

Behaviour Modelling Approach for Defining Codes of Conduct in Public Administration Institutions

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ABSTRACT

Links between behaviour modelling theories and techniques and the definition of codes of conducts for public administration institution are addressed in this study to add to the definition of a theoretical model, based on behaviour modelling instruments, for the elaboration of the content of the said codes of conduct and to determine the expected behaviour from civil servants.

It builds on the premise that the legal framework applicable to a certain institution is extremely extensive, and quite often its application requires multiple interpretation efforts before it can be properly enforced. Furthermore, enabling enforcement of such a vast legal framework requires adjustment to particular conditions and context of the mentioned institution. Such particular conditions are determined on one hand by pre-defined elements of the administrative capacity of a certain organization, and on the other hand by the organizational behaviour – itself subject to influence by the individuals' behaviour.

To define a theoretical model of behaviour management in public institutions, the inputs that can be changed in order to reduce the frequency, duration and intensity of non-compliant behaviours are identified. Once these factors are identified and determined, to improve the expected behaviour an intervention strategy can be defined based on what needs to be changed (history, entries, history, legal requirements) and what are the effects of the intervention (change in one or more characteristics of a behaviour). In this context the paper explores the possibility of using the behaviour modelling theory to determine the expected behaviour of the civil servants as individuals and as members determining the organizational behaviour of the public institution they pertain to.

KEYWORDS: *compliance, enforcement, codes of conduct, behavioural modelling.*

1. Introduction: Compliance – The End Goal for Adopting Codes of Conduct

Each public institution has a social function for which it has been created and that it has to fulfil¹⁾, namely to protect and satisfy the public interest established by law in its

¹⁾ Klotz-Santha, 2013, p. 16, in Pallai, K: *Integrity and integrity management, created within the framework of priority project No. SROP-1.1.21-2012-2012-0001: Prevention of corruption and the revision of public administration development*, in Gurzawska, A, *Principles and Approaches in Ethics*

competence, as well as to ensure the rule of law, constitutional democracy, safeguard citizens' rights and freedoms and determine their respective duties.

One of the premises for the fulfilling such social function by a certain public institution is its compliance or its capacity to carry out the entity's activities in accordance with the *obligations imposed by laws and regulations – the regulatory framework*, as well as respecting the entity's *internal policies* that are appropriate to the fulfilment of its purpose².

According to Ihering, the law exists to be realized. Realizing the law is the law itself³. However, realizing the law amounts for implementing the law within an existing social context, which requires transposing and translating the content of a legal rule to actionable behavioural requirements applicable to specific and determined situations.

Ultimately, realizing the law requires a comparison between the general behavioural model described by the law with a concrete situation or what we call reality.

According to practitioners and ideologists, realizing the law entails two major approaches – one is through executing and observing the law by individuals, the other is through application of law by administrative bodies⁴. Although, in theory, these two approaches can be addressed separately, we are of the opinion that they are closely linked and should be addressed and analysed together.

A first condition for applying and observing the law is to *know* it and to *understand* it, and therefore the obligation of the individuals to obey the law entails a correlative obligation for the state authorities to make sure that such law has been disclosed to the public⁵.

For Hegel, to *realize* the law means to understand legal concepts not merely in abstraction, but in conjunction with the concrete results of their application. For him, legal concept and result are inseparable. A given legal concept can only be understood by considering the legal results that it yields and conversely, a legal result is comprehensible only when viewed through the lens of some legal concept⁶.

According to professor N. Popa, successfully realizing the law is inherently linked to how the society is able to absorb the new rule, and to how every individual is able to incorporate it in his or her own psychological patrimony. The general conditions that determine the socio-political and ideologic context are key determinants for how the law will be applied, how efficient it will be and how individuals will observe it, thus determining the correctness of the social relations. Furthermore, it depends on the legal

Assessment, Institutional Integrity University of Twente, June 2015, available at: <http://satoriproject.eu/media/1.e-Institutional-Integrity.pdf> (accessed on 10 September 2020).

²) Coșpănar, I, *Phased overview of a new compliance system's development for good administration in Romanian public institutions*, in E. Bălan et.al., *Academic Journal of Law and Governance*, no. 7/2019, Romanian; Academic Society of Administrative Sciences, Bucharest: Wolters Kluwer, 2019, p. 79-80; available at: <http://ttpublishing.eu/files/ajlg-n7/7.AJLG%207.2019-78-107.COSPANARU.pdf> (accessed on 10 September 2020).

³) Ihering, R. von, *L'Esprit du droit romain*, t. III, p. 15, in Popa, N., 2002, *Teoria Generală a Dreptului*, Bucharest: Ed. All Beck, p. 220.

⁴) Popa, N., 2002, *Teoria Generală a Dreptului*, Bucharest: Ed. All Beck, p. 222.

⁵) Djuvara, M., 1935, *Drept rațional, izvoare și drept pozitiv*, Bucharest: Biblioteca Universitară de Drept.

⁶) Sage, N.W., *Hegel on Legal Philosophy and Legal History*, available at: <https://www.qmul.ac.uk/law/media/law/research/centres/clscg/ivr/members/docs/SAGE.pdf>; p. 3 (accessed on 28 October 2020).

culture of a society as part of the general culture of a nation – the level of legal education, the attitude towards the law, its application and its observance⁷⁾.

For all the above reasons it appears that to ensure compliance with the applicable legal framework, a public institution is required to understand the letter of the law, but also to determine the context in which it has been adopted, its objectives and the context in which it will apply. Furthermore, to ensure compliance it is critical to understand which are the determinants for the individual behaviour in line with the law requirements, and what is his or her attitude with respect to the law.

A second approach to realizing the law is by translating it into a number of law enforcement acts. Such acts are characterized by being specific for certain actions and tailored for determined institutions with the aim of translating rules into actual practice.

One of the key elements here is the fact that usually a law is issued by a limited number of institutions and is intended to cover a board variety of scenarios. In most of the cases one single law will apply to institutions acting in completely different fields. For instance, the Code for Internal Managerial Control⁸⁾ equally applies to hospitals, universities, mayor halls and ministries – it stands for a general law, that can't be applied directly by any of the mentioned institutions as it is not an actionable act. As such, a law enforcement act is required to translate such general requirements into concrete and actionable ones for each of the mentioned institutions.

It is understandable, therefore, from the aforementioned example, that, unlike the approval of the law, its enforcement can be made by a variety of institutions, including by non-public ones.

When it comes to understand where to draw the line between the law and the law enforcement act, Hans Kelsen indicates that such assessment depends on the reference system used. The same rule can be at the same time a law enforcement one in comparison to the law it describes, and a law itself when compared to its subsequent enforcement acts. Such subsequent acts in fact dive into deeper details of the application of the law⁹⁾. Ultimately, the difference between the law and the law enforcement act are the different content, the scope and the purpose of the two.

The code of conduct is a 'rules based' instrument that aims to offer a solution to every possible situation and helps to outline organizational strategies, i.e. to define the behaviours to adopt when specific problems emerge. It typically identifies responsibilities towards stakeholders and obliges top managers to comply with certain guidelines when exercising their authority, both inside and outside the institution. Such instruments are intended to create cohesive and aligned behaviour that contributes to organizational efficiency and helps to improve coordination between decision-making and functional areas. Ultimately, the code of conduct is an expression of the organizational culture since it reveals how the rules of conduct towards the organization's interlocutors derive from cultural values and principles¹⁰⁾.

⁷⁾ Popa, N., *op. cit.*, p. 222; p. 225.

⁸⁾ Order of the General Secretariat of the Government no. 600/2018.

⁹⁾ Popa, N., *op. cit.*, p. 230.

¹⁰⁾ Arrigo, E., *Code of Conduct and Corporate Governance*, in *Symphonya Emerging Issues in Management* (www.unimib.it/symphonya), n. 1, Milan, Italy, 2006, pp. 93-109, <http://dx.doi.org/10.4468/2006.1.07arrigo>

According to the existing literature in the field, codes of conduct are a formalization of the values or practices of an institution that are designed to guide the behaviour of that institution as they attempt to manage people with different political, social and economic background. Further, the content of a code is often an aspirational strategy that describes how institutions and employees should behave¹¹⁾.

We believe that in an organizational context, where the institution is required to ensure compliance, elaborating codes of conduct can provide an appropriate answer on how to apply the law in the particular context of that institution. Furthermore, such codes may also provide a foundation for setting up an internal control system.

2. Phases of Law Enforcement

When it comes to the steps of the law enforcement, reputable authors indicate multiple phases¹²⁾. This paper aims to provide certain guidance about how such phases can be accomplished.

2.1. Knowing and understanding the particularities of a specific situation or the assessment of the de facto situation

To understand the *de facto* situation, one should consider that the individual is behaving in a social and cultural context, and that it has multiple interactions with other individuals and institutions, and that the institution itself interacts with other similar ones.

To enable a proper application of the law, the responsible institution is required to perform a thorough assessment of such *de facto* situation.

For the purpose of this paper, we believe there are two fundamental elements to be considered here: the administrative capacity of that institution and its organizational behaviour.

Literature defines legal capacity as being the person's ability to exercise rights and to assume obligations, by doing its own legal acts.

For a public institution to be a legal person, it must have a stand-alone organization, its own patrimony and a legitimate and moral purpose in accordance with the general interest¹³⁾.

However, a public institution will only be able to acquire rights and to assume obligations, if such rights and obligations are consistent and compatible with the very purpose for which the institution was established. For instance, an institution created to provide education will not be able to exercise rights related to providing health care services, as such rights are not compatible with its purpose.

According to the European Charter of Local Self-Government¹⁴⁾ and the Explanatory Report accompanying it, the concept of "capacity" (*ability*) also includes the idea that right

¹¹⁾ Bondy, K., Matten, D., Moon, J., *The Adoption of Voluntary Codes of Conduct in MNCs: A Three-Country Comparative Study*, in *Business and Society Review*, December 2004, 109:4, p. 449–477, available at: <https://www.researchgate.net/publication/228147905> (accessed on 10 October 2020).

¹²⁾ Popa, N., *op. cit.*, p. 232.

¹³⁾ Art. 187 Civil Code.

¹⁴⁾ http://www.coe.int/t/congress/sessions/18/Source/CharteEuropeenne_en.pdf, p. 34; The Charter was ratified by Romania through Law no. 199/1997.

to regulate and administer public affairs shall be accompanied by the means of efficiently fulfilling this mission.

To conclude, we may consider that a broad definition of the *administrative capacity*¹⁵⁾ of public institutions includes all of the material resources, organizational (structural, organizational) and human resources available to a public institution, *as well as the actions it carries out* in the exercise of its legal powers.

Defining the „organizational behaviour requires a study of the individuals` behaviour within organizations. Such exercise involves understanding, predicting and controlling human behaviour, patterns and structures, in order to improve the environment, the performance and the efficiency of the organization”¹⁶⁾.

An organization involves a number of individuals who interact with each other. Their behaviour is influenced both by the individual culture and environment, but also by the interaction between multiple individuals each with his or her own cultural and environment determinants.

An organization is ultimately a group, a group of groups, and therefore in order to understand the organizational behaviour one should first aim at understanding the idea of group`s behaviour. A group is defined by its objective dimension – characteristics and processes, and by its subjective dimension – its consciousness: the fact that individuals within it interact and are aware of the mutual relations.

A group is characterized by stability, duration, history, system of rules. It usually includes a role structure and specialization of tasks, communication and cognitive structures, a power structure and a structure of affinities and a locomotor structure¹⁷⁾.

If we are to translate such characteristics of a group into characteristics of a public institution, we could easily identify congruence with the elements of the administrative capacity.

An institution is set for a specific purpose and it shall exist for as long as the purpose has not been accomplished. A recently-set organization is still defining itself, while for a long standing one its behaviour is definitely influenced by its history and context. However, in both cases, each organization has its own set of rules, who are dependent on the applicable legal framework, the history and social context.

Each organization has a pre-defined organizational chart, with defined hierarchy, specialized roles for each individual (the job descriptions) and a specific system for the decision-making process and escalation. Internal communication rules are defined, and a promotion system is in place to reward the members of the group for their efficient behaviour.

As already stated, the individuals influence the behaviour of the group they belong to and the behaviours of an individual is influenced by the behaviours of the other group members¹⁸⁾.

¹⁵⁾ Coșpănar, I, *op. cit.*

¹⁶⁾ Mancas, M., Jorovlea, E., *Organisational Behaviour: modelling in the light of its dimensions*, in *Journal Economica* no. 1(83) 2013, available at: https://ibn.idsi.md/ro/vizualizare_articol/22713, (accessed on 28 October 2020).

¹⁷⁾ Mancas, M., Jorovlea, E., *op. cit.*

¹⁸⁾ *Idem.*

To understand the behaviour of an organization it is important to understand its environment, determined by its organizational structure and organizational culture. When it comes for the organizational structure this amounts for the stand-alone organization and the patrimony of an institution, both determinant elements of its administrative capacity. Furthermore, such structure entails the assessment of the resources available, in comparison with the entrusted mission and objectives.

Getting back to assessing the *de facto* situation, it is highly important to understand that an organization will be structured and behave differently if it is a rural or an urban one, if it has 10 members or 1000 members, if it serves a population of hundreds or of millions, if it operates in a border city of an inside city or in capital – all of these due to the different external factors that influence its organization, structure and resources available.

„The organizational culture is the personality of an organization”¹⁹⁾. „Organizational culture is a unitary system of thinking of the members of a group that differentiates them from other groups”²⁰⁾. “Organizational culture is a model of common assumptions that the group has learned with problem solving, which have proved functional and were considered valid enough to be passed on to new members as the right way to perceive and tackling similar issues later on”²¹⁾.

The environment knowledge and analysis of any organization is the starting point to identify the opportunities and threats that can determine an organization behaviour. The adaptation of the individuals, groups and organizational behaviour is influenced by both internal (pertaining to that specific organization such as structure, capacity, resources) and external factors (changes of laws, changing citizens interest or expectations, etc)²²⁾.

Within this context, we believe that understanding the *de facto* situation, entails determining and understanding the administrative capacity of an institution, its organizational behaviour and the factors and elements that influence it, but also the factors that may influence the behaviour of the individuals that belong to that organization, to the extent their individual behaviour is able to influence the organizational one.

2.2. Identifying the applicable legal framework

When it comes for organizational compliance, each institution shall systematically identify the applicable compliance requirements²³⁾ and their implications for its activities and for the fulfilment of the purpose for which it was established. All the applicable compliance requirements amount for the applicable compliance framework originating into the main legislation containing compliance requirements²⁴⁾.

¹⁹⁾ McNamara, C., *Organizational Excellence*, in *Business&Economic Review*, July-September 1997, in Stănimir, E.F, *op. cit.*, p. 5.

²⁰⁾ Hofstede, G., 1991. *Culture's consequences: International differences in work – related values*, Beverly-Hills: Sage, in Stănimir, E.F, E, *Managementul culturii organizaționale în poliția română*, PhD Thesis, Bucharest, Romania, p. 5., p. 11.

²¹⁾ Schein E.H. *Culture: The Missing Concept in Organization Studies*, in *Administrative Sciences Quarterly*, No. 41, 1996, in Stănimir, E.F, *op. cit.*, p. 11.

²²⁾ Mancas, M., Jorovlea, E., *op. cit.*

²³⁾ ISO 19600: Compliance management systems.

²⁴⁾ Coșpănar, I, *op. cit.*

Therefore, the next step into applying the law, is identifying which are the applicable laws to that particular situation. In most of the case, a single public institution is subject to a variety of laws and regulations and having a comprehensive list of such applicable law requires extensive effort.

One of the main reasons for the need of such a compliance framework is that often multiple rules applicable contain contradicting rules or their application is competing for the same resources. Furthermore, within the European Union context, multiple layers of legislation are relevant. EU Regulations are directly applicable to national institutions, while Directives require transposition. Some of these rules apply only to EU institutions, while others apply also to the national ones – sometimes to all their operations, while some others only to the operations that require a direct enforcement of the *acquis*.

Last but not the least, the compliance framework does not cover only legal requirements. It is a recent practice that public institutions adhere to different best practices – such as the ones defined by OECD, or international standards such as the ISO ones.

In this highly and increasingly complex context, this step of identifying the applicable law is no longer a simple exercise and it requires consistent and systematic monitoring and understanding.

2.3. Interpreting the applicable legal framework

By interpreting the legal framework in fact, one is clarifying the requirements of the law and tailoring such requirements for the specific situation at hand.

It is highly important for the law enforcement agents to exactly determine the applicable legal framework and its compatibility with the given situation.

The interpretation was initially considered to be the sole prerogative of the legislative body, following the principle *ejus est interpretari legem cujus est condere* (the law may only be interpreted by those who have issued it). Currently, this approach is rather specific for authoritative, despotic systems, while modern democracies recognize large interpretation rights for public institutions, and even for private entities, provided that the ultimate scope of the law is accomplished.

An interesting debate applies in respect of interpreting the law within the common law systems – as in such system the legal precedence is a source of law itself, while this is not the case in civil law systems. It is therefore in these systems that interpretation is more extensive, while in civil law systems there is a tendency in regulating activities in detail to avoid such extensive interpretation²⁵⁾.

The interpretation of the law amounts for translating it from a general approach into a tailored, specific one. It is an intermediation between the law and the reality, and the interpreter will have to explain the law in the social context in which it is applied.

To the above rationale for interpreting the law we should also add the fact the law may not and should not cover all the aspects of the social life and many laws include the so called „white areas” intentionally left to enable correlation with the real life²⁶⁾.

One recent challenge for the interpretation of the law originates in the European law. The working languages for creating the *acquis* are English and French, and the official versions

²⁵⁾ Popa, N., *op. cit.*, p. 236-239.

²⁶⁾ DelVecchio, G., *Justitia*, p. 160, in Popa, N., *op. cit.*, p. 240.

agreed within these linguistic versions are then translated to the other 28 official languages of the European Union. In such a multicultural environment, translation is often inaccurate, as it cannot reflect the whole cultural and linguistic heritage of the original version.

As reputable authors have flagged, for the Romanian translation, an additional burden is the fact that most of the translations are made by using the official English version, although the Romanian legal system is far closer to the French and Italian one. Such reality is turned into inaccurate translations as the English terminology is slightly different and nuanced than the French one. One argument in this regard is that, with different legal systems, this is reflected into the specific terminology.

It is in this context that we believe a new interpretation method, subsequent to the grammatical interpretation should be added to the existing one – the linguistic one. An option at this point is to compare multiple translation versions, in different languages, such as to enable a proper and nuanced understanding of the actual meaning and intention of the decision-maker.

Another interpretation method that we believe are relevant and helpful in this context is the historical one. Such method considers the evolution of a specific law in time and also takes into consideration the context in which such law was adopted. It is of public notoriety that multiple legal amendments have been adopted to enable the functioning of institutions during the current pandemic. It is of utmost importance to understand such context to enable a proper interpretation – all such measures have an extraordinary/ exceptional nature, have been adopted to answer to specific circumstances and shall not be considered as general rule outside of the context that determined their adoption.

The systematic interpretation method is likely the most often used one, as it is based on the long-lasting general principles. One of its main principles is the interpretation of the rule according to content of the law it is incorporated in, and according to the domain of the law (*subiect am materiae*). No rule shall be interpreted separately, outside of the context of the law to which it belongs, or outside the broader context to which it belongs. In the context considered in this paper, such principle is highly relevant, and shall be understood as a requirement to interpret all together the entire compliance framework in order to determine the actual meaning of each requirement. Such interpretation shall further consider the principle of *actus interpretandus est potius ut valeat quam ut pereat* (the rule shall be interpreted in the sense of producing effects and not in the sense of producing none).

Following this analysis, we may observe that consideration for the context in one of the highly important elements of realizing or applying the law.

Further interpretation methods include the logical one and the analogy. For our purpose it is important to recall that exceptions are of strict interpretation, who can do more, can do less (*a maiori ad minus*), and that rules can be interpreted *per a contrario*, *tertium non datur*, *a fortiori*, *a pari* (*ubieadem ratio, ibi idem jus*) and *ubilex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, nor the interpreter must distinguish).

Where the interpretation is finalized, a last step for the application of the law is required.

2.4. Develop and issue of law enforcement act

During this last step, understating of the context and particularities of the specific situation, its legal qualification and the legal interpretation are being performed at ones, based on the

law requirements, and are all amalgamated into a new act – the law enforcement one. Such act shall explain how the general requirements of the law are being applied to that specific situation and what are the expected results – what is the expected behaviour.

As we have indicated above, we believe that developing a code of conduct for a specific institution amounts for creating a law enforcement act that aims at translating the general requirements of the comprehensive legal framework applicable to that institution, into tangible and actionable behavioural guidelines, that have taken into consideration the social context and the particularities of that institution – mission, size, structure, resources, capacity, and its organizational and individual behaviour.

3. Behavioural modelling when developing Codes of Conduct

As we have already discussed above, there is a direct link between the behaviour of a group, an organization and the behaviour of an individual.

Furthermore, we have explained already that the capacity for realizing the law, applying and observing it is dependent on the defined behaviour of a society and its individuals.

Within this paper our intention is to explore techniques of behavioural modelling for individuals and extrapolate them to influence the organizational behaviour. The rationale of such endeavour is to identify what are the triggers for a compliant behaviour at organizational level and use reverted behavioural modelling techniques to support the development of codes of conduct that can trigger such compliant behaviour. While the behavioural modelling techniques are largely sourced in psychology and psychotherapy, we believe that the number of arguments analysed above can provide a solid basis for a different, experimental use.

An important step for modelling a behaviour is to correctly identify the existing behaviour to be modelled and determine the factors that determine that specific behaviour/ cognition with the aim of understanding how a certain behaviour varies and what are the consequences it produces²⁷⁾. In our case the behaviour we want to correct is the non-compliant one. The purpose is to understand what triggers such behaviours and which are the elements that can be changed to influence such behaviour to a different direction.

A functional analysis is used to disassemble the behaviour chain into its respective parts²⁸⁾, so that we may better understand why a desirable behaviour works and why undesirable behaviour happens. Once determined why and how a particular behaviour is triggered, we can aim at changing parts of the behaviour chain to achieve a different outcome²⁹⁾.

A first step in this endeavour is to collect quantifiable information about a certain behaviour/ cognition (turn the behaviour operational). Such information shall observe the following characteristics of a behaviour³⁰⁾:

- (a) frequency – how often it is repeated in a certain unit of time (how many civil servants have breached the law over one year)

²⁷⁾ Miclea, M., 2004-2005, *Modificări cognitiv-comportamentale – curs*, University Babes-Bolyai, Cluj-Napoca, Romania.

²⁸⁾ Bakker, 2008, available at: <https://positivepsychology.com/functional-analysis-cbt/> (accessed on 20 October 2020).

²⁹⁾ O'Donohue & Fisher, 2009, available at: <https://positivepsychology.com/functional-analysis-cbt/> (accessed on 20 October 2020).

³⁰⁾ Miclea, M., *op. cit.*

- (b) length – how long a certain behaviour exists from the moment it starts to the moment it ends (how long the non-compliant behaviour happened)
- (c) intensity – the strength of the behaviour (what is the nature of the breach – small and multiple misbehaviour; one significant misbehaviour amounting for a criminal offence)
- (d) latency – the time elapsed between issuance of the input and the issuance of the behaviour (response to the input) (how long it took from the time the individual was appointed to that specific position and time of misbehaviour).

For describing the assessment process, we will mostly rely on the phases and steps described by prof. M. Miclea, while adapting these from an individual perspective to an organizational one. As such, for assessing such behaviour in the context of public institutions, a relevant source could be to collect information from existing disciplinary actions or other forms of existing law enforcement acts that are reflecting scenarios where the individuals were not complying with the law requirements. Administrative practice with respect to misbehaviour is an important source of information to collect the above-mentioned data.

Such information will enable a proper understanding of the issue at hand and of the causes that determine the misbehaviour. This is the phase of the assessment of the situation. At this point, a great emphasis is put on identifying and understanding the pre-existing conditions: what are the inputs that happen just before the behaviour was initiated (was there any specific item that could have induced or triggered that non-compliant behaviour – e.g. during the pandemic, exceptions to public procurement were made and such exceptions were widely used under the impression that there would be no negative consequences). Furthermore, it is important to understand if there is any common experience in the past that can constitute a specific pattern for the members of the organization (i.e. if in the recent past there was any audit from an external law enforcement agency that has considered compliant or non-compliant the organizational behaviour).

A comprehensive assessment of the social and cultural context is also required at this stage to understand the values and the rules that organization embraces (whether they are open to a more open approach, or they will strictly follow the letter of the law).

As we can easily identify, both elements above are consistent with the elements we have taken into consideration for interpreting the law. In all these different perspectives, the characteristics of the organization, its history and the history of its members, as well as the context in which it operates are highly relevant and an important source of influence for the organization's behaviour and that of the individuals' belonging to it.

Each behaviour determines certain consequences. However only some of these consequences lead to strengthening a behaviour or to repel it. Such relations between a behaviour and its consequences are considered contingencies³¹⁾.

For the purpose of this paper – namely to use behaviour modelling to determine the content of codes of conduct, the aim is to identify all contingencies and to act upon the inputs that lead to a *strengthening behaviour*. Furthermore, for the purpose of defining codes of conduct the aim is also to define such contingencies – the expected behaviour amounting for a behaviour where civil servants understand the requirements of the law and properly apply it.

³¹⁾ Miclea, M., *op. cit.*

Once such factors are identified and determined, the intervention strategy can be defined to improve the expected behaviour: what needs to be changed (antecedents, inputs, history, legal requirements) and what are the effects of the intervention (change in one or several characteristics of a behaviour – frequency, length, intensity).

If we are to define a theoretical model for managing behaviour in public institutions, the functional analysis shall aim at identifying which inputs need to be changed, in order to reduce the frequency, length and intensity of the non-compliant behaviour.

Managing behaviour relies mostly on managing contingencies, but also on modelling the behaviour itself. To support a proper management of the behaviour, the following approached may be considered³²⁾:

(a) establish achievable objectives; however these objectives shall aim to be in the so called zone of proximal development: the distance between what an employee can do on his or her own, and what he/ she can accomplish with the support of someone with more knowledge about the activity³³⁾

(b) disassemble a complex behaviour into multiple simpler components – in our case define a Code of conduct to set the objectives for the complex behaviour and use procedures or other internal documents to set objectives for the simpler components of that behaviour. Such approach will enable an easier identification and handling of the specific elements that require a different approach (e.g. expected *complex behaviour* – align with the transparency rules; *simpler behaviour* to which the complex one can be disassembled to – reply to free access to information request within less than 30 days)

(c) determine the success criteria (e.g. to the extent the institution received only 5 free access to information requests per day, answer to all of these in less than 10 days).

In terms of managing contingencies, the aim is to strengthen reinforcement of the desirable behaviour and reduce reinforcements for disturbing behaviour.

Once the expected behaviour was achieved, it needs to be safeguarded. Maintaining a similar behaviour within the group/ the organization and seeking to interact with organizations embracing a similar behaviour is highly recommended. Trust may be cemented by acknowledging that counterparts are behaving likewise – this translates both into a similar behaviour within different groups on the same organization, but also into a similar behaviour with similar organizations (e.g. the mayor hall in Galati with the mayor hall in Warsaw). The same applies in respect to different organizations – a public institution may require bidders to follow a similar code of conduct to enhance trust among the two organizations.

To determine the factors that can influence the organizational and institutional behaviour, we shall return to first phase of the law application – which is the determination of the *de facto* situation. All the elements listed here as influencing behaviour are in fact elements of such a situation. With the code of conduct being a prescription law enforcement act, and not necessarily a sanctioning one, these elements can then be used for the interpretation of the law and further on the development of the law enforcement act.

³²⁾ Idem.

³³⁾ Lev Semyonovich Vygotsky.

4. Conclusions

It is already well known that the administrative science is a highly complex science, embodying a number of characteristics pertaining to different disciplines. The key question this paper attempts to help answer is to what extent compliance is not only a voluntary act of an individual and institution, but it can be a modelled behaviour.

Such question substantiates on the existence of a highly complex legal framework, which, given its complexity and general character, is often observed only in the letter, without the due enforcement effort. Where such cases occur, compliance is likely missing. One prerequisite of ensuring compliance is the ability of translating general requirements in actionable rules for a specific institution, according to its purpose, mission, resources and the context in which it operates.

This work strives first to make a legal analysis of what compliance means and why compliance is required.

The next step is to examine the key elements on which institutional compliance depends, and then transition to a sociological approach to the structure and culture of an organization.

Last but not the least, the paper explores the theory of behaviour modelling to conclude that many of these elements are already considered for the law realization, and to advocate for the use of the associated concepts and instruments used for the cognitive-behaviour changes to develop enforceable and more effective codes of conduct – seen as law enforcement acts.

The main goal of this work, contributing to the creation of codes of conduct that can trigger compliant behaviour in public institutions, is addressed in this study, firstly by taking into account the non-conforming behaviour, which is identified and defined, and then considering the methods of cognitive-behavioural changes.

It is assumed in this paper that there is a functional relationship between the compatible behaviour and the factors that determine this behaviour, starting with the code itself. This assumption has not yet been proven in practice, but it is expected that the theoretical approach presented in this study would constitute the starting point of such an endeavour.

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