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TABLE OF CONTENTS

Ioan Lazar - <i>DECENTRALIZATION OF ITS QUALITY ASSURANCE REQUIREMENTS...</i>	1/6
Crăciun Leucea - <i>LUCRATIVE LINKS TO LOCAL POLICE AND LOCAL POLICEMEN ...</i>	7/10
Florian Mateaş - <i>PUBLIC ORDER AND SAFETY PLAN OF THE LOCAL POLICE.....</i>	11/17
Solymosi Krisztina - <i>FAT IS IN THE FIRE.....</i>	18/24
Saad Badah - <i>REFUSING RECOGNITION AND ENFORCEMENT ON GROUNDS OF PUBLIC POLICY AND NON-ARBITRABILITY IN KUWAIT.....</i>	25/30

DECENTRALIZATION OF ITS QUALITY ASSURANCE REQUIREMENTS I. Lazar

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Abstract

This article aims to offer a synthetic presentation of the principles of local public administration autonomy and decentralization at national level as well as the perspective of increasing the quality of local administration through the implementation of quality management activities of local authorities.

The article aims to illustrate the full compatibility between decentralization, local autonomy, and quality management, the meeting point of which is the individual and his rights.

To achieve this target, I proposed to address the following issues:

- *Concept and current development of the principles of decentralization and local autonomy;*
- *Highlighting the main advantages and disadvantages of decentralization administrative area;*
- *Concept and the scientific content of total quality management and the lines of action in improving the quality of public administration activities.*

The present article has the basis the sources and papers from experts in the field of administrative law, Community and studies by sociologists on public administration, legislation and quality management, having as starting point the European Charter of Local Self-Government.

We appreciate the importance of the article is determined by its objectives. The conclusions and recommendations are developed interdisciplinary; both of them are oriented on the increase of the citizen's satisfaction towards local government acts.

In the new European context, because there is increasing talk of a unique structure not only European but also at global level, what we call a qualitative administration is required, without ignoring social values, political, economic and cultural needs of each nation.

Keywords:

Local government, decentralization, quality management

Introduction

Local societies are being more and more highlighted, each citizen occupying a central role in the evolution of the modern state. Therefore, the decentralization process is a fundamental principle of the functioning of local societies and involves solving local interests by the representative authorities of the territorial administrative units. This principle is enshrined in international documents, the European Charter of Local Self extensively discussing the application of this principle by the signatory states of the Charter.

Our paper's actuality emerges from the influence of the decentralization principle on the quality of local public administration in the context of European integration properties values that directly supports democratically principles and the rule of law, as well as the importance of quality management to overcome the disadvantages of decentralization.

Local public administration

By local public administration we refer to all state organizations that are called upon to satisfy the interests that are not general, but concern primarily the local societies, and are characterized by the fact that holders entrusted with the administration of these interests have no power from the central authority, but from the local electoral body, by election. These holders are subordinated to the central authority, represented by the Government, exercising its right of coordination and unity of the state by means of guardianship and control.

The characteristics of local public administration

The analysis of the legal dispositions regarding the local public administration, highlights the following key features:

1. The local public administration is no longer a state administration, but an autonomous administrative structure that allows local communities to solve local public affairs through their own administrative authorities, under the guidance of the central authorities¹;
2. The functioning of the local public administration is based on the decentralization principle, local functional autonomy and the distribution on a wider space of public services, are an expression of administrative decentralization regime applied to the Romanian government;
3. Local public administration includes within its autonomous administrative authorities: villages, towns, mayors, county councils (also chairman of the county council) and public services organized under the authority of the local public administration;
4. Relations between the local public administration organized in villages and cities and the county level administration are based on the principles of autonomy, legality and cooperation in solving common problems; there is no subordination between the two public administrations;
5. The relations between local public administration and the specialized central government, we include here the decentralized public services, are the specific relations of collaboration, cooperation and collaboration, which is a co-management regime;
6. Local public administration solves the public problems of the county, through elected administrative authorities, or by local referendum. In other words, their power does not come from the state powers, but on the contrary –their strength is drawn from the will of local voters whom they represent and on whose behalf they act;
7. Local government is a concept that designates a body of civil servants who provide public services (which can be considered in terms of SR EN ISO 9000) for national and local collectivities.

The Constitution, in Title III Public authorities at Cap. V Public Administration, Section 2 of the local government or administrative, art. 120, establishes only three constitutional principles underlying the organization and functioning of public administration in Romania, namely:

- Local autonomy;
- Decentralization;
- Distribution on a wider space of public services.

Legal provisions on local government include six basic principles²:

- The principle of decentralization;
- The principle of local autonomy;
- Principle of public services;
- The principle of eligibility local authorities;
- The principle of legality;
- The principle of consultation of citizens in solving local problems of interest.

¹ Constitution, *Official Gazette No. 758*, 23 October 2003

² Law 215/2001 *on local government published in the Official Gazette no. 204*, in April 2001, as amended by Law no. 286/2006.

DECENTRALIZATION OF ITS QUALITY ASSURANCE REQUIREMENTS

Decentralization

Decentralization regime of public administration is specific to the state of law and involves solving local problems by the authorities chosen by local societies (not appointed by the central authorities), not hierarchically subordinate to the central authorities, operating autonomously, under the law, and their acts (even illegal acts) can be canceled only by authorities from a different sphere of state powers, respectively – the courts of law.

In the Romanian constitutional system, the decentralization process regards on the organizational and institutional plan elected local authorities such as: local councils, mayors and county councils, including public institutions that are subordinated to the elected local public administration. Functionally speaking, the powers and duties of the authorities mentioned above are conferred by law.

Decentralization of public services consists in the recognition of a certain autonomy and granting legal personality for a certain type of institutions or public services organized in administrative units. Many specialists analyze and focus simultaneously and decentralization of public services principle and the principle of local autonomy, considering them in many ways, inseparable.

In the Romanian doctrine, largely influenced by the French, it was felt that government represents all public services and that public services are the means by which government operates.

Considerations on decentralization

The main advantages of decentralization are:

1. One of the advantages is that decentralization is a fragmentation and dispersal of political power. It must be said that governments remain the most powerful institutions in the society. The establishments of the governments not only include rules that coordinate the economic system, but governments, and not only them, have the authority, ability and power to legitimate dispose of wealth, freedom, and even the life of the individual. In this conditions it's very important to establish and maintain a balance. Decentralization is the best way, maybe the only way to achieve such a balance. This balance in the state power separation can be achieved by:

- Decentralization of the decision-making capacity even within the state.

As Montesquieu and Madison have shown, it is essential that a "branch" or "actor" (a person) is not entitled to exercise the power alone. In most cases this has resulted in the establishment of independent judicial and legislative bodies

- Setting up multiple levels of government, each with a degree of independence and autonomy in relation to the other.

The objective is to avoid an excessive concentration of power and authority and to promote the creation of competing elites.

2. A second advantage of decentralization is that it serves the creation of additional civic space. Generating more centers of power, inevitably creates more space in which civil society organizations (interest groups, employers, trade unions, media, etc.) can develop and find the means of subsistence. Such centers of power, especially when you have a certain autonomy, can contribute to the consolidation government accountability to society.

3. The third advantage of decentralized governance is that it creates opportunities for the emergence of opposition political parties groups and especially resources for opposition political parties. Decentralization provides opposition political parties the opportunity to mobilize themselves, to concentrate their efforts and earn experience from the exercise of local responsibilities.

4. The fourth advantage of the decentralization is that it creates many opportunities skills development and democratic practices. Many observers, beginning with Rousseau suggested that Local Government is not only a springboard to higher positions, and experience in the field of negotiation and compromise - necessary elements of democratic governance.

5. The fifth advantage of the decentralization is that it provides more options for the citizens in search of a certain service. If the solution obtained at one level is not satisfactory, citizens can implement strategies which are meant to cause a positive reaction in relation to a third party.

6. The sixth advantage of the decentralization is the adaptation to the diversity of popular expectations. In several countries, regions have income needs and accommodate many different ethnic groups, regional and tribal. Decentralization allows the combating of a certain uniformity with the possibility to make local adjustments. In this way the needs and interests of the people will be followed and respected.

7. The seventh advantage of the decentralization is that it creates a stronger sense of political efficacy among citizens. Generally people tend to react positively to a government closer to them and tangible, even if the policies pursued by the government are not the most favorable for individuals.

8. Decentralization offers more economical initiative at local level. The conditions of a successful local economic development are: a high degree of local autonomy, extensive powers given to the local authorities (fiscal and legislative).

The limits of decentralization relate to:

- a. One of the targets is the fiscal field. The dangers are higher when the local actors don't have the responsibility to collect their own revenues, but on the contrary, depend on the income we are transferred to a higher level. This situation contributes to fiscal irresponsibility.
- b. Another potential danger of decentralization is that local institutions can be captured by local elites very well placed and organized. Madison pleaded in favor of a larger and more uniform district organization, considering that they are less susceptible to be captured and controlled by local elites.
- c. Another problem is that local institutions, even when run by well intentioned individuals who take a stand, they are likely to have a narrow perspective compared to the the government in terms of public policies. Therefore, the efforts to achieve political interest may be, deliberately or not, countered by the action of the local authorities. This occurs in a particularly fashion, when the public policy issue is not clearly acting in the interests of the local level.
- d. Another real difficulty which is becoming increasingly evident in many countries, as they adjust their policies for decentralization, is that such a strategy can serve as a front to allow the central government to avoid responsibility regarding essential services. Thus, increasingly, more and more national governments, under the pressure of the financial regime, tend to transfer powers to the local authorities without providing them with the necessary resources to sustain their new status.

The public administration and the quality management

The importance of quality management in the local public administration stem from the following considerations³:

1. for the administrative authorities achieving and maintaining the desired quality of people, under efficiency conditions, is a social necessity; to achieve this goal one is conditioned by the proper usage of the human resources and the available material and financial resources.
2. people want to have faith in the ability of the administration to provide the required quality and maintain the quality of public services; the administration must be able to demonstrate that it has implemented an effective quality system.
3. the administration must take more under account the requirements of electors - aimed to protect the life and health of the individual and the environment.

³ LAZAR, I., *Quality Management*, Agora University Press, Oradea, 2011.

DECENTRALIZATION OF ITS QUALITY ASSURANCE REQUIREMENTS

Given the succession of the stages that correspond to the management process in general and the specific activities to achieve quality, it is considered that the quality management functions are planning, organizing, coordinating, training, control, quality assurance and the improvement of quality. Taking into account the concept of "quality trilogy" defined by Juran, we can see, as follows, the three main functions of quality management:

- the planning;
- the control;
- improve quality.

Planning processes are aimed primarily to the development of products and processes that comply to the citizen`s requirements. Quality control ensures a small range of variation as to its prescribed level. The corresponding processes of improving the quality should ensure the elimination of inconsistencies due to "chronic" quality problems.

The basic principles applicable to MQT services offered by public administration are:

Principle 1. It all starts with a commitment by the management and all is perpetuated because of this commitment.

The general direction has launched and continued the movement due to:

- the enunciation of a quality policy at administrative level
- the existence of a quality Committee, responsible with implementing quality management strategies and monitoring it through specific barometers
- Investment of resources by naming a director of quality and quality coordinators at the level of the operational and functional units. These resources serve to catalyze the actions of these essential functions and the proposed strategies and of action plan of the direction mentioned above. This investment is added to the existing investment of maintaining the quality of services provided;
- the decision groups from the administrative level will take into account the specific quality improvement projects.

General Management:

- Promoting actions to improve quality management;
- provides the education for its own personnel and recognize its merits;
- Key decision makers from the administrative level invest their own time in order to have a quality administration.

Principle 2. Adhesion to promote the quality of the staff of an administrative structure on all functions and at all levels.

This adhesion is part of quality education, either by tracing individual objectives, either by participating in working groups (groups for quality improvement, quality clusters).

Principle 3. In order for a rational action to improve quality to exist, the next conditions are needed:

- The definition of quality in quantitative terms, by expressing the needs that result from the administration - citizen relation;
- Measuring quality through data acquisition, in terms of a "non-compliance " level of the products delivered or services rendered, by reference to the residents needs;
- Searching and analyzing the causes of non-compliance, the use of traditional means and methods (brainstorming, consensus, Pareto diagram, cause and effect diagrams, etc.).
- Eliminating the causes of non-compliance, through preventive action plans; in this problem supervision is needed to prevent the recurrence of the same effects due to the same causes.

Conclusions

It's very important for the manager (mayor, councils president) and the organization he leads to plan the activities regarding the setting, documenting and implementing of a quality system. Activities within the organization are dynamic activities and contracts should run, while the staff affects a large part of its efforts to implement SQ. Before engaging in this effort, the manager must be prepared and develop a plan of activities in order to establish the documentation and implementation of SQ. This plan can serve as a basic document to control and track the performance of daily activities. The plan can be improved as new or planned activities diversify their object of work.

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LUCRATIVE LINKS TO LOCAL POLICE AND LOCAL POLICEMEN C. LEUCEA

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Abstract

The work approached by me aims to highlight the Group and tracing individuals with which interacts congruently and convergent the local police, local police officers to perform with maximum efficiency the required tasks from reference documents at central and local level.

A clear selection of corresponding officers as well as clear problem-solving areas of joint action is set up in a matter of good practice and behavioral attitude.

In fact, I've structured my presentation on main directions such as: networking and cooperation with subsumed lucrative structures from City Hall, with citizens, with institutions of public order and national defense, with local public administration bodies, municipal, city and County.

Also, I've treated in my work issues relating to joint police work with local volunteers, with local police, other local police structures in the surrounding areas and outside borders, and last but not least, issues of cooperation with the local police units, with higher education institutions which train courses in this problem.

Therefore, I appreciate that the content of this material will complete the image of the work of the local policeman, considering the fact that for any adjacent mission to the areas of responsibility, he will combine informative documentary effort, with the Local Council, according to the provisions emanating from City Hall departments.

Keywords: public order, lucrative networking, cooperation

Introduction

Life after 1989 showed that there is an increasingly need for a structure at the level of the community and in its subordination to deal with the solving of the everyday problems of the citizens, which affects them directly and indirectly, a lucrative lever through which the City Hall can directly monitor how the local Council decisions are materialized.

If, generally, all the structures in the city have to act harmoniously and cooperatively, it seems that the local police for this issue sounds like a command, like something imperative, as a conviction to harmony.

I strongly believe that since the entity in question is designed to operate both the normative acts elaborated at the central level as well as those from the departments subordinated to municipal councils in the form of projects to the City Council, they gain a legislative power at the local level, and need to be implemented. Therefore, the local police must maintain the informative and well understood cadence to act in various fields in cooperation with the departments.

Thus we observe that the scope of local police doing is quite large, and includes inside the citizen, who has to be the recipient of all institutions called CITY HALL, including the Local police too.

From the work of the institution in question should not miss the educational arrangements, domestication, civic and educational activities for the citizens.

1. Working in conjunction of the local police departments with different departments of the Town Hall

As I showed above, I think I'm not wrong when I say that there is no structure so well and tightly interlaced with other structures, such as the Local police. Maybe, though surely it is, it is its main advantage and one of springboard for generating success.

To read and learn competences stipulated by laws and regulations and to plunge in work without fixing a time limit for getting the knowledge of the duties of all the directions of the City Hall would be a serious error. So a mandatory solution for the structure of the local Police officers, called local policeman, is to know in details the tasks of the management board which rule at the level of the community, what their expectations are and what administrative measures to provide legal documents that they've generated and that local police have put them in practice in their specified manner.

I'm going to list below some ways, techniques and methods by which this lucrative networking is put in practice of annual, quarterly, monthly, weekly and daily activity between local police and City Hall departments.

I appreciate that the plan with the strategic objectives of the City lay in the thumb for everyone, and the same happens with extracts from plans from the department tangent with local forces.

Further, I'm going to underline the duties extracted from the insurance plan policy of order and peace. These are the conclusions extracted from the quarterly newsletters sent to the City Council, from those monthly offered to the mayor, as well as those revealed by the weekly coordination meetings.

Based on an agreed schedule, Local police are obliged to inform about the operative situation and ask for moves accordingly and last but not least to be the integrating institution in realizing the full circuit in the relation with the citizen. Inventory reference that occurs in the concentration of forces and action comes as a clear option that proves the management of order, peace, etc., when the town is found above the daily behavior.

I have left to the end of this part what concerns the educational side put in practice through verbal, written information, preventive notices, announcements and fliers and through media.

As a practical-applicative way, I underline the manner which means the analysis for each responsible, within the areas of responsibility vis-à-vis the who's with whom, how, when, working in joint cooperation, who are intended for civil servants, which is their phone number, office etc, so that the relational system between local police and the institution to be well harmonized.

2. Local police cooperation with the structures of law of order and peace and not only

From my experience, I consider that the first step which must be done is the one that means the reciprocal study of the documents for each institution by all its components. This study of the documents will not violate the privacy of specific areas but it will assume a well-defined informative documentary picture versus "the object" of work of each institution.

Then, I appreciate as necessary to highlight the tasks which are complementary, followed by the achievement of a common vision which means zoning the responsibilities, namely a common establishment of the order and public safety sectors.

The participation according to law 155/12 July 2010 of the local forces of joint-team City police headquarters, the headquarters of the gendarme-structure to carry out the plan to ensure peace and order, under the patronage of the mayor shall be set up in another lucrative level.

Further, I enumerate other ways through which this vision of working together is possible:

- the section plans for joint actions determined by different manifestations;

- cooperation protocols
- joint working procedures
- joint patrols
- sharing of information
- exchange of experience
- training activities in common
- each other access to the database
- educational activities conducted in common, etc.

I appreciate that the model adopted for the relational system may be used as set out in paragraph 1.

3. Lucrative relationships of the Local Police with the citizens

The reason of the local forces coexists in the need to provide services, assistance to the population, to the citizens. The citizen becomes both the object of action of the institution and the beneficiary of labor. He, the citizen, is the center of interest, of concern, the citizen representing the community.

The motto ' Together for the community, close to the Community ' should not be a dry, empty of content, without foundation, but one to be found in every day activity. The preventive side of the local police work is strongly supported by the citizen information.

Local police being subordinated to a decentralized structure and in the service of the community, of the citizen, is obligated to give them their reckoning and to act for the good order in all aspects. What could be more successful in an enterprise in which there is a convergent action between City Hall structures (local police) and the citizens? Almost nothing!

Further, I will enumerate some of the ways through which the Local Police, the local police officers and the citizens work together-:

- the continuous functioning of the call center service
- the existence of the free call for the citizen's relationship with City Hall
- the exposure on the internet and the media of the annual, quarterly, monthly objectives of the local police
- the direct contract between the local policeman and the citizen
- providing flyers, forms, etc.
- the use of the preventive working procedure through preventive ' notifications '
- local police participation at meetings of associations of lodgers
- initiating and conducting formal and informal gatherings in the streets, neighborhoods etc.
- the implementation of communication strategies via-à-vis the role, the tasks of local police
- the possibility of visiting the structure - open gates day

Here, for instance, the informative and transparent is doing at home regarding the functioning of lucrative joint local policeman with the citizen.

4. Lucrative local police cooperation, of a local policeman in other administrative bodies of the County with local volunteers, police and other local police, as well as some local police of other States bordering on our country, with institutions of educational profile

I believe that the above enunciation conjures up the amplitude of the local police work congruent with other vectors with the power of influence and action for the achievement of orders issued in the community, to the assurance of the need for mental and physical comfort for the citizen. So, I'll leave this problem unfinished out of my desire to focus upon it in a future article, because it requires a greater attention.

Conclusions

Some important conclusions can be drawn from the above presentation, such as:

- first of all the presence of the local policeman among the citizens is the real key to success;
- secondly, the rich data base and information which the local police must have and which must be permanently updated by him, makes out of him a civil servant with a special status within the City Hall
- thirdly, as the local policeman cooperates with other structures, makes out of him a “team worker” highly appreciated by everybody, both citizens and City Hall.

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**PUBLIC ORDER AND SAFETY PLAN
OF THE LOCAL POLICE
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Abstract

The strategy for providing public order and security, increasing the safety of citizens and preventing street crime is a medium-term planning document drafted by the Ministry of Administration on the basis of the National Security Strategy of Romania, the White Paper on National Defense and Security and the institutional and conceptual boundaries in the field, which defines public order and security and the national interest in this area, assesses the current state of public order and risk factors, lays down the main principles and directions of action, estimates the resources required in order to maintain, secure and restore public order and sets the responsibilities of the public order forces.

Keywords: strategy for providing public order, Local Police, Local Committee of Public Order

Introduction

The Ministry of Administration is the specialized authority of the central public administration which exercises, according to the law, its incumbent duties of maintaining public order, protecting fundamental human rights and freedoms, public and private property, preventing and combating antisocial acts, preserving the legal regime of the state border, fire safety and civil protection, contributing through all its activity to defence of constitutional democracy, sovereignty, the unity and territorial integrity of Romania.

Ensuring a climate of civic normalcy, of public order and safety has always been a priority for society, which through its specialized structures has sought to identify the most effective forms and methods of achieving this goal. The various patterns of organization of the authorities responsible for ensuring public order determined different approaches to implementing it, based on the realities specific to each country. The Ministry of Administration successively experienced several institutional models in order to meet the community's needs of public order and safety, among other things, through the development and implementation of programs and strategies adapted to the operational situation existing in a certain stage of social development.

1. The place and role of the Local Police among the state institutions responsible for public order and safety

The need for harmonization and compatibility of the Romanian public order system with those in the European Union has led to constant efforts to achieve an effective legal and action framework that might serve the intended structural and functional changes and objectives, by providing the human and financial resources necessary for their implementation.

To this end, the process of drafting and adapting the laws on the operation of the Ministry of Administration and its subsystems had in view to set their powers and duties, as well as to align them with EU standards.

PUBLIC ORDER AND SAFETY PLAN OF THE LOCAL POLICE

The general evolution of Romanian society and the dynamics of the operational situation, characterized by the perpetuation of criminal acts that endanger human life and integrity, public and private property, the legitimate rights and interests of citizens, require a reassessment and thoroughness of the reform of the structures and components with the authority to prevent and fight crime, by giving priority to the preservation of street public order and safety.

Depending on the operational situation and the resources allocated, the public order and safety strategy establishes the structure, the missions of the component forces of public order and safety in a dual system, the logistics, the management and cooperation mode of these forces.

Public order, as a component of national security, is the state of legality, balance and peace, corresponding to a socially acceptable level of compliance with the legal rules and civic behavior, which allows for the exercise of constitutional rights and freedoms, as well as the functioning of structures specific of the rule of law and is characterized by the credibility of public institutions, public health and morality, a state of normalcy in the organization and conduct of the political, social and economic life, in compliance with legal, ethical, moral, religious and other rules, that are generally accepted by society.

Public safety expresses the feeling of tranquility and trust that the police service inspires through the measures it applies to maintain public order and tranquility, the safety of persons, groups and goods, and to achieve a civil society – police partnership, in order to solve the problems of the community, to protect the rights, freedoms and legal interests of citizens.

The state of public order and safety is achieved through general economic, social and political measures, as well as through special measures, mainly of a preventive nature. An analysis of the current state of facts reveals the persistence of the vulnerability of citizens' safety, the perpetuation of crime and the development of organized crime, although the response capacity of the institutions of the rule of law to specific risks and threats has increased.

Oradea Local Police was established by the decision of the Local Council of Oradea¹, to exercise powers with regard to the protection of the fundamental rights and freedoms of individuals, public and private property, the prevention and detection of crimes, including the following fields:

- a) public order and tranquility, as well as the protection of goods;
- b) traffic on public thoroughfares;
- c) construction works and street display discipline;
- d) environmental protection;
- e) trading activities;
- f) population statistics;
- g) other fields established by law.

2. Public Order and Safety Plan²

¹ H.C.L. (Local Council Decision) No. 37/28.01.2011, as a public institution with legal personality subordinated to the Local Council of Oradea.

² Decision (No. 15/2011) *approving the public order and safety plan of the local police. The Local Council of Oradea Municipality, Bihor County: Considering:*

The provisions of Law No. 155/2010 on Local Police.

Order No. 92/2011 approving the methodology of the public order and safety plan of the local police.

Government Decision (HG) 1332/2010 *on the Regulation of organization and functioning of the local police.*

Local Council Decision (HCL) No. 1/2011 on the set up and operation of the local committee of public safety.

On grounds of Article 36 in conjunction with Article 45 of Law No. 215/2001 (r1).

The Local Council of Oradea Municipality adopts this decision: Article 1. The plan of public order and safety of Oradea Local Police is approved, according to Annex 1 which is part of this decision.

- a) Analysis of the operational situation
- b) Public order and safety formations, missions and areas of responsibility
- c) The available manpower and logistical support
- d) Manpower training for the tasks and formation control
- e) Final Provisions

The Public Order and Safety Plan is the annual document that organizes the activity of the local police structures to maintain public order and safety in the territory of administrative-territorial units.

The drafting of public order and safety plans for the administrative-territorial units that have local police structures is done by the local committee of public safety and approved by the deliberative authority of the respective local public administration.

In drafting the public order and safety plan, the concept and modes of action set in the Unique public order and safety plan drafted at the level of the county/Bucharest municipality will be mandatorily taken into account.

The data referred to in the Unique plan and the main operational data required for the drafting of the public order and security plan are provided by the representative of the unit/territorial structure of the Romanian Police in the Local Committee of Public Safety, who also establishes the organization mode of sectors/areas of public safety, the action spots/perimeters and patrol areas.

Public order and safety plans are developed and updated annually until the 15th of April or whenever changes occur in the evolution of the operational situation or in the number of local police forces participating in the activities of enforcement of public order and safety.

In the preamble the legal framework underlying the preparation of the public order and safety plan is presented – provisions contained in laws, Government Ordinances, Emergency Government Ordinances, Government Decisions, orders of the Minister of Administration and Interior, as well as other provisions within the reference area.

2.1 Analysis of the operational situation³

For an effective analysis of the operational situation, issues relating to the geographic location of the territory, population, social and economic, political or religious events, regular traditional celebrations, the report on crimes and contraventions for the previous year and present-time trends in the field should be taken into account.

A. The territory

Mainly the following aspects are considered:

- a) the geographical location of the administrative-territorial unit;
- b) land superficies and configuration: hills, mountains, plains, woodland, arable land, cultivated areas;
- c) climate regime: ordinary temperatures, lows/highs recorded, rainfall recorded in recent years and temporary precipitation;
- d) river networks: networks built, state of maintenance, their owners or managers;
- e) communication routes – roads, railways, by sea: length, their arrangement, linkages with other administrative-territorial units;
- f) recreational areas: both urban and rural;
- g) tourist sights, economic sights, public institutions, churches, museums, schools and other places that may be of interest to the work of maintaining public order;
- h) petroleum product transport mains with their pertaining installations, their length, route.

B. Population

Article 2. *This decision will be communicated to persons and institutions concerned by the care of the secretary of the municipality.*

³ Mateaș Fl., Curulescu G., Nicholas M., *Manualul poliției locale*, (Local Police Handbook), CEAFSCE Publishing House, Bucharest, 2011.

PUBLIC ORDER AND SAFETY PLAN OF THE LOCAL POLICE

Data are recorded regarding:

- a) the number and structure of the population – by age, sex, nationality;
- b) basic and/or temporary occupations;
- c) demographic data of interest – the fluctuation of the population, unemployment, etc.
- C. Socio-economic, political or religious events

The events taking place in the administrative-territorial unit are recorded, by locations and times when they occur, to have an overview of them, thus allowing a flexible orientation of the forces in the integrated public order system.

The following events are of interest:

- a) national holidays – National Day, Day of the Union of the Principalities, etc.;
- b) days of municipalities, towns, villages;
- c) celebrations of professional organizations and associations – e.g.: Navy Day, Metallurgist Day, etc.;
- d) national and local religious holidays;
- e) regular traditional events – e.g. Ziua Salcâmului (Acacia Day), Târgul de Fete (Girls' Fair), Drăgaica, Sâmbra oilor, etc.

D. The report on crimes and contraventions

Overall statistical data will be recorded, as follows:

- a) data on the evolution of crime;
- b) data on acts of contravention, percentage by categories of acts, areas where they are often committed, etc.;
- c) inter/intra family, ethnic, confessional or other kinds of conflicts;
- d) other information that would help envisage accurately the state of crimes and contraventions.

2.2. Public order and safety formations, missions and areas of responsibility⁴

A. Public order and safety formations and areas of responsibility

The following issues are highlighted:

- a) the delineation of public safety sectors, patrol areas and places/perimeters where local police forces operate;
- b) the location of formations for road traffic surveillance and control;
- c) the arrangement of the forces guarding the objectives.

B. Specific Missions

The specific missions of local police components are highlighted, in compliance with the regulatory acts of organization and functioning, with strict reference to the object of the document, namely only missions of public order and safety enforcement.

C. Activities and missions carried out in common

The highlight is on the activities and missions that are carried out in common with: the Romanian Police, the Romanian Gendarmerie, the Romanian Border Police, structures of the General Inspectorate for Emergency Situations, Financial Guard, voluntary or private emergency services, civil defence formations from public administration authorities, National Sanitary Veterinary and Food Safety Agency, National Environmental Guard and other security-specialized institutions or companies that can help prevent crime and defend the rights and safety of citizens and are based on cooperation agreements concluded for this purpose.

2.3. The available manpower and logistical support

Numerical details are given of all existing manpower and the forces involved in missions of maintaining public order and public safety, as well as their logistical support.

⁴ Mateaş Fl., Curulescu G., Nicholas M., *Proceduri operaționale*, Editura CEAFSCE, București, 2011 (Operational Procedures, CEAFSCE Publishing House, Bucharest, 2011).

The logistics equipment description includes mentions of the personnel using specific means of action and the number of patrol/intervention vehicles, motorcycles, scooters, etc., that are provided.

2.4. Manpower training for the tasks and formation control

The modes of conducting the training are mentioned, according to mission types, in compliance with the legal duties in the reference field, the venue, also specifications of who leads, coordinates and controls the formations set in place.

2.5. Final provisions

The following are provided:

- a) the manner of mutual information on developments of the operational situation between local police structures and the other institutions participating in the activities of public order and safety enforcement;
- b) the frequency of the assessments of the activities performed.

Annexes

1. the map of the administrative-territorial unit and formation elements participating in activities of public order and public safety enforcement;
2. a table of the persons in leadership positions, with tasks of coordination and control of the formations participating in the activities of public order and safety enforcement;
3. other necessary documents, including documents of cooperation with structures of other security-specialized institutions or companies, in order to prevent crimes and protect the rights and safety of citizens.

3. The head of the public order service⁵ (head of the public order office) is subordinate to the chief of Oradea Local Police and has the following specific tasks, depending on the responsibilities entrusted to him:

- organize, plan, lead and monitor the work of the Oradea Local Police staff charged with maintaining public order and tranquility;
- make sure the subordinate staff know and carry out to the letter the legal provisions governing public order and tranquility enforcement, the rules of social cohabitation and the physical integrity of persons;
- keep track of the administrative sanctions enforced by the subordinate staff;
- make sure that the subordinate staff attend specialized training, according to the established schedule;
- immediately inform Oradea Local Police leadership about all special events in the activities of public order enforcement and keep track of them;
- give a monthly analysis of the work of the subordinate staff;
- take effective measures in order for the entire staff to properly execute their incumbent duties, have a civilized behaviour, respect the disciplinary rules set, by proposing rewards and sanctions, accordingly;
- participate, along with Oradea Local Police leadership, to the drafting or updating of the public order and safety plan of Oradea Municipality;
- ensure the maintenance of public order and tranquility in areas and places established by the public order and safety plan of Oradea Municipality;
- organize and coordinate the verification of the claims and complaints addressed to Oradea Local Police, on the committing of acts that violate public order and tranquility;
- prepare a weekly report on the activities of the subordinate staff and submit it to the chief of Oradea Local Police;

⁵ Decision (No. 15/2011) approving the public order and safety plan of the local police. *The Local Council of Oradea Municipality.*

PUBLIC ORDER AND SAFETY PLAN OF THE LOCAL POLICE

- provide daily training of local police officers on awareness of the operational situation in their area of competence;

4. Local Committee of Public Order

At Municipality level, a Local Committee of Public Order⁶ operates, consisting of:

- *The Mayor of Oradea Municipality..... – Chairman of the Commission;*
- *Police Chief Commissioner..... – Oradea Municipality Police Chief*
- *..... - Oradea Local Police Chief;*
- *..... - Secretary of Oradea Municipality;*
- *..... – Local Councilor;*
- *..... – Local Councilor;*
- *..... – Local Councilor.*

The Local Commission has the following duties:

- ensure cooperation between public institutions and services with duties in public order and public safety enforcement at the level of the administrative-territorial unit;
- endorse the draft of the Regulation of organization and functioning of the local police;
- draw up the project for the public order and safety plan of Oradea municipality, which he updates annually;
- periodically review the activities of public order and safety enforcement at the level of Brasov municipality and make proposals for the settlement of the deficiencies found and the prevention of acts affecting the social climate;
- assess the specific requirements and make proposals on the number of local police staff necessary;
- submit annual reports to the deliberative authority on the implementation of the provisions of the public order and safety plan of the administrative-territorial unit. On the basis of the conclusions drawn from the the analyses carried out, he proposes to the local public administration authorities the initiation of draft resolutions by which to prevent acts that affect the social climate.

The Local Committee meets quarterly or whenever necessary, being convened by the Mayor/General Mayor of Bucharest or one third of the number of local councilors/general councilors.

Conclusion

The Local Police (of Oradea) focus on fulfilling the tasks set by the “Public Order and Safety Plan of Oradea Municipality”, drafted by the City Hall of Oradea, approved by the Mayor of Oradea Municipality and having the advisory opinion of Oradea Municipality Police, and their primary objectives are to increase citizen safety, to prevent and combat criminal acts and contraventions, crime and street crime and other missions in compliance with the provisions of Law no. 155/2010.

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⁶ *Local Committee of Public Order established through H.C.L. (Local Council Decision) no. 60/2011.*

4. Decision (No. 15/2011) approving the public order and safety plan of the local police. The Local Council of Oradea Municipality, Bihor County: Considering:
5. The provisions of Law No. 155/2010 on Local Police.
6. Order No. 92/2011 approving the methodology of the public order and safety plan of the local police.
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8. Government Decision (HG) 1332/2010 on the Regulation of organization and functioning of the local police.
9. H.C.L. (Local Council Decision) No. 60/2011 for the establishment of the Local Committee of Public Order
10. Nadia Cerasela Aniței, Drept financiar, Editura Universul juridic, București, 2011.
11. On grounds of Article 36 in conjunction with Article 45 of Law No. 215/2001 (r1).
12. The Local Council of Oradea Municipality adopts this decision:
13. Article 1. The plan of public order and safety of Oradea Local Police is approved, according to Annex 1 which is part of this decision.
14. Article 2. This decision will be communicated to persons and institutions concerned by the care of the secretary of the municipality.

Web resources:

1. www.anaf.ro – National Agency of Fiscal Administration

FAT IS IN THE FIRE

Thoughts on the alarming signs of burnout threat of Hungarian law enforcement officers

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Abstract:

An alarming phenomenon is that recently an increasing proportion of young, talented and physically well-shaped law-enforcement officers show one or more symptoms of burnout. It is therefore necessary to improve – within the framework of regular psychological and physiological screening – current assessment tools and introduces more effective screening methods for coping functions as well as for physical and psychological predictors of burnout-threat. Research says that, in many cases, these indicators can predict future decline in performance. Prevention, or more specifically trainings and forming supportive relationships in the workplace are also very important.

Keywords: burnout, police, prevention

I deal with management training of Hungarian law enforcement officers since 2006. Over the last seven years, I have met more than five hundred persons during different sessions of very variegated length (1-30 days). These officers have arrived from almost all types of law enforcement organizations and nearly all management levels. Training is an interactive method where the instructor/trainer gets the opportunity to get to know participants and this way one can get an insight to their daily life, experiences, reactions, motivations and attitudes. During the reviews and discussions following tasks, participants share not only their current challenges, pleasures and success stories, but also those problems that make their daily work operation or even private life more complicated. This article is inspired by the alarming fact that, in the past years, there is an increasing proportion of young, talented and physically well-developed officers showing one or more symptoms of burnout: they are showing low energy levels, fatigue, extremely low levels of motivation, cynicism and desperateness.

The phenomenon is not unique: many European colleagues at a recent conference pointed out burnout of policing staff as the leading risk factor and mentioned that their countries plan or are already working on complex action plans for burnout prevention. In Hungary I do not know of such plans, however evidence shows that there would be a huge need for it. Despite the fact that understanding stress symptoms, mental and physical consequences of stress and coping with stress are all part of leadership training schedules at law enforcement institutions and that there is increased public media coverage of the topic, there is still a great lack of information in this area. Few people are aware of how much stress can jeopardize them both mentally and physically, and that after a while, there is no turning back, since the damages are permanent¹⁰.

¹⁰ Selye, 1978.

FAT IS IN THE FIRE

In one of our previous articles¹¹, we argued that a watchful recruitment/selection process of potential employees as well as a regular monitoring of the staff's aptitude, mental and physical health are essential conditions for development and meeting the rising expectations. Currently health, mental and physical aptitude testing is regulated by the decree 21/2000¹² jointly issued by the Ministry of the Interior, the Ministry of Justice and a Minister without Portfolio. Aptitude testing is first carried out prior to entering law enforcement education and/or starting regular service. Examinations entail medical-health tests and assessments of one's physical condition as well as general mental functions. There are four different types of psychological aptitude testing:

- preliminary psychological aptitude assessment (before starting regular service);
- regular psychological aptitude assessment (for those in regular service);
- special aptitude assessments (e.g. for applicants to special positions);
- emergency aptitude assessment (in case of certain problems).

These assessments entail personality tests, sensory-motor performance tests and perceptual performance tests for example, but specialised testing of coping functions and measurement of physical and psychological precursors of burnout are missing, however these indicators may predict future decline in performance.

In the absence of effective coping techniques, stress associated with everyday work tasks has a negative effect on both psychological and physical health (and certainly on the quality of work as well) in the long run. A Hungarian military study also confirms that sub-chronic physical and psychological stress make performance decline in a very special way:

- it deteriorates information storage and retrieval capability;
- performance in well-practiced, automatic sensory-motor tasks declines and
- some mental factors playing an important role in task execution such as mood or emotional stability change¹³.

The same study states that accumulated stress increases the possibility of emotional, affective and mood-directed responses, whereas the number and accuracy of experience- or knowledge-based, professional responses also decline. This would again result in incorrect task execution and poor performance.

One cannot stress it enough that there are psychological and physiological precursors that could be detected by appropriate assessment tools – even as part of the regular assessments. (E.g. detecting the sources regulating stress management and coping mechanisms or detecting inadequate psychological operations). This can be an important aspect in a system, where we constantly suffer from staff shortage and replacement of missing skilled, experienced personell is rather difficult and time-consuming.

What does burnout mean?

H. Freudenberger's (1974) classic definition is still valid today. In his view burnout syndrome is a state of physical, emotional and mental exhaustion caused by chronic, emotional burden (stress). This state is characterized by feelings of hopelessness and incompetence as well as losing goals and ideals. The person in this state has dominantly negative attitudes towards himself, his work and frequently others around him.

The phenomenon itself is not a novelty, but scientific research in the subject started only a few decades ago. The first studies of burnout were all focusing on professional workers dealing

¹¹ Papp et al, 2010.

¹² VIII. 23.

¹³ Hullám, 2005.

with people (e.g. nurses, physicians, social workers etc.). However it may occur in any profession, in which direct communication with clients, citizens, students etc. plays a major role. Most studies written in this topic addresses police officers and other law enforcement officials as a vulnerable group.

Over the past thirty-four years, many approaches and definitions were constructed for the concept of burnout. Static definitions focus on symptoms and the context of their emergence. Such a static definition is the most frequently cited definition by Maslach and Jackson (1981, 1984). They say that burnout can be characterized by symptoms of emotional exhaustion, depersonalization and reduced personal accomplishment, and most frequently it can be observed in persons working in „people-related” jobs. Dynamic approaches refer to the process itself. An example could be a definition from Cherniss (1980). He believes that burnout is a process in which the professional attitudes and behavior of the individual change in a negative way as a consequence of workplace overload. Schaufeli and Enzmann (1998), after reviewing previous research, proposed a synthesizing or integrative definition: in their opinion burnout is a state of mind that can be observed in normal, healthy individuals. This lasting, negative and work-related state of mind is characterized by distress-related fatigue, decreased performance and/or motivation, as well as development of dysfunctional working attitudes and behaviors. The authors focused on the role of coping in developing either ‘positive gain’ or ‘negative loss spirals’.

The Handbook of Work and Health Psychology published in 2003 dedicated an entire section to the burnout phenomenon¹⁴. After an overview of relevant research, they found that burnout correlates with

- demographic characteristics: those having a higher education and those under the age of 30 are more vulnerable than others, but there are examples to the fact that older, more experienced persons are more affected by this phenomenon¹⁵. Another interesting demographic issue is the fact that those living alone are more often vulnerable to burnout than those living in a steady relationship¹⁶.
- personality features: people having an external control attitude are more vulnerable¹⁷ compared to those having an internal control attitude, whereas those having an active-confrontative coping strategy are less affected compared to those having a passive-defensive coping strategy¹⁸. It is interesting to note that all three dimensions of burnout (emotional exhaustion, depersonalization and reduced personal accomplishment) are negatively correlated with self-esteem, self-appraisal and with the competence motif¹⁹.

Burnout at the same time has several physiological implications, and several researchers dealt with this aspect during the past decade. Here are a few examples:

- Grossi et al. (2003) found that burnout accelerates metabolism and initiates oxidative stress reactions in women.
- De Vente et al. (2003) reported that post-awakening cortisol levels and resting heart rate of burnout syndrome test subjects are elevated as compared to a healthy control group.

¹⁴ Schabraeq et al. eds. 2003; pp. 383-425

¹⁵ Schaufeli and Van Dierendonck, 2000; *referred to by Schabraeq et al.* published 2003

¹⁶ Maslach and Jackson, 1985

¹⁷ Glass and McKnight, 1996

¹⁸ Schaufeli and Enzmann, 1998

¹⁹ Pfennig and Hüsich, 1994

FAT IS IN THE FIRE

- Armon et al. (2008) concluded that burnout and insomnia are risk factors of one another, i.e. existence or formation of one indicates that the other one will develop.
- Honkonen et al. (2006) believes that burnout in males' causes' mainly musculoskeletal problems while affected females rather suffer from cardiovascular diseases. These disorders interestingly correlated with all three burnout dimensions.

Literature thus provides numerous data for physiological changes occurring besides the well-defined psychological symptoms. Some of these – such as cortisol levels and change in heart rate – can be measured relatively easily while others require more complex intervention. It would be useful to examine which of these changes could have a predictive value at an early stage of burnout. These could then be added to the regular aptitude testing procedures. This would be important because traditional, questionnaire-based testing does not always show accurate results. Participants could try to make their answers more appealing, in order to avoid inappropriateness or the inconvenience of going to suggested treatments.

Concerning the organizational correlates of burnout, Maslach and Leiter identified six key domains: workload, control, reward, community, fairness, and values. Let's see these in a nutshell (based on Leiter and Maslach (2006)):

- The most commonly discussed source of burnout is workload, that is when job demands exceed human limits. Increasing workload has a strong relationship with burnout, especially with the exhaustion factor.
- The control area includes employees' perceived capacity to influence decisions that affect their work, to exercise autonomy, and to gain access to the resources necessary to do an effective job. Control problems occur when workers have insufficient authority over their work-related tasks or are unable to shape the work environment to be consistent with their values.
- The reward area of worklife deals with the extent to which rewards – monetary, social, and intrinsic – are consistent with expectations. Lack of recognition from others (e.g. service recipients, colleagues, leaders etc.) devalues both the work and the workers, and is closely associated with feelings of inefficacy.
- Community means the overall quality of social interaction at work, including issues of conflict, mutual support, closeness, and the capacity to work as a team. Sadly enough, some jobs isolate people from each other, or make social contact impersonal, but most destructive is chronic and unresolved conflict with others on the job. Such conflict produces constant frustration and hostility, and reduces the likelihood of social support.
- Fairness is another important element. Unfairness can occur when there is inequity of workload or payments, or when there is cheating, or when evaluations and promotions are handled inappropriately.
- A values conflict can undermine people's engagement with work. Value means for example the motivations that originally attracted staff to the job. The greater the gap between individual and organizational values, the more often staff members find themselves making a trade-off between work they want to do and work they have to do.

There is significant agreement in recent articles about the symptoms of burnout, however for example the above mentioned organizational correlates and other causal factors depend largely on culture – maybe this is why some findings of contemporary studies are quite contradictory.

Burnout was first studied in helping professions, but numerous researchers examined law enforcement fields, too. These studies – e.g. Alexander et al. (1993); Biggam et al. (1997);

Brown, Campbell (1990, 1994); Evans, Coman (1993); Ellison (2004); Golembiewski, Kim (1990); Golembiewski et al. (1995), Burke (1993, 1997); Fishkin (1987) – generally emphasize two large groups of stressors affecting policemen. One group is stressors generated by the nature of police work (physical dangers, violence, insecurity etc.), the other is organizational stressors (leadership style, poor communication, lack of support, labor shortage, etc.). The above mentioned studies all conclude that the latter group is considered more important. Erika Szabó had arrived at a similar conclusion in her 2009 PhD thesis when she examined the characteristics of subjectively perceived workplace stress-load at the Hungarian Police. She found that stressors related to working conditions (e.g. financial recognition, lack of workplace comfort) are more burdensome than stressors related to actual work tasks²⁰. Interestingly, a large proportion of law enforcement research uses the Maslach's Burnout Inventory.

Possible solutions

Job burnout is a cluster of psychological and physiological symptoms that develop as a reaction to workplace stress. This condition however is not a static, one-time phenomenon, but rather a process that is repeated periodically. Individual features are responsible for the development of burnout on one hand, and characteristics of the work organization on the other. Therefore solutions could also be twofold: both prevention and intervention could appear on a personal as well as on an organizational level.

Probably the most effective prevention method is developing the frustration-tolerance capacities and the individual sources supporting it within the personality. Developing self-knowledge and assistance in acquiring certain coping and stress-release techniques could also be very effective. Clarifying personal motivations and attitudes is another important aspect. This means that trainings and all forms of education play an essential role in the prevention process. This is the personal level. On an organizational level team buildings of all kinds, developing a network of supporting working relationships, clarification of roles and responsibilities, shared values, goals and priorities as well as leadership development could help.

An organizational culture in which a person may sense his own importance, where employees feel that they are useful members of the community and are supported by each other is less likely to „produce” burned out employees. Workplace discussions, collegial consultations and systems introduced for decreasing work overload are all reducing the risk of job burnout.

Hungarian Police faces several problems or challenges nowadays:

- an overwhelming and uneven workload due to continuous headcount shortage;
- financial cutbacks (sometimes even endangering daily operation);
- continuous restructuring, changes in positions and adjustments and reforms in the legal environment;
- lack of shared goals, values and poor communication;
- the often rather hostile attitude of media and the public;
- the ever-shortening deadlines and high expectations, etc.

Conclusion

These problems put an extra burden on officers today, who unfortunately have little institutional opportunity to release these tensions. In order to protect the physical and psychological health of the law enforcement population, it would be essential to introduce new screening methods to

²⁰ Szabó, 2009

FAT IS IN THE FIRE

indicate early stages of job burnout in addition to regular annual physical and psychological assessments.

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REFUSING RECOGNITION AND ENFORCEMENT ON GROUNDS OF PUBLIC POLICY AND NON-ARBITRABILITY IN KUWAIT

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Keywords : Public Policy and Non-Arbitrability in Kuwait

Abstract

Foreign arbitral awards should be recognizable and enforceable. However, this is not always the case; they are recognizable and enforceable in some countries but not in others. Those countries that recognize and enforce awards are mostly developed countries, whereas those which do not are mainly developing countries. This study compares and contrasts the recognition and enforcement of foreign arbitral awards in Kuwait with a view to discovering why its recognizable and enforceable. Three factors determining whether or not foreign arbitral awards are recognizable and enforceable are identified in this study. They are the availability and adequacy of the legal framework, the attitude of the business community, and the attitude of the courts. The inquiry, accordingly, focuses on an examination of those factors in both countries. The examination reveals that the third factor is the determining element regarding the recognition and enforcement of foreign arbitral awards.

Introduction

Economic globalization has boosted international trade not only among the major trading countries but also among many other parts of the world. Consequently, parallel to this, commercial disputes have increased tremendously in recent years. There are several means that can be chosen by businessmen to settle their disputes, such as negotiation, mediation, conciliation, and arbitration as well as court adjudication. In many cases, international commercial disputes can be very complex; the facts are frequently difficult to identify, and the legal issues involve not only matters of substance but also international procedures. As well, such disputes frequently cannot be resolved by non-binding means²¹. For businessmen who want their dispute settlement to be legally binding, arbitration and judicial settlement are the only appropriate choices.

Nevertheless, it has become a trend that international businessmen often prefer arbitration because they perceive it as having more comparative advantages than judicial settlement. The resolution of disputes in cross-border transactions is a main concern to the business community. Parties to an international commercial transaction are often wary of being forced to litigate a dispute in the other party's home country, under unfamiliar laws²². One of the most suitable alternatives to overseas litigation is arbitration. Arbitration is a process by which parties agree to submit a dispute to a neutral third party, namely an arbitrator or an arbitral tribunal. The arbitrator

²¹ Bom, G., International Commercial Arbitration, 2nd ed. (*The Hague: Kluwer Law International, 2001*). Pp.123

²² Coe, J., International Commercial Arbitration: American Principles and Practice in a Global Context (New York: *Transnational Publishers Inc., 2007*). Pp.98

decides the dispute by rendering a binding and final award. One of the significant advantages of arbitration over traditional litigation is the lack of appeal on the merits of the case.

The parties' dispute is resolved in a single instance. Moreover, the "finality" of an arbitral decision brings with it the corresponding advantages of speed and efficiency. Arbitration is, however, not a perfect dispute resolution mechanism. Arbitrators, like judges, commit mistakes. The risk of receiving an erroneous award understandably preoccupies the parties to an international transaction, particularly when the pecuniary amounts in dispute are considerable²³. The main characteristic of the grounds for refusing recognition or enforcement of is that they constitute an exhaustive list, meaning that there no more reasons by which courts or the respondent could justify a refusal of enforcement of an award. In other words, under the Convention, courts are forbidden to refuse recognition or enforcement of awards under grounds that have not been established in Article V²⁴.

Although an ideal uniform interpretation and application of the New York Convention by national courts is understandably a difficult goal to achieve, the signatory countries have generally been consistent with the provisions and goals of the Convention. However, as it will be shown, one of the unfortunate precedents endangering the Convention's purposes has been emerging in the Kuwait, where courts have allowed parties to contract for additional grounds for refusing enforcement of awards, beyond those contemplated in the New York Convention and in domestic arbitration statutes.

Another fundamental principle of the New York Convention is that there is to be "no review of the merits" of arbitral awards. Indeed, the courts' scrutiny does not extent to the substance of arbitration. An arbitrator's error of law or fact is not a ground set out in the exhaustive list of Article V and, therefore, an assessment of the correctness of the arbitrator's findings is unwarranted. This restriction responds to the basic principle of international commercial arbitration which states that courts cannot interfere in the substance of arbitration, since that would denaturalize this alternative and independent dispute resolution mechanism. Furthermore, as it will be shown, a review of the merits would undermine and, in some cases, eliminate the advantages of arbitration that the parties sought by entering into an arbitration agreement²⁵.

Discussion

Under the New York Convention, the role of the enforcement courts is extremely limited. Their main task is to verify whether an objection alleged by the respondent in virtue of the grounds listed in Article V (1) is justified or whether the enforcement of an award would violate the public policy of Kuwait, according to Article V (2)²⁶. Any scrutiny beyond these limits would be unjustifiable. The non-review of the merits of arbitral decisions has been recognized and respected by courts worldwide. There are only a few exceptions where a substantive review of awards has been allowed based on statutory provisions. For instance, the Kuwait law expressly permits courts to review awards under certain conditions.

Refusing Recognition and Enforcement on Grounds of Public Policy

²³ Domke, M., *The Law and Practice of Commercial Arbitration* (Illinois: Callaghan & Company, 2008). Pp.23

²⁴ Fouchard, Ph., Gaillard, E., & Goldman B., *Fouchard Gaillard Goldman on International Commercial Arbitration (The Hague: Kluwer Law International, 1999)*. Pp.88

²⁵ Redfem, A. & Hunter, M., *Law and Practice of International Commercial Arbitration*, 3rd ed. (London: Sweet & Maxwell, 1999). Pp.89

²⁶ *Ibid*7

REFUSING RECOGNITION AND ENFORCEMENT ON GROUNDS OF PUBLIC POLICY AND NON-ARBITRABILITY IN KUWAIT

In the Kuwait, parties have attempted to empower courts to review the merits of arbitral awards by expanding the scope of judicial review by contract, beyond the boundaries established in the New York Convention and those elaborated in national arbitration statutes. As previously noted, Article V of the New York Convention establishes the only grounds under which a court may refuse enforcement of a foreign arbitral award. This list of exceptions for enforcement is exhaustive, meaning that there are no more reasons to justify a refusal of enforcement of an award.

These grounds, although regretted by some, are generally limited to the recognition and enforcement of foreign awards and not applicable to setting aside procedures. Article I restricts the applicability of the Convention “to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought”²⁷. However, as will be discussed later, the Convention may also be applied in Kuwait where the award was rendered if such an award is considered as “non-domestic” under the applicable national law²⁸.

Since the New York Convention does not stipulate the grounds for setting aside awards, the signatory countries can freely establish their own defences in their national laws. The underlying rationale of this rule is to respect the authority each Kuwait has in controlling proceedings within its territory. It also responds to the belief that that the courts of the place of arbitration are the ones best suited to decide over the regularity of arbitration. This evidences the responsibility the signatory countries have to implement national arbitration laws that, ideally, are consistent with the international treaties. It also confirms the vital role of courts in applying correctly such domestic laws.

One of the purposes of the contractual provisions seeking to create heightened judicial review is precisely to insert a ground into the setting aside procedure, namely “arbitrator’s errors of law or fact”. Two correlative effects would result from such an alteration: reduced possibilities to enforce the award outside the Kuwait -which is particularly significant when the parties’ assets are located in a second Kuwait - and enhanced possibilities to challenge the award for the party opposing enforcement.

The above remark is even stronger if the “denationalization” theory is adopted, under which an award ceases to exist once it has been annulled. Allowing parties to contract on additional grounds for setting aside awards is undesirable for the international enforcement regime. It would amount to allowing parties to alter the standards predetermined in international treaties. Courts should apply the national law strictly, setting aside awards only on prescribed grounds.

In sum, expanding the scope of judicial review of arbitral awards contravenes the New York Convention’s principle that dictates that the grounds for refusal of enforcement are exhaustive. Contractual expansion of review contradicts this basic assumption. Finally, provisions for heightened judicial review not only defy the New York Convention’s principles, but also frustrate its main goals of neutrality, certainty, and predictability in international arbitration.

Non-Arbitrability in Kuwait

One of the primary reasons why parties enter into arbitration agreements in international transactions is the high degree of mistrust they have of the other party’s judicial system. By

²⁷ Ibid6

²⁸ Huleatt-James, M. & Gould, N., *International Commercial Arbitration: A Handbook*, 2nd ed. (London: LLP, 1999). Pp.213

resorting to arbitration they wish to “assure that any disputes are resolved in a neutral forum rather than the national courts of one of the parties”. The New York Convention’s goal in this regard was to provide the business community with an appropriate legal framework which helps maximize the certainty that commercial disputes will be resolved in a relatively neutral and predictable forum.

It seems, however, that such neutrality and predictability may be jeopardized if provisions for expanded judicial review are upheld. Firstly, as noted, by sanctioning such provisions, additional grounds for vacating awards are introduced, which distorts the international award enforcement picture. The predictability in arbitration would thus be diminished. If courts accept that parties may add grounds for setting aside awards, “then there are no limits to what may be super-added to traditional arbitration”. Secondly, by these provisions courts from the Kuwait of one of the parties would be entitled to review the arbitration.

As a result the other party may find itself relitigating the dispute in the courts of the adversary, which is precisely what the parties sought to avoid by entering into an arbitration agreement. Therefore, heightened judicial review of arbitral awards endangers the New York Convention’s goals of assuring neutrality²⁹, certainty and predictability in international arbitration. As one commentator believes, allowing parties to contract on judicial scrutiny beyond the established international standards “would serve as a mechanism to circumvent the goal of the New York Convention” of unifying standards of award enforcement in order to promote international trade and commerce.

Permitting parties to expand the scope of judicial review by contract would inevitably insert more uncertainties and obstacles into an already complex award enforcement system. This leads us to fear that decisions upholding provisions for expanded judicial error of law were to be enforced in Kuwait. Countries like Kuwait, for instance, that supports the “denationalization” theory, which separates the existence of awards from the law of the Kuwait of origin, would almost certainly enforce the award because such annulment would not have effect in Kuwait³⁰. As Kuwait law forbids review based on errors of law or fact, such an award could be enforceable in Kuwait despite its annulment

Secondly, the fact that parties contract for a judicial appellate review of an arbitration, empowering courts to review the arbitration merits as if it was a mere trial, raises the question whether their agreement may be still considered as an agreement to differently: “if the parties accept arbitration on the condition that issues of law and fact remain subject to court review, can we hold we have a consent to arbitrate..³¹?”

Courts may find the arbitration denaturalized by these provisions and, therefore, may deny recognition of such a “hybrid” agreement in application of Article II of the Convention. This leads also to a third problem. Since clauses for expanded judicial review might not be enforceable under the New York Convention, the question whether the remaining part of the arbitration agreement is still valid arises³². In fact, some courts have already addressed this issue and concluded that such a principle is not applicable. It further observed that “the provision for judicial review of the merits of arbitration award was so central to the arbitration agreement that

²⁹ Brunet, E., “*Replacing Folklore Arbitration with a Contract Model of Arbitration*” (1999) 74 Tul. L. Rev. pp.39.

³⁰ Varady, T., Barcelo, J., & Von Mehren, A. T., *International Commercial Arbitration* (St. Paul: West Group, 1999). Pp.12

³¹ Chemick, R., “*Mix and Match: Creating Tailored Dispute Resolution Clauses*” (1996) SB41 ALI-ABA 195.

³² Van den Berg, A. J., *The New York Convention of 1958 (The Hague: Kluwer Law and Taxation Publishers, 1981)*. Pp.89

REFUSING RECOGNITION AND ENFORCEMENT ON GROUNDS OF PUBLIC POLICY AND NON-ARBITRABILITY IN KUWAIT

it could not be severed”. Finally, the Court referred to the corresponding arbitration agreement as an “illegal” contract³³.

The unfortunate result of a complete invalidation of an arbitration agreement is that, because of the existence of an invalid clause for expanded review, the parties will have to resort to litigation, which they obviously tried to avoid by entering into an agreement to arbitrate. Fourthly, parties who contract for expanded judicial review empower courts to review the arbitration merits and also to vacate, modify or correct the award in case the arbitrator’s conclusions were found to be erroneous. However, modification or correction of awards is traditionally possible only on technical matters, not on substantive aspects. These issues make evident that allowing parties to expand the scope of judicial review of arbitral awards by contract is counterproductive for international arbitration.

This practice will only result in more confusion and uncertainty. Contracting for heightened review could subject the parties to the worst of the scenarios. Their arbitration agreement could be rejected recognition and the resulting award could be refused enforcement for not complying with the New York Convention’s standards. Although the Kuwait courts that upheld provisions for expanded review relied heavily on the party autonomy principle and pro-arbitration public policy, one should question whether the courts’ decisions really are pro-arbitration in the long run.

Despite the above-mentioned values of arbitration the trend of businessmen to favor it, the level of acceptance of developed and developing countries, towards such an alternative dispute resolution is to some extent different. Their attitudes as well as general policies and laws of the countries concerning international commercial arbitration are different³⁴. Parties from developed countries generally are strong proponents of arbitration clauses in commercial contracts, in contrast with the parties from developing countries who are still reluctant to submit to binding international arbitration. Some believe that the current proliferation of clauses for expanded judicial review demonstrates the mistrust parties to international commercial transactions still have toward arbitration³⁵.

According to some commentators, this is a reaction to the “lawlessness” that affects the reliability of this dispute resolution method. The fact that an arbitral award cannot be appealed on questions of law or fact has supposedly forced parties to broaden the scope of judicial review by contract, so that an award can be vacated on grounds of an arbitrator’s erroneous ruling. The concern of the business community is understandable. As commercial transactions grow in size, amounts, and complexity, the desire for more predictable results in arbitration is justified.

However, contractually expanded review does not seem to be the best way to cope with the uncertainty in arbitration. In fact, it might only bring more insecurity and intricacy to the resolution of commercial disputes. At first sight, clauses for heightened review seem to make arbitration an ideal dispute resolution method, which would combine arbitration with judicial examination, so that a fair and more predictable decision can be reached³⁶. But, as will be shown, the insertion of these clauses into arbitration agreements is counterproductive. The parties may find themselves litigating in courts when what they bargained for was to resolve their dispute in arbitration. Furthermore, the advantages of arbitration that usually motivates parties to choose arbitration would be diminished, if not completely eliminated.

³³ Cullinan, T., “*Contracting for an Expanded Scope of Judicial Review in Arbitration Awards*” (1998) 51 Vand. L. Rev. pp. 395.

³⁴ Craig, W. L., “*Uses and Abuses of Appeal from Awards*” (1988) 4 Arb. Int’l 174. Pp.34

³⁵ Ibid8.

³⁶ Ibid1

Conclusion

In conclusion we can say that, Arbitration, as an alternative dispute resolution mechanism, has advantages over traditional litigation due to its neutrality, efficiency, speed, and finality. Traditional litigation is commonly characterized by high cost, excessive formality and long delays, while “arbitration is often described as everything that civil litigation is not”³⁷. Not only has the business community benefited from the advantages of arbitration, but the judicial system as well, since this alternative forum reduces the heavy case load of the courts. Arbitration and litigation are different and independent methods of adjudication. The judicial control performed over arbitration does not affect its nature; to the contrary, supervision of awards constitutes an essential characteristic of arbitration.

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³⁷ Ibid4