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PROPOSITIONAL CALCULATION FOR EXPERT SYSTEMS IN ECONOMICS

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Abstract: *The paper presents the propositional calculation for expert systems in economics that ensure the logic for advanced programming language such as Prolog. An Expert System (ES) is a complex application (a software program) that explores a multitude of given knowledge to get new conclusions about difficult activities to examine using methods similar to human experts. An expert system can succeed in problems without a deterministic algorithmic solution. The inference engine is the one to determine all the rules that are activated, thus making the correlation between the facts base and the rule base, and then it also selects one of the rules that are activated at a given moment, which it puts into execution. Execution of a rule means the implementation of the right part of it, which may have one or more effects such as modifying the base of facts, sending messages to the operator, or transmitting signals to the outside, depending on the actions provided for in part to conclude the rule. The inference engine initiates a search in the knowledge base trying to*

solve the problem proposed by matching the left parts of the rules with the facts in the working memory and executing the rules that are enabled. ES may ask questions to the user when working when he gets stuck (he does not solve the proposed problem and cannot activate any rule) by using this dialog in the same interface. This also illustrates the difference in principle from conventional programming: the path that the inference engine will follow to reach the solution is not predetermined. It depends on the user's problem (the baseline state of the facts) and the responses the ES receives during work.

Keywords: *Propositional calculation, expert systems, business environment, programming rules, information systems.*

JEL Classification: C23, C26, C38, C55, C81, C87

1. Introduction

The statement is any linguistic text stating anything about one or more objects. Such an affirmation may or may not have any meaning. The object or objects of a statement must belong to a well-defined domain, called the reference scope of the statement. From a syntactic point of view, every statement distinguishes: the predatory part and the subject or the subjects. The subject or subjects of a statement are the object (s) to which the statement refers.

An enunciate may have all the topics determined or may have one or more indeterminate topics. Depending on the domain of reference, the same statement may be true or false, or it can not be established a truth value, that is, it is indecisive.

states:

p: "The ball is round"

it is true if the field of reference is football, it is false if the field of reference is Rugby and undecidable if the field of reference is Sport.

A statement of all determined topics is called a proposition if it is either true or false, not one and the other simultaneously. A statement with one or more indeterminate topics is called predicate if any value given to undetermined topics becomes a sentence. Undetermined topics of a predicate are called predicate variables. Depending on the number of undetermined topics we distinguish predicates with a variable, two - binary, etc [1], [5].

This statement

p (x): "x is divisible by 2" has the reference domain number theory and the predatory part consists of the text "... is divisible by ..." The statement

has two topics: "x" and "2", one of which is undetermined. We notice that by giving x values the statement becomes true or false but not one and the other simultaneously, therefore it is a predicate with a variable.

The statement p (x, y): "x is divisible by y" is a predicate with two variables having the number theory reference domain.

2. Propositional computational elements

A sentence is a statement of all determined subjects that is true or false, not one and the other simultaneously. Such sentences we call simple sentences.

A sentence may be true or false if it corresponds to a state of fact in its field of reference. The quality of a sentence to be true or false is called the truth value of that sentence.

The simple sentences are denoted by: p, q, r, … Then true sentences are assigned the value of truth1 and false proposition the value of truth 0. Starting from one or more simple propositions by applying a finite number of operators - logical connectors we get other sentences called composite sentences.

There are four basic logical operators:

¬ (read non), ∧ (read and), ∨ (read or) and → (read implies).

Let it be a proposition. The sentence obtained by placing the particle "no" in front of the predatory part of the sentence p is called the negation of the proposition p and is marked by the symbol ¬p. The negation of the proposition p is true only when p is false.

Example: "2 is the number" with the reference range the set of natural numbers.

The negation of p is ¬p: "2 is not a number" p is a true sentence, while ¬p is a false proposition. It is easy to use a truth table to verify the relationships between the truth values of the sentences [2], [3].

The truth table for ¬p depending on the truth value of p is:

p	$\neg p$
1	0
0	1

Let p, q be sentences. The sentence obtained by putting the particle "and" between the predatory parts is called the conjunction of the propositions p, q and is denoted by the symbol p ∧ q. The proposition p ∧ q is true only when both sentences are true.

Example: The sentence "2 is a par and a 3 is a number" with the reference range The set of natural numbers is the conjunction of the sentences:

p: "2 is the number"

q: "3 is the number", p is true and q is false.

The truth value of the proposition p ∧ q according to the truth values of the sentences p, q is given in the table:

p	q	$p \wedge q$
1	1	1
1	0	0
0	1	0
0	0	0

Let p, q be sentences. The sentence that is obtained by putting the particle "or" between the predatory parts is called the disjunction of the sentences p, q and is denoted by the symbol p ∨ q. The proposition p ∨ q is true only when one of the sentences is true.

Example: The sentence "8 is multiple of 2 or 5 is integer" with the reference range The set of natural numbers is the disjunction of sentences:

p: "8 is multiple of 2"; q: "5 is integer", p, q being true.

The value of the proposition p ∨ q according to the truth values of the propositions p, q is given in the table:

p	q	$p \vee q$
1	1	1
1	0	1
0	1	1
0	0	0

Let p, q propositions. The expression "p involves q" is a new sentence, called the implication of the sentences p, q. The implication of sentences p, q is denoted p → q. The implication of the sentences p, q is a false proposition when the proposition q is false and p is a true and false proposition in other cases.

Example: The proposition "x 2 ≤ 0 involves x = 0" with the reference range the set of real numbers is the implication of the sentences:

p: "x 2 ≤ 0"; q: "x = 0" being a true sentence. The expression "p involves q" also uses:

"if p then q"

"p is sufficient for q"

"q is required for p"

The truth value of the sentence p → q according to the truth values of the propositions p, q is given in the table:

p	*q*	*p* → q
1	1	1
1	0	0
0	1	1
0	0	1

The proposition q → p is called the reciprocal of the sentence p → q.

If we combine the proposition p → q with the proposition q → p, we get a new sentence which tells the equivalence of the sentences p, q. Equivalence of sentences is noted p ↔ q.

Let p, q be sentences. Equivalence p ↔q is that sentence which is true when p, q have the same value of truth and is false for the rest. The proposition p ↔q reads "p if and only if q" [4], [5].

The proposition "$x^3 \leq 0$ if and only if x ≤ 0" with the reference range the set of real numbers is the equivalence of sentences:

p: "$x^3 \leq 0$ involves x ≤ 0"; q: "x ≤0 implies $x^3 \leq 0$" being a true proposition. Note that the equivalence p ↔ q is true when p → q and q → p are true.

For the expression "p if and only if q" is still used:

"p is necessary and sufficient for q"

"if p then q, and vice versa"

The truth value of the proposition p ↔q according to the truth values of the sentences p, q is given in the table:

p	*q*	*p* ↔ *q*
1	1	1
1	0	0
0	1	0
0	0	1

We will write by A or A (p, q, r, ...), B or B (p, q, r, ...) the composite sentences or logical expressions obtained by applying different logical operators to simple propositions p, q, r, ...

A (p, q, r) :(p ∨ q) → r ...

The sentence computation studies the logical expressions of truth or false in relation to the logical values of the simple sentences that compose them.

A logical expression A (p, q, r, ...) that is true regardless of the truth values of p, q, r, ... is called tautology. (P, q, r, ...) → B (p, q, r, ...) is a tautology then write A (p, ...). If A (p, q, r, ...) ↔B (p, q, r, ...) is a tautology write A (p, q, r, ...)) Notes:

The symbol → is an operation from which we deduce the truth value of the proposition A → B while ⇒ indicates the connection between the propositions A (p, q, r, ..), B (p, q, r, ...).

The sign ↔ is an operation from which we deduce the truth value of sentence A ↔B while ⇔ indicates the relation between propositions A (p, q, r, ...), B (p, q, r, ...).

Examples of tautologies:

- the law of the third excluded: p ∨ (¬p).
- the law of syllogism: [(p → q) ∧ (q → r)] → (p → r).
- the reflexivity law: p ↔p.
- the idempotential law of the conjunction: p ∧p ↔p.
- the law of idempotency of disjunction: p ∨p ↔p.
- the law of double negation: ¬ (¬p) ↔p.
- the comutative law of the conjunction: (p ∧q) ↔ (q ∧p).
- the comutative law of the disjunction: (p ∨q) ↔ (q ∨p).
- the law of associativity of the conjunct:
- [(p ∧ q) ∧r] ↔ [p ∧ (q ∧r)]
- the law of associativity of the disjunct: [(p ∨q) ∨r] ↔ [p ∨ (q ∨r)]

De Morgan's laws:

¬ (p ∧ q) ↔ (¬p) ∨ (¬q) ¬ (p ∨q) ↔ (¬p) ∧ (¬q)
Conjunctivality Distribution Law:
- with respect to the disjunction: [p ∧ (q ∨r)] ↔ [(p ∧q) ∨ (p ∧r)]

Distributive Distribution Law:

- in relation to the conjunction: $[p \vee (q \wedge r)] \leftrightarrow [(p \vee q) \wedge (p \vee r)]$
$(p \rightarrow q) \leftrightarrow (\neg q \rightarrow \neg p)$
Demo 1:

p	$\neg p$	$p \vee (\neg p)$
1	0	1
0	1	1

Demo 2:

p	q	r	$p \rightarrow q$	$q \rightarrow r$	$(p \rightarrow q) \wedge (q \rightarrow r)$	$p \rightarrow r$	$[(p \rightarrow q) \wedge (q \rightarrow r)] \rightarrow (p \rightarrow r)$
1	1	1	1	1	1	1	1
0	0	0	1	1	1	1	1
1	0	1	0	1	0	1	1
0	1	1	1	1	1	1	1
1	0	0	0	1	0	0	1
0	1	0	1	0	0	1	1
0	0	1	1	1	1	1	1
1	1	0	0	1	0	0	1

3. The elements that define predicates for expert systems in economic systems

By predicate is meant a statement with one or more indeterminate subjects that depends on a variable or several variables and has the property that for any values given to the variables a true prophecy or a false proposition is obtained.

Observation. Whenever a predicate is defined, it must also indicate the sets in which variables take values.

Example.

The predicate p (x): "x <4, x R"

has the reference range the set of real numbers and the predatory part consists of the text "... is smaller than ..."

The predicate has two subjects: "x" and "4", of which an undetermined one is therefore a predicate with a variable [2], [6].

Example:

Let p (x, y) be the predicate "2x + y = 2". What are the truth values of the prophecies p (2,0) and p (1,0)?

The proposition p (2,0) obtained by assigning x, y the values x = 2, y = 0 is a false proposition, while the proposition p (1,0) obtained by assigning x, y values x = 1, y = 0 is a true proposition.

Exercise.

Let p (x) be the predicate "x <4, x R". What are the truths of p (5) and p (4)?

Generally, a predicate with n variables x1, x2,. . , xn is denoted by p (x1, x2, ..., xn).

Let p (x), q (x) single predicates. Using logical operators we construct other united predicates, namely:

(X), p (x) → q (x), p (x) ∧ q (x), p (x)

For example, for the predicate p (x), ¬p (x) is the predicate of which for each value x = a corresponds to the sentence ¬p (a). Legated with the notion of predicate, the notion of quantifier appears. We distinguish the following types of quantifiers:

The universal proposition of p (x) is the proposition "p (x) is a true sentence for any value of x in the reference range." Note (x) p (x) denotes the universal proposition of p (x). The sign is called universal quantifier. For the universal proposition of p (x) we also use the expressions:

"for all x, p (x)"

"for each x, p (x)".

Example. Any 10th grade student knows the number of natural numbers. The predicate is p (x): "Every student knows the number of natural numbers." The set in which p (x) is true is the X grade class. If x (x) → q (x)) is true then we use the notation p (x) ⇒ q (x) and read: "p (x) involves q (x). It is also said in this case that the predicate q (x) is a logical consequence of the predicate p (x).

Example. Considering predicates

p (x): "x = 1"

and

q (x): "x^3-1 = 0, x ∈ R"

with the set of real numbers, we have p (x) ⇒ q (x). If the sentence (x) (p (x) ↔q (x)) is true, then we will use the notation p (x) ⇔q (x). It is also said in this case that the predicates p (x), q (x) are logically equivalent.

Example. Considering predicates

p (x): "x> 0, x ∈ R"
and
q (x): "x^3> 0, x ∈ R"
with the set of real numbers, we have p (x) ⇔ q (x).

Observation. Relationships of logical consequence and logical equivalence can also be defined between n predicates, where n ≥ 2, in a similar way.

Definition. The existential proposition of p (x) is the sentence "there is at least one x of the reference range so that p (x)". The notation (x) p (x) denotes the existential proposition of p (x) and is a true sentence when there is at least one element x_0 of the reference range so that p (x_0) is true [2], [4].

The sign ∃ is called existential quantificator.
For the existential proposition of p (x) we also use the expression:
"there exists x, p (x)"
Example. If we consider the predicate
p (x): "x + 5 = 0, x R"
with the set of sets of integers, then the existential proposition of p (x) is true because for x = -5 (∃ x) (x + 5 = 0) the proposition
p (-5): "-5 + 5 = 0"
it is true.
We consider the predicate p (x) defined only for a finite number of values of the variable x, namely x1, x2,. . . , xn, then:

(∀x) p(x) ⇔ p(x1) ∧ p(x2) ∧ … ∧ p(xn)
and
(∃x) p(x) ⇔ p(x1) ∨ p(x2) ∨ … ∨ p(xn)
Taking into account the laws of De Morgan, it follows

¬ (∀x) p(x) ⇔ ¬ p(x1) ∨ ¬ p(x2) ∨ … ∨ ¬ p(xn)
and
¬ (∃x) p(x) ⇔ ¬ p(x1) ∧ ¬ p(x2) ∧ … ∧ ¬ p(xn)

The negative rules set out above also apply to the general case. So for any single predicate p (x) we have:
a) ¬ p(x) ⇔ (∃x)(¬p(x))

b) ¬ (∃x) (¬p(x)) ⇔ (∀x) (¬p(x))

Example: The predicate is considered

p (x): "(∃x ∈ N) so that x + 1 = 2" whose truth is the truth.

Her negation is the proposition

¬p(x): " (∀x ∈ N) , avem x+1≠2"

it is obviously a false proposition.

Predicate binary. Let p (x, y) be a binary predicate.

Using quantificators we can form the unified predicates:

(∃x) p(x,y) şi (∀x)p(x,y)

where y is the variable of these two predicates. From these united predicates we can form the predicates:

"(∃y)(∃x) p(x,y),(∀y)(∃x)p(x,y),(∃y)(∀x)p(x,y) şi (∀y)(∀x)p(x,y)"

Next, it we will be demonstrated how to deduct the negative laws for binary predicates, from unicast predicate denying laws.

Example:

a') ¬ ((∀)y (∃ x) p(x ,y)) ⇔ ∃ y (¬ (∃ x) p(x ,y)) ⇔ (∃ y)(∀x)(¬ p(x , y))

b') ¬ ((∃)y(∃ x) p(x , y)) ⇔ ∀y (¬ (∃ x) p(x , y)) ⇔ (∀ y)(∀ x)(¬ p(x , y))

Analogously it can be extended these results to predicates.

4. Conclusions

The propositional calculation is the base for Prolog (Programming in logic) that is a language dedicated to symbolic, non-parametric computation. Prolog programming is geared to solving problems that involve the implementation of objects and the existing relationships between them. The Prolog language is therefore useful in solving artificial intelligence and expert systems. Prolog is a high-level language. By logic programming (reasoning) it is meant to produce a program that consists of facts and relationships (logical relationships between data sets) from which conclusions are drawn [1], [3]. A Prolog program is a collection of facts and rules. Objects are represented in Prolog by symbolic names. Existing relationships between objects are defined with clauses. There are two kinds of clauses: facts and rules.y [2], [4]. A program in Prolog is a description of some existing objects and relationships between them objects. Objects are represented by symbolic names whose syntactic structure is determined by the type of objects. There are two classes of types,

elementary type and complex type. The propositional calculation may help to implement the business logic and the economic rules into Prolog programming language and then into enterprise applications.

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DISCIPLINARY LIABILITY OF CIVIL SERVANTS. ASPECTS OF THE ADMINISTRATIVE AND JUDICIAL PRACTICE

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Abstract: *This study reviews some aspects of the administrative and judicial practice regarding the disciplinary liability of civil servants, drawn by the commission of a disciplinary offence which, according to law, is the guiltily violation of the civil service duties and the rules of professional and civic conduct prescribed by law.*

The application of the civil servant's disciplinary sanction must comply with the terms and conditions provided by Law no. 188/1999 on the Statute of civil servants, as republished, as well as by the Government Decision no. 1344/2007 for the approval of the Rules of organization and functioning of the disciplinary committees. It is in the jurisdiction of the courts to verify the lawfulness of the administrative deed for the application of the disciplinary sanction in terms of compliance with the relevant regulations.

The reports on the monitoring of observance of the rules of conduct by civil servants and the implementation of disciplinary procedures prepared and published by the National Agency of Civil Servants, following the collection of data transmitted by public authorities and institutions on court solutions in case the sanctioning administrative deeds are challenged, reveal an increase in the number of cases in which the court annulled the administrative deed by which the disciplinary sanction was applied.

Even though these reports mainly contain statistical data, they are considered as monitoring tools that can lead to the improvement and increase of the civil service quality.

Keywords: *civil servant's disciplinary liability, application of disciplinary sanction, limitation period, sanctioning administrative deed, obligation to describe the deed, absolute nullity sanction, solutions of the courts*

JEL Classification: *K4, K40*

1. Preliminaries - regulation of disciplinary liability of civil servants

In our approach to analysing some aspects regarding the **disciplinary liability of civil servants**, we will refer to the provisions of *Law no. 188/1999 on the Statute of civil servants*, as republished,[1] with subsequent amendments and completions, the *Government Decision no. 1344/2007 on the Rules of organization and functioning of the disciplinary committees*,[2] as subsequently amended and supplemented, as well as the case law of the High Court of Cassation and Justice on the application of disciplinary sanctions, taking into account certain doctrinal reference points and administrative statistics published on this matter.

Law no. 188/1999, republished, as subsequently amended and supplemented, provides in Art. 77 par. (1) **the meaning of the disciplinary offense notion** as follows:

"*The guiltily violation by the civil servants of the civil service duties they hold and the professional and civic conduct rules stipulated by the law constitutes a* ***disciplinary offense*** *and entails their disciplinary liability."*[3]

1 Published in the Official Gazette of Romania, Part I, no. 600 of December 8, 1999, republished in the Official Gazette of Romania, Part I, no. 251 of March 22, 2004, republished in the Official Gazette of Romania, Part I, no. 365 of May 29, 2007.

2 Published in the Official Gazette of Romania, Part I, no. 768 of November 13, 2007.

3 Art. 77 par. (2) of the Law no. 188/1999, republished, as subsequently amended and supplemented, provides the following ***deeds which constitute a disciplinary offence***:

"*a) systematic delays in carrying out the works;*
b) repeated negligence in solving the works;
c) unjustified absences from work;
d) repeated non-compliance with the working hours;
e) interventions or requests for the settlement of requests outside the legal framework;
f) failure to observe professional secrecy or confidentiality of such works;
g) acts that bring prejudice to the prestige of the public authority or institution in which they operate;
h) carrying out activities of a political nature during the working hours;
i) refusal to perform work duties;
j) violation of the legal provisions regarding the duties, incompatibilities, conflicts of interests and prohibitions established by law for civil servants;
k) other deeds foreseen as disciplinary offence in the laws in the field of civil service and civil servants."

Art. 77 par. (3) of the same law provides for the following ***disciplinary sanctions***:

„*a) written reprimand;*

b) reduction of the salary rights by 5-20% for a period of up to 3 months;

c) suspension of the right to advance in salary grades or, where appropriate, the right to promote to the civil service for a period of 1 to 3 years;

d) relegation in the civil service for up to one year;[4]

e) dismissal from the civil service."

According to Art. 77 par. (5) of Law no. 188/1999, republished: „*Disciplinary sanctions shall be applied no later than 1 year from the date when the disciplinary committee was notified of the disciplinary offence, but not later than 2 years from the date when the disciplinary offence was committed*."

In a simple grammatical interpretation of the cited law, given the use of the conjunction „*but*", it is unambiguously understood that the two terms apply *cumulatively* and not *alternatively*.[5]

The rules of organization and functioning of the disciplinary committees, approved by the Government Decision no. 1344/2007, provide in Chap. III - *Disciplinary procedure,* and in Chap. IV - *Applying and challenging the disciplinary sanction,* Art. 50 par. (3): „*Under the sanction of absolute nullity, the sanctioning administrative deed will necessarily include the description of the deed constituting a disciplinary offense (...).*"

Compliance with the terms and conditions laid down by the regulations in force remains at the discretion of the competent courts to exercise control over the legality of disciplinary sanctioning administrative deeds against civil servants.

2. Legal terms and conditions regarding the application of disciplinary sanctions

2.1. Limitation period on the application of the disciplinary sanction of civil servants

By *Civil sentence no. 433 of October 5, 2011*, the Timișoara Court of Appeal – The Administrative and Fiscal Litigation Department ordered the

4 Letter d) par. (3) of Art. 77 was amended by section 5 of Art. 41 of the Framework Law no. 284/2010, published in the Official Gazette of Romania, Part I, no. 877 of December 28, 2010.

5 See: Nicolae Popa, *The general theory of law,* Actami Publishing House, Bucharest, 1997, pp. 277-278: A. *Grammatical method; B. Systematic method.*

annulment of the *Order of the President of the National Agency for Fiscal Administration (A.N.A.F.) no. 2111 of May 19, 2011*, the court holding the following:[6]

By Order of the President of A.N.A.F. no. 2111/2011, communicated to the applicant on 20.05.2011, he was applied a disciplinary sanction by the reduction of the salary rights by 10% over a period of two months, based on Art. 77 par. (5), previously quoted, (...)[7].

(...) on 28.04.2010 *the notification for starting the disciplinary investigation of the applicant, accompanied by the fact-finding report describing the state of facts considered to have revealed the commission of a disciplinary offence* was registered with the disciplinary committee of the National Customs Authority of Bucharest (*competent to carry out the disciplinary investigation*).

The court of first instance found that „*on April 28, 2010, the 1-year time limit within which the disciplinary sanction for the applicant had to be applied, has begun to run, and the disciplinary sanctioning order was issued after its expiration on 19.05.2011*."

In order to decide, the Court of Appeal concluded that „*whereas (...) there were no grounds for suspending or interrupting the limitation period, the aforementioned time limit, regulated by Art. 77 par. (5) of Law no. 188/1999 expired prior to the issuance of the sanctioning order*."

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6 See, Decision no. 1107 of March 1, 2012, the High Court of Cassation and Justice - the Administrative and Fiscal Litigation Department. *Civil servant*. *Disciplinary liability*. *Limitation period*. Available at the I.C.CJ website: http://www.scj.ro/1093/Detalii-jurisprudenta (...), accessed on 11.02.2018. Our trans.

7 (...) *based on Art. 75, Art. 77 par. (1), par. (2) j), par. (3) b), par. (4), par. (5), Art. 78 par. (3) and Art. 79 par. (1) of Law no. 188/1999, corroborated with Art. 50 par. (1), par. (3) and (4) of GD no. 1344/2007.*

Law no.188/1999, republished, provides as follows:

Art. 75 *The guiltily infringement by civil servants of work duties entails disciplinary, contravention, civil or criminal liability, as the case may be*.

Art. 77 par. (1) *The guiltily infringement by civil servants of the duties corresponding to the civil service they hold and the professional and civic rules stipulated by the law constitute a disciplinary offense and entails their disciplinary liability*.

Art. 79 par. (1) *Disciplinary committees shall be established for the analysis of the facts notified as disciplinary offenses and the proposal of the disciplinary sanction applicable to civil servants from public authorities or institutions*.

GD no. 1344/2004 states: Art. 50 par. (1) *Within 10 calendar days of receipt of the report of the disciplinary committee, the person having the legal competence to apply the disciplinary sanction shall issue the sanctioning administrative deed*. Our trans.

(...) Please note that the other relevant normative provisions are quoted selectively in this study.

The National Customs Authority through the Regional Office for Excise and Customs Operations Timişoara and the National Agency for Fiscal Administration appealed against this sentence, the following criticism being affirmed (section 2.1 of the High Court of Cassation and Justice (ICCJ) Decision no. 1107/2012): „*the court of first instance misinterpreted the provisions of Art. 77 par. (5) of Law no. 188/1999 republished, ignoring that the disciplinary sanction was applied on 19.05.2011, therefore within the 2-year time limit from the date of the disciplinary offence - 19.11.2009.*"

By **Decision no. 1107 of March 1, 2012, the High Court of Cassation and Justice** established that the *appeals were unfounded for the following reasons* (section 2.2):

(...) *the court of first instance judiciously held*,[8] the competent Disciplinary Committee was notified on 28.04.2010 and the sanction was applied by Order no. 2111 of 19.05.2011, *which means the violation of the 1-year time limit* stipulated in Art. 77 par. (5) of Law no. 188/1999, republished.

From the interpretation of the law quoted, the court of appeal held that „***the two time limits are not alternative, and it is mandatory that the application of the disciplinary sanction be circumscribed to both time limits,*** *otherwise non-observance of any of them constitutes a vice of illegality. The solution of the court of first instance is legal and sound, and the appeals are consequently rejected as unfounded*."

In the specialized doctrine:[9] „*The imposition by law of such a time limit leads to the conclusion that the disciplinary procedure must enjoy a certain degree of expedience,* (...)*. The reason for this time limit can be as follows: in order that the disciplinary liability be able to achieve the objectives that characterize any form of legal liability, namely punitive, educational and preventive.* (...) *the recipients are all civil servants of the respective public authority or institution who, according to the proverb, learn not only from their own mistakes but also the mistakes of others.*"

Therefore, the period stipulated by the law for the application of the disciplinary sanction *(at most 1 year from the date when the disciplinary committee was notified, but not later than 2 years from the date when the*

8 Civil Sentence no. 433 of October 5, 2011 Timişoara Court of Appeal - Administrative and Fiscal Litigation Department, on the annulment of the *Order of the President of the National Agency for Fiscal Administration* no. 2111 of 19.05.2011.

9 Verginia Vedinaş, *Statute of Civil Servants, Comments, doctrine, legislation, case law*, Universul Juridic Publishing House, Bucharest, 2009, p. 294. Our trans.

disciplinary offence was committed) must be mandatorily observed by public authorities and institutions.

In our view, this time limit can be considered as *reasonable*, the aim of the legislator envisaging the observance of the *civil servant's right of defence* and the *expedience* with which the *disciplinary investigation procedure* under the responsibility of the public entity must be carried out so that facts that may constitute disciplinary offences of a certain severity do not remain outside investigation/sanctioning.[10]

2.2. Description of the deed constituting disciplinary offense in the content of the administrative deed sanctioning the civil servant, a mandatory condition

By Civil Sentence no. 535 of March 31, 2010, the Timiş Tribunal dismissed the application made by the applicant L.M. against the defendants Timişoara represented by the Mayor and Mayor of Timişoara.[11]

The purpose of the action was to annul *the Mayor's Order no. 803 of April 1, 2009, which imposed the disciplinary sanction of relegation to a civil service inferior to the position held,* the obligation of the defendants to pay the salary rights related to the position occupied before the decision was issued (…).

10 Please note that Art. 28 par. (2) of GD no. 1344/2007 provides that: *A notification shall be lodged within a maximum of 1 year and 6 months from the date of the offense referred to as disciplinary offense* (...).
Referring to this time limit of referral to the disciplinary committee, see PhD Univ. Lecturer Alin Trăilescu, Universitatea de Vest of Timişoara, Faculty of Law, *Some considerations on disciplinary investigation of civil servants*, Annals of the Universitatea de Vest of Timişoara, Drept Series, p. 73, available at https://drept.uvt.ro/administrare/files/1481047525-lect.-univ.-dr.-alin-tra--ilescu.pdf, accessed on 15.02.2017:
"*However, the solution to range the referral cannot be accepted simply because the referral has not been registered with the disciplinary committee within 1 year and 6 months from the date when the disciplinary offense was committed when, for example, the disciplinary offense was discovered after the expiration of this time limit, but within the 2-year term from the date of the offense in which, according to the law, the disciplinary sanctions can be applied*." Our trans.

11 See, Civil Decision no. 1030 of October 12, 2010, Timişoara Court of Appeal - Administrative and Fiscal Litigation Department. *Civil servant*. *Decision on disciplinary sanction*. *Failure to state reasons*. Category: *Case law and administrative litigation test cases*. Available on site: https://legeaz.net/spete-contencios/functionar-public-decizie-de-sanctionare-554-2004, accessed on 11.02.2018.

By **the Civil Decision no. 1030 of October 12, 2010 the Timişoara Court of Appeal, the Administrative and Fiscal Litigation Department**[12] upheld the applicant's appeal and amended the entire sentence under appeal, found the nullity of the *Timişoara Mayor's Order no. 303 of April 1, 2009* and ordered the defendants to pay the salary rights due to the civil service held prior to the issuance of the decision. The judicial review court held that: „*by the Timişoara Mayor's Order under no. 803 of April 1, 2009, the applicant was applied a disciplinary sanction by relegation in the civil service, (...) for a period of 6 months, for disciplinary offences consisting in systematic delay in performing the work, repeated negligence in resolving works and breaching the legal provisions relating to duties, incompatibilities, conflicts of interest and prohibitions established by law for civil servants*."[13]

The applicant alleged before the first court that: „*the sanctioning decision does not specifically include the deed held in its charge and has entailed the application of the contested sanction, lacking an essential requirement in that regard, namely the reasoning of the administrative deed*."

The first instance rejected the applicant's defence, considering that: „*in the sanctioning provision, the offences made are listed with reference to the provisions of Art. 77 par. (2) letter a), b) and j) of Law no. 188/1999 republished, and this reasoning corresponds to the legal requirements since an express provision imposing another form of description of the deed cannot be identified in the Law on the Statute of civil servants*". The court of appeal found that „*these arguments cannot be endorsed, since, according to the provisions of GD no. 1344/2007, Chap. 4, application and contestation of disciplinary sanctions, Art. 50 par. (3), the administrative sanctioning deed shall include under the sanction of absolute nullity the following elements: the description of the deed constituting an offense* (...).[14] *It follows that* ***the***

12 See, Civil Decision no. 1030 of October 12, 2010, Timişoara Court of Appeal - Administrative and Fiscal Litigation Department, Portal> TIMIŞOARA Court of Appeal> File Information, *Solution in brief*. Available on site: http://portal.just.ro/59/SitePages/Dosar.aspx(...), accessed on 11.02.2018.

13 Provided by Art. 77 par. (2) a), b) and j) of Law no. 188/1999 republished.

14 Art. 50 par. (3) of GD no. 1344/2007 provides: *Under the sanction of absolute nullity, the administrative sanctioning act shall mandatorily include:*

a) a description of the deed constituting a disciplinary offense;
b) the legal basis on the basis of which the disciplinary sanction is applied;
c) the reason for which a sanction other than that proposed by the disciplinary committee was applied, in the situation stipulated in par. (2);
d) the time limit in which the disciplinary sanction can be challenged;
e) the competent court to which the administrative deed by which the disciplinary sanction has been disputed, can be challenged.

description of the deed constituting an offence is a mandatory and distinct condition of the administrative sanctioning deed, the lack of which being sanctioned by a legislator with absolute nullity."

The Court of Appeal also pointed out that „*the sanctioning deed cannot be completed with regard to the mention on the description of the offense with the report of the disciplinary committee issued, even if, according to the provisions of the same Art. 50, it must be attached to the sanctioning deed.* (...) *the requirement relating to the description of the deed constituting a disciplinary offense does not imply the reproduction of the text of the Law on the Statute of civil servants* (...)[15]".

From this perspective, the court of appeal concluded that: „*the person who has the power to enforce the sanction by means of the administrative sanctioning deed (...) must specify in concrete terms the actions committed by the applicant and the court vested with the exercise of legality control will verify whether the facts thus described fall within the notions of disciplinary offence regulated by Art. 77 par. (2) a), b) and j) of Law no. 188/1999 republished.*"

The Timişoara Court of Appeal upheld the appeal brought by the appellant L.M. and amended the entire sentence under appeal in that it found the nullity of the *Provision no. 803 of April 1, 2009 issued by the Mayor of Timisoara* and ordered the defendants *to pay the salary rights owed for the civil service held prior to the decision*.[16]

In our view, in the light of the provisions on the *grounding* of administrative deeds, as also provided by *Law no. 24/2000 on legislative technical rules for the drafting of laws*,[17] republished, with subsequent amendments and completions, the provisions of Art. 50 par. (3) a) in the GD

15 *The Law on the Statute of civil servants, which at Art. 77 a) and b) declares as disciplinary offences the systematic delay in carrying out the works and the repeated negligence in solving the works; and in j) it establishes as a disciplinary offense the violation of the legal provisions regarding the duties, incompatibilities, conflicts of interests and prohibitions established by law for civil servants.*

16 Civil decision no. 1030 of October 12, 2010, the Timişoara Court of Appeal, the Administrative and Fiscal Litigation Department: "(...) *in order to ensure the full reparation of the damage suffered by the applicant and his return to the situation prior to the issuing of the administrative sanctioning deed, the defendants were obliged to payment to the applicant of the salary rights payable for the civil service held prior to the decision*." Our trans.

17 *Law no. 24/2000 regarding the legislative technical rules for the drafting of laws,* republished in the Official Gazette of Romania, Part I, no. 777 of August 25, 2004. See Art. 31 par. (1) a) *The presentation and motivation tool includes the content of the assessment of the laws impact, comprising the following sections: the reason for issuing the legislative act*; (...).

no. 1344/2007, according to which *the administrative sanctioning deed will necessarily include, under the sanction of absolute nullity, the description of the deed constituting an offense*, establishes an element involving the *grounding of the administrative deed,* considering that the aspects of the description of the deed are already presented in the *report of the disciplinary committee* drafted, which is *attached to the administrative deed, under the sanction of absolute nullity*, according to the same Art. 50, par. (4).

3. Aspects resulting from the monitoring of compliance with the rules of conduct

The comparative analysis of the *Reports on the monitoring of compliance with the rules of conduct by civil servants and the implementation of disciplinary procedures*, for the 1st semester - 2017 and 1st semester - 2016, published by the National Agency of Civil Servants[18], (A.N.F.P.), points out some issues that may be a reference point in addressing the administrative phenomenon in terms of disciplinary administrative liability of civil servants, which should be dealt with by preventive measures applied before the disciplinary procedure rather than by corrective measures.

Regarding the ***reasons for the notifications***, following the reports received from public authorities and institutions, for the 1st semester - 2017, A.N.F.P. found that: „*the same reasons for notifications are maintained as in the previous periods, with the preponderant ones regarding the way of performing work duties*"[19].

Regarding ***the duration of the administrative investigation***, from the reports sent to A.N.F.P. the following data resulted:[20]

18 The National Agency of Civil Servants, the *Report on the monitoring of compliance with the rules of conduct by civil servants and the implementation of disciplinary procedures*, Semester I - 2016, published in October 2016 and the *Report on monitoring the observance of rules of conduct by civil servants and the implementation of disciplinary procedures*, Semester I - 2017, published in October 2017, available at: http://www.anfp.gov.ro/continut/Rapoarte (...).

19 A.N.F.P., *Monitoring Report* (...) Semester I - 2017, doc. quot., Chap. 6.1.4 - *Reasons for referrals,* p. 16*: "violation of legal provisions relating to duties, conduct affecting the prestige of the public authority or institution; inadequate attitude towards the beneficiaries of the civil service; non-fulfilment of the job duties according to job description; carrying out activities of a political nature during working hours; negligence in performing the work; misconduct of job duties; inappropriate behaviour towards the public service beneficiaries; unmotivated absences from work; non-compliance with the working hours*." Our trans.

20 A.N.F.P., *Monitoring Reports* (...), Semester I - 2016, Semester I - 2017, doc. quot., Chap. 6.1.5 - *Duration of administrative investigation*, p. 16. Our trans.

– for the first semester of 2016, the duration of administrative investigation is generally between 1 and 3 months (248%), followed by periods ranging from 4 to 6 months (60%), 7-9 months (14%) and 10-12 months (38%);

– for the first semester of 2017, the duration of administrative investigation is generally between 1 and 3 months (188%), followed by periods ranging from 4 to 6 months (70%), 7-9 months (29%) and 10-12 months (36%).

Although these data cannot be considered as absolute since they have to be reported to the number of public authorities and institutions that provided the information, there is a certain increase in the length of administrative investigation at certain intervals.

Regarding the ***civil servants' unfulfilled obligations***, on the basis of the reports of the public authorities and institutions, the same legal grounds were identified as the basis of the proposals for disciplinary sanction, representing obligations regulated by law, violated by civil servants, both in the first semester of 2016, as well as in the first semester of 2017, as follows: „*the failure to perform the duties within the established deadlines; non-compliance with working hours and unjustified absences from work; violation of legal provisions on duties, incompatibilities and conflicts of interest; non-compliance with internal regulations and procedures*."[21]

Regarding ***the proposals made by the disciplinary committees*** and the disciplinary sanctions applied, the published data show a decrease in the number of disciplinary sanctions applied (the percentage of disciplinary sanctions applied, in relation to the number of civil servants targeted by the referrals solved by the discipline committee, was 27.04% in 2016 and 26.98 in 2017 respectively):

– in the first semester of 2016 „*a number of 360 referrals resolved by the disciplinary committees were reported to the Agency on 514 civil servants*"; „*139 disciplinary sanctions were applied*," (...);

– in the first semester of 2017 „*disciplinary procedures regarding 315 civil servants were reported as completed to the Agency*"; „*85 disciplinary sanctions were applied*," (...).[22]

21 Ibidem, Chap. 6.2.2 - *Obligations not fulfilled by civil servants*, p. 19-20. Our trans.

22 Ibidem, Chap. 6.2.1 - *Proposals by the disciplinary committees*, pp. 18-19. Semester I - 2016: „*Of these, the disciplinary committees put forward proposals for ranking 234 civil servants and 33 were sent to criminal investigation bodies*." Semester I - 2017: „*Of these, 139 proposals for disciplinary sanctions were formulated, (...), 171 were ranked, and 5 were transmitted to criminal investigation bodies*." Our trans.

In the A.N.F.P. Reports for semester I - 2016 and semester I - 2017 it is stated that:[23] „*For the reporting period, compared with the same period of previous years, a small number of disciplinary sanctions are being challenged in court*."

On the other hand, regarding ***the solutions of the courts in the case of challenging the administrative sanctioning deeds***, following the collection of the data transmitted by the public authorities and institutions, an increase in the number of cases in which the court annulled the administrative deed by which the sanction was applied, can be noticed:[24]

„*With regard to the judgments in which the courts have definitively ruled on disciplinary sanctions applied before the reporting period, 2 cases were maintained and in 8 cases the court annulled the administrative deed by which the sanction was applied*" during the 1st semester of 2017;

„*Only in 5 cases the court annulled the disciplinary sanction originally ordered*" during the 2nd semester of 2016.[25]

Please note that the *sample on which the evaluation was made is considered to be representative*.[26]

Taking into account the information communicated by the public authorities and institutions, the National Agency of Civil Servants concludes that: "*The previous observations were maintained according to which, on the basis of the submitted reports, statistical data, consisting of quantitative and less qualitative data, were obtained on the basis on which to draw relevant conclusions and concrete lines of action;* (...) *the analysis can be a regular monitoring tool to improve and enhance the quality of public service*."[27]

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23 A.N.F.P., *Monitoring Report* (...), Semester I - 2017, doc. quot., Chap. 6.4 - ***Solutions of the courts in case of challenging the administrative sanctioning deeds***, p. 21: „*Thus, following the collection of the data transmitted by the public authorities and institutions, 12 situations in which the disciplinary sanctions were challenged by the civil servants, were recorded*." Our trans.

24 A.N.F.P., *Monitoring reports* (...), Semester II - 2016, published in April 2017, Semester I - 2017, doc. quot., Chap. 6.4, p. 21.

25 A.N.F.P., *Reports on monitoring the compliance with the rules of conduct by civil servants* (...), Chap. 6.4, for the 1st Semester - 2015 and 1st Semester - 2014, indicate only *one case in which the court* ***cancelled the administrative deed*** *by which the sanction was applied*, and for the 2nd Semester - 2016, 2nd Semester - 2015 and 2nd Semester - 2014, there are no indications on this matter.

26 A.N.F.P., *Monitoring reports* (...), 1st Semester - 2016, 2nd Semester - 2016, 1st Semester - 2017, doc. quot., Chap. 7.2.2 - *Relevance of reporting*, p. 23: "(...) *the sample on which the evaluation was carried out is considered to be representative, taking into account the fact that the reporting system has been modified by operationalizing the on-line platform*." Our trans.

27 A.N.F.P., *Monitoring report* (...), 1st Semester - 2017, doc. quot., Chap. 8 - *Conclusions and recommendations*, p. 24.

Conclusions

We note that the provisions of the Government Decision no. 1344/2007 were no longer amended and/or supplemented since 2009[28], with the stipulation that Art. 50 par. (3) of its content is still in force in its original form.

In our opinion, Government Decision no. 1344/2007 has to be amended and completed in a correlation with the legal provisions regarding the *grounding* of legislative/administrative deeds, for the purpose of presenting in the instruments of motivation the elements *describing the deed constituting an offence* (as well as ... *the reason for replacing the disciplinary sanction proposed by the disciplinary committee*), reasoning that accompanies the administrative sanctioning deed, as the deed is already presented in the *report of the disciplinary committee*, which *is attached to the administrative sanctioning deed, under sanction of absolute nullity*, according to the provisions of the same legislative instrument.

From the analysis of the data published in the contents of the A.N.F.P. Reports for the years 2015-2017, there can be noticed an increase in the number of cases in which the court annulled the administrative deed by which the disciplinary sanction was applied, even if they can only be considered relative, in the report with the number of public entities communicating data, the length of cases being settled before the courts, the accuracy of the reports, and other possible factors that exceed or may be omitted from our analysis.

In these circumstances, we can assume that continuous professional development in the field could be a solution, for the members of the disciplinary committees, if not necessarily, even with a recommendation value, given the variety and complexity of administrative cases and solutions by the courts in litigation with this object.

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28 The original text of the Government Decision no. 1344/2007 was amended and completed by: Government Decision no. 787/2008, Government Decision no. 1.268 / 2008, Government Emergency Ordinance no. 35/2009.

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GOVERNANCE AND ITS MECHANISMS IN COMBATING CORRUPTION

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Abstract: *Governance and corruption remain incorrectly interpreted topics, but they are now spotlighted as a higher priority in development circles for public and private sectors including small, medium, multinational companies. Indeed, some donors and international financial institutions increasingly work with emerging economies to help reduce corruption, and increase citizen voice, gender equality and accountability. Strengthening governance and combating corruption are closely linked one to another, and some of the characteristics of good governance include corruption and corruption mechanisms as well. Governance is an effective component of economic growth, investment climate, and the business itself and thus economic development is in need for corporate governance to combat corruption.*

Keywords: *governance, corruption, governance mechanisms, economic development*
JEL Classification*:* M4, M2, M11

1. Introduction

In response to the call of the parties and in reaction to the institutions' economic corruption and to achieve effective control that protects the common interests of all in the company. It ensures mechanisms, procedures, laws and regulations that ensure discipline and transparency. Concerned institutions achieve public approval and the interests of the company concerned to

apply governance to protect these common interests among stakeholders. Accordingly, the idea of governance is based on the various supervisory tools which govern the company that guarantees rights' beneficiaries and protect them from being victims of economic or financial corruption, due to that an effective governance system ensures greater oversight to reduce corruption. From the above, the issue can be addressed depending on the following problem: How effective are governance mechanisms in fighting corruption? Hypothesis: Governance systems and mechanisms have the capacity to reduce corruption or even increase growth, and the main question is what corruption is. The concept of corruption: it is mentioned in several definitions and meanings: relating to international transparency perspective: abuse of potency for special gain, and according to the encyclopedia sociale: it is a misuse of public influence to achieve special interests. Besides that, the World Bank considers that it is a bribe or commission that is paid directly to employees or government officials and in the public and private sector to liquefy transactions. The United Nations Convention on the Rights of the Child focuses on the following points to determine corruption:

- Bribery of national public officials
- Bribery of foreign national public officials and employees of international institutions
- Nationalism
- Misappropriation of property and waste by a public official
- Trading in money
- Illegal enrichment
- Bribery in the private sector
- Misappropriation of property in the private sector
- Laundering of proceeds of crime
- Obstruction of justice
- A moral deviation of some public officials to achieve interests
- Personal

Here, we may discuss the types of corruption which is classified according to a set of criteria. According to individuals' affiliation: Corruption in the public sector: exploitation of the year; applications of financial and banking policies, definitions customs, bank credit, tax exemptions.

Private sector corruption: Private sector exploitation has an impact on government policies. According to the level and size of corruption: small

corruption (low level): It affects employees in the state, banks and managers and it is less harmful. Large corruption (blind level): involves senior officials from the decision-makers in the field that is linked to major transactions and is even more dangerous when bureaucracies turn into enrichment profile.

Corruption Crimes are compounded by informal economy: unauthorized production, hidden revenue and providing prohibited services, and that open the door for the next issue washing money. Besides that, fraud and tax smuggling is intended to violate the tax law in order to escape from the obligation in front of the state and citizens.

Overall proposes an important question about the effects of corruption: the impacts on microeconomics can be presented through creating fake companies to cycle money in the economic institutions providing the same products in the market with less prices to reach the final destination. The national impact on national income is presented by the informal economy, which usually grows at the fastest rate of growth in the formal economy. The estimates of national output are usually much lower than in real terms. In the light of that, that affects the income distribution, which leads to a sharp deviation in the distribution of income between the different groups of society. By converting income between some productive groups into other unproductive categories and that is accompanied by a growing gap between the rich and the poor. In addition, fiscal policy is affected as well, as money laundering is part of the hidden economy, the gap between real income and declared national income will be increased and that makes it difficult for the state to develop plans or effective economic development programs, accordingly, that weaken the effectiveness of monetary and fiscal policies of the State. The negative impact on the stock market is in terms of high volatility, which leads to losses for small investors and leads to further trouble among investors.

Economic impacts can be handled at the economic level, the tax is considered to be an economic variable and it leads to negative repercussions on the national economy in several aspects:

- Affected by public income: the decline of the latter limits the ability of the state to establish investment projects and make them have to reduce their expenditures, particularly with regard to subsidies and exemptions. That is granted under the framework of the investment of economic workers and the result of this is the economic recession and hence high inflation and unemployment.

- The act of evasion beating to curb the most important economic stimulus and is the spirit of competition, and the institution is evasive in a degree that is distinct from those that perform its duties honestly. In the same way that taxation is a major tool through which the state seeks justice social.

2. Corruption factors

Corruption can be traced to economic, political, sociocultural, and professional reasons as the following:

Economic reasons: government intervention in economic activities: one of the main reasons for corruption is government intervention in activities, which leads individuals to give bribes to officials to overcome rules and regulations. In addition, low government wages: where there is an inverse relationship between the low wage level in the public sector as opposed to the private sector and the rate of corruption, which stimulates low wage earners improve the exploitation of government jobs by bribery that perpetuates corruption. Besides that, administrative system inflation. That is, the size of the public sector exceeds its needs and this will complicate the procedures and weakens communication with citizens as well as being a source of state resources, accordingly, the existence of a large natural resource base in society is an important factor since a large natural wealth in society entices officials to do business and corruption is more likely to occur in communities with limited resources.

Political reasons: weak governments lead to the development of corruption and can be judged on the extent of weakness or the power of government by knowing: the extent of ambiguity or transparency in their transactions affecting control over the activities of the state. In the light of that, political leadership's lack of interest in combating corruption has a significant role in combating corruption, but the problem becomes even worse when leaders themselves engage in actions, when they hide such acts from certain people, and of course, they are not expected to government officials do nothing to make heads.

Social and Cultural Causes: the pattern of relationships, norms and awareness among the members of society and government officials tend to prefer relatives, friends, and employees in which they can earn special benefits and illegal benefits leading to growth of corruption in society.

Financial and administrative corruption is presented in bribery ,affidavits and intermediation. Bribery: Obtaining funds for an individual or a person belongs to a person such as an individual, or floating or area without entitlement. Affidavits is a preference for another blindness in service without the right to obtain blindness or specific interests.

Intermediation is an intervention in favor of an individual or group without obligation to the efficiency and the assets of the business belonging to an individual party.

3. Governance

The concepts of governance have been varied and can be explained as follows: according to IFC: the system through which companies are managed and control of their workers, and the

Organization for Economic Co-operation and Development (OECD) defines governs through different responsibilities for management of the organization, the board of directors, and the general assembly. There are those who know the rules of the game that are used to manage the company from the inside, that is, a system governs relationships between key players that influence performance, as well as the constituents of the institution and the definition of responsibilities.

In the light of that, the importance of governance can be presented as the following:

— Companies that apply the principles of governance have a competitive advantage to attract capital, especially in the long term through transparency in their transactions and accounting procedures.

— Implementation of the principles of governance will improve the performance of the company's management and assist in the development and strategy to ensure that mergers and acquisitions take place on a sound basis.

— Applying the principles of governance leads to strengthening the confidence of the people in the process of privatization require good administrative rules.

— Adoption of disclosure and transparency standards in dealing with investors and borrowers in the context of the strong application of governance principles to help prevent financial crises.

— There is a close correlation with the level of emerging markets between the performance of the company in terms of prices and levels of return,

and that is clearly for distinguishing companies apply governance standards maintaining the rights of the participants and all stakeholders.

Principles of Governance:

To establishing an effective corporate governance system, this system should be implemented correctly, and it is important to achieve transparency and market efficiency, to be compatible with the rule of law and to be renewed and to distribute responsibilities among specialized organizations in the field of control and regulations. Equity is the most important functions of capital holders as well in any governance system. Concerned institutions are found to protect and facilitate the exercise of human rights, and in the light of that, fair contribution to Shareholders is an important principle for governance system.

The role of stakeholders in corporate governance is another essential principle; a governance system must be recognized the rights of different beneficiaries in accordance with applicable law or in accordance with the mutual agreements among cooperations and it actively promotes the leveraging wealth for stakeholders. Further, related principles of governance are requested; transparency and dissemination of information; corporate governance system should ensure dissemination and timely information about everything that goes into the organization, especially activities' results and performance reports to be presented to stakeholders. The responsibility of the Board of directors is a core principle for governance system, corporate governance should provide strategic leadership to manage and oversight by the Board of Directors, as well as the responsibility and integrity of the Board of directors towards shareholders and employers.

After discussing the principle of governance, the objective of governance can be determined:

– Maximizing corporate performance and risk minimization.

– Improved access to capital markets.

– Developing efficient systems to avoid or mitigate fraud and conflict of interest.

– Adapting control systems for the management of the company and members of the board of directors.

– Setting the rules of work within the company and including in the light of achieving the objectives of governance.

– Fairness, transparency and accountability, allowing all those authorized parties to review the performance of executives and board of directors.

— Encourage and attract foreign investments.

— Ensuring review good use of company funds and compliance with the law and supervision of social responsibility in accordance with governmental regulations.

3.1. Governance mechanisms and legislation

The absence of laws and regulations that guarantee the execution of contracts and the existence of contracts leads to a significant reduction and it is essential to ensure that these laws and regulations protect stakeholders; suppliers, creditors, customers, business owners and others. Besides that, the banking system is governed by good laws since the availability of high-end banking facilities is essential for a sound exchange working efficiently and in order to ensure the efficiency of companies. The banking sector provides the necessary capital and the liquidity required for the growth of companies and the financing of generalizations, and therefore the focus is on the importance of governance mechanisms. In addition, governance mechanisms grant liberalization of financial markets and sufficient protection for credit risks.

In this context, good supervision and effective oversight are needed over banking practices. The Bank for International Settlements has been established settle sets of useful criteria and excellent practices that can be adapted accordingly in specific country systems to form the appropriate new ground for a business in this area. It offers a project "New Capital Adequacy Framework" provides many flexible and better methods for assessing capital adequacy and risk assessment until the legal capital requirements are determined. The proposed framework provides three pillars: minimum capital requirements, supervisory review of the internal rating and capital adequacy of the Company, and use effective disclosure effectiveness to strengthen market discipline and to supplement regulatory oversight.

Indeed, not all companies are successful, and this is why there are laws that regulate liquidation mechanisms and it exists in a fair manner to consider the necessity of these mechanisms for liquidated investments and adjustments which are important for production facilities. There should be laws and regulations that govern financial and non-financial entities in-depth, informed on debt and obligations and laws allowing for prompt and adequate procedures for bankruptcy and expropriation. Besides that, good securities markets lead to internal discipline by sending signals to enable investors to liquidate

investments quickly and without cost, and this, in turn, affects the value of the company and its ability to access money. In accordance with that, the stock market needs to be organized by laws governing the issuance of securities for the rights of property, company debts and trafficking besides responsibilities and obligations of issuers of securities and brokers on a transparent and stable basis. Therefore, the conditions for listing companies is based on a strict criteria; transparency and disclosure. Governance regulations are issued to protect the rights of minority residents besides the rights of other stakeholders.

Transparency and fair privatization procedures refers to the implementation of privatization, which is not limited to the structure of the property, but it reflects the culture of companies in the country as a whole. Transparent and fair procedures show how and when companies are privatized, because they are performing negatively. In the light of that, designing privatization can destroy the economy and affect the business environment. Also, tax systems need to be reformed so that they are fair, simple and straight and therefore these systems are necessary to eliminate complex procedures that consist of multiple steps in the preparation of reports, which may allow the release of employees and the introduction of corruption. To complete that, there is a need for an independent and good judicial system. An independent judicial system should be efficiently operated since it is one of the most important economic institutions. The efficiency of the judicial system can be improved by providing adequate financial and technical resources to implement the laws quickly. In addition to these proposals, there is a long way to resolve conflicts outside the court which is an arbitration method that eases the burden of the courts and helps blindly achieve speed in deciding disputes.

4. Anti-Corruption Strategies

The strategies to combat corruption are basically based on an effective implement for anti-corruption measures by identifying and including legal guidelines and clarifications and adopting the standards of the Organization for Economic Co-operation and Development (OECD). Besides that, there is a need to reform government bodies to reduce bureaucracies. That can be done through streamlining and simplifying work systems, internal procedures and assessing the performance of organizations on a continuous basis in accordance with very clear and specific criteria, and the necessary measures must be taken

to improve the performance of government agencies immediately and in a strict manner.

Strengthening the capacities of the administrative and executive bodies can be done through developing and upgrading staff capacities, in accordance with that, recruitment and promotion should be based on specific criteria besides ensuring that micro-training opportunities, which are available to employees using the latest technical methods. Also, reward salaries for employees and avoiding overtime without payment are important for employees to not accept bribes. The promotion is by efficiency, and the efficiency of the judicial system can also be improved by the provision of financial and technical resources.

5. Conclusion

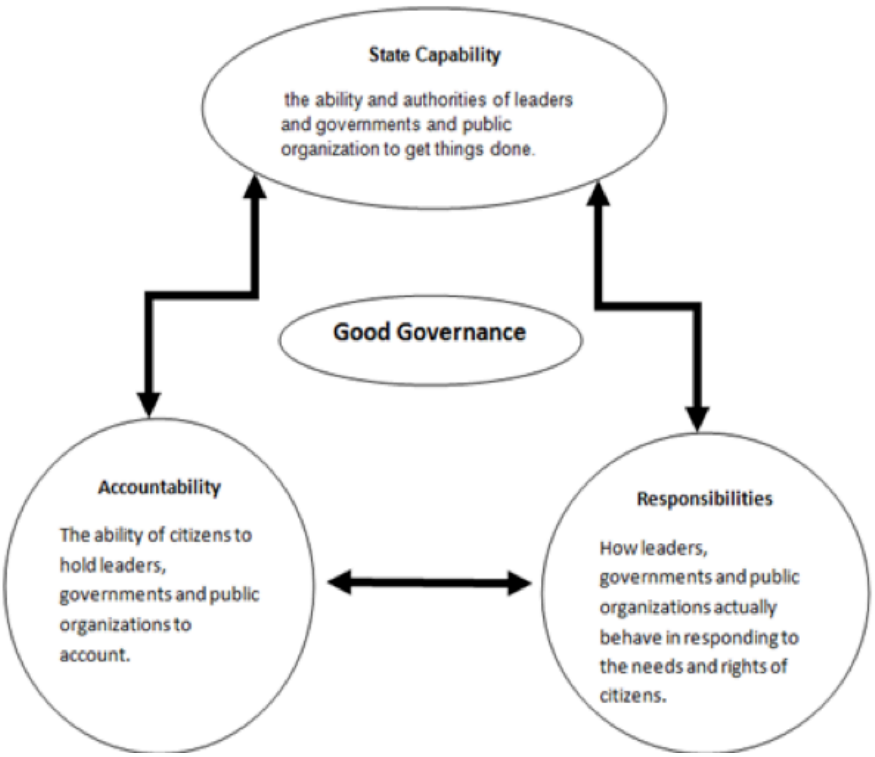
Governance can be complemented by various forms of corruption that are embodied in the emergence of other ways of Legitimated or lawful methods that are manipulated in order to gain personal benefits. The role of governance is primarily to mitigate the risk of corruption through Board of directors, internal audit, external audit, and fair competition subject to laws and regulations. Corruption is one of the obstacles to economic development because of obstacles that undermine the rule of law and affect governance. The several points can be highlighted due to what was presented previously:

- Corruption is a threat for good governance practices.
- Corruption is only a reflection of a weak government.
- Transparency, fairness and responsibility in decision making is necessary to activate the role of governance in combating corruption.

The recommendations that can be taken:

- Achieving the principle of the regulations and equality.
- Improving the performance of public administration.
- Activating supervision of institutions.
- The investigation of the activities of the government.
- Good planning and assessment and building future strategies.
- Implementing corporate governance principles.

Sustaining and strengthening the morality of citizens to recognize what is wrong and what is right and increase their awareness about the impact of corruption on the next generations.



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ABOUT PUBLIC ACQUISITION MONITORING ROLE AND NECESSITY DURING FRAMEWORK AGREEMENT POST-IMPLEMENTATION

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Abstract: *This article aims to highlight the importance of a good contract administration to the success of the public contracting process. The necessity for monitoring is also crucial, because during the implementation and post-implementation stage a significant amount of waste and abuse of public funds and corruption in public contracting happens. Our research considers that, most of the focus monitoring and control time is placed on the procurement process, which is a comparatively shorter period than contract implementation. In our opinion, the real benefits, however, are obtained after the contract is awarded, so more attention needs to be placed on ensuring the contract is implemented consistently with its terms and conditions. This is not to lessen the importance of the procurement process in getting the contract awarded, but it is only after the contract is awarded that the real value of the entire procurement process is achieved. Therefore, our article presents a risks analysis of the post-implementation process and aims to spotlight an issue for Romanian present stage of public acquisition process.*

Keywords: *public aquisition, risk analysis, procurement process, monitoring necessity, public funds, corruption in public contracts*
JEL Classification: M410

1. Introduction

The main goal of public procurement is to ensure timely and cost-effective contracts to qualified contractors in accordance with the principles and procedures established in the public procurement laws.

The main goal of contract administration is to ensure that proper procedures are in place to monitor and evaluate suppliers and service providers' performance in the fulfillment of their contractual obligations, and to ensure that appropriate actions are taken to avoid or remedy any deficiencies noticed in contract execution. Namely, the suppliers and service providers of goods, works and services to support national and local government, and public services operations, are involved in such a way as to accomplish the public procurement laws.

Based on their specific goals, we distinguish a clear delimitation between public procurement and contract administration. That distinction, far from lessening the importance of one as opposed to the other, actually reinforces each of them by identifying and focusing on their specific purpose.

Our article highlights the idea that all the procurement and contract administration processes always deal with risks. There are risks in determining need and planning procurements, selecting the appropriate procurement methods, developing the specifications, preparing solicitation documents and calling for offers, evaluation and selection of companies, negotiating the contract, and contract administration.

As any ordinary process, customers need supplies and services to cover immediate and future needs, therefore procurement management is about solving problems and managing risks. Procurement planning and strategy development are important with a view to reducing risk in the procurement process. A comprehensive understanding of the procurement process, principles and guidelines is also vital to finding appropriate solutions and minimizing risks during the entire process, including post-implementation stage.

2. Dealing with contract administration risks

Regarding the state of knowledge, the concept of risk has seen a remarkable evolution, but all definitions make references to mitigating hazards to a comprehensive approach of our realities, including financial aspects and the non-financial aspects which relate, mainly, to the elements of social responsibility.

The Health and Safety Executive (HSE) says: "A risk assessment is nothing more than a careful examination of what, in your work, could cause harm to people."

According to HSE, the employers have a duty under the Management of Health and Safety at Work Regulations 1999, to carry out risk assessments to identify what hazards exist in a workplace, and how likely these hazards are to cause harm. They must then decide what prevention or control measures are needed. Control measures include actions that can be taken to reduce the potential of exposure to the hazard, or the control measure could be to remove the hazard or to reduce the likelihood of the risk of exposure to that hazard being realised.

A simple administrative control measure would be the secure guarding *by adopting standard operating procedures or safe work practices or providing appropriate training, instruction or information* to reduce the potential for harm and/or adverse health effects to person(s). Isolation and permit to work procedures are examples of administrative controls.

In terms of public procurement, mitigating risk is a necessary action laying also during the framework agreement post-implementation period but directly linked with the prior process time, including negotiations and evaluating the implementation process itself. The final goal of risk assessment is to ensure that the residual risk following implementation of control measures is "as low as is reasonably possible (ALARP)".

Theoretically speaking, for a risk to be ALARP it must be possible to demonstrate that the cost involved in reducing the risk further would be grossly disproportionate to the benefit gained.

We identified some risk situations during the negotiations process with direct influences into the contract administration process and the following analysis would trigger the main consequences and the appropriate measure set as recommendations items, limited with our research.

1. Risks for Negotiations process

Some Risk situations	Kind of consequences	Risk assessments
1.1. The expectations of buyer and tenderer are not reconcilited	✓ Contract disputes ✓ Cost variations ✓ Purchase of non-suitable product and inefficient use of resources ✓ Delivery delays	• Define the contract terms clearly and carrefully • Provide staff with strong skils in contract planning and management and very good communication atitude • Clarify all ambiguities before signing the contract • Record writing for any negotiating each party's obligations
1.2. Terms and conditions of agreement without definitions or clearly details	✓ Contract disputes ✓ Cost variations ✓ Delivery delays ✓ Need to restart procurement ✓ Possible cost of legal action	• Distinguish between essential and non-essential goals and requirements • Terms and conditions defined to share risks between buyer and tenderer
1.3. The contract terms do not include all the requirements on the tenderer	✓ Contract disputes ✓ Need to restart procurement for a possible contract invalidity ✓ Possible cost of legal action ✓ An inadequate relationship with supplier/ customer ✓ Cost variations ✓ Purchase of non-suitable product and inefficient use of resources ✓ Delivery delays	• Provide negotiators with adequate training and support • Negotiate commercial terms • Terms should be fair and reasonable
1.4. Failure to reflect the terms offered and agreed in the contract	✓ Contract disputes ✓ Possible cost of legal action ✓ An inadequate relationship with supplier/ customer ✓ Cost variations ✓ Purchase of non-suitable product and inefficient use of resources ✓ Delivery delays	• Provide negotiators with adequate training • A must: Checking final draft of contract with successful tenderer • Keep writing records of all negotiations and agreements

2. Risks for Contract management

Some Risk situations	**Kind of consequences**	**Risk assessments**
1	2	3
2.1. The supplier DO NOT accept the contract	✓ An inadequate relationship with supplier/customer ✓ Contract disputes ✓ Possible cost of legal action ✓ Cost variations ✓ Purchase of non-suitable product and inefficient use of resources ✓ Delivery delays ✓ Need to restart procurement	• Provide negotiators with adequate training • Negotiate but retain integrity of the contract • Adopte legal action if non-acceptance causes loss • Ensure all staff know responsibilities and conditions • Ensure good record keeping and documentation
2.2. Failure to fulfil the conditions of the contract	✓ An inadequate relationship with supplier/customer ✓ Contract disputes ✓ Possible cost of legal action ✓ Cost variations ✓ Inefficient use of resources ✓ Delivery delays ✓ Need to restart procurement	• Negotiate but retain integrity of the contract • Provide negotiators with adequate training • Adopte legal action if non-acceptance causes loss • Ensure all staff know responsibilities and conditions • Ensure good record keeping and documentation
2.3. Contract Price variation	✓ Cost overruns influences by foreign rate exchange Contract disputes ✓ Cost variations ✓ Inefficient use of resources ✓ Purchase of non-suitable product and inefficient use of resources ✓ Delivery delays ✓ Need to restart procurement ✓ Possible cost of legal action	• Agree on a formula for calculating variations in case of foreign rates • Agree on prices and the basis of prices • Ensure good record keeping and documentation
2.4. The supplier is starting to work before contract is signed	✓ Contract disputes ✓ Possible cost of legal action for perceived breach of contract ✓ Potential liability to pay for unauthorised work ✓ Unanticipated cost increases	• Ensure all staff know responsibilities and conditions • Accept all contracts in writing • Ensure approvals are received before allowing work to start • Confirm verbal acceptance of contract with written advice • Ensure good record keeping and documentation

Some Risk situations	**Kind of consequences**	**Risk assessments**
2.5. Unauthorised increase in scope of work	✓ Contract disputes ✓ Possible cost of legal action for perceived breach of contract ✓ Potential liability to pay for unauthorised work ✓ Unanticipated cost increases	• Ensure all staff know responsibilities and conditions • Ensure all contract amendments are issued in writing • Record all discussions and negotiations • Confirm instructions in writing • Ensure good record keeping and documentation
2.6. Poor administering the contract	✓ Cost variations ✓ Inefficient use of resources ✓ Purchase of non-suitable product and inefficient use of resources ✓ Delivery delays ✓ Need to restart procurement ✓ Failure of contract ✓ Full benefits not achieved ✓ Contract/supply disputes ✓ Possible cost of legal action	• Ensure all staff know responsibilities and conditions • Ensure all staff are suitably trained and experienced in contract planning and management • Maintain up-to-date procedures and practices • Check that all obligations are covered in the contract • Agree on responsibilities • Implement appropriate safety standards and programs • Ensure good record keeping and documentation
2.7. Key personnel not all time available	✓ Full benefits not achieved ✓ Contract/supply disputes ✓ Progress on project disrupted ✓ Less expertise without key personnel	• Ensure all staff know responsibilities and conditions • Ensure all staff are suitably trained and experienced in contract planning and management • Maintain up-to-date procedures and practices and include requirement in specification and ensure compliance in post-tender negotiation • Assuring personnel with strong knowledge of the market • Accept risk and manage possible delay

Some Risk situations	**Kind of consequences**	**Risk assessments**
2.8. Loss of intellectual property	✓ Cost variations ✓ Inefficient use of resources ✓ Loss of commercial opportunity ✓ Unwarranted reliance on supplier for product support	• Check that all obligations are covered in the contract • Agree on responsibilities • Implement appropriate safety standards and programs • Ensure good record keeping and documentation • Ensure suitable clauses are included in the contract • Ensure all staff know responsibilities and conditions • Ensure all staff are suitably trained and experienced in contract planning and management • Maintain up-to-date procedures and practices
2.9. Loss or damage to goods in transit	✓ Delays in delivery ✓ Inefficient use of resources ✓ Loss of commercial opportunity ✓ Liability disputes ✓ Failure of contract ✓ Full benefits not achieved ✓ Contract/supply disputes ✓ Possible cost of legal action	• Include appropriate packaging instructions in specification • Agree on insurance cover for supplier to provide • Accept delivery only after inspection • Know when title of goods is transferred to buyer • Ensure all staff know responsibilities and conditions • Ensure all staff are suitably trained and experienced in contract planning and management • Maintain up-to-date procedures and practices
2.10. Fraud	✓Delays in delivery ✓Inefficient use of resources ✓Disruption to procurement activities ✓Full benefits not achieved ✓Contract/supply disputes ✓Failure of contract ✓Failure of contract ✓Possible cost of legal action	• Follow and maintain fraud procedures and practices control procedures • Maintain an ethical environment • Ensure all staff are suitably trained and experienced in avoiding or detecting fraud

3. Evaluating the procurement process

Some Risk situations	Kind of consequences	Risk assessments
3.1. Failure to identify and address problems during the procurement process	✓ Scope of the public procurement is not achieved ✓ Procurement objectives are not achieved ✓ Potential future failure in the procurement process	• Promote a good relationship with suppliers • Agree on performance criteria (with supplier and customer) • Include evaluation clause in the contract • Implement performance management strategies
3.2. Failure to evaluate procurement and management processes	✓ Failure to improve procurement and management processes	• Include evaluation clause in the contract • Develop systematic evaluation methods, techniques and evaluation criteria • Implement performance management strategies
3.3. Failure to administrate the contract	✓ Scope of the public procurement is not achieved ✓ Procurement objectives are not achieved ✓ Potential future failure in the procurement process	• Promote a good relationship with suppliers • Agree on performance criteria (with supplier and customer) • Include evaluation clause in the contract • Ensure all staff know responsibilities and conditions • Ensure all staff are suitably trained and experienced in contract planning and management • Maintain up-to-date procedures and practices
3.4. Failure to monitor the post-implemetation process	✓ Potential future failure in the procurement process	• Ensure all staff are suitably trained and experienced in contract planning and management • Maintain up-to-date procedures and practices • Include evaluation clause in the contract • Develop systematic evaluation methods, techniques and evaluation criteria

As above is presented, we conclude that the Contract administration involves all activities related to the monitoring of suppliers, contractors and service providers' performance in the fulfillment of their contractual obligations, and to ensure that appropriate actions are taken to promptly remedy any deficiencies noticed in contract implementation, scope or terms and conditions.

The overall performance of the entity involves the aggregation of economic performance of the contracts, with the social and environmental performance. All economic entities claim performance so that performance management has become a tool not only useful but also indispensable, unable to speak of performance without proper management, performance evaluation and in this context, is a key to management.

In this article the research vision is limited to some risks situations which could have consequences to a general economic and financial analysis of the contract administration, especially in term of costs, as the following:

1. ability **to negociate** the contract
2. ability **to administrate** the contract
3. ability **to monitor** the post-implementation stage
4. ability **to evaluate** the procurement process,

with indicators such as: *the contract quality of terms and conditions, reconciliation with the bide, staff performance on negotiating process and the implementation process, market knowledge, ability to solve administrative problems, cost variables, ability to share risks between buyer and tenderer, adequate formula for calculating variations of costs/prices, the level of evaluation methods, techniques and evaluation criteria progress*, and so on.

As the results of these abilities aim to assess **the health of the public procurement process**, the same applies to the interpretation of indicators obtained for the assessment of the "risks health of the contract". Economic and financial results obtained are assessed by

- *comparison with the values obtained at the end of the contract implementation with the values established in the planning period,* in order to appreciate the time evolution of the "state of contract health" or,

- *comparing with the averages registered or recommended for different areas and industries for the same types of acquisitions*, in order to take future measures with a view to increasing quality of work.

Depending on the objectives pursued by the contract diagnosis and depending on the assessment of the results, we can jump to different conclusions, such as:

- the financial evolution of the contract **has accomplished** the objectives compared to the prior planning period, but compared to the average values of branch activity can be seen as a company is much below these performances;

- the financial evolution of the contract **does not achieve** its own performance determined in the prior planning period but, compared to the average values of branch activity can be seen that the contract achieved more than these performances.

Our research intends to mirror **the importance of the monitoring action during all the procurement process**, therefore as above is mentioned, the evaluation for any contract must include a good understanding of the objectives aimed to be performed by. Contract Administration generally concludes with a final inspection and acceptance of the goods, works or services prior to the completion date or termination of the contract.

The inspection and verification, prior to acceptance, should ensure as a minimum that:

1. The goods, works or services meet the technical specifications and quantities defined in the contract, *2. Any variations to the contract are well documented and accounted for,* *3. Any delay has been noted and appropriate actions has been taken as indicated in the contract, and*
4. All required documentation had been received and good record keeping, and documentation is ensured.

Depending on the conclusions of the financial diagnosis which occurs we can identify the strengths and weaknesses of the contract, as the first step to prepare a corrective action plan in the short, medium or long term, in order to recover, maintain or optimize a future **"state of financial health" of the public procurement contract.**

3. Conclusions

How important the contract implementation phase is in reality is a question with a prompt response: *very important*, because it is where the results of the procurement process are obtained, and the requesting entity is in a position to finally receive the expected benefits of their procurement

request. Without contract award and effective contract implementation, the objectives for initiating the procurement process cannot be attained. The supplier, contractor or service provider has the obligation to observe the contract in accordance with its terms and conditions, to meet all the technical and quality standards. Also, the procuring entity has the obligation to comply with the terms and conditions of the contract; especially the obligation of ensuring that payments are made on time. The success of the public contracting process depends on a good contract administration because during this stage a significant amount of waste and abuse of public funds and corruption in public contracting happens. Most of the focus is placed on the procurement process, which is a comparatively shorter period than contract implementation. The real benefits, however, are obtained after the contract is awarded, **so more attention needs to be placed on ensuring that the contract is implemented consistently with its terms and conditions**, when the real value of the entire procurement process is achieved.

Therefore, our article presents a form of how to manage to analyze the risks for a public procurement contract not only in the planning period but also after the implementation stage, so that future difficulties are to be mitigated and good practices to be developed by all the public or private entities.

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