as an index of *law-appliance efficiency*. Therefore, the fewer the expenses and the better the results in such conditions, the more efficient will be the very activity of law-appliance.

Regulation will be more appreciated when contributing to or being directed to averting and excluding unjustified expenses. Law-appliance practice knows many such cases. There are also numerous cases when perspectives of law creation are determined by perspectives of bearing some excessive expenses, which go beyond admissible ranges. Of course, in such cases it is not advisable to merge or to correlate *law efficiency* and *law-appliance efficiency* [9, p. 135]. When examining, for instance, the field of criminal proceedings branch, quite often there will be situations when due to various non-objective reasons, repeated interrogations are allowed, thus parting away from procedural norms, along with experiments, searches, costly examinations, and also additional research and repeated legal examinations of criminal cases because of imperfections and mistakes made during the initial research. All of these situations cause material and spiritual expenses, and most often the fault lies on law subjects working on a given criminal case. The level of reaching objectives related to law adjustments can be rather high, however due to increased expenses during law-appliance process, it cannot be considered efficient.

When law-appliance activity lacks expenses, or when they do not go over acceptable limits (established by lawmaker), both law and actions are of equally high efficiency. In analogous situations, law efficiency unifies with law-appliance efficiency into a whole. Such a coincidence is not permanent, though the dynamics of any legal mechanism relies on a normal and productive functioning of its mechanism of influence, yet the study of law-appliance practice confirms the presence of some essential errors, which lead towards major discrepancies between law-appliance result and its objectives; and the larger this discrepancy is, the more inefficient law-appliance activity becomes as well. Lidia Barac states: “economy of law relies on correlation between the real achieved result and means used to achieve it (material resources, human and temporal resources)” [10, p. 62]. In the light of the aforesaid, it must be noted that in legal literature law-appliance efficiency, most of the times, is a correlation between results of individual regulation and objective of law [2].

When evaluating law-appliance efficiency, one must note that some legal norms, laws are often directed towards achieving several objectives simultaneously. We may also

encounter complex legal institutions, whose norms are directed towards a simple or complex objective, where stressing the objective of a certain legal norm does not make sense. In other words, *law efficiency* implies correlation between the done deed, meaning the achieved result, and the intended objective within the process of passing a given law. Thus, efficiency expresses the correlation between the real result and the objective of a given law. Sometimes, efficiency also means the level at which a subject follows the legal provisions contained in a law. From a theoretical standpoint, it allows us to better perceive the structure of law, its intellectual construction, while in practice, it contributes to the process of designing and elaborating law, making it lawmaker's duty to elaborate a law, whose content would aim to achieve, to the highest extent, the three distinctive qualities: efficiency, utility, and economy [10, p. 62 - 63].

In a way, it is possible to highlight law-appliance efficiency within inter-branch legal institutions, branch of law, legal institutions, and law-appliance efficiency of certain laws. However, law-appliance efficiency within a branch or legal institution is not simply equal to the sum of efficiencies of certain legal norms' application. State's main goals and objectives are recognizing, respecting and offering state guarantees on adhering to persons' and citizens' rights and obligations in compliance with the principles and norms unanimously recognized by the rules of international law, and pursuant to art. 1, par. 3 of the Constitution of the Republic of Moldova – "Governed by the rule of law, the Republic of Moldova is a democratic State in which the dignity of people, their rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values that shall be guaranteed." [11]. Therefore, the above provisions must determine the functionality grounds for all branches of power, central and local public authorities. No public authority, no public servant is allowed to make a decision or to pass a normative act, whose content would contravene citizens' rights, freedoms, and obligations provided by the Constitution.

Another state's objective, which is also one of law-appliance efficiency, is ensuring the rule of law, being an objective and subjective state of social life, characterized by coordination, internal concordance; regulation of the system of legal relations based on normative provisions, principles of justice and legitimacy, as well as subjective rights, legal obligations and democratic, humanist, ethic and moral freedoms of all subjects of law. "The rule of law is the legal result the state tends to achieve." [12, p. 224]. It is the realization of law, which determines and regulates social life, the result of the manifestation of law and legality, as well as the will and the realized interests of the state power and of the society. The rule of law represents „the core of the social order, the fundamental condition of social equilibrium, the guarantee of realization of essential rights of society members and normal functioning of institutions." [13, p. 484]. An element of the rule of law is the rule of legal system. The rule of legal system does not exist without legality, and legality decreases when flaws appear in the rule of law.

When analyzing the role of law enforcement agencies, one must not overestimate and absolutize their place and role since the efficiency of these agencies depends on some objective conditions. "We notice that the rule of legal system is the final outcome of legality, that is, realization of and compliance with legal provisions. Namely the rule of legal system, or rule of law, is the objective of legal regulation, and namely, for its realization, laws and other normative acts are elaborated. The level of person's freedom, the level of ensuring



observance of human rights, the level of democracy, etc., depend on the level of legality and rule of law" [8, p. 479].

It would be wrong to consider as efficient the law-appliance activity by public authorities in case the objective of the law is achieved by any means. The correct choice of methods is vital for the realization of legal regulation objectives, as well as for ensuring efficiency of law-appliance in general. Underestimation, wrong choice of methods, which have their origin in the normative basis of legal regulation, lead to errors in law enforcement, and to a decrease of law-appliance efficiency on behalf of public authorities [12].

### **III. Law enforcement by public authorities**

As a result of doctrinal investigations carried out in the given section, here are some conclusions related to efficiency of the activity of law enforcement by public authorities.

Law-appliance efficiency is attained not just by following specific characteristics of legal norms, but is also the result of qualitative achievement of the complete set of actions regarding application of law, thus, in case any of the constituent elements of this activity lacks sufficient quality and certain drawbacks are allowed, then even the most efficient and appreciated norm will not produce the necessary effect. Therefore, in our opinion, *the efficiency of the activity of law enforcement by public authorities is the level of realization of objectives the lawmaker sets for a norm, it being the quickest and the most complete achievement of results for a given law, legal institution, branch of law in relation with the intended objectives and goals set by means of passing and enforcing normative acts, provided that the principles of the activity of law enforcement are respected and that they are enforced effectively.*

It is worth noting that the general principles of law-appliance, to a large extent, coincide with the general principles of law. In fact, the law is not a goal in itself, thus, it does not end at the stage of elaboration of legal norms, and is being realized in a complexity by means of principles which determine the activity of its appliance. Evidently, these principles coincide, both for the stage of elaborating law and for the stage of its application. For the activity of law enforcement in functional aspect, one can distinguish more special principles, typical for the regulation field and for the particularities of functionality of public authorities. Thus, research revealed the principles of institutional organization: *a) principle of multilateral interaction and collaboration, b) principle of subordination, c) principle of economy;* and legal principles of functioning of law enforcement activity by the public authorities: *a) principle of objective research; b) principle of legality and reasonability of law application, c) principle of competence, d) principle of necessary regulation of the legal procedure, e) principle of individualization, f) principle of publicity, g) principle of rationality.*

The analyzed principles of law enforcement activity have an interrelated connection, and, by disrespecting even one of these, the efficiency of law enforcement will be substantially decreased, it being a vital requisite of such activity. Along with complete and well-thought regulation of principles of law enforcement activity by public authorities, it will become possible to reach the highest level of efficiency for this process.

Therefore, while studying the efficiency of law-appliance activity, it is important to know which of the constitutive elements deliver positive results and which do not. It is also obvious that along with perfect functioning of law enforcement agencies, some branches of legal regulation may fail to react accordingly, and thus, lawmaker's intended result will not be achieved. That is why, without knowing the negative values and characteristics of all constituent parts, which form the law enforcement activity, it is impossible to create a clear

presentation of efficiency of both legal provisions which are being realized and law enforcement activity in general.

### **Conclusions**

In order to emphasize the law enforcement activity by public authorities, a key role is played by certain factors of both objective and subjective nature, which determine its presence. Their identification, their capitalization in organizing and functioning of public authorities, especially in the realities of the Republic of Moldova, orient us toward the theoretical, but especially practical implementation of an efficient law enforcement activity manifested by the public authorities. The efficiency of law enforcement activity is, in fact, the main indicator of organizing and functioning of public authorities, its essence being expressed by a certain comparative element. It is necessary to know which methods and means will determine the maximum result correlated to a minimum volume of consumed resources. It is, therefore, relevant, to include in the concept of law enforcement activity the element, which determines the mandatory means for achieving the objectives and establishes the evaluation of the results obtained in achieving these objectives.

In order to develop and to put into practice an activity of efficient application of legal norms by public authorities, it is appropriate to identify a system of factors which determine this efficiency. The number of highlighted factors does not need to be an exhaustive one as it shows a theoretical value of the phenomenon of efficiency of law enforcement activity, with practical realization, oriented towards establishing a real functional efficiency. Ensuring a correct realization of the highlighted factors coincides with the limits of a scientific project of increasing the efficiency of public authorities' activity. Analyzing the factors which cause appearance of deficiencies, it becomes necessary to look for and justify ways of improving law enforcement activity by public authorities. Taking into account that major reasons for committing mistakes are subjective, we believe that the benchmark would be the legal education of law enforcement subjects, developing for them a sense of responsibility for the decisions made, legality and fairness, and reliable attitude towards requirements of legal norms. This can be regarded both in a direct sense, that is, raising the standards of higher education, as well as the aspiration of the law enforcement officer to extend one's professional horizon, and also the prophylaxis of legal conscience, etc. The officer's interest in upgrading one's professional level could be triggered and streamlined by stimulating qualitative activity of law enforcement, such as introducing various rewards, but also by means of certain external factors, such as creating appropriate conditions (creating a favorable psychological environment, rationally organizing the work of law enforcement officers, using modern technical and scientific means and progressive experience, creating of computerized databases), as well as professionally recruiting candidates applying for a certain position; compliance of legal norms with the progressive development of social relations; properly organizing control over law enforcement activity (by the direct supervisors of law enforcement subjects, interdepartmental control, judicial control, etc.)

In the light of the aforesaid, we conclude that errors reduce the educational meaning of law enforcement activity and have a negative influence over the authority of subjects recruited for their expertise in the field. The negative result of the subject acting pursuant to the legal norm may create a misperception on citizens' behalf related to the orientation of the state apparatus as a whole, which will cause a significant decrease of the efficiency of law enforcement and discredit the involved public authorities.

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