ROMANIAN ACADEMIC SOCIETY OF ADMINISTRATIVE SCIENCES

ACADEMIC JOURNAL OF LAW AND GOVERNANCE

No. 8 / 2020

AJLG

Academic Journal of Law and Governance is indexed in international databases: HeinOnline, CEEOL, SSRN, WorldCat, Library of Congress – East Central Europe Division.

Wolters Kluwer Romania

T & T Academic Publishing

ACADEMIC JOURNAL OF LAW AND GOVERNANCE

No. 8/2020

Wolters Kluwer Romania

T & T
Academic Publishing

Academic Journal of Law and Governance is indexed in international databases: HeinOnline, CEEOL, SSRN, WorldCat, and by the Library of Congress – East Central Europe Division.

ISSN: 2344-0643
ISSN–L: 2344-0643

Wolters Kluwer
Bdul Tudor Vladimirescu nr. 22,
Green Gate, et. 6
Sector 5, Bucureşti 050881

NOTE: THE ACADEMIC JOURNAL OF LAW AND GOVERNANCE (AJLG) is the official journal of the Romanian Academic Society of Administrative Sciences.

CONTENT

On the Right to Good Administration: European developments and national administrative practice

Emil BĂLAN

Gabriela VARIA

ABSTRACT

The present paper presents in brief the evolutions related to the right to good administration since it was listed as a fundamental right in the EU Charter of Fundamental Rights and stressing also the more recent work of the ReNEUAL on Model Rules on Administrative Procedure. We also try bringing examples from the national level, from the Romanian administrative practice on the right to be heard, the right of access to your own file and the obligation of the administration to give reasons for its decisions.

KEYWORDS: *good administration, standardization, rule of law, equitable treatment, procedural rights.*

1. Introduction

The article tries to analyse the major role played by the standards of good administration in a society that becomes more and more diversified and complex, where the political leadership needs to reach the main goals of the governance through accepted democratic means that were also recognized by the social body. Public administration involves bureaucratic systems and procedures which are used by a specialized body, that allow governors to enact their policies.

Good administration, in relation to protection and promotion of human rights, is fundamentally linked to societies where the principles of rule of law are observed and where the power granted to public administration is unequivocally stated by the Constitution and by the law. But if the legal delegation represents an essential condition of the legitimacy in the exercises of the public administration's prerogatives, this condition is not sufficiently. There is the need to address other principles to make the administrative process ensure citizens an adequate and equitable treatment. Setting up the conditions to ensure a sustainable development of the community requires a good administration, seen in opposition to maladministration, a concept

considered to be broader than illegality[1)], which could prove itself to be indifferent to the citizen's needs or even hostile.

In order to create the possibility for the citizen's involvement in the decision-making process, it is necessary that they can formulate proposals and they can follow the evolution of the debates which will influence their lives, increasing also the transparency of the regulation mechanisms. Transparency allows citizens to examine in detail the activities of the public authorities, to evaluate their outcomes and it also attracts, if case, the liability of the authorities. The concept of "good administration" concerns both the observance of the human rights of the citizens in the framework of the rule of law and the good functioning of the public administration as a system, the observance of rules which are clear, predictable, easy to understand and to apply by the citizens and public administration, setting public objectives that match the needs and expectations of the citizens. Charles Debbasch stated that administrative law must answer to two fundamental requirements: on the one hand, it has to ensure the internal discipline of the public administration, to make it as good as possible, and, on the other hand, to guarantee citizens the functioning of the public administration according to the exigencies imposed by the rule of law[2)]. Each state of the European Union should be concerned with identifying and promoting the most adequate measures to ensure good administration, identifying and then applying at national level the principles that govern EU's activity. In the field literature there are different mentions on the national administrative autonomy and its limitations in every state, in the context of adapting it to the necessity of the harmonization of law[3)]. When implementing EU law, national authorities are subject to the duty of loyal cooperation, and national administrative authorities are subject to the European principles of equivalence and effectiveness, being obliged to adopt all the general or specific measures in order to provide legal remedies. The procedural means appliable in this context belong to the internal juridical order of each state on the basis of the procedural autonomy of the Member States, under the condition that they are not less favourable than the ones applying to domestic situation, as far as equivalence is concerned, and they do not make it excessively difficult or even impossible in practice the exercise of the rights conferred by EU law, as far as the principle of effectiveness is concerned. Moreover, the European Union has the competence to harmonize national administrative law, which is strengthened by Art. 197 TFUE that promotes administrative cooperation among the Member States and between them and the Union. ECJ, European Parliament and European Commission have tried to adopt minimal standards that govern European administrative procedure.

---

1) Vogiatzis, N., 2018*, The European Ombudsman and Good Administration in the European Union*, London, United Kingdom: Palgrave Macmillan, p. 9.

2) Debbasch, C., 2002, *Droit administratif*, 6e édition, Paris, France: Economica Publishing House, p. 3.

3) Slabu, E., 2018, *Buna administrare în spațiul administrativ european*, Bucharest, Romania: C.H. Beck Publishing House, p. 13.

2. The right to good administration at European level and the role of the Research Network on EU Administrative Law

During its early days, the European Union's decisions were aiming at an economic development of the Member States, but, as time passed and the EU enlarged, it was more and more obvious that economic welfare needs to be linked to the rule of law principles, with fundamental human rights and liberties, with a good administration of the public affairs. In this context, the national administrative convergence has led to introducing into the *Acquis Communautaire* of two important elements: the right to good administration, and the administrative cooperation between Member States as a matter of common interest, that promotes the improvement of administrative capacity.

The process of modernization of public administrations at European level led to the right to good administration, mentioned for the first time in the Charter of Fundamental Rights of the European Union, which entered into force on the 1st of December 2009, with the Treaty of Lisbon. The content of the Charter is considered "a mixture of fundamental rights, principles and values, and ideas, some of which have clear frames and history of application, whereas other are novel concept that have not yet found their clear space in the *espace juridique Européen* (European legal space)"[4]. In the Romanian field literature, it was shown that the Charter represents a "veritable catalogue of rights all European citizens should benefit before all EU's institutions, and in relation to the Member States when those are applying European legislation"[5].

The emergence of the right to good administration, together with the development of the various procedural legal principles and related obligations, was considered a feature of the judicial globalization process[6]. It was shown in the field literature that the right to good administration is a umbrella concept, encompassing different procedural rights and principles previously recognized by the EC Courts' case law[7], the principles relating to good administration being previously stated not only by the general administrative procedure acts of many western countries, but also by international treaties and by rules and guidelines of many international and global

---

4) Kerikmäe, T., 2014, *EU Charter: its Nature, Innovative Character, and Horizontal Effect,* in Kerikmäe, T. (ed.), Protecting Human Rights in the EU. Controversies and Challenges of the Charter of Fundamental Rights, Berlin, Germany: Springer Verlag, p. 8-9.

5) Tănăsescu, E.S., 2010, *Carta drepturilor fundamentale a UE: avantajele și efectele ei pentru cetățenii europeni*, in Revista română de drept european, no. 4, p. 18.

6) Ponce Solé, J., 2011, *EU Law, Global Law and the Right to Good Administration* in Chiti, E.; Mattarella, B.G. (eds.) Global Administrative Law and EU Administrative Law. Relationships, Legal Issues and Comparison, New York, USA: Springer, p. 133.

7) Nehl, H.P., 2009, *Good administration as procedural right and/or general principle?* in Hoffman, H.; Türk, A. (eds.), Legal Challenges in EU Administrative Law. Towards an Integrated Administration, Cheltelham, United Kingdom: Edward Elgar, p. 350.

organizations, which either commit themselves to respecting rules based on such principles, or force national administrations to do so, or do both[8].

The right to good administration is enshrined in the fifth title of the Charter, "Citizens' Rights", together with the right to vote and to stand as a candidate at elections to the European Parliament (art. 39), right to vote and to stand as a candidate at municipal elections (art. 40), right of access to documents (art. 42), European Ombudsman (art. 43), right to petition (art. 44), freedom of movement and residence (art. 45) and diplomatic and consular protection (art. 46).

Thus, in relation to Art. 41 on the right to good administration[9], it was showed that the Member States should identify the practical ways that would lead to the actual achievement of this right, the main elements mentioned within in the article representing a starting point for Member States in drafting the domestic regulations that will determine the good administration at national level, since the Treaty provisions underlines that currently the Union has as objectives not only a unitary economic development, but also strengthening the observance of people's fundamental rights and, implicitly, the right to good administration[10].

One important aspect is that the Charter uses the syntagma "every person" and not the one of "European citizen", opening it to citizens belonging to third states, which confers the Charter a global dimension. But, as it has been shown, the Charter is addressed only to EU's institutions, bodies, offices and agencies and not to the Member States[11], the extension of its provisions to the Member States being refused by the ECJ, without leading to significant gaps in the protection of fundamental rights in practice[12].

We can also notice that Article 41, right to good administration, should be read in strong correlation to Article 43, European Ombudsman, which states that in relation

---

8) Mattarella, B.G., 2011, *The Influence of European and Global Administrative Law on National Administrative Acts*, in Chiti, E.; Mattarella, B.G. (eds.) Global Administrative Law and EU Administrative Law. Relationships, Legal Issues and Comparison, New York, USA: Springer, p. 65.

9) 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
(c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

10) Slabu, E., *op. cit.*, p.53.

11) Kellerbauer, M.; Klamert, M.; Tomkin, J. (eds.), 2019, *The EU Treaties and the Charter of Fundamental Rights. A Commentary*, Oxford, United Kingdom: Oxford University Press, p. 2205.

12) *Idem*, p. 2205.

to maladministration in the activities of the institutions, bodies, offices or agencies of the Union, any citizen of the Union and any natural or legal person residing or having its registered office in a Member State, has the right to refer to the European Ombudsman[13)].

The European Parliament Resolution of 15 January 2013 shows that citizens are increasingly and directly confronted with the Union's administration, without always having the corresponding procedural rights, and calls for guaranteeing the right to good administration by means of an open, efficient and independent administration based on a European Law of Administrative Procedure, and also for the codification the fundamental principles of good administration. Those principles should regulate the procedure to be followed by the Union's administration when handling individual cases to which a natural or legal person is a party, and other situations where an individual has direct or personal contact with the Union's administration[14)]. The more recent European Parliament Resolution of 9 June 2016, for an open, efficient and independent European Union administration[15)], was adopted for guaranteeing the right to good administration and is applicable to without prejudice to other legal acts of the Union providing for specific administrative rules. According to Art. 3 of the resolution, it will also supplement such legal acts of the Union, which shall be interpreted in coherence with its relevant provisions.

In this context, the Research Network on EU Administrative Law developed a set of model rules between 2009 and 2014, in order to reinforce general principles of EU law and to identify – on the basis of comparative research – best practices in different specific policies of the EU.

According to Article 41 of the EU Charter of Fundamental Rights, the right to good administration appears to include the following: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions.

On these three aspects concerning procedural fairness, the ReNEUAL Model Rules on EU Administrative Procedure has elaborated the following developments in the Book III concerning Single-Case Decision Making:

---

13) Art. 43 Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

14) European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)) available at https://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0004&language=EN

15) European Parliament resolution of 9 June 2016 for an open, efficient and indepent European Union Administration (2016/2610(RSP), available at https://www.europarl.europa.eu/doceo/document/TA-8-2016-0279_EN.html

3.1 The right to be heard:

(1) Every party has the right to be heard by a public authority before a decision, which would affect him or her adversely, is taken.

(2) The hearing prior to the taking of the individual decision may be omitted when an immediate decision is strictly necessary in the public interest or because of the serious risk involved in delay, but a hearing shall be provided after the decision was taken, unless there are very compelling reasons to the contrary. The public authority shall provide reasons as to why these conditions are applicable and has the burden of proof in relation to showing that the evidence supports the reasons given.

(3) Every party has the right to notice of the central issues that are to be decided by the public authority and the core arguments that inform its reasoning, in order that the party can effectively make known its views on the matter and can exercise its rights of defence.

(4) Every party must have adequate time in which to respond after notice in accord with paragraph 3 has been provided. The public authority should set clear time-limits within which the response is to occur.

(5) The public authority has discretion as to the form and content of the hearing. This includes the choice as to whether the hearing should be written or oral, whether to allow cross-examination and the nature of the evidence. In choosing how to exercise this discretion the public authority should take into account the objectives of the legislation, the legislative provisions, the importance of the person's interests, the importance of the additional process right for protection of the person's interest, and the costs of granting such rights.

3. Short considerations on the Romanian administrative practice

For a better understanding of the multiple dimensions of the right to good administration at national level, we will make a short survey on some cases of maladministration, that occurred in the last years' Romanian administrative practice, and if case, the steps taken by the Romanian Ombudsman to tackle them[16)].

3.1. The right to be heard

Here we are going to refer to the administrative and fiscal matter the dispositions of the article 9 of the Law no. 207/2015 Code of Fiscal Procedure. When analyzing the content of the disposition, it results that the legislator only affirms the right to be heard, establishing after numerous exceptions and limitations, without offering sufficient guarantees that the hearing is only a formality, since there is a lack of

16) For more details on the Romanian Ombudsman, see Berceanu, I.B., 2016. *The characteristics of the Romanian Ombudsman as an autonomous administrative institution*, in Manda, C.C.; Nicolescu, C.E.; Rădulescu, C.R. Probleme actuale ale spațiului politico-juridic al UE, Supliment al Revistei Române de Drept European, Bucharest, Romania: Wolters Kluwer Romania, pp. 19-25.

information concerning informing the heard person on the case and on the arguments of the fiscal organ, and also on granting a reasonable period of time for preparation of the hearing.

3.2. The right of access to your own file

The Romanian administrative practice reveals the situation concerning the access of a person to his/hers file concerning the pension according to the Law no. 263/2010 on the way of determining the incomes taken into account for the calculus of the pension, points, annual average etc. As explicit procedures lack, the person is limited in the exercise of the right to access his/her file, although being indicated the means for legal contestation, the access to probation means is limited. This aspect could be linked to the right to an equitable trail that involves the requirement that the parties have sufficient possibilities, equivalent and adequate to sustain their position on the legal and factual matters, and that none of the parties becomes disadvantaged in relation to the other.

Only in 2019 the Romanian Ombudsman had to deal with 461 petitions concerning the rights of the retired citizens which specifically asked for information and explanations concerning the legal conditions for granting pensions, calculus, legislation in the field of social insurances and how pension authorities understand to apply this legislation[17]. The Romanian Ombudsman is noticing an increased critical attitude of the insured citizens and of the retired ones towards the specific regulations into force, citizens asking clarifications on how Law no. 263/2010 concerning the unitary system of public pensions is applied[18]. The previous year, in 2018, the Romanian Ombudsman received 388 petitions concerning the rights of the retired citizens and in 2017 a number of 464 such petitions.

3.3. The obligation of the administration to give reasons for its decisions

From the Romanian administrative practice concerning contraventions, we mention the situation of the insufficient motivation of the minutes written by the police agents. Not allowing the offender now which are the legal grounds that conducted to the issuing of the administrative act infringes the procedural guarantees instituted in his/her favor, the administrative act making it almost impossible for the offender to carry the burden the contrary proof. The observance of the procedural rights of the citizens requires public administration to give reasons for all its decisions, to present the arguments on which they are based, especially in the situations of rejecting recognition of rights.

In the exercise of the constitutional attributions of bringing cases before the Constitutional Court, the Romanian Ombudsman has raised the exception of

[17] Annual Report of the Romanian Ombudsman for the year 2019, p. 16, available at http://avp.ro/rapoarte-anuale/raport_2019_avp.pdf.

[18] Law no. 263/2010 concerning unitary system of public pension, published in the Official Journal of Romania no. 852/22.12.2010.

unconstitutionality of the provisions of the Emergency Ordinance no.195/2002[19] which do not ensure the equality of juridical treatment because of a legislative omission, regarding the application of a complementary sanction, for the drivers who exceed the maximum road speed limit. The case is pending before the Constitutional Court.

3.4. The right to have his/her affairs handled within a reasonable time

The Romanian Ombudsman has effectuated in 2019 an inquiry at the Direction of Public Finances of Bucharest on the matter of the restitution of the environmental tax (pollution) for vehicles, which has been applied with the breach of European regulations. The Romanian Ombudsman found out that the Direction did not observe the regulations of the Emergency Ordinance no. 52/2017[20].

Acting according to its legal competencies, the Romanian Ombudsman issued a recommendation of the Ministry of Finances, asking for the urgent finalization of the procedures concerning the communication of the decisions concerning the requests for the restitution of the environmental tax, ensuring an adequate behavior of the public administration in relation to the citizens.

In a democratic society, the exercise of the public power that public administration is effectuating in order to accomplish its public missions cannot be compatible with the abuse of power or with over-delayed terms, without becoming maladministration. The open, participative character and the procedural fairness represent the foundations of a dialogue between citizens and public administration.

4. Conclusions

The good administration implies the right to equitable treatment from the public authorities. Into the right to equitable treatment we can include the obligation of the public administration to observe the requirements of the principle of legality in its letter and spirit according to Art. 1 paragraph 5 of the Constitution of Romania and to ensure the procedural rights of the citizen, as veritable guarantees of the equity. As the European Ombudsman was stating when discussing aspects concerning the activity of the European Anti-Fraud Office, "the concept of good administration is, however, broader that the concept of legality. By subjecting its findings to scrutiny and challenge, OLAF can enhance their certainty and validity"[21].

Public authorities exercise considerable prerogatives in relation to citizens, so when imposing obligations, public administration prove an equitable treatment for every person; in a society based on the rule of law it is important that all those

[19] Emergency Ordinance no. 195/2002 concerning the circulation on the public roads, republished in the Official Journal of Romania no. 670/2006.

[20] Published in the Official Journal of Romania no. 644/2017.

[21] Good administration in practice: The European Ombudsman's decisions in 2013, available for download at https://www.ombudsman.europa.eu/ro/publication/en/56331.

powers conferred to public administration have a legal basis, but they also respect the principle of good administration.

The procedural fairness involves the right of the citizen to a treatment based on truth, non-discrimination, an equitable treatment. The citizen must be able to use a series of instruments guaranteed by law, by enshrining it in rules and methodologies, validated by good practices, that allow him to defend his/her rights against public administration. The exercise in good faith of the procedural rights both by the public administration and by the citizens, could constitute the premise of avoiding that the decisional act becomes a formality that empties the right to an equitable treatment.

REFERENCES

1. Berceanu, I.B., 2016, *The Characteristics of the Romanian Ombudsman as an autonomous administrative institution in Manda*, C.C.; Nicolescu, C.E.; Rădulescu, C.R., *Probleme actuale ale spațiului juridic* al UE, 3rd edition, Revista Română de Drept European, Bucharest, Romania: Wolters Kluwer Romania.
2. Chiti, E.; Mattarella, B.G. (eds.), 2010, *Global Administrative Law and EU Administrative Law. Relationships*, Legal Issues and Comparison, New York, USA: Springer Publishing House.
3. Debbasch, C., 2002, *Droit administratif*, 6e édition, Paris, France: Economica Publishing House.
4. Hoffman, H.; Türk, A. (eds.), 2009, *Legal Challenges in EU Administrative Law. Towards an Integrated Administration*, Cheltelham, United Kingdom: Edward Elgar Publishing House.
5. Hoffman, H.; Schnider, J.P.; Ziller, J.; Dragoş, D. (coordinators), 2016, *Codul ReNEUAL de procedură administrativă a Uniunii Europene*, Bucharest, Romania: Universul Juridic Publishing House.
6. Kellerbauer, M.; Klamert, M.; Tomkin, J., 2019, *The EU Treaties and the Charter of Fundamental Rights. A Commentary*, Oxford, United Kingdom: Oxford University Press.
7. Kerkimäe, T. (ed.), 2014, *Protecting Human Rights in the EU. Controversies and Challenges of the Charter of Fundamental Rights*, Berlin Heidelberg: Germany: Springer-Verlag.
8. Slabu, E., 2018, *Buna administrare în spațiul administrativ european*, Bucharest, Romania: C.H. Beck Publishing House.
9. Tănăsescu, E.S., 2010, *Carta drepturilor fundamentale a UE: avantajele și efectele ei pentru cetățenii europeni* in Revista Română de Drept European, no.4, p. 18.
10. Vogiatzis, N., 2018, *The European Ombudsman and Good Administration in the European Union*, London, United Kingdom: Palgrave Macmillan.
11. Annual Report of the Romanian Ombudsman for the year 2019, p. 16, available at http://avp.ro/rapoarte-anuale/raport_2019_avp.pdf.

12. European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)) available at: https://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0004&language=EN
13. European Parliament resolution of 9 June 2016 for an open, efficient and indepent European Union Administration (2016/2610(RSP), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2016-0279_EN.html
14. Emergency Ordinance no. 195/2002 concerning the circulation on the public roads, republished in the Official Journal of Romania no. 670/2006.
15. Good administration in practice: The European Ombudsman's Decisions in 2013, available at www.ombudsman.europa.eu
16. Law no. 263/2010 concerning unitary system of public pension, published in the Official Journal of Romania no. 852/22.12.2010.

ABOUT THE AUTHORS

Emil Bălan, PhD., Professor at the National University of Political Studies and Public Administration, Bucharest, Romania.

Email: emil_balan2005@yahoo.fr

Gabriela Varia, PhD., Lecturer at the National University of Political Studies and Public Administration, Bucharest, Romania.

Email: gabriela.varia@administratiepublica.eu

The Administrative Code – validated by the Constitutional Court of Romania

Verginia VEDINAŞ

ABSTRACT

The adoption of the Administrative Code of Romania represented a crucial point in in the development of the Romanian law, in general, and of the administrative law in special. The process was far from being easy, neither on the aspect of the elaboration, nor afterwards, the Constitutional Court of Romania being notified twice to rule on the constitutionality of this normative act, which was, at first, promoted as a law, subsequently, after the law being declared unconstitutional, as an Emergency Ordinance, also challenged before the Constitutional Court by the People's Advocate (Romanian Ombudsman) and the Constitutional Court, wisely this time, declared it constitutional.

This study aims at presented this tortuous and "strenuous" endeavour, as we allowed ourselves to qualify it in a previous article, and also the significance, in essence, the Administrative Code bears for the Romanian public administration and for the Romanian State, as a whole.

KEYWORDS: *Administrative Code, constitutionality, decision, Constitutional Court, public administration, administrative law*

1. Introduction

The codification of the administrative law has been a matter of concern for scholars, for the legislator, and, after 1990, it was transformed into an objective undertaken also by the political parties. The governments which held, periodically, the means for governing and administering, constantly included in their governance program the adoption of **both Administrative Code** and **the Code of Administrative Procedure**. Such a project have remained for long solely at declarative level, being known that political promises, in general, including the documents in which they are enshrined, for many times are written and expressed in order to be breached, or having the representation that such a breach would take place.

In this context, we specify that it is for the first time when the government's programme acquires legal force, being the provided the compulsoriness of its provisions. We have in mind Art. 16 paragraph (1) of the Administrative Code,

approved by the Emergency Ordinance no. 57/2019[1)], which states that "*The Government is organized and functions according to the constitutional provisions,* ***based on the Government's programme accepted by the Parliament****".*

Also, Art. 15 states that ***"For the accomplishment of the Government's programme,*** *the Government exercises the following functions: ...".*

In what concerns the possibility of codification of the administrative law, some authors were **pessimists,** considering it unattainable, or hardly attainable, because of the fact that public administration is a process of continuous transformation, as the social needs it has to fulfil, this excluding the possibility to comprise it in the norms of a code, some other authors, the **optimists,** among which we count ourselves, have strongly supported the necessity and the reality of the legislative approach, getting involved in its progress[2)]. From this perspective it should be understood our participation at all the working groups, the one that elaborated the content of the current Administrative Code included, which was adopted, at first, by a law of the Parliament, which was declared unconstitutional by the **Decision no. 681/2019**[3)].

In this situation, the project was not abandoned, the Government in office at that time setting the objective to continue working on it and to transform it into a normative act, which happened by the adoption of the Emergency Ordinance no. 57/2019, which was challenged before the Constitutional Court, this time by the People's Advocate, which invoked the unconstitutionality exception before the Court, being known that People's Advocate is the only legal subject that can bring up such an exception directly before Constitutional Court, according to Art. 146 letter d) of the Constitution of Romania, revised and republished[4)].

By the **Decision no. 60/12 February 2020**, unwritten and unpublished by the time of elaborating the present study, the Constitutional Court **rejected**, with majority of votes, as ungrounded, the exception raised by the People's Advocate.

Personally, I have embraced this solution and I have militated in its favour, both as a scholar[5)], and as a practitioner of the law, and we express also in this framework the satisfaction for this success. It is true that by its content, the Administrative Code isn't perfect. But we ask ourselves, rhetorically, of course, which law is a perfect one? The Administrative Code is a perfectible normative act, but it is a certain advantage the fact that, nowadays, the whole legislation on public administration is settled in

1) Published in the Official Journal of Romania no. 555/5 July 2019.

2) On this implication, see Vedinaş, V., 2019*, The Administrative Code of Romania – a "strenuous", loved, blasphemed but a necessary normative act, preface to the book Administrative Code of Romania,* Bucharest, Romania: Universul Juridic Publishing House, pp. 5-6.

3) Published in the Official Journal of Romania no. 190/11 March 2019.

4) The Constitution of Romania was published in the Official Journal of Romania no. 233/21 November 1991. It was revised by the Law no. 429/2003, published in the Official Journal of Romania no. 758/29 October 2013 and republished in the Official Journal no. 767/31 October 2003.

5) See also the following studies: Vedinaş, V., 2018, *The Administrative Code, a dream closer and closer to becoming reality*, in R.D.P. no. 1/2018, pp. 16-18; Vedinaş, V., 2018, *The Administrative Code, a hope came true,* in R.D.P. no. 2/2018, pp. 16-19; Vedinaş, V., *Codification of the administrative law, between science, conscience and responsibility*, in Supplement to R.D.P. for the year 2018, pp. 20-25.

an unitary normative act, which may, in time become subject of inherent corrections, completions, modifications.

Another aspect that we have been permanently discussing and we don't get tired of doing so, is the fact that by the means of Administrative Code there are filled certain normative voids that produced nefarious consequences, not only in legislative or doctrinary context, but also at the level of the practice. We had the possibility to confront this negative effects from the perspective of some public dignities we exercised for the Romanian State, and we refer especially to the one of member of the Romanian Court of Accounts for a 9 year mandate, when we could see *proprii sensibus,* the consequences of the inexistence of some regulations concerning the private domain of the state and of the territorial-administrative unit, the inventory of the goods or the means for valuing such goods. It is true that we are somehow unique in the European Union, in the sense that, in the states where this branch of law was codified, it was mainly codified the administrative procedure and not the material law. We think that this aspect should not minimize the importance of the endeavour and of the regulation in itself. To open new horizons is not blameworthy, but, on the contrary, it represents a merit.

2. Short presentation of the Administrative Code of Romania

The structure of the Administrative Code comprises 10 parts, 638 articles and 6 annexes, as it follows: 1st Part – General provisions; 2nd Part – Central Public Administration; 3rd Part – Local Public Administration; 4th Part – The Prefect, the Prefect's Institutions and Deconcentrated Public Services, 5th Part – Specific Rules on the public and private Property of the State or of the territorial-administrative Units; 6th Part – The Statute of Civil Servants, provisions applicable to the contractual personnel from the public administration and the record of the personnel paid from public funds; 7th Part – Administrative Liability; 8th Part – Public Services; 9th Part – Final and Transitory Provisions; 10th Part – modifications and completions brought to other normative acts. We specify that by the Administrative Code there are also modified and completed a 6 laws, and a number of 16 normative acts is repealed, as it follows: 8 laws, 2 emergency ordinances and 4 simple ordinances, one decision of the Government and a decree of the ex-Great National Assembly[6].

We appreciate that the **merits** presented and brought by the Administrative Code can be structured as follows:

In the *first place,* we consider that by reuniting, in the same normative act, of the regulations applicable to public administration *"there are eliminated the parallelisms, contradictions, amassed norms where not only the practitioner but also the scholar risked to get lost or they effectively got lost"*[7].

[6] This is the name of the Romanian unicameral Parliament during the totalitarian regime.

[7] Vedinaș, V., *The Administrative Code of Romania – a "strenuous", loved, blasphemed but a necessary normative act*, art. cit., p. 12.

In the *second place,* as we already showed, the Administrative Code comes to fill some legislative voids that we cannot afford anymore, both from normative and practical perspective, and we would exemplify with the incoherencies from the matter of regulating public property and, especially, the private property of the State and of the territorial-administrative units. If, in what concerns the public property things were somehow "covered" under the aspect of regulation, by the Civil Code[8)], they were precarious under the aspect of the private domain of the State and of the territorial-administrative units. That is why, we were happy to see that this insufficiency was filled, even if legislative solutions are not perfect and practitioners and theoreticians of the law confront them, or, if case, they highlight them, discuss them, criticize them more or less vehemently and, the most important, they come with corrective solutions.

In the *third place,* the Administrative Code comes with innovative solutions, which produce, as the late professor Antonie Iorgovan used to say, real *changes of paradigm,* since they revolutionize institutions of the administrative law and this branch of law as a whole. We exemplify that, by means of the Administrative Code, there is regulated the juridical situation of the contractual personnel of the public administration, together with the statute of civil servants. This means, as we previously took the liberty to affirm[9)], that there are recognized some particularities that this category of personnel presents in relation to other employees, respectively the employees from the public sector. These peculiarities come from the fact that the activity undertaken by the personnel from public administration, irrespectively the fact that they are civil servants or employees, has the same scope, **serving the general interest.** And **the principle of fulfilling the public interest**, which has priority before the individual one or of the group interest, associated to the priority of the national interest before the local one, represents, according to Art. 10 of the Administrative Code, one of the general principles of the public administration.

In line with the above-mentioned aspects, we also enshrine the 8th Part, consecrated to the regulation of civil service. Paradoxically, although it represents a traditional institution of the administrative law, the traditional way in which public administration materializes its activity, did not exist until the Administrative Code, a regulation to create a normative ground for this specific institution.

3. Conclusions

The Administrative Code of Romania is far from being a perfect and complete law. But it is the first unitary regulation of the great institutions and juridical categories of this branch of law. We are confident that many of its imperfections are going to be "corrected" with the procedure of approval, by means of law, of the Emergency Ordinance no. 57/2019 by which the Code was adopted. The doctrine and the

8) The Civil Code was adopted by Law no. 287/2009, published in the Official Journal of Romania no. 409/10 July 2011 and entered into force on the 1st of October 2011.

9) Vedinaş, V.; Bitea, C., 2019, Mutations brought by the Administrative Code in the field of regulating public administration personnel, in R.D.P. no. 3/2019, p. 30.

jurisprudence, comprised the jurisprudence of the Constitutional Court, will also have a say in this matter. We express the hope that they will express in a constructive way, that aims at improving the content of the act, an objective that satisfies both interests of the public administration and the citizens.

REFERENCES

1. Vedinaș, V., 2018, *The Administrative Code, a dream closer and closer to becoming reality*, in R.D.P. no. 1/2018.
2. Vedinaș, V., 2018, *The Administrative Code, a hope came true*, in R.D.P. no. 2/2018.
3. Vedinaș, V., 2019, *The Administrative Code of Romania – a "strenuous", loved, blasphemed but a necessary normative act, preface to the book Administrative Code of Romania*, Bucharest, Romania: Universul Juridic Publishing House.
4. Vedinaș, V., *Codification of the administrative law, between science, conscience and responsibility*, in the Supplement to R.D.P. for the year 2018.
5. Vedinaș, V.; Bitea, C., 2019, *Mutations brought by the Administrative Code in the field of regulating public administration personnel*, in R.D.P. no. 3/2019.
6. The Constitution of Romania published in the Official Journal of Romania no. 233/21 November 1991 and revised by the Law no. 429/2003, published in the Official Journal of Romania no. 758/29 October 2013, republished in the Official Journal no. 767/31 October 2003.
7. The Civil Code adopted by Law no. 287/2009, published in the Official Journal of Romania no. 409/10 July 2011 and entered into force on the 1st of October 2011.

ABOUT THE AUTHOR

Verginia Vedinaș, PhD., President of the Institute of Administrative Sciences "Paul Negulescu", Romania, University Professor at the Faculty of Law, University of Bucharest, Romania.

Email: prof.verginia.vedinas@gmail.com

The evolution of the relationship between administration and citizens in Romania

Claudia Elena MARINICĂ

ABSTRACT

The article addresses an ever-current issue that Romania faces, in the central and local public administration, namely the relationship between administration and citizens, from the perspective of its evolution since 1989 until now, on a legislative and practical level. A series of aspects concerning the relationship between the public administration and the citizen are presented, emphasizing those aspects regarding the need to consolidate and improve this relationship, by referring to public interest and to the citizen, the main beneficiary of the activity carried out by public administration, having as a goal the implementation and identification of constructive solutions to the current problems that the public administration is facing.

KEYWORDS: *citizen, public administration, good administration, transparency*

1. Introduction

The year 1989 represents for Romania the transition to a society founded on the compliance with and the promotion of fundamental values such as freedom, democracy, the rule of law, pluralism, and human rights. The post-December administrative law has as its starting point the individual, the general interest and the insertion of all the global actors in a democratic state under the rule of law, and it is concerned with the definition and evaluation of the various public policies. Since 1990, Romania has pursued the creation of a modern and efficient system of public administration, at central and local level, going through a period of transition to a democratic regime and the aim was to ensure an efficient, transparent and successful functioning of the state institutions, supplemented by an involvement of citizens in the relationship with the administration and regarding the decision-making processes.

On the other hand, globalization and socio-economic development led to the adapting of institutions and public administration to a new relationship between administration and citizens. The equality in rights of citizens in what concerns the law and the public authorities, no discrimination and no privileges, is one of the basic democratic principles that emphasizes in the first place that no one is above the law, as it also results from the provisions of article 16 of The Constitution of Romania,

and that the authorities involved in the public administration are called upon to ensure by their activity (together with the other public authorities) full equality in rights irrespective of domain, for all citizens of the country, regardless of race, nationality, ethnic origin, language, religion, gender, political affiliation, wealth or social background.

The administration-citizen relationship should be regarded as a fundamental relationship that underlies the functioning and organization of any society since the state, through administration and not only, identifies with its citizens, as the citizen identifies with the state. The public administration is based on citizens, civil society, organizations, etc. and is more effective and relevant when using a gradual approach and continually trying to be efficient.

Currently, the public administration can no longer function without the citizen. The relationship between the administration and the citizens was established in order for the former party to be aware of and find ways to solve problems in a socio-economic and political context centrally and locally. Citizen participation in the public decision-making process is a *sine qua non* condition of modern governance, both at national and at European level. The reforms initiated by Romania after 1989 are completed by the reforms due to the accession and integration to the European Union in 2007. The context of Romania's accession and integration into the European Union in 2007 has meant that it aimed to achieve the proposed objectives as well as to adapt and comply with the standards in European administration, respectively improving the standards of public administration and the implementation of public policies. These policies include those concerning the development of relations between the national administration and the European administration, on the one hand, and the European administration and its citizens, on the other hand in order to increase the confidence level regarding the activity and the institutions of the European Union.

In this presentation, we will try to give some brief details about the level of improvement defining this relationship during the last three decades of reforms and, at the same time, to identify a series of quality solutions and policies and ways to better implement them in the relationship between administration and citizens.

2. Literature overview

Immediately after 1989, the activity of the public administration in Romania represented a permanent topic subject to criticism on the part of the institutional actors, including citizens, and underwent a continuous process of creating an efficient, transparent and citizen-oriented public administration, by implementing reforms and solutions in specific situations[1)].

In the first place it was the objective of bringing the administration closer to the citizen, carried out by the adoption of the *Government Strategy on accelerating*

[1)] Ex. Approved by the Government Decision no. 1006/2001 for the approval of the Government Strategy on accelerating the reform in the public administration, published in the Official Gazette of Romania, Part I, no. 660 of October 19, 2001.

the reform in the public administration from 2001, which involved creating an administration close to the citizens, and having as means the creation of mechanisms for effective citizen consultation, integrating providing of services, using information and communication technology to create a more accessible and transparent public administration and changing bureaucratic mindsets. In the immediately following period, the updated S*trategy of the Government of Romania on accelerating the reform in the public administration, 2004-2006*[2)] was adopted. This strategy has been adopted mainly for attaining progress in the field of civil service, decentralization, deconcentration of public services and the process of formulating public policies, but also for bringing the administration closer to the citizen.

The access to information of public interest followed, in this sense being adopted *Law no. 544/2001 regarding the free access to information of public interest*[3)], which ensures "free and unrestricted access of the person to any information of public interest", representing also "one of the fundamental principles of relations between individuals and public authorities".

These legislative regulations are supplemented by *Ordinance no. 27/2002 regarding the regulation of the activity of solving petitions*[4)] which regulates the way of exercising the right to address petitions formulated by citizens in their own name to the authorities and public institutions, as well as the way of solving them. The right to petition is "an expression of interdependence or complementarity in the system of rights and freedom"[5)], considered to be a guarantee-type of right[6)], that ensures the effective protection of the legitimate rights, freedoms and interests of citizens, a right granted to the citizen so as to create a direct relationship between his initiative and the state authorities, in addition existing the possibility of solving some aspects of personal and general interest. Thus, an interactive relationship imposed between the two parties is created, the citizen and the state authorities, namely the citizen exercises his right of petition and the state authorities must answer them within the terms and conditions established by the law.

Next, *Law no. 52/2003 on the decision making transparency in the public administration*[7)] is adopted, its purpose being to increase the degree of responsibility of the public administration towards the citizen, as a beneficiary of the administrative decision, the active participation of the citizens in the administrative decision-making

---

2) Approved by Government Decision no. 699/2004 and published in the Official Gazette of Romania, Part I, no. 542 of June 17, 2004.

3) Published in the Official Gazette of Romania, Part I, no. 663 of October 23, 2001, with subsequent amendments and further additions.

4) Published in the Official Gazette of Romania, Part I, no. 84 of February 1, 2002, with subsequent amendments and further additions.

5) Deleanu, I., 2006, *Intitsuții și proceduri constituționale – în dreptul român și în dreptul comparat-*, Bucharest, *Romania:* C.H. Beck Publishing House, p. 156.

6) Constantinescu, M.; Iorgovan, A.; Muraru, I.; Tănăsescu, E.S., 2004, *Constituția României revizuită – comentarii și explicații*, Bucharest, *Romania:* All Beck Publishing House, p. 106.

7) Republished in the Official Gazette of Romania, Part I, no. 749 of December 3, 2013.

process, regarding the process of elaborating normative acts and increasing the degree of transparency at the level of the whole public administration. Law no. 52/2003 envisages the application and observance of the principle of informing the citizen, which also implies a right of the citizen, that of being informed.

In 2014, *The Strategy for the consolidation of the public administration 2014-2020*[8] aims at Romania having an efficient and responsive administration to the needs of the society by 2020, specifying that the public administration "will follow a spiral of trust in relation to society, in that the beneficiaries will enjoy integrated, timely and quality public services" and "the values that underlie the development of such an administrative body are transparency, professionalism , predictability and receptivity to needs that arise, all of them serving the public interest". The objective to gain the trust of the citizens will be attained by offering prompt services and ensuring a constant quality of the services provided, by stimulating the involvement of citizens in adopting appropriate services to them. Why this attitude? Because it is considered that the relationship between the public administration and the citizens "means dedication, correlation and orientation towards solutions that harmonize with the reforms in the social, cultural-educational, economic-financial, justice and democracy fields"[9].

The tendency of involving the citizens in the activity of the administration has become more and more pronounced over the years, but it has been found that this is not sufficient and that there is a substantial need to strengthen and maintain the confidence of the citizen in his ability to influence the public decision.

In order to increase efficiency in the public administration and to maintain the confidence of the citizen, more attention was paid to the computerization of the relation between the public administration and the citizen, by providing electronic services, by developing mechanisms of coordination and institutional cooperation within the public administration, through the creation of portals (virtual one-stop shops) and appropriate websites for reducing bureaucracy, and a series of normative acts to this effect has been adopted. (e.g. Government Decision no. 58/1998 approving the National Strategy for computerization and implementation at an accelerated pace of the information society and of the Action Program on the large-scale use and development of the information technology sector in Romania[10], Law no. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of these data which was recently repealed by Law no. 129/2018, for amending and supplementing Law no. 102/2005 on the establishment, organization and functioning of the National Supervisory Authority for the Processing of Personal Data, as well as for the repeal of Law no. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of

---

8) Approved by the Government Decision no. 909/2014 and published in the Official Gazette of Romania, Part I, no. 834 bis of November 17, 2014.

9) The Strategy for strengthening the public administration 2014-2020.

10) Published in the Official Gazette of Romania, Part I, no. 93 of February 27, 1998.

these data[11], Law no. 455/2001 regarding the electronic signature[12], Government Decision no. 1007/2001 for the approval of the Government Strategy regarding the computerization of the public administration[13], Law no. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, preventing and sanctioning corruption[14], with subsequent modifications and further additions, a.s.o.).

Taking into consideration a modern and efficient public administration, a series of measures have been adopted to strengthen the institutional capacity, in this respect the Administrative Code was adopted[15], being an act of fundamental character in the field of public administration that was adopted with the purpose of increasing the quality of the decisional act. The Administrative Code aims to "adapt the structure and mandates of central and local public administration to the needs of the citizens, ensuring the optimal framework for the distribution of competences between central and local public administration, adapting the human resources system to the demands of a modern administration, de-bureaucratising and simplifying at the level of public administration, strengthening the capacity of the public administration to ensure quality and access to public services"[16]. The reason underlying the adoption of this normative act is determined, inter alia, by the need for a unitary and coherent legislative framework in the field of public administration, for the fulfilment of the commitments made by Romania to the European Union, whereas up to that time there have been various "frequent, disparate, inconsistent and, in some cases, uncorrelated changes in some normative acts with major impact on a field of public interest (public administration), changes occurring either as a result of some initiatives of the primary legislator, either through interventions of the delegated legislator". Among others, for the first time in the Romanian legislation, the general framework for public services is in place, as well as the regulation of the principles applicable to them (transparency, equal treatment, continuity, adaptability, accessibility, responsibility for the provision of the public service), the provision of public services in compliance with the quality norms/standards a.s.o. The Administrative Code has a major impact on the whole public administration, ensuring "the premises of increasing transparency regarding the activity of the public administration and the rules that it must follow"[17].

Changes, further additions or even repeals that have occurred over time concerning these normative acts are mainly due to Romania being a member of the European Union, and the acquisition of European citizenship[18], so that the necessity of

11) Published in the Official Gazette of Romania, Part I, no. 503 of June 19, 2018.

12) Published in the Official Gazette of Romania, Part I, no. 316 of April 30, 2014.

13) Published in the Official Gazette of Romania, Part I, no. 705 of November 6, 20014.

14) Published in the Official Gazette of Romania, Part I, no. 279 of April 21, 2003.

15) Published in the Official Gazette of Romania, Part I, no. 555 of July 5, 2019.

16) For more details, see the note on the Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, p. 3.

17) *Ibidem*, p. 27.

18) For more details see Moroianu-Zlătescu, I.; Marinică, E., 2017, *European Union Law*, Bucharest, *Romania:* Universul Academic Publishing House and Universitară Publishing House, pp. 257-269.

respecting the rights of persons, especially those regarding the protection of persons by processing personal data (the right to information, the right of access, the right of rectification, the right to restrict the processing, the right to delete data, the right to data portability), as well as regarding the most effective interaction in the relationship between administration and the citizen . The role that national authorities play in the protection of private data and personal data of natural persons/individuals is essential, the National Supervisory Authority for the Processing of Personal Data being the responsible institution in this matter.

Following the regulation at European Union level, in the Charter of Fundamental Rights of the European Union (Articles 41 and 42), of the fundamental right to good administration, we consider that at national level this right should be addressed from the perspective of the citizen, and not necessarily from the perspective of public administration, as the real beneficiary of public policies is the citizen.

As for the European Union, in order to be considered democratic "it must be characterized by representativeness, transparency, accountability and, consequently, legitimacy and authority. The way in which democracy is understood in the European Union derives from the involvement of civil society in the different stages of European policy-making, from the way in which public interest is favoured over private interest and also from the transparency that it is trying to manifest."[19] All these ideas can also be applied at national level to prove the existence of a democratic society.

3. Scientific research

The last three decades of reforms in Romania regarding the relationship between administration and the citizen have somewhat improved this relationship, but not enough improvements have been registered, especially regarding the consolidation and the rendering the citizen's confidence permanent when it comes to his ability to influence public decisions. We consider that the determining reasons for this situation are difficult to interpret and analyse, since the evaluation of the reforms is not entirely faithful to reality, sometimes it is subject to limitation or interpretation only from certain angles, and sometimes it has only a collateral perspective on the real beneficiary of public policies.

It can be stated with certainty that the administration and public institutions have become more transparent, more efficient, more open, that access to public services has increased considerably, but it is not enough to improve and strengthen the relationship with the citizen. In this context, it may be a solution to develop partnership agreements between citizens, civil society and other stakeholders, attracting and effectively involving citizens in the activity of a quality administration, including the modification and implementation of a new administrative culture for both the citizen and for administration. It is obvious that the confidence of the citizen in the public administration is closely linked to the quality of public services, to the perception of

[19] Marinică, E., 2018, *European Union issues - Protecting democracy, human rights and the rule of law*, Fiat Justitia Review, no.2/2018, Cluj, p. 166.

these services, but also to the need to develop tools and mechanisms to evaluate the evolution and effects of public policies, as well as to make alternative proposals.

At the same time, the communication between the administration and the citizen is also an improvement solution for increasing confidence, a solution that can be found in the implementation of the digital governance program (e-Government), in order to provide better communication and management of information between public institutions and citizens, to serve the citizen quickly and efficiently, by reducing bureaucracy and simplifying procedures, by implementing and providing services such as online payment of taxes and fees, the possibility of transmission or registration of a series of online petitions, quick access to forms of administrative nature, a.s.o. Reducing bureaucracy will also result in reducing its negative impact on the citizen, mainly by simplifying the administrative procedures applicable in areas essential to it such as records of persons, documents of civil status, payment of various taxes, health, work and social benefits, registration of vehicles and procedures related to the issuing of driving licenses a.s.o).

At the same time, it is beneficial to set general objectives for simplifying these administrative procedures (identifying, establishing simplification measures and tools, implementing them and, last but not least, periodically assessing the impact of these measures) but also identifying the real problems that the citizen is facing in the relationship with the public administration.

Improving the citizen's access to public administration services is another imperative objective, the access being ensured, on the one hand, as a result of the permanent evolution of public administration, doubled by the increase in the quality of public services. In direct relation with the development of information technology, with the solutions of digital governance but also with the help of a close relationship with the citizen, the public administration should implement solutions such as the development of the technological infrastructure of public administration, the creation of web pages with an accessible interface, with information that is as clear, transparent, easy to follow and constantly updated, the creation of portals, call centre or toll free phone number systems and single virtual or physical counters as efficient as possible; also the creation of telephone lines that ensure the easiest access to necessary public information and the best training of employees in the field of public relations, the creation of an electronic document management system, the possibility of submitting and editing online administrative forms, educating the citizen in the field of using information technology, a.s.o. Unfortunately, at the level of 2018, Romania ranks last in the European Union in terms of digital public services[20], while in the European Union there is "a tendency of convergence between the Member States for the period 2014-2019, 64% of Internet users who submit forms to their public administration currently using online channels (compared to 57% in 2014), which demonstrates the advantage of online procedures over other procedures that involve more bureaucracy".

The participation of citizens in the decision-making process is equally important, which is why the creation and effective implementation of stable consultation

[20] For more details see *The Digital Economy and Society Index (DESI)*, available at https://ec.europa.eu/digital-single-market/desi.

mechanisms is an essential condition, ensured through a permanent dialogue on citizens' initiatives and the identified options, and through the accessibility of the general public to information (including using online space), by implementing partnerships and pilot projects to educate the citizen in this regard a.s.o. Thus, the citizens will become visible, real and serious partners of the public administration and, at the same time, they will be able to exercise control over the public administration. Last but not least, this process will increase the self-esteem of the citizen, the confidence in his abilities (psychological aspects) and, at the same time, he will be convinced that through his activity he contributes to the decision-making process, to the development of the local community or even to its administration and will gain confidence in the public administration.

We believe that the relationship between administration and the citizen should not be viewed as a relationship based exclusively on equity, because the state's interest in the broad promotion of public participation in public policy decisions is fundamental, this objective that is not an easy target, as it involves, among many others, a rethinking of the way the government structures operate, a change in the organizational culture but also a better and more efficient allocation of resources.

Finally, we believe that good administration at national level involves besides civic values a series of democratic qualities, applicable at the executive level to those in the public administration, but also to the citizens, in order to maintain an efficient, balanced relationship, but also one that is dynamic and ongoing. Asking for a good functioning of the public administration is a right of the citizens, the activity of the public administration serving the general interest and representing the objective of answering the needs of the citizens. The fundamental right to demand good administration must be regarded as universally valid and at the same time as the opposite of the right of "bad administration", which violates the principles of equality, legal certainty, and legality.

4. Conclusions

In the light of the foregoing, it can be concluded that a thorough analysis of the modern public administration must have as a main reference point the relation between the public administration and the citizen; also, the confidence granted by the citizen to the public administration must be permanently sustained, in order to reach a degree of satisfaction in accordance with the general and individual interest.

It is easy to understand that without a permanent modernization of the public administration, without support from the political decision-making factor at national and local level and, why not, without citizens who know their rights and obligations and who exercise them but who, at the same time are active citizens, the evolution of the public administration, its capacity to develop efficient and citizen-oriented public policies is cumbersome, slow and less efficient.

Obviously, in relation to the modern nature of public administration, ensuring the rights of citizens to good governance and good administration is complemented by

multi-levelled governance as seen in efficient human resources management, efficient public policies, and electronic governance, e-government services, and the increase in the degree of information, performance and transparency complete the landscape characterized by the efficiency and effectiveness of public administration.

Further on, one can consider that there is a need for increased and constant attention paid to these aspects regarding public administration, supplemented by possible proposals of solutions and measures that need to be taken in the short and long term, which come in anticipation of citizens' wishes and in support of an innovative evolution of the public administration by discussing its responsibilities and involving citizens in the process.

REFERENCES

Books, articles

Constantinescu, M.; Iorgovan, A.; Muraru, I.; Tănăsescu, E.S., 2004, *Constituția României revizuită – comentarii și explicații*, Bucharest, Romania: All Beck Publishing House.

Deleanu, I., 2006, *Instituții și proceduri constituționale – în dreptul român și în dreptul comparat* –, Bucharest: Romania: C.H. Beck Publishing House.

Marinică, E., 2018, *European Union issues – Protecting democracy, human rights and the rule of law*, in Fiat Justitia Review, no.2/2018, Cluj, Romania.

Zlătescu, I.M.; Marinică, E., 2017, *European Union Law*, Bucharest, Romania: Universul Academic Publishing House and Universitară Publishing House.

The Digital Economy and Society Index (DESI), available at https://ec.europa.eu/digital-single-market/desi.

Legislation

Government Decision no. 1006/2001 for the approval of the Government Strategy on accelerating the reform in the public administration, published in the Official Gazette of Romania, Part I, no. 660 of October 19, 2001.

Government Decision no. 699/2004 and published in the Official Gazette of Romania, Part I, no. 542 of June 17, 2004.

Government Decision no. 909/2014 and published in the Official Gazette of Romania, Part I, no. 834 bis of November 17, 2014.

Strategy for the consolidation of the public administration 2014-2020.

Government Emergency Ordinance no. 57/2019 regarding the Administrative Code.

ABOUT THE AUTHORS

***Claudia Elena Marinică*,** PhD., University Assistant at the National University of Political Studies and Public Administration, Bucharest, Romania,

Email: elena.marinica@administratiepublica.eu

Communication of administrative acts. The role of the courts in developing the rules of administrative contencious. Legislative evolution and practical aspects

Nicolae-Alexandru CESLEA

ABSTRACT

Throughout the legislative evolution carried out over the last 30 years, the courts have played an important role in establishing the legal regime applicable to the operation of communication of administrative acts. Nor can it be denied that the practice of the courts emphasized the shortcomings of the regulation, thus triggering the initiation of the procedures for amending the legal provisions regarding communication of administrative acts.

From the initial regulation given by the former Law no. 29/1990 regarding the administrative litigation, in which no distinction was made between the situation of the beneficiary and the third party in relation to the administrative act, to a regulation in which greater attention is paid to the communication of the administrative act to the third party, a considerable period of time passed during which jurisprudence has played a central role.

The study begins with the problem of conceptualizing the notion of communication and determining the legal regime as a result of qualifying the communication operation as an element that falls within the scope of material law. The central part of the paper concerns the concrete analysis of the legislative evolution and the role of the courts in this process. The final part brings in discussion the challenges that will be faced by law practitioners having as starting point the current form of the legal text. The last legislative changes put in foreground absolutely new challenges with which courts will be confronted, and their intervention will be, in the same sense as until now, significant.

Bringing to the forefront and awareness the evolution of the regulation regarding the operation of the communication helps create a picture of the legislative changes in order not to arrive at the same solutions that presented shortcomings, all towards a healthy and coherent legislative evolution.

KEYWORDS: *administrative act, legislative evolution, communication, third party, case law.*

1. Introduction

The communication of the administrative acts is a particularly important aspect in the administrative law, both from the perspective of protecting the principle of security of legal relationships[1)] and from the perspective of protecting the principle of free access to justice[2)].

The question regarding the security of the legal relationships is favorable to the beneficiaries of the administrative act, with the communication and the expiration of contestation terms, in general, the administrative act becomes definitive and can no longer be annulled by the courts. On the other hand, the principle of free access to justice is favorable to the third parties and implies the interpretation of the legal provisions in the sense that they are given the possibility to challenge the administrative act without imposing unreasonable limitations, in the latter category including the contestation terms.

In this regard, we can already draw the preliminary theses of the present paper, in the sense that we intend to analyze how the courts have chosen to give priority to one of the two principles of law that are in opposition, the principle of security of legal relationships and the principle of free access to justice, and, consequently, how they chose between the diametrically opposed interests of the beneficiaries and of the third parties in relation to the administrative act.

To begin with, we considered it useful to conceptualize the notion of communication and to integrate it in the domain of application of material law or procedural law, in order to determine what in the sphere of law influenced the courts. The importance of analyzing these aspects arose also from observing the opinions in the doctrine that are still divided regarding the classification in the sphere of material or procedural law of the elements next to the communication operation, as is the problem of the legal nature of the contestation terms of the administrative acts.

The central part of the paper deals with the legislative evolution of the legal provisions governing the communication operation and what contribution the courts have had. From the establishment of the rules regarding the communication of the administrative acts to the third party, in the conditions in which his situation was not regulated by the law, to the concrete way of applying the legal provisions in the matter, to highlighting the main shortcomings of the different regulations, the courts have been positioned at the center of the problem of communication of administrative acts.

---

1) For details on this principle in administrative law, see Brad, I., 2019, *Revocarea actelor administrative. Instituția revocării sub exigențele dreptului european*, Bucharest, Romania: Universul Juridic Publishing House, pp. 122-173; Podaru, O., 2010, *Drept administrativ. Vol. I. Actul administrativ. (I) Repere pentru o teorie altfel*, Bucharest, Romania: Hamangiu Publishing House, pp. 296-304; Săraru, C.S., 2019, *Contenciosul administrativ român*, Bucharest, Romania: C.H. Beck, pp. 111-112.

2) For details on this principle, see Chiriță, R., 2016, *Paradigmele accesului la justiție. Cât de liber e accesul liber la justiție?*, article published on 08.12.2016, available on http://www.unbr.ro/publicam-articolul-intitulat-paradigmele-accesului-la-justitie-cat-de-liber-e-accesul-liber-la-justitie-reprodus-cu-acordul-autorului-lect-univ-dr-radu-chirita-facultatea-de-d/.

In the last part of the paper are presented the current legal provisions regarding the communication of administrative acts, as modified by Law no. 212/2018[3], the main shortcomings of this regulation are identified, including those arising from the multitude of interpretations that the text can generate regarding the moment from which the term of contestation of administrative acts begins to expire, the general conclusion being that the legislative changes will bring absolutely new challenges to the courts, whose intervention will be, in the same sense as before, significant.

2. The notion and legal nature of the operation of communication of administrative acts

In the specialized legal literature, the communication of the administrative acts is defined as "the operation by which the issuing administrative body notifies the interested party an administrative act"[4], also "sending an individual administrative act to the subject of law concerned (the recipient of the act), either through direct delivery, either by posting at the address where he/she has his/her address"[5].

In relation to the second definition, the first one has a broader content from two points of view. Thus, on the one hand, the operation of the communication is not limited only to the sending of the administrative act, but also to the operation of informing about the existence of the administrative act that does not necessarily imply the presentation in written form of the administrative act, and, on the other on the one hand, the number of the subjects of communication is much wider. The second definition involves the written form of the administrative act and is intended only for the recipient of the administrative act.

The communication operation was also defined in the doctrine as "an administrative operation subsequent to the issuance or adoption of an administrative act that may concern other subjects of law than the addressees of the act"[6], the last part of the definition being exemplified by the administrative acts communicated to the mayor and prefect pursuant to art. 197 paragraph (1) and (2) of the Administrative Code[7]. This definition aims to emphasize that the sphere of the recipients is wider, without being limited to the beneficiary of the administrative act.

---

3) Law no. 212/25 July 2018 for amending and completing the Law on administrative contentious no. 554/2004 and other normative acts, published in the Official Journal of Romania, Part I, no. 658/30 July 2018.

4) Petrescu, R.N., 2009, *Drept administrativ,* Bucharest, Romania: Hamangiu Publishing House, p. 327.

5) Ciobanu, A.S., 2015, *Drept administrativ. Activitatea administrației publice. Domeniul Public*, Bucharest, Romania: Universul Juridic Publishing House, p. 70.

6) Vedinaș, V., 2018, *Tratat teoretic și practic de drept administrativ*, Vol. II, Bucharest, Romania: Universul Juridic Publishing House, p. 76.

7) Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, published in the Official Journal of Romania, Part I, no. 555 of July 5, 2019. Thus, according to art. 197 of the Administrative Code "(1) The general secretary of the territorial unit/subdivision communicates the administrative acts provided in art. 196 paragraph (1) to the prefect within

In the same sense as the last definition, but also with the second definition set out in the first paragraph of the section, it was also noted that the operation of the communication consists in "the fact of a public authority to inform officially and personally, by a specific means, the recipients of a norm or other public authorities"[8].

In the current framework of the regulation, on the basis of what will be presented in this study[9], we will define communication as an operation that falls within the scope of the administrative procedure, within the legal regime applicable to the administrative act, and implies the disclosure of the content of an administrative act, in the form which the administrative act take, to the interested person, beneficiary or third party, or to a certain public authority.

There is no general regulation of the operation of communication of administrative acts. The legal nature and the applicable legal regime can be established by interpretation starting from the relation with the norms of material law and civil procedural law, as well as from the legal norms that contain mentions regarding the communication of the administrative acts.

The administrative act is the one that produces effects in the matter of administrative law, as well as in the other matters of the law, the communication determining, in principle, the moment from which the administrative acts begin to produce these legal effects[10]. In relation to the provisions of Law no. 554/2004[11], the operation of the communication of the administrative act appears in the context of the regulation of the legal regime of the pre-trial administrative complaint procedure, in relation with the term for formulating the preliminary complaint[12], being able to claim that the operation of the communication concerns a condition regarding the referral to the court, respectively it concerns the exercise of the right to action, so that it is

no more than 10 working days from the date of adoption, respectively of the issue. (2) The decisions of the local council shall be communicated to the mayor". Similar provisions can also be found in matters of administrative guardianship art. 3 paragraph (1) of Law no. 554/2004: "(1) The prefect may directly attack before the administrative contentious court the acts issued by the local public administration authorities, if he considers them illegal; the action is formulated within the term provided in art. 11 paragraph (1), which begins to expire from the moment of communication of the act to the prefect and under the conditions provided by this law (...)".

8) Podaru, O., *op. cit.*, p. 217.

9) See the present section and Section 4. Communication of administrative acts in the current regulation.

10) For details, see Vedinaș, V., *op. cit.*, pp. 82-87. Also, Clipa, C., 2018, *Ne îndreptăm spre facultativitatea plângerii administrative prealabile? Câteva observații pe marginea modificării neriguroase a art. 7 alin. (5) din Legea cu nr. 554/2004 a contenciosului administrativ*, article published on 01.10.2018, available on www.juridice.ro.

11) Law no. 554/2004 regarding the administrative dispute, published in the Official Journal of Romania, Part I, no. 1154/07 December 2004.

12) According to art. 7 paragraph (1) of Law no. 554/2004, in the form currently in force: "Before addressing the competent administrative litigation court, the person who is considered harmed in his right or in a legitimate interest by an individual administrative act addressed to him must request the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the act, to revoke it, in whole or in part".

considered that the operation of the communication constitutes an aspect that falls within the scope of the civil procedural law and the application of the corresponding legal regime[13)].

This assessment can be made more so as the current doctrine has not yet stabilized with regard to the question of qualifying the 30 day term for submitting a pre-trial administrative complaint, within a term specific to the material law, a deadline[14)] or a prescription term[15)], respectively a deadline term[16)] specific to procedural law, so that the problem of framing the communication in the scope of the norms of material law or of civil procedural law is of further interest. If it can be deduced that elements of the legal regime of the administrative act, of the administrative procedure, have been qualified as elements that fall within the scope of the civil procedure, then, all the more, the temptation is also regarding the communication operation.

In other words, if the term for formulating the prior complaint is an element that falls within the scope of the civil procedure, then so is the proximate element, dependent on it, the operation of communicating the administrative document must benefit from the same interpretation. But in this way the entire legal regime of the administrative act could enter the field of civil procedure, which would qualify the administrative act itself as a procedural act.

However, the administrative act, the terms of the pre-trial administrative complaint procedure and the communication of the administrative acts are not elements specific to the civil trial, since the civil trial follows the activity carried out by the court, the conduct of the parties and other participants in the court, the latter norms constituting the rules that regulate the organization and the conduct in civil trial[17)].

The 30 day term for submitting the pre-trial administrative complaint is viewed in correlation with the legal nature of the administrative act, which is a manifestation

---

13) The provisions of art. 153-173 of the Civil Procedure Code carefully regulates the procedure of communication of the procedural acts, provisions that can be applied under the conditions of art. 28 paragraph (1) of Law no. 554/2004: "The provisions of this law are supplemented by the provisions of the Civil Code and those of the Code of civil procedure (...)". Law no. 134/2010 on the Civil Procedure Code, republished in the Official Journal of Romania, Part I, no. 247/10 April 2015.

14) Dragoş, D.C., 2009, *Legea contenciosului administrativ. Comentarii şi explicaţii*, Second Edition, Bucharest, Romania: All Beck Publishing House, p. 228; Nicolae, M., 2010, *Tratat de prescripţie extinctivă*, Bucharest, Romania: Universul Juridic Publishing House, p. 1035. A deadline specific to the material law has as an effect the loss of a material right.

15) Petrescu, R.N., *op. cit.*, p. 466. The prescription term implies the loss of the right to constraint the defendant.

16) Podaru, O., 2014, *Despre prescripţie şi pseudo-prescripţie în contenciosul administrativ*, in Curierul Judiciar Review no. 1/2014, p. 35; Rîciu, I., 2012, *Procedura contenciosului administrativ. Aspecte teoretice şi repere jurisprudenţiale*, Bucharest, Romania: Hamangiu Publishing House, p. 217. A deadline specific to the procedural law has as an effect the loss of a procedural right.

17) Boroi, G.; Stanciu, M., 2015, *Drept procesual civil*, Bucharest, Romania: Hamangiu Publishing House, pp. 1, 5.

of will[18] concerning a material administrative law relationship and in correlation with the legal nature of the administrative appeal, which, although it belongs to the administrative procedure, also constitutes a material law element in relation to the civil procedure. The administrative appeal is part of the administrative procedure, an administrative route of appeal, the civil procedural provisions establishing only the condition of the pre-trial procedure, the condition of following it before the trial is initiated. From this perspective, we consider that the legal regime applicable to the administrative act, the term of formulating the pre-trial complaint and the operation of the communication is that of material law.

It should also be noted that the doctrinal dispute regarding the qualification of the 30 day term for formulating the pre-trial complaint was maintained even when, once the Law no. 554/2004 was adopted, the term corresponding to the 30 days term, that of 6 months for formulating the pre-trial complaint over the term, in case of solid reasons that justified the exceeding of the general term, was expressly qualified as prescription[19]. As we have already noted in another study, in order to maintain the regulation consistency, in order to ensure a harmonization of the legislation, the term of 30 days is required to receive a qualification similar to that of 6 months, as long as they perform similar functions[20]. These differences of interpretation remain important reasons for drawing the net distinction between the institutions of material law, regardless that they are qualified as administrative procedures, and those of civil procedure, the qualification thus determining the applicable legal regime.

The doctrine addresses the issue of the communication of administrative acts as a procedural form subsequent to the issuance of the administrative act[21], an aspect that implies that the operation of communicating administrative acts does not affect their validity, but conditions their entry into force, respectively their third party effect[22]. Of course, the validity of any legal act relates to the moment of its issuance, and any element subsequent to its issuance is outside the scope of the institution of the nullity of the administrative act, but what is interesting to note is the qualification of the communication operation as a *procedural form*.

It is sufficiently clear that there are administrative procedural forms, which from the perspective of the civil procedure constitute elements of material law, and, since it concerns the legal regime of the administrative acts, the communication takes into

18) For details, see Vedinaș, V., *op. cit.*, pp. 27-34.

19) Thus, according to art. 7 paragraph (7) of Law no. 554/2004 in the form in force at the date of adoption: "The prior complaint in the case of unilateral administrative acts can be introduced, for justified reasons, beyond the term provided in par. (1), but not later than 6 months from the date of issuing the act. The term of 6 months is a prescription term"; in the current form of the regulation, the phrase regarding the qualification of the longer term as prescription term can be found in art. 7 paragraph (3) of Law no. 554/2004.

20) Ceslea, N.A., 2018, *Termenele de prescripție și decădere în materia dreptului administrativ*, Dissertation paper, University of Bucharest, Faculty of Law, Master's program: Private Law, Scientific Coordinator Prof. Univ. Dr. Marian Nicolae, Bucharest, p. 32.

21) Iorgovan, A., 2005, *Tratat de drept administrativ*, Vol. I, 4th Edition, Bucharest, Romania: All Beck Publishing House, pp. 63-64, Petrescu, R.N., *op. cit.*, p. 327, Vedinaș, V., *op. cit.*, p. 76.

22) Ciobanu, A.S., *op. cit.*, p. 70.

account the administrative procedures, viewed from the perspective of the material law. The situation is similar to the regulation of the fiscal law, in which the Fiscal Procedure Code[23)] represents material law in relation to the civil procedure and works on the basis of different mechanisms.

The importance of qualifying the operation of communication as an element that falls within the scope of material law or civil procedure is essential, given that the rules of civil procedure regarding communication are strict, while those of material law have not benefited of increased attention in the regulation. In this context, the courts intervened, establishing a series of rules regarding communication, which were highlighted in the process of the evolution of the legal provisions in the matter.

3. The evolution of the legal provisions regarding the communication of administrative acts and the corresponding jurisprudence[24)]

The provisions of the Law on administrative disputes no. 29/1990[25)], like the previous legislation[26)] did not include a general title regarding the operation of the communication of the administrative act[27)], its legal regime being determined by the doctrine and the practice of the courts.

---

23) Law no. 207/20.07.2015 regarding the Fiscal Procedure Code, published in the Official Journal of Romania, Part I, no. 547/23 July 2015.

24) The paragraphs within this section represent an adaptation of the result of the research carried out within the program of the Doctoral School of Law of the Faculty of Law, University of Bucharest, presented in the Research Report no. 1 sustained on September 30, 2019, unpublished, before the commission composed of coordinator Prof. Univ. Dr. Verginia Vedinaș, Assoc. Univ. Dr. Dan Drosu Șaguna, Assoc. Univ. Dr. Alexandru-Sorin Ciobanu and Lecturer Univ. Dr. Bogdan Dima.

25) Law of the administrative contentious no. 29/1990, published in the Official Journal of Romania, Part I, no. November 29, 1990.

26) The specific legislation from the modern administrative law, based on the principle of separation of powers in the state, respectively Law no. 167 for the establishment of a state council of February 11, 1864, published in the Official Journal of Romania of January 11, 1864, the Law for the administrative dispute of December 23, 1925, quoted in full in Annex IX Rarincescu, C.G. 1936. *Contenciosul administrativ român*, 2nd Edition, Alcalay & Co. Universal Publishing House, Bucharest and Law no. 1/1967 regarding the trial by the courts of the claims of those harmed in their rights through illegal administrative acts, published in the Official Bulletin no. 67/26 July 1967.

27) Based on the provisions of art. 5 of Law no. 29/1990: "Before requesting the court to annul the act or to compel his release, the person who is considered harmed by an administrative act shall address for the defense of the right or, within 30 days from the date when the administrative act was communicated or at the expiration of the term provided in art. 1 paragraph 2, to the issuing authority, which is obliged to resolve the complaint within 30 days from the date of the complaint. In case the person who is considered harmed by an administrative act is not satisfied with the solution given his complaint, he can notify the court within 30 days from the communication of the solution. If the person who is considered harmed by an administrative act addressed with a complaint also to the hierarchically superior administrative authority to the one who issued the act, the 30 day term, provided in the previous paragraph, is calculated

Law no. 29/1990 did not expressly regulate the situation of the action brought by the third party, but, in the practice of the supreme court[28], the right of the third party to challenge an administrative act was recognized, the moment from which the term for formulating the pre-trial complaint was considered to expire starting with the date on which the third party became aware of the existence and content of the act. In the practice of the same court[29], it was also held that the formulation of a complaint against an administrative act presumes the knowledge of its content.

During the analyzed period, this was a first step taken by the courts in completing the regulation given to the operation of communicating administrative acts to a third party. Although this interpretation was not confined to the limits of the attributions of the judicial authority to judge, however, the intervention of the supreme court not only determined an important aspect, not regulated by the legislation in the matter, but it also drew the direction followed by the subsequent regulation.

Law no. 554/2004[30] kept the same format as the previous legislation regarding the communication of the administrative act to the beneficiary, without establishing the concrete way in which the communication takes place.

Regarding the situation of the third party, the provisions of art. 7 paragraph (3) and (7) in conjunction with art. 7 paragraph (1)[31] of Law no. 554/2004 expressly regulated its situation. These provisions were interpreted in the way that the third party had a period of 30 days from the moment when he became aware of the existence of the administrative act to submit a pre-trial complaint to the administrative authority, but not later than 6 months from the issuance of the administrative act[32]. The only notable benefit of this mechanism was that it followed the legal regime of the prescription for

from the communication by that authority of the solution given to the complaint. The court may also receive the case if the issuing administrative authority or the hierarchically superior authority does not resolve the complaint within the term provided in par. 1. In all cases, the application to the court may not be made later than one year from the date of communication of the administrative act whose cancellation is requested".

28) By the decision no. 580/27 March 1997, pronounced by the Supreme Court of Justice, presented in Anghel, V.; Preda, M., 1998, *Decizii și hotărâri ale Curții Constituționale și Curții Supreme de Justiție în probleme ale administrației publice și agenților economici*, Bucharest, Romania: Lumina Lex Publishing House, pp. 609-610.

29) In this respect, the decision 1775/08 November 1996, in Anghel, V.; Preda, M., *op. cit.*, pp. 610-612.

30) In the initial form of the text of art. 7 paragraph (1): "Before addressing the competent administrative litigation court, the person who considers himself harmed in his right or in a legitimate interest by a unilateral administrative act must request the issuing public authority, within 30 days from the date of communication of the act, it's revocation, in whole or in part. The complaint can be addressed equally to the higher hierarchical body, if it exists".

31) In the initial form: "(2) It is entitled to file a pre-trial complaint also the harmed person in his right or in a legitimate interest, through an individual administrative act, addressed to another subject of law, from the moment he became aware, by any means, of its existence, within the limits of the term of 6 months provided in par. (7)", and the provisions of par. (7) "The pre-trial complaint in the case of unilateral administrative acts may be filed, for justified reasons, also over the term provided in par. (1), but not later than 6 months from the date of issuing the act. The term of 6 months is a prescription term".

32) The solution is also confirmed by the doctrine. In this regard, see Iorgovan, A., *op. cit.*, p. 589.

the 6 months term which started to expire from the moment of the issuance of the administrative act. But this limitation imposed by art. 7 paragraph (7) of the law has proved to be mostly unfair to the third party.

Thus, the term of 30 days was starting to expire regardless of whether the third party came into possession of the act, being sufficient for him to be aware of the existence of this act. If the third party became aware of the existence of the act after the expiry of the limitation period of 6 months from the issuance of the administrative act, the right to make a pre-trial complaint was considered to be fulfilled, and the preliminary complaint would be rejected for this reason.

In order to counteract the unfairness of the regulation towards the third party, by the Constitutional Court Decision no. 797/27 September 2007[33)] the exception of unconstitutionality of the provisions of art. 7 paragraph (7) of Law no. 554/2004 was granted. It was found that the text is unconstitutional insofar as the term of 6 months from the issuance of the administrative act applies to the pre-trial complaint submitted by the third party. It was held that the administrative acts are not opposable to the third parties, they are not communicated or subject to any form of publicity, so that they don't have the possibility to become aware of its existence from the date of issue. In this way, third parties find themselves in an objective impossibility to know the existence of the administrative act, which is why the term cannot be calculated from the moment of issuing the administrative act.

In the configuration given by the presented decision of the Constitutional Court to the right to submit the pre-trial complaint, it was sufficient to prove that the third party was aware of the existence, and not the content, of the administrative act, to begin the expiration of the 30 day term, respectively, for justified reasons, not later than 6 months from the same moment.

In the practice of the courts[34)], starting from those established by the Constitutional Court in the cited decision, it was appreciated that the acknowledgement of the existence, and not of the content of the administrative act, must be effective, the burden of proof being at the adversary. Thus, the simple contact between the beneficiary and the third party or, in the case of building authorizations, the display of the investment identification panel[35)] raised on a secluded, isolated land, do not meet these requirements[36)].

---

33) Published in the Official Journal of Romania no. 707/19 October 2007.

34) In this regard, sentence no. 1783/20 March 2017 pronounced by the Bucharest Court - The Second Section of Administrative and Fiscal Contentious, unpublished, definitive by renouncing at the right, established by decision no. 4976/22 November 2017 delivered by the Bucharest Court of Appeal – VIII Section of Administrative and Fiscal Contentious, unpublished.

35) According to art. 1 of the Order of the Ministry of Public Works and Spatial Planning no. 63/1998 regarding the obligation to display in the visible place the investment identification panel, published in the Official Journal of Romania, Part I, no. 345/11 September 1998.

36) Ceslea, N.A., *op. cit.*, pp. 38-39. As a general rule, these assessments also remain valid in the current legislative framework, in that the acknowledgement of the content of the administrative act must be appreciated in concrete, on a case-by-case basis, and should not be easily presumed. In other words, there must be a firm conviction of the judge that the third party knows the content of the administrative act, and any means of evidence can be administered in this regard.

Although it appeared as an evolution of the regulation, representing another stage in the development of legal norms regarding the communication of administrative acts, this form of the legal provisions had a shortcoming. Specifically, the third party was held accountable for the period of time within he followed the necessary steps to obtain the administrative act and to challenge it. In other words, his right to defense was seriously affected in the situation when he found out immediately about the existence of the administrative act, then he addressed the issuing authority, but the authority did not answer or refused to communicate the administrative act, and until a court ruling regarding the obligation to communicate the administrative act, both the 30 day term and the maximum 6 month term for submitting the pre-trial complaint would had expired. In this way, the third party was in a position to challenge the administrative act without being aware of the content of it, in a way that proved inefficient, being deprived at least of the right to submit an effective administrative appeal.

In the presented context, we also add the lack of reluctance of the courts to prohibit the third party from modifying the application with new reasons of illegality of the administrative act, when the third party became aware of the content of the administrative act from the case file after the first trial term[37)].

Even if the reported practice concerns a request to suspend the execution of the administrative act, it does not exclude that in other stages prior to the trial or in other procedural stages this practice did not manifested. The third party could reach the stage of the administrative appeal, the stage of the procedure of suspending the administrative act and even the stage of formulating the action before the court without knowing the content of the contested administrative act.

Indeed, if the third party came into possession of the document at a subsequent moment to the first term of the trial, the procedural provisions require the solution to be in the same manner as the one ordered in the cited sentence. This is because the legality[38)] and the delivery of the judgement in an optimal and predictable term[39)] are principles of the civil procedure. It should not be forgotten that the principle of

---

37) In this regard, sentence no. 1913/19 March 2019, pronounced by the Bucharest Court - Second Section of Administrative and Fiscal Contentious, unpublished, definitive by rejecting the appeal, as unfounded, by decision no. 435/09 July 2019 delivered by the Bucharest Court of Appeal - Section VIII of Administrative and Fiscal Contentious, unpublished. It was held that "the aspects relating to the modification of the application after the first court term, as the Court has already considered that the provisions of art. 14 of Law no. 554/2004, interpreted in a logical way, require that the reasons for the suspension, the justified case and the imminent damage, must be known reasons at the time of the submission of the application before the court, and, after the first trial term, the procedural provisions allow the applicants to supplement the reasons for suspension only with the agreement of the parties, according to art. 204 para. 3 from the Code of Civil Procedure".

38) According to art. 7 of the Code of Civil Procedure "(1) The civil trial is carried out in accordance with the provisions of the law. (2) The judge has the duty to enforce the provisions of the law regarding the implementation of the rights and the fulfillment of the obligations of the parties".

39) According to art. 6 paragraph (1) of the Code of Civil Procedure "Everyone has the right to a judgement of his case (...) in an optimal and predictable term (...). For this purpose, the court is obliged to order all the measures allowed by law and to ensure the celerity of the procedures".

celerity was enshrined in the context of Romania's multiple sentences by the European Court of Human Rights for the duration of the proceedings, this also being the context of the adoption of this regulation[40].

Although "it is the attribute of the sufficiently general norms of the Code of civil procedure, the general framework in this matter, but also of the specific flexibility of the norms of the general law, that can include in the regulatory sphere all the aspects of the trial"[41], however it would have been appropriate to consider that, in the presented hypothesis, the limitation to modify the application until the first term of the trial should not be applicable.

In the conditions in which the Code of civil procedure elevates to the rank of principles the right to a fair trial[42], equality[43], good faith[44] and guarantee of the right to defense[45], we note that the provisions of art. 204 para. (1) and (3) of the Code of Civil Procedure[46] have not been designed and, therefore, cannot be adapted to such scenarios as those presented in the previous paragraphs, so they should be removed from application. In this way, the regulation regarding the communication and contestation of the administrative act by the third party would have been close to a reasonable standard.

4. Communication of administrative acts in the current regulation

By Law no. 212/2018 the problem presented in the previous paragraphs is solved, the term for submitting the pre-trial complaint by the third party starts to expire from the moment of the acknowledgement, by any means, of the content of the

40) As can be observed from the explanatory statement of the draft law registered at the Chamber of Deputies under no. PL-x no. 413/2009 which materialized in the content of Law no. 134/2010 regarding the Civil Procedure Code, available on www.cdep.ro.

41) Ceslea, N.A., *op. cit.*, p. 27.

42) Based on art. 6 paragraph (1) of the Code of Civil Procedure "Everyone has the right to a fair trial (...)".

43) According to art. 8 of the Code of Civil Procedure "In civil litigation the parties are guaranteed the exercise of procedural rights, equally and without discrimination".

44) Based on art. 12 paragraph (1) of the Code of Civil Procedure "The procedural rights must be exercised in good faith, according to the purpose for which they were recognized by law and without infringing the procedural rights of another party".

45) According to art. 13 of the Code of Civil Procedure "(1) The right to defense is guaranteed; (3) The parties are assured of the possibility to participate in all the phases of the trial. They can have access to the file, propose evidence, defend themselves, present their written and oral arguments and exercise the legal remedies, in compliance with the conditions provided by law".

46) According to these legal provisions: "(1) The applicant may amend his application and propose new evidence, under the sanction of forfeiture, only until the first term at which he is legally summoned. In this case, the court orders the postponement of the case and the communication of the modified request to the defendant, in order to formulate the welcome, which, under the sanction of the decay, will be filed with at least 10 days before the fixed term, to be investigated by the applicant in the case file; (3) Modification of the request for judicial appeal over the term provided in par. (1) may take place only with the express agreement of all parties".

administrative act[47]. But this way of solving the problems arising under the applicable legal regime until the time of the adoption of Law no. 212/2018 generates completely new ones.

Thus, it is noted that the situation of the third party becomes unjustifiably privileged in relation to that of the beneficiary, the latter having 30 days from the communication to formulate the prior complaint and, in case of exceeding the latter term for justified reasons, 6 months from the issuance of the act[48], while the third party has 30 days, respectively 6 months, in case of exceeding the latter term for justified reasons, from the moment when he became aware of the content of the act[49].

Then, the current regulation raises the question whether the acknowledgement of the content of the administrative act, specific to the situation of the third party, is similar to that of the communication of the administrative act, specific to the beneficiary's situation. This in the context in which the acknowledgement of the content of the administrative act implies the awareness of all its elements, both intrinsic and extrinsic. To illustrate, the third party become aware of the signature applied to the administrative act only after observing the written form of the act that involves the operation of communicating the administrative act. Such an appreciation entails the possibility to challenge the administrative act by the third party after considerable periods of time from the moment of issuing the administrative act, an aspect that raises important problems in the sphere of the principle of security of legal relationships, respectively, as the case may be, of the principle of free access to justice.

At the same time, one of the most important problems raised by the recent legislative modification is the establishment of the legal regime in the case of submitting the application before the court, whose object is the annulment of the administrative act, for the hypotheses in which the pre-trial complaint is not necessary.

---

47) According to art. 7 paragraph (3) of Law no. 554/2004 as amended: "It is entitled to file a pre-trial complaint also the harmed person in his right or in a legitimate interest, by an individual administrative act, addressed to another subject of law. The pre-trial complaint, in the case of unilateral administrative acts, will be filed within 30 days from the moment the harmed person became aware, by any means, of the content of the act. For justified reasons, the pre-trial complaint can be formulated within 30 days, but not later than 6 months from the date on which it became aware, by whatever means, of its content (...)".

48) According to art. 7 paragraph (1) of Law no. 554/2004 amended as follows: "Before addressing the competent administrative litigation court, the person who is considered harmed in his right or in a legitimate interest by an individual administrative act addressed to him must request the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the act, the revocation of it, in whole or in part. For justified reasons, the harmed subject, the addressee of the document, can file the pre-trial complaint, in the case of unilateral administrative acts, also over the term provided in par. (1), but not later than 6 months from the date of issuance of the act".

49) The paragraph represents the adaptation of the result of the research carried out within the program of the Doctoral School of Law of the Faculty of Law, University of Bucharest, presented in the Research Report no. 1 sustained on September 30, 2019, pp. 86-88, unpublished, before the commission composed by coordin. Prof. Univ. Dr. Verginia Vedinaș, Assoc. Univ. Dr. Dan Drosu Șaguna, Assoc. Univ. Dr. Alexandru-Sorin Ciobanu and Lecturer Univ. Dr. Bogdan Dima.

In the doctrine[50], it has already been pointed out that the legislator was not concerned by issue of the time limit when submitting an application in the situation when it is not necessary to formulate the pre-trial complaint, proposing to apply by analogy the provisions of art. 11 paragraph (3)[51] of Law no. 554/2004. In this way, the similarity with the situation of the application submitted by the prefect, the People's Advocate, the Public Ministry or the National Agency of Civil Servants is drawn.

But this proposed solution is not unique. Only the preference can guide us to the option set out in the previous paragraph. The situation of the action filed by the third party is more similar to that of the action submitted by the beneficiary, than that of the listed authorities. In this way, the provisions of art. 11 paragraph (1) and (2)[52] of Law no. 554/2004 can be applied by analogy. These provisions allow the action to be filed within 6 months, respectively 1 year from the communication or, as the case may be, from the moment of acknowledgement of the content of the act. As a consequence, the interested person will no longer have a maximum term of 1 year from the issuance of the administrative act, as in the case of the action made available to the listed authorities, but of 6 months, respectively 1 year from the communication (the beneficiary's case), respectively the acknowledgement of the content of the administrative act (the case of the third party), if it is appreciated that the latter two operations are different.

On the other hand, a more rigorous interpretation implies the prohibition of analogy, in accordance with art. 10 of the Civil Code[53]. Thus, as the provisions of art. 11 of Law no. 554/2004 do not regulate an express and limited derogation from the previsions instituting a term for submitting an application when the pre-trial complaint is no longer necessary, the rules of the common law regarding the prescription terms becomes applicable, respectively art. 2.500 and following of the Civil Code.

---

50) Clipa, C., *op. cit.*

51) According to these legal provisions: "(3) In the case of actions filed by the prefect, the People's Advocate, the Public Ministry or the National Agency of Civil Servants, the term begins to expire from the date when the existence of the illegal act was known, the provisions of para. (2)".

52) According to art. 11 of Law no. 554/2004: "(1) Requests for the annulment of an individual administrative act, an administrative contract, the recognition of the claimed right and the reparation of the damage caused by an administrative act can be submitted within 6 months from: a) the date of communication of the answer to the pre-trial complaint; b) the date of communication of the unjustified refusal to solve the request; c) the date of expiry of the term for solving the pre-trial complaint, respectively the date of expiry of the legal term for solving the request; d) the date of expiry of the term provided in art. 2 paragraph (1) lit. h), calculated from the communication of the administrative act issued in the favorable solution of the request or, as the case may be, of the pre-trial complaint; (2) For justified reasons, in the case of the individual administrative act, the application may be submitted also over the term provided in par. (1), but not later than one year from the date of communication of the act, the date of acknowledgement, the date of the application's submission or the date of the conciliation report, as the case may be", applied mutatis mutandis.

53) Law no. 287/2009 regarding the Civil Code, republished in the Official Journal of Romania, Part I, no. 505/15 July 2011. According to the mentioned provisions: "Laws derogating from a general provision, restricting the exercise of civil rights or regulating civil sanctions apply only in the express and limited cases provided by law". These legal provisions are applicable under the conditions of art. 28 of Law no. 554/2004, cited above.

In the presented normative context, the communication of the administrative acts, including the acknowledgement, in any way, of the content of the act, can be placed in a secondary position in a certain situation that can be detached from the activity of the courts[54]. It is thus achieved a balance of the legal provisions by the passage of time and by certain legal effects produced by the administrative act, without the need to establish express rules that limit the right to submit an application before the court. Thus, without an explicit solution in this regard, but analyzing the preliminary measures ordered by the court during the procedures[55], the idea that the judge can be put in a position to weigh all the circumstances of the case in relation to the protection the principle of legal certainty.

Specifically, in analyzing the legality of an administrative act, on the background of the passing of a considerable period of time from the moment of issuing the administrative act[56] and the generation of certain legal effects by the administrative act in question, if there are several arguments that sustain the need to protect the security of the legal relationships, the administrative act can be maintained in the legal order. In this way, the passage of time and, therefore, the communication of the administrative act, will be placed in a secondary position, their place being taken by the analysis of the most important effects that the administrative act has produced and, thus, the way in which the principle of legal security takes precedence.

In this way, no matter what interpretation they consider to be more convincing regarding the term within which the administrative act can be challenged in the event that no pre-trial complaint is necessary, but also for the hypotheses where the communication is vitiated or for differences of interpretation regarding the notion of acknowledgement in any way of the content of the administrative act by the third party, if the judge reaches the analysis of the merits of the case, it should not be omitted that the courts have the duty to use also the arguments regarding the protection of the principle of legal security in relation to the effects produced by the administrative act.

Regarding the problems generated by the new legislative modifications for the communication of administrative acts, without ignoring the contribution of the doctrine, the role of the courts will continue to be important, as it has happened until these legislative changes. This important intervention of the courts is possible in the context of the existence of a considerable margin of appreciation that is based on the lack of a clear regulation, the current legal provisions offering multiple solutions to the problem related to communication of administrative acts.

---

54) In this regard, see the court proceeding finalized with sentence no. 7384/04.11.2019 pronounced by the Bucharest Court - Second Section of Administrative and Fiscal Contentious, indefinite, unpublished, in a dispute in which the question of the legality of a building permit was raised. Based on this permit a building was raised and the comprising apartments were subsequently sold to the population.

55) Consisting of supplementing the evidence for the selling of the apartments.

56) Regardless of whether this passage of time has been left unsanctioned by a relaxed interpretation of the legal provisions on communication or as a result of a vitiated communication.

5. Conclusions and implications

In the context that the rules of the civil procedure regarding the communication are strict, while those of the material law still enjoy a relaxed regulation, the qualification of the communication operation as an element that enters into the field of material law is of particular importance, because in this way the legal regime is determined.

The attributions of the courts are manifested, in principle, within the notions of interpretation and application of the law. However, the courts intervened in the regulation regarding the communication of administrative acts, establishing a series of rules that subsequently determined the successive changes in the legislation.

This paper highlights the intervention of the courts during the last 30 years, as well as the role they played in shaping the provisions on communication. Also, identifying the main legislative changes and determining the legal regime applicable to the communication operation helps to avoid the adoption of the same legislative solutions that presented shortcomings, all in order to determine a healthy and coherent legislative evolution.

If a series of elements were identified on the basis on which the courts could somehow stabilize the legal regime applicable to the operation of the communication of the administrative acts, the last legislative changes raise absolutely new challenges for the courts, challenges that will put the judges in the situation to choose from several possible interpretations which have diametrically opposite consequences.

BIBLIOGRAPHY

1. Anghel, V.; Preda, M., 1998, *Decizii şi hotărâri ale Curţii Constituţionale şi Curţii Supreme de Justiţie în probleme ale administraţiei publice şi agenţilor economici*, Bucharest, Romania: Lumina Lex Publishing House.
2. Boroi, G.; Stanciu M., 2015, *Drept procesual civil*, Bucharest, Romania: Hamangiu Publishing House.
3. Brad, I., 2009, *Revocarea actelor administrative. Instituţia revocării sub exigenţele dreptului european*, Bucharest, Romania: Universul Juridic Publishing House.
4. Ceslea, N.A., 2018, *Termenele de prescripţie şi decădere în materia dreptului administrativ*, Dissertation paper, Bucharest, Romania: University of Bucharest, Faculty of Law, Master's program: Private Law, Scientific Coordinator Prof. univ. dr. Marian Nicolae.
5. Chiriţă, R., 2016, *Paradigmele accesului la justiţie. Cât de liber e accesul liber la justiţie?,* article published on 08.12.2016, available on http://www.unbr.ro/publicam-articolul-intitulat-paradigmele-accesului-la-justitie-cat-de-liber-e-accesul-liber-la-justitie-reprodus-cu-acordul-autorului-lect-univ-dr-radu-chirita-facultatea-de-d/.
6. Ciobanu, A.S., 2015, *Drept administrativ. Activitatea administraţiei publice. Domeniul Public*, Bucharest, Romania: Universul Juridic Publishing House.

7. Clipa, C., 2018, *Ne îndreptăm spre facultativitatea plângerii administrative prealabile? Câteva observaţii pe marginea modificării neriguroase a art. 7 alin. (5) din Legea cu nr. 554/2004 a contenciosului administrativ*, article published on 01.10.2018, available on www.juridice.ro.
8. Dragoş, D.C., 2009, *Legea contenciosului administrativ. Comentarii şi explicaţii*, 2nd Edition, Bucharest, Romania: All Beck Publishing House.
9. Iorgovan, A., 2005, *Tratat de drept administrativ*, Vol. II, 4th Edition, Bucharest: Romania: All Beck Publishing House.
10. Nicolae, M., 2010, *Tratat de prescripţie extinctivă*, Bucharest, Romania: Universul Juridic Publishing House.
11. Petrescu, R.N., 2009, *Drept administrativ*, Bucharest, Romania: Hamangiu Publishing House.
12. Podaru, O., 2010, *Drept administrativ. Vol. I. Actul administrativ. (I) Repere pentru o teorie altfel*, Bucharest, Romania: Hamangiu Publishing House.
13. Podaru, O., 2014, *Despre prescripţie şi pseudo-prescripţie în contenciosul administrativ*, in Curierul Judiciar Review no. 1/2014.
14. Rîciu, I., 2012, *Procedura contenciosului administrativ. Aspecte teoretice şi repere jurisprudenţiale*, Bucharest, Romania: Hamangiu Publishing House.
15. Săraru, C.S., 2019, *Contenciosul administrativ român*, Bucharest, Romania: C.H. Beck Publishing House.
16. Vedinaş, V., 2018, *Tratat teoretic şi practic de drept administrativ*, Vol. II, Bucharest, Romania: Universul Juridic Publishing House.

ABOUT THE AUTHOR

Nicolae-Alexandru Ceslea, PhDc., Doctoral School of the Faculty of Law, University of Bucharest.

Email: alex.ceslea@ymail.com.

Particular aspects on the exercise of rights on the public property domain

CĂTĂLINA DINU

ABSTRACT

The study aims to exemplify certain situations regulated by legal provisions that recognize certain citizens' rights over the public domain and their faulty application. Either the legal provisions are interpreted by the competent public authorities to the detriment of the beneficiary, or the way of expressing the legislator does not lead to a unitary agreement in practice. By this analysis we try to determine a bridge between these provisions and the applicable principles of law, exemplifying the situation of assigning a free parking place on the public domain, nominally, to persons with disabilities and the situation of assigning a churchyard to special categories of persons.

KEYWORDS: *public domain, local administrative authority, parking place, place of eternity.*

1. Introduction

The criterion of the declaration of the law is the main way of including some goods in the public property. The goods that are exclusively the object of public property must be established by law, in accordance with the constitutional provisions. The declaration of the law is "the first and main criterion of public domain".

Unlike the private domain, the public domain contains a much narrower sphere of goods, which are not found in the civil circuit, and which, according to the law or by their nature, are of general use or interest.

The goods that belong to the public domain have the following characteristics: they are inalienable, imprescriptible and unsaleable, these are in fact the legal characters of the property right.

The inalienability of the public domain has an exceptional character, but also a relative and temporary character.

Public domain goods re-enter the civil circuit, when they are no longer for public use, so, according to art. 864 of the Civil Code, "the public property right is extinguished if the good has been lost or passed into the private domain, if it has ceased use or public interest, respecting the conditions provided by law ".

In France, the theory of public domination was invoked by the jurisprudence taking in view a lato sensu interpretation, being recognized the so-called theory of global

dominance, under the auspices of which it was stated that the lands, buildings and works carried out in a complex ensemble belonging to the public domain, also belong to them. , in the public domain. Seen as an extension of the principle of accesorium sequitur principalem, the theory of global public domain has been criticized, as the public domain was delimited by too sensitive borders, perceived as a "hypertrophy of the field of the public domain".

We could appreciate that, on the contrary, given the special legislation adopted in our country, we are facing a hypotrophy of the public domain. In this regard, we recall the situation regulated by Law no. 247/2005 regarding the restitution in kind in full of buildings taken abusively during the communist period, regardless of the legal regime of the goods subject to retrocession. The adverse effect was the diminution of the public domain of the state or of the administrative-territorial units, speaking even of the violation of art. 44 of the Romanian Constitution, by disregarding the state property right, the law operating "an expropriation of the state". These aspects formed the object of the exception of unconstitutionality of the provisions of art. 24 paragraphs (1^1), (1), (2) and (3) of Law no. according to the provisions of the Law of the Land Fund no. 18/1991 and of the Law no. 169/1997 (published in the Official Gazette of Romania, Part I, no. 415 of June 17, 2009). By the Decision no. 652 of April 28, 2009, the Constitutional Court admitted the exception of unconstitutionality and ruled that the criticized legal texts violate the provisions of art. 16 of the Romanian Constitution, republished, and a discrimination between the Romanian citizens is instituted by favouring those whose forest lands are declared, according to the law, protected natural areas, being given the opportunity to opt for the allocation of an equivalent area from the state-owned forest fund. Art. 24 paragraph (1^2) of Law no. 1/2000 also inserts the obligation of the beneficiary owner of the retrocession to keep the destination and to ensure the administration through authorized forest structures. The court found, in relation to the former owner's right to opt for the form of restitution of property rights, that he "enjoys greater protection of his property, while the state may suffer a significant loss of assets." As a result, the Court considered that the prejudice of the state's public property right by thus attaining the right of disposition as a prerogative of the public property right is undeniable.

A more recent example is the one regulated by a sinuous succession of normative acts that regulate the legal situation of pastures in our country.

From Anglo-Saxon sources, European law does not regulate the delimitation between the public domain and the private domain of the administrative-territorial units. In the jurisprudence of the European Court of Justice, however, the sphere of public property assets was delimited by that of private property assets from the patrimony of civil law subjects.

The use in the Romanian legislation, either of the notion of "public domain" or that of "public property", determined the doctrine to define the two phrases and to establish the relationship between them.

In a definition, the public domain is the totality of those goods, "public or private, which by nature or by the express provision of the law must be preserved and

transmitted to future generations, representing values intended to be used in the public interest, directly or through a public service. and subject to an administrative regime respectively to a mixed regime, in which the power regime is decisive, being in the property or, as the case may be, in the protection of public law persons". According to this theory, the notion of public domain has a broader meaning than that of public property, in its sphere also entering private property, which, due to their value, must be protected in order to be passed on to "future generations".

According to the repealed provisions of art. 3 paragraph (1) of the Law no. 213/1998, regarding the goods of public property, with the subsequent modifications and completions, "the public domain is made up of the goods provided in art. 135 para. (4) of the Constitution, of those set out in the annex that forms an integral part of this law and of any other goods that, according to the law or by their nature, are of public interest or use and are acquired by the state or by the administrative-territorial units by the ways provided by law ". Also, according to the former and also the actual legislation, represented by Law no. 215/2001 of the local public administration, respectively The Administrative Code, belong to the public domain of local or county interest the goods that, according to the law or by their nature, are of use or of public interest and are not declared by law of use or of national public interest. Art. 858 paragraph (1) of the Romanian Civil Code takes over the constitutional provisions.

2. Theoretical and practical aspects regarding the free allocation of a parking space in the public domain

Persons with locomotor disabilities, classified as disabled, residing in a locality where the parking situation is regulated, who have a personal car adapted to the physical condition, have the right to request the local public administration to personalize/permanent a place parking near the house.

Persons with disabilities benefit in this regard from the protection of the law, and the right thus recognized is exercised over a parking place in the public domain of the administrative-territorial unit, either concessioned or in the administration of a service of the authority.

According to art. 65 paragraph (5) of Law no. 448/2006, republished, with the subsequent modifications and completions, in the parking spaces of the public domain and as close as possible to the domicile, their administrator distributes free parking places to the disabled persons who requested and need such parking, and according to art. 56 of the Methodological Norms for the application of the provisions of Law no. 448/2006, the National Authority for Persons with Disabilities ascertains the contraventions and applies the legal sanctions *ex officio* or notified by any other person.

According to art. 21 of the HCL no. 251/2005 regarding the approval of the Regulation of organization and functioning of the parking system in the municipality of Brașov, republished, with the subsequent modifications and completions, the provisions of art. 65 paragraph (5) of Law no. 448/2006 are exactly resumed.

On the other hand, Brasov City Hall assigns the parking lots also based on the provisions of art. 38 of the HCL no. 927/2006 regarding the approval of the *Regulation for the allocation and use of parking places in the residential parking lots of Brasov Municipality, republished*, according to which, in the parking lots which are located in the historical area, delimited according to the General Urbanistic Plan of The municipality of Brasov, approved by H.C.L. no. 144/2011, parking subscriptions are issued at a fee of 156 lei/year for the natural persons domiciled in this area, car owners registered at the home address and without parking possibilities in the yard.

Taking into account the above aspects, we consider it necessary to corroborate the art. 21 of the HCL no. 251/2005 and the art. 38 of the HCL no. 927/2006, by virtue of the principle of law the *specialia generalibus derogant*, considering that, according to the provisions of the Law no. 448/2006, the category of persons with disabilities has a special legal right to allocate free parking places - by virtue of their quality as persons with disabilities - if they fulfill both conditions regulated by law, namely, the submission of a request in this meaning and the need for such parking.

In addition, in order to avoid a misinterpretation of the regulations HCL no. 251/2005 and HCL no. 927/2006 regarding the different categories of parking and regulated subscriptions, the following questions are raised: what is the legal basis according to which the parking areas in zone 0 are classified as public car parks; the legal provisions on which the allocation of a parking place is based for the benefit of persons with disabilities, respectively if in the area bordering the petitioner's domicile, there are *unnamed* parking places, but *signaled* for the purpose of their exclusive destination for persons with disabilities and on which, as well, persons with disabilities domiciled in that area could use them accordingly.

These aspects must be analyzed from the perspective of the fact that the local authorities consider that the legal provisions are respected by giving a beneficiary a free parking subscription, but not with a *designated* parking place, the justification coming from the fact that if the person resides in the old center of to the city, *no nominal* parking space is allowed (nominal parking places are specific to the residential ones), all of these places being assigned as public parking. The delimitation of the old area from the rest of the areas is based on criteria of specificity of the area (of houses), relief, street structure, this being exempted from the attribution of the residential parking lots. This exception leads to a differentiated regime of application of the special legislation of persons with disabilities between different areas of the same administrative-territorial unit, so that, in the historical area, persons with disabilities benefit from a free parking subscription, but not from a nominated parking place, while in the urbanized area, the same category of persons has both free subscription, but also nominal/residential parking space. The only way provided by the concessionaire of the parks on the public domain of the Municipality of Brașov, so implicitly those of the historical area of the city, to customize the public parking places is to rent the parking, by applying a license plate with the registration number of the vehicle, with 18 lei/day, situation in which the tax exemption or gratuity does

not apply. Basically, this possibility is used by the legal entities that carry out their activity in these public areas.

Therefore, even if the parking place is located in the vicinity of the applicant's home, it has the character of public paid parking, the place marked and signaled correspondingly for persons with physical disabilities mentioned, has a public character and works according to the principle of "first-come, first-served", it cannot be assigned with the exclusive right.

Are the provisions of art. 65 of Law no. 448/2006 regarding the protection and promotion of persons with disabilities complied with the conditions of not granting a designated parking place to persons with disabilities? Or is it enough to mark certain public car parks with the distinctive signs of this category of people?

Nor does the National Authority for Persons with Disabilities adopt a coherent point of view in this situation described above, which specifies that, at the request of persons with disabilities who need parking places, the administrator has the obligation to identify and distribute parking places free of charge, as close as possible to their domicile, and any provision contrary to other regulations is devoid of legal basis, Law no. 448/2006 having a special law character. Therefore, no distinction is made between nominal and public parking, with the emphasis on *no fee*. However, the very etymology of the verb “to repartition” leads us to a literal interpretation, to an attribution *intuitu personae. Is the recognition of a free right to a parking place, by issuing a parking permit for the historical area, by the City Hall of Brasov Municipality or not sufficient to meet the requirements of the law?*

Each resident, with or without a handicap is allowed parking on any vacant lot. However, residents with disabilities can also park either on public parking marked spots and either on the marked separately for the handicap places. In this regard, the arrangement of a public parking place right in front of the applicant's house, properly marked and marked for the disabled it would be a guarantee of compliance with the law.

3. Theoretical and practical aspects regarding the assignment of a place of eternity, free of charge, on the public domain

Another sort of similar situation, but a clearer example of the non-application of the law by the local public administration authorities, is the provisions for another category of persons, namely, *Law no. 189/2000 regarding the approval of Ordinance no. 105 of August 30, 1999 regarding the granting of rights to persons persecuted by the regimes established in Romania, starting from September 6, 1940 to March 6, 1945, for ethnic reasons*. More precisely, the right to a free place of eternity assigned on the public domain of the administrative-territorial unit is interpreted differently.

According to the provisions of art. 1 of the HCL no. 580/2005, republished by the HCL no. 587/2012, the City Hall of Braşov Municipality assigned to this category of persons, without payment, a place of eternity in the Municipal Cemetery of Brasov.

However, the actual distribution took place "only at the time of the death of these persons, based on the prior nominal approval, through which a place of eternity is granted free of charge". *Do these provisions of the decision of the Local Council add limitations to the law regarding the free allocation of a place of eternity, regulated by Law no. 189/2000, through the prohibition of its acquisition during life?*

The applicable legal framework, in force at the date of issuing the Local Council decisions, was the following:

1. Art. 17 of the Law no. 44/1994 regulated the right of veterans and war widows to be provided free of charge burial places in military and civilian cemeteries or incineration, as the case may be;

2. Art. 5 paragraph (1) letter h) of the Law no. 341/2004 regulated the right of the fighters who contributed to the victory of the Romanian Revolution of December 1989 to the attribution in the property, without payment, of the place of eternity. Also, according to art. 35 of the Methodological Norms for the application of Law no. 341/2004, in applying the provisions of art. 5 paragraph (1) letter h) of Law no. 341/2004, the attribution in property, without payment, of the place of eternity, is made, at the request of the beneficiaries, without requesting fulfillment of additional conditions, the right of ownership over the place of eternity is assigned within the cemeteries under the administration of mayors or parishes, and the requests addressed to grant the right provided (...) is solved within the limit of the availability of spaces (…);

3. Art. 6 letter h) of the Decree-Law no. 118/1990 regulated in favor of the persons persecuted for political reasons by the dictatorship established from March 6, 1945, as well as those deported abroad or constituted prisoners, granting, upon request, free of charge, of a place of eternity;

4. Art. 5 letter h) of the Law no. 189/2000 regulates the right of the persons persecuted by the regimes established in Romania, starting from September 6, 940 until March 6, 1945, for ethnic reasons when granting, on request, free of charge, a place of eternity. The rights granted to the categories of persons listed above are also currently regulated, as well as the modifications and completions that the legislation in the field has undergone without affecting the right to assign a place of eternity.

However, the HCL no. 580/2005, including in its republished form, imposed, in addition to the prior approval of the free assignment of a place of forever, the condition that the distribution takes place "only at the time of death" of the persons concerned. Therefore, a differentiation is created between the phrase of the *free assignment of a place of eternity* and that of *the previous nominal award* – both being in fact identical, but a new criterion is added, not found in the legal regulations, namely, that of the distribution *only at the moment of death*.

Also, by amending HCL no. 580/2005 following the adoption of HCL no. 587/2012 and its correlation with HCL no. 283/2012 regarding the approval of the free assignment of burial places for war veterans widows, *a distinct legal regime* between the different categories of beneficiaries of the above mentioned legislation was addded. Thus, art. 1 of the HCL no. 580/2005 has been modified in the sense: “it is

approved that the distribution of the places of everlasting/burial, which is assigned free of charge, in the special plots of the Municipal Cemetery of Brasov, located in the street Dimitrie Anghel no. 21, to the persons who benefit from this right, according to the legal provisions, to be performed by SC RIAL SRL Braşov, only at the time of the death of these persons, based on the prior nominal approval, by which the place of eternity is granted free of charge*, with the exception of the beneficiaries of Law no. 44/1994 on war veterans and some rights of invalids and widows of war,* with subsequent amendments and completions and HCL no. 283/2012 ".

We mention that the above mentioned legal regime is also found in HCL no. 283/2012, according to which "the war veterans' widows benefit free of charge for the burial place where the predeceased spouse is buried or for a place of burial adjacent to his side, in the extent to which this is possible". Therefore, the category of persons provided by Law no. 44/1994 (ie, widows of war veterans), benefit from this possibility, being in a situation like the petitioners - beneficiaries of Law no. 189/2000.

The administrative acts have not been the subject of an action in administrative litigation since now, and compared to the provision in the local council decision regarding the fact that the place of eternity is assigned at the time of death, it was considered that *this paragraph does not lead to the illegality of the act as long as* the law does not provide for the exact moment of the award.

As a result, in the described situation, a differentiated recognition of the right to the assignment of a place of eternity for various categories of beneficiaries of several normative acts is highlighted, as we have shown above.

Therefore, for the identity of reason and for respecting the principle of equality before the law, it was necessary to elaborate a new regulation, at the local level of the municipality of Brasov, namely, an identical legal regime applicable to the categories of beneficiaries of the special legislation to which the right is recognized the free assignment of a place of eternity.

This change was made by repealing the decision of the Local Council of the Municipality of Braşov and by according a place of eternity during life time of the solicitant. The burial place is distributed by the Administration of the Municipal Cemetery from Dimitrie Anghel str. no. 19-21, based on the awarding address issued by the City Hall of Brasov, *both during the beneficiary's life and at the time of death.*

4. Conclusion and implications

Regarding the situations submitted to the scientific research presented, we find that sometimes, between the will of the legislator and the interpretation by the administrative authorities, there is a discrepancy that risks *distorting the spirit of the legal provisions applied*, *from their initial purpose.* In these situations, for a unitary interpretation, a determining role is played by the national authorities with competences in the legislated field (for example, the National Authority of Persons with Disabilities) or, in the case where such a specialized authority does not exist, the Prefect must check rigorously the legality of the normative acts adopted by the local

councils. Also, the People's Advocate Institution, the autonomous central authority, can carry out actions, pursuant to art. 4 of Law no. 544/2004, by promoting an action in the administrative litigation.

At the same time, we consider that these cases are just examples that should be confined to the principle of good administration, by ensuring a sound application of the law and by the adequate provision of a public service by the authorities of the public administration.

REFERENCES

1. Apostol Tofan, D., 2018, *Administrative Law*, tome.I, 4th edition, Bucharest, Romania: C.H. Beck Publishing House.
2. Bălan, E.; Iftene, C.; Văcărelu, M., 2016, *Ownership and the public domain: perspectives and developments in the administrative space*, Bucharest, Romania: Wolters Kluwer Publishing House.
3. Slabu, E., 2018, *Good administration in the European administrative area*, Bucharest, Romania: C.H. Beck Publishing House.
4. The Information Bulletin of the People's Advocate Institution.

ABOUT THE AUTHOR

Cătălina Dinu, PhD., University Lecturer at Transilvania University of Brasov.

Email: catalina.matei@unitbv.ro

Considerations regarding the evolution of the Romanian System for the protection of the Child Rights following 1989

Elisabeta SLABU

ABSTRACT

The Romanian child rights protection system has undergone multiple transformations over the nearly 30 years since the 1989 Romanian revolution. New institutions have been set up to ensure the coordination of this system at national and county level. Quality standards have been developed for social services offered to children and their families. Large non-performing residential institutions have been closed. Family-type houses and a foster care system have been established so that children who could not remain in their natural or enlarged families can benefit from conditions as close as possible to a family environment. But there are still much that can be improved. From the opening to the community of residential child protection services until equal treatment is ensured for all categories of children at risk. Finally, awareness of the importance of initial and continuing training of staff working in the child protection system. All these improvements require human, material and financial resources to be provided continuously and consistently, as children continue to be the most vulnerable category of people under the care of the Romanian state.

KEYWORDS: *evolution of the social services system, child, constitutional principle of equality, principle of the best interest of the child, guardianship of the child, Civil Code.*

1. Considerations concerning the national system of social services in Romania and, in particular, regarding the child protection system

The bases of the national system of social services were laid only in 2001, 12 years after the Romanian revolution, through **Law no. 705 regarding the national system of social services,** which entered into force on January 1, 2002. According to this law**, social assistance, a component of the social protection system,** represents the *entirety of institutions and measures through which the state, the public authorities of the local administration and the civil society ensures the prevention, limitation or removal of the temporary or permanent effects of certain situations that may cause the social marginalization or exclusion of some people*. The main goal of social assistance

is the protection of persons who, due to economic, physical, psychic or social reasons, cannot ensure their social needs, are not able to develop their own capacities and competences for social integration. Social assistance is the responsibility of specialized public institutions of central and local public administration authorities and of civil society organizations and includes the rights granted through **benefits in money or in kind**, as well as **social services**. Social services are provided at home, in specialized institutions or in residential institutions. **The Ministry of Labor and Social Solidarity** (currently the Ministry of Labor and Social Justice) establishes national priorities as concerns social services and initiates draft normative acts in order to regulate their grant. **County and local councils** establish local strategies and priorities according to the needs of the respective community, according to the national strategy.

Law No. 705/2001 was repealed by **Law No. 47/2006**, subsequently repealed by **Law no. 292/2011 on the social assistance, subsequently amended**. **Law No. 292/2011** should be analyzed and put into effect taking also into account the provisions of **Law No. 197/2012 on the quality assurance in the field of social services**, also amended almost yearly, until 2019.

Pursuant to Article 66 of **Law No. 292/2011 updated**: "*the state ensures the protection of the child and guarantees the observance of all his/her rights through the specific activity carried out by the public authorities/institutions with responsibilities in the field.* The child has the right to be raised with his/her parents in conditions that enable his/her physical, mental, spiritual, moral and social development. The child has the right to benefit from social assistance measures, depending on his/her personal situation and the social and economic situation of the family or of the persons who act as his/her guardian. In order to fulfill their obligations towards the child, the authorities of the *central and local public administration support the family by **granting social assistance benefits**, as well as by **providing social services***. The principle of the child's best interests of will prevail in all the steps and decisions concerning children, undertaken by the State, as well as by any natural or legal person, either public or private…*".*

Nevertheless, the main normative act in the field of child protection remains **Law No. 272/2004 on the protection and promotion of the rights of the child**, amended many times until 2019. According to this law, **the General Directorate of Social Assistance and Child Protection is a public institution with legal personality, set up under the subordination of the County Council, respectively of the local councils of the Bucharest districts**, which exercises the duties provided by the normative acts in force in the field of the child rights protection.

2. Considerations Regarding the Legislative Framework for the Child Rights Protection Starting with 1989

In December 1989, the rights of the child were protected based on Law no. 3/1970 regarding the regime of protecting certain categories of minors[1)],

[1)] Which was repealed in 1997 through the approval of GEO No. 26/1997 on the protection of the child in difficulty.

applicable to children in difficulty and based on the **Family Code**[2)], that is, based on **Law No. 4/1953** (with amendments related to 1956, 1966, 1970 and 1974).

Article 1 of Law No. 3/1970 established the following: "The protection, according to this law, **is granted to minors**: a) whose parents are deceased, unknown or in any other situation that leads to the establishment of guardianship, if they have no assets or other material means of their own and there are no persons who were obliged or who may be obliged to support them; b) who, being deficient, need special care which cannot be provided within the family; c) whose physical, moral or intellectual development or whose health is endangered in the family; d) who have committed offences provided by the criminal law, but are not criminally liable or are exposed to commit such offences or whose behaviors contribute to the spread of vices or immoral habits among other minors. "

Article 2 from the same law established that "Minors provided in Article 1 (a), as well as minors whose health is endangered in the family, may be given in a family foster care to a family - husband and wife - or to a person who consents to it and who has the required moral, material and sanitary conditions..."

Article 3 provided as follows: "In case that, concerning the minors shown in the previous article, it was not possible to take the measure of placing in a family foster care, as well as in case that the physical, moral or intellectual development of the minor is endangered in the family, the Commission for Minors Protection may decide to give him/her to a family or a person, with his/her consent".

Alternatively, **Article 5** established thus: "In order to raise, educate and train the deficient minors, as well as the minors indicated in Article 1 (a) and (c), if for them none of the measures provided for in the previous articles could be taken, the Commission for Minors Protection may order their entrustment, as the case may be, to one of the following institutions of protection:

a) orphanages for children aged up to 3 years;
b) orphanages for pre-school and school children;
c) kindergartens, as well as general schools and high schools of general knowledge for deficient minors who are recoverable;
d) vocational schools and specialized high schools for deficient minors who are recoverable
e) school homes and workshop homes for the partially recoverable deficients;
f) homes for deficient minors who are not recoverable."

On the other hand, **Article 1** of the **Family Code** provided the following: "In the Socialist Republic of Romania, the state protects marriage and family; through economic and social measures, it supports the development and strengthening of the family. **The state defends the interests of the mother and the child and puts forth a special concern for the raising and education of the young generation**. The family is based on the freely agreed marriage between the spouses. In the relations between spouses, as well as in the **exercise of rights towards children**,

[2)] The Family Code was amended several times after 1989, respectively in 1990, 1993, 1997, 1999, 2004, 2007, 2010 and 2011. It was repealed by Law No. 71/2011 for the implementation of Law no. 287/2009 concerning the Civil Code.

man and woman have equal rights. **The parental rights are exercised only in the children's interest**. "Article 113 of the Code provided that:" In case both parents are dead, unknown, lapsed from parental rights, placed under prohibition, disappeared or declared dead, **the child is curtailed of the care of both parents**, as well as in the case provided in Article 85, **the child will be placed under guardianship**".

For the child's rights protection system, the most important changes were those of 1997, when there have been set up, at national and local level, specialized institutions for protecting the rights of children. Thus, in 1997, through a series of normative acts, for the first time it was established a **specialized system to promote and defend children's rights**. Through **Emergency Government Ordinance no. 26/1997 regarding the protection of the child in difficulty**, based on Article 4, there have been set up **public services specialized for the child protection and commissions for the protection of the child**, subordinated to the county councils, respectively, the local councils of the districts of Bucharest.

For the purposes of this emergency ordinance, **the child is in difficulty if his or her physical or moral development or integrity is endangered**. The child in difficulty enjoys protection and assistance in the full achievement and proper exercise of his/her rights. Any child who, temporarily or permanently, is abridged of his family environment or who, in his own best interests, cannot be left in this environment, has the right to protection and special assistance from the local community. The state guarantees the child protection against any form of violence, including sexual, injury, physical or mental abuse, abandonment or negligence, ill-treatment or exploitation, while he/she is in the care of the parents or one of them, his/her legal representative, or any other person.

The specialized public service is founded through a decision of the county council, respectively of the local council of the Bucharest districts, and functions as a public institution of county, respectively local interest, with legal personality. The specialized public service proposes to the commission the measures for protecting the child in difficulty and ensures their enforcement. The specialized services subordinated to the local councils, which carry out activities in the field of the tutelary authority and the protection of the child's rights, will support the county public service specialized in the fulfillment of the duties assigned to it. The activity of the specialized public service is coordinated by the secretary of the county council, respectively by the secretary of the city hall of the Bucharest district.

Emergency Government Ordinance no. 26/1997 regarding the protection of the child in difficulty, repealed Law 3/1970 on the protection regime of certain categories of minors, applicable to children in difficulty before 1989, starting with 12 June, 1997 this law ceasing its enforceability. The transfer of protection institutions **- orphanages, children's houses - and of the reception centers for minors,** which functioned according to **Law no. 3/1970,** the transfer of the patrimony and their personnel, as well as their reorganization into **foster care centers and child reception centers** within the specialized public services, has been made until the entry into force of Law on the state budget for 1998, by protocol concluded among the county councils, respectively the local councils of the districts of Bucharest,

and the authorities in whose subordination these institutions functioned until the enforcement of this emergency ordinance.

The Methodological Norms of 1999 for applying the provisions of the Government Emergency Ordinance No. 26/1997 regarding the protection of the child in difficulty, as well as of the Methodology for coordinating the activities of protection and promotion of the rights of the child at national level, approved by **Government Decision no. 117/01.03.1999** established the practical way in which the child protection activity will be carried out and the new directions of action in this field, **and they also provided for the taking over of all other existing institutions of protection until June 12, 1997, regardless of their form of organizing them, institutions which, according to their object of activity, received and protected children in residential regime, through decisions of the former territorial commissions for the protection of minors, which functioned according to Law no. 3/1970 concerning the regime of protecting certain categories of minors.**

Another specialized body responsible for the protection of the child in difficulty is **Commission for Child Protection** subordinated to the county council, respectively to the local council of the Bucharest district. This establishes the measures for protecting the child in difficulty, according to **Emergency Government Ordinance no. 26/1997**. Through **Emergency Government Ordinance No. 123/2001 on the reorganization of the child protection commission (approved and amended by Law No. 71/2002)** and **Government Decision no. 1205/2001 regarding the approval of the methodology of functioning of the child protection commission**, the duties of the commission for the child protection have been updated, this taking over also the duties of **the commissions of medical expertise for children with disabilities and of the expertise commissions for special education**, organized pursuant to the provisions of Article 23 of **Emergency Government Ordinance no. 102/1999 regarding the special protection and employment of persons with disabilities**, respectively of Article 43 of the Education Law no. 84/1995, republished, which is dissolved.

The Commission for child protection was reorganized through the enforcement of the **Government Decision no. 1437/2004**[3)]**.** By this amendment and according to Law No. 272/2004, **the court becomes an important actor in the field of child protection,** this being the one that will make the decision to establish a protection measure for the child in difficulty most of the time starting with 2005. Thus**, the foster care measure is established by the Commission for Child Protection,** in the event that the parents' agreement exists, for the child who, with a view to protecting his interests, cannot be left in the care of the parents for reasons not attributable to them, and the child who has committed an offence provided by the criminal law and who is not criminally responsible. **The foster care measure is established by the court,** upon the request of the general directorate of social assistance and child protection, as follows:

a) for the child whose parents are dead, unknown, lapsed from the exercise of parental rights or who have been enforced a punishment of forbidding parental

[3)] Approved based on Article 104 of Law no. 272/2004 on the protection and promotion of the rights of the child and repealed by GD 502/2017.

rights, interdicted, declared dead or missing judicially, when guardianship could not be set up

b) for the abused or neglected child and the child found or the child left in health care institutions, if it is necessary to replace the emergency foster care ordered by the general directorate of social assistance and child protection,

c) for the child who, in order to protect his/her interests, cannot be left in the parents' care for reasons not ascribable to them, and the child who has committed an offence provided by the criminal law and who is not criminally liable, when there is no parental consent or, as the case may be, of one of the parents, for setting up this measure.

Government Decision no. 1437/2004 was repealed by **Government Decision no. 502/2017 on the organization and functioning of the commission for child protection**, which is currently in force, and mentions that the special measures for child protection are established by the Commission, only when there is an agreement of the parents, as well as the consent of the 14-year-old child spoken in front of the Commission.

As a matter of fact, in 2004, by **Law no. 272/2004 concerning the protection and promotion of the rights of the child, the system of protecting the child rights is reorganized**. According to this law, public authorities, authorized private bodies, as well as natural and legal persons responsible for the child protection are obliged to observe, promote and guarantee the rights of the child established by the **Constitution and the law**, in accordance with the provisions of the **United Nations Convention on to the Rights of the Child, ratified by Law no. 18/1990**, and of the other international acts in the matter to which Romania is a party. This law and any other regulations adopted in the field of observing and promoting the rights of the child, as well as any legal act issued or, as the case may be, concluded in this field, are subordinated prevalently to the principle of the best interests of the child, which will prevail in all the steps and decisions regarding children, undertaken by public authorities and authorized private bodies, as well as in the cases settled by the courts**.**

In the same year was adopted **Government Decision No. 1434/2004 on the duties and the Framework Regulation for the organization and functioning of the General Directorate of Social Assistance and Child Protection.** This has been amended several times until 2017, when it was repealed by **Government Decision no. 797/2017 for approving the framework regulations for the organization and functioning of public services of social assistance and the personnel structure of guidance,** as subsequently amended by **Government Decision no. 417 of 8 June, 2018.**

The provisions of **Law No. 272/2004** are supplemented by other regulations referring to the rights of the child. On these lines it should be mentioned the **Civil Code, which incorporated the old Family Code**. **Law no. 287/2009**, respectively the **Civil Code of July 17, 2009**, as subsequently amended and supplemented, includes important regulations regarding the protection of the child.

Thus, Article 110-163 of the Civil Code has provisions regarding **the guardianship of the minor**, Article 110 establishing the following: "The minor guardianship starts when both parents are, as the case may be, deceased, unknown, lapsed from the exercise of parental rights or have been enforced a criminal punishment of forbidding parental

rights, interdicted judicially, disappeared or declared as dead, as well as in case that, at the adoption termination, the court decides that it is in the interests of the minor to establish a guardianship ". **Article 133** provides that "Guardianship is exercised only in the interests of the minor, both as concerns the person and his/her goods".

In addition, **Article 264** of the Civil Code establishes a very important rule regarding the **respect of the child's opinion**, thus: "In the administrative or judicial procedures concerning the child, the listening of the child who has reached the age of 10 years is mandatory. Nevertheless, can be heard the child who has not reached the age of 10, if the competent authority considers that this is necessary for settling the case. The right to be heard implies the possibility of the child to ask for and receive any information, according to his/her age, to tell his/her opinion and to be informed of the consequences that this may have, if it is respected, as well as of the consequences of any decision that concerns him/her..."

All these normative acts, adopted through almost 30 years since the events of 1989, have led to the **restructuring of the child protection system**, **its improvement** and the **establishment of quality social services**, which function according to minimum mandatory standards, and which are permanently monitored and evaluated by other specialized institutions. Emphasis is laid on the protection of the child in the family, threre are provided clear deadlines for the closure of old foster care centers and for setting up small-sized social services, as close as possible to the idea of family. However, it should be also accelerated the **activity of preventing the child reaching a situation of risk and abandonment**, by creating as many social services as possible in each local community, so that the children remain, if they cannot in their natural or extended family, at least in a family from the community from where they come, since only in this way they will be able to keep in touch with those from whom they come and where they will have to return after they become major.

3. Proposals concerning the improvement of legislation applicable to the system of protecting the rights of the child

3.1. Observing the principle of equal rights for all children/young people who do not benefit from parental protection

Law no. 272/2004 regarding the protection and promotion of the rights of the child establishes in **Article 54 that: "The special protection** of the child is the entirety of measures, performances and services intended for the care and development of the **child deprived, temporarily or permanently, of the protection of his/her parents** or of the one who, in order to protect his/her interests, cannot be left in their care." Also, Article 55 establishes as follows: **(1) The child benefits from the special protection provided by this law until acquiring the full capacity of exercise. (**2) Upon the request of the young man, expressed after acquiring the full capacity of exercise, if he/she continues his/her studies only once in each form of full-time

learning**, the special protection is granted, according to the law, throughout the entire continuation of the studies, but without exceeding the age of 26. "**

Article 128 establishes that: "(1) For each child for whom it was taken the measure of foster care to a family, person, foster carer, in a residential service of an accredited private body or **it was instituted guardianship**, according to the law, it shall be granted a monthly foster care allowance, related to the social reference indicator, in amount of 1.20 ISR. (2) The allowance provided in par. (1) shall be paid to the person, foster carer, the family representative, of the accredited private body that has taken the child in foster care or the guardian and is intended to ensure the rights provided in Article 129 paragraph (1)".

Moreover, Article 129 establishes the following: "(1**) Children and young people for whom a special protection measure has been established, as well as the protected mothers in maternal centers,** have the right **to food, clothing, footwear, hygienic-sanitary materials, writing materials/manuals, toys, transport, cultural-sporting materials, as well as amouns of money for personal needs.** (2) The need for clothing, footwear, hygienic-sanitary materials, writing materials/manuals, toys, cultural-sporting materials is determined according to the age and the needs of the child, by decision of the county council, respectively of the local councils of the Bucharest districts or, as the case may be, of the governing body of the accredited private body. (3) In the case of children with disabilities, infected with HIV or with AIDS disease, the amount necessary for granting the rights provided in par. (1) is increased by 50% in relation to the amounts granted. (4) **Children and young people for whom a special protection measure has been stipulated, as well as protected mothers in maternal centers,** have the right**, when going out of the special protection system, to an allowance that is granted once, equal to the value of the minimum gross base salary per country, guaranteed in payment, fixed according to the law.** The allowance is also granted, upon leaving the special protection system, to the children for whom a final decision to approve the adoption has been given."

Therefore, according to Law no. 272/2004, **children and young people for whom a special protection measure has been set** have the right to receive a monthly foster care allowance for the entire duration of the protection measure. In addition, upon going out of the special protection system, these children or young people will be granted an allowance that is given one time, equal to the value of the minimum national gross base salary in the country, guaranteed in payment, determined according to the law.

Instead, **the children for whom it was set up the guardianship**, **can only benefit from the foster care allowance**, until, according to the Civil Code, **the guardianship ceases**. Thus, Article 156 of the Civil Code provides that the guardianship ceases **when the situation that led to the establishment of the guardianship no longer maintains**, as well as in the case of the death of the minor. **Article 110** establishes the cases of guardianship setting up, as follows: "The guardianship of the minor is set up when both parents are, as the case may be, deceased, unknown, lapsed from the exercise of parental rights, or they have been criminally punished by the prohibition of the parental rights, interdicted judicially, disappeared or declared dead by court order, as well as if, at the end of the adoption, the court decides that it is in the interest of the minor to establish a guardianship".

Consequently, most of the time, **the guardianship ceases when the child reaches the age of 18 years**. Although, mostly, the situations that led to the establishment of the guardianship will not cease when the child reaches the age of 18, he/she, growing young, **will no longer be able to receive the foster care allowance** which the young person who benefited from a measure of special protection can receive until the age of 26, if he/she continues his/her full time learning. He/she will neither benefit from the allowance granted one time, equal to the value of the minimum gross base salary in the country, guaranteed in payment, established according to the law, upon going out of the special protection system**.**

On account of the above presented, I consider that the two categories of children/ young people, although they are in similar situations, respectively they are not under parental protection, **do not benefit from an equal treatment**, being violated the right provided by Article 16 para. (1) of the Constitution, thus: **Citizens are equal before the law and public authorities, without privileges and without discrimination**. Also, there should also be mentioned the provisions of **Article 49 para. 1 of the Constitution**, named *Protection of children and young people*, as follows: "Children and young people enjoy a special regime of protection and assistance in the achievement of their rights".

Therefore, I propose that **Articles 55 and 129 of Law no. 272/2004 be amended in order to broaden the categories of beneficiaries by including the children/ young people who benefit/have benefited from the guardianship measure, in order to achieve both the constitutional principle of equality and non-discrimination and the principle provided by the special legislation, that of compliance with the best interests of the child[4)].**

3.2. Widening of the field of persons who can be appointed by the parent to take care of children while working abroad

Section 4 of Law No. 272/2004, entitled *Protection of the child with parents who work abroad*, establishes in **Article 104** that "The parent who exercises alone the parental authority or with whom the child lives, who is going to leave for working abroad, has the obligation to notify this intention to the public service of social assistance at home, with minimum 40 days before leaving the country. The notification shall contain, in a mandatory manner, the designation of the person in charge of the child's care during the absence of the parents or guardian, as the case may be. Confirmation of the person who will take care of the child will be carried out by the guardianship court, in accordance with the provisions of this law. The provisions of this article are also applicable to the guardian, as well as in case that both parents are to go to work in another state".

---

4) See also Cătălina Georgeta Dinu, Cătălina Georgeta Dinu, *The Equal Opportunities of Dyslexic and Dysgraphic Persons to Participate as Candidates for The Driving License Examination,* in Public Administration&Regional Studies, 10th Year, No. 1 (20) – 2018, Galati, Romania: University Press, pp. 62-70; Elisabeta Slabu**,** *Buna administrare în spațiul administrativ european*, Bucharest, Romania: Ed. C.H. Beck, 2018, pp. 88-98.

In **Article 105 para. 1** it is provided that: "The person appointed according to Article 104 para. (2) must be part of the wide family, be at least 18 years old and fulfill the material conditions and moral guarantees necessary for the raising and care of a child…".

Given the current social realities, according to which more and more children have abroad both their parents and most part of the relatives capable of providing raising and care of the child, Article 105 para. 1 must be amended in order to widen the field of the persons who can be appointed by the parent to care for children, while he/she is working abroad. There can also be appointed the in-laws of the children or other persons towards whom the children feel affection, if they fulfill the material conditions and the moral guarantees required for the raisinf and care of a child.

4. Conclusions

The Romanian system for the child rights protection has undergone multiple changes during the almost 30 years that have passed since the Romanian revolution in 1989. New institutions have been set up in order to ensure the coordination of this system at national and county level. There have been conceived quality standards for the social services provided to children and their families. Large and non-performing residential institutions were closed. There have been established family-type homes and a network of professional foster carers so that those children who could not stay in their natural or extended families could benefit from conditions as close as possible to a family environment. But there are still many things that can be improved. From the opening to the community of residential services of child protection until **ensuring an equal treatment for all categories of children at risk**. And, finally, the awareness of the importance of the initial and continuous training of the personnel working in the child protection system. All these improvements require human, material and financial resources, resources to be provided continuously and consistently, as children are still the most vulnerable category of persons in the care of the Romanian state.

REFERENCES

1. Dinu C.G., 2018, *The Equal Opportunities of Dyslexic and Dysgraphic Persons to Participate as Candidates for The Driving License Examination*, in *Public Administration&Regional Studies,* 10th Year, No. 1 (20) – 2018, Galati, Romania: University Press.
2. Slabu E.**,** 2018, *Buna administrare în spațiul administrativ european*, Bucharest, Romania: Ed. C.H. Beck.
3. Romanian legislation as indicated and analysed in the text.

ABOUT THE AUTHOR

Elisabeta Slabu, Ph.D., University Lecturer "Dunărea de Jos" University of Galați, Romania.

Email: slabuelisabeta@yahoo.com

Migration at European Union level in correlation with the Public Administration

Irina MOROIANU-ZLĂTESCU

Alexandra BUCUR-IOAN

ABSTRACT

The phenomenon of immigration requires special attention in the field of public administration. The article presents in the initial part the correlation between migration and public administration. Following, there are the main developments of migration at EU level, with a focus on September 2019. The "hotspot approach" is also highlighted during the study. At the end of the article is presented the importance of public administration in relation to the new transformations of the society, migration being one of these.

KEYWORDS*: migration, public administration, European Union, hotspot approach*

1. Introduction

Naturally, migration brings changes and challenges throughout the society. In the context of increasing the number of foreigners, the issue of immigration requires special attention in the field of public administration, representing one of the major challenges.

The approach to the field of immigration has two main guidelines that coexist. The first is inextricably linked to a "common area of freedom, security and justice"[1)], from the point of view of administration, justice, and politics. The second approach is the one related to the socio-economic dimension centred on the economic and social approach.

The public administration is based on activity through "detailed concretization and analysis of the forms in which it takes place"[2)]. We consider that the most important element of public administration in correlation with immigration is the formulation and implementation of policies. The formulation of immigration policies is autonomous, the influence of the public administration on the content of immigration policies having a

1) Moroianu-Zlătescu, I.; Marinică, E., 2018, *Dreptul Uniunii Europene*, Bucharest, Romania*:* Universitară Publishing House and Universul Academic Publishing House, pp. 35-36.

2) Skulová, S.; Potěšil, L.; Hejč, D.; Bražina, R., 2019, *Effectiveness of Judicial Protection against Administrative Silence in the Czech Republic*, in Central European Public Administration Review, Vol. 17, No. 1/2019, p. 45.

decisive role on the dynamics in this public sector. Adopting comprehensive policies is not the crucial factor, but their implementation is of overwhelming importance, which is also the responsibility of the public administration.

The convergence of national governments to the selection of immigrants has developed a new approach and new responses on the involvement of states and decision-makers in the design and implementation of immigration policies[3]. We can speak, rather, of an administrative and dynamic convergence between the regional and the national administration. Theoretical approaches to Europeanization argue that in the relationship between the administration of the European Union and the national one, policies and institutions generate pressures facing politics and administration in national systems.

2. Migration at European Union level and the public administration

In recent years, the European Union and the Member States have stepped up their efforts, by setting strategic priorities, in order to achieve an effective and safe migration policy[4].

The Charter of Fundamental Rights of the European Union, in article 41, regulates the right to good governance. As the European document states, any individual has the right to enjoy, in the solution of his problems, an impartial and equitable attitude. Also, the aforementioned article calls for resolving the problems encountered by the institutions within a reasonable time. By the fact that the subject of good governance is "any person", the document extends the applicability of the principle not only to its own citizens, but also to foreigners under the jurisdiction of the Member States. Thus, regardless of their status, foreigners have the right to good governance, as do the citizens of the Member States.

The need for protection arises from strong abusive reasons that appear in the state of origin, on the basis of which, the individual requests to enter another state in order to obtain the protection and, implicitly, his safety. The lack of protection of the state of origin represents a "cracking down" of the link between a state and its own citizen, a situation that generates persecution or serious injury and implicitly, the unfair treatment.

Under the conditions of illicit treatment, by violating fundamental rights and freedoms, persons are entitled to a form of protection granted by another jurisdiction.

State protection is the set of measures, actions, the capacity of institutions to ensure the security of the individual by establishing an efficient system. Diffuse protection is not enough.

---

[3] Moroianu-Zlătescu, I.; Bucur-Ioan, A.; Zlătescu, P.E., 2019, *Migrants, asylum seekers and refugees in a globalised world*, Bucharest, Romania*:* Universitară Publishing House and Universul Academic Publishing House, pp. 11-12.

[4] *Idem,* p. 19-20.

In terms of migration routes, the Central Mediterranean route is one of the most used to reach Europe. Thus, many migrants from sub-Saharan Africa and North Africa transit through Libya to Europe. Another important route to Europe is the Eastern Mediterranean route, passing immigrants by sea, from Turkey to Greece. Thus, many people from Syria arrived in Europe using this route. As of 2015, the number of irregular arrivals on this route has decreased due to the cooperation between the European Union and Turkey. Thus, the implementation of the 2016 agreement between the European Union and Turkey has played a particularly important role in reducing the number of immigrants arriving in Europe[5)].

As shown above, the number of migrants in the European Union has increased since 2015. The number of asylum seekers is one that remains high. Thus, as an example, we should mention that more than half a million asylum applications were lodged in the European Union during the first nine months of 2019[6)].

The European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010, represents one of the key institutions in the concrete development of the common European asylum policy. In accordance with the aforementioned Regulation, EASO, based in Malta, focuses on three main tasks: developing practical cooperation between the Member States of the European Union on asylum, by facilitating the exchange of information on the countries of origin, training asylum officials and assisting with relocation. beneficiaries of international protection; supporting the Member States of the European Union under particular pressure, in particular by establishing an early warning system, coordinating expert teams to assist them in managing asylum applications and in setting up appropriate reception facilities; contributing to the implementation of the common European asylum system by collecting and exchanging information on best practices[7)].

Of course, as is stipulated in the opening part of the Regulation, it respects fundamental rights recognized by the Charter of Fundamental Rights of the European Union and should be applied in accordance with the right to asylum recognized in Article 18 of the Charter. In accordance with the aforementioned article: "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union"[8)].

---

5) European Council, EU-Turkey statement, 18 March 2016, https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

6) European Asylum Support Office, Latest Asylum Trends, 2019, September, https://easo.europa.eu/latest-asylum-trends

7) Official Journal of the European Union, REGULATION (EU) No 439/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 May 2010 establishing a European Asylum Support Office.

8) Charter of Fundamental Rights of the European Union (2000/C 364/01), https://www.europarl.europa.eu/charter/pdf/text_en.pdf

One of the directions adopted by the European Union for managing the existing situation of migration is the "hotspot approach". It was developed by the European Commission as part of the immediate action to assist the Member States of the European Union, located at the external border of the Union and presented in the European Migration Agenda of May 2015.

The operational support provided under the "hotspot approach" focuses on the registration, identification, imprinting and debiting of asylum seekers, as well as return operations. Asylum seekers will be channelled immediately into an asylum procedure where EASO support teams will help process asylum applications as quickly as possible. Also, for those who do not need international protection, Frontex helps European Union Member States by coordinating the return of irregular migrants. Two other institutions, Europol and Eurojust, assists the host European Union Member States with investigations to dismantle smuggling and trafficking networks.

The "hotspot approach" is also contributes to the implementation of the temporary relocation schemes proposed by the European Commission on May 27 and September 9, 2015. Thus, people who clearly need international protection will be identified in the first European Union Member States for relocation to others EU Member States in which asylum applications will be processed.

Thus, Italy and Greece are the first two European Union Member States where this hotspot approach is currently being implemented. Other EU Member States will also be able to benefit from the on-demand hotspot approach.

There are currently five hotspots in Greece (on the islands of Samos, Chios, Kos, Leros and Lesvos) and four in Italy (in Lampedusa, Messina, Pozzallo, Taranto)[9]. In Greece, the Reception and Identification Centres on the Aegean islands (hotspots) remained severely overcrowded, due to significant increase in arrivals over the summer and in September 2019[10].

For example, Samos hotspot, although the capacity is 700 people, is currently accommodating eight times as many applicants as its capacity (around 5,800 people)[11]. In total, almost 27,000 people were living in the Greek hotspots at the end of September 2019[12].

It should be emphasized that migration involves human rights issues, their protection being a basic pillar of asylum rights. In these conditions, European Union Fundamental Rights Agency has been visiting the Eastern Aegean islands since April 2016 providing fundamental rights expertise. The Director of European Union Fundamental Rights Agency, Michael O'Flaherty, took part in a European Parliament hearing on 6 November 2019, in Brussels on the situation in the Greek migration

9) European Union Agency for Fundamental Rights, Asylum, Migration &Borders, 2019, https://fra.europa.eu/en/theme/asylum-migration-borders/fra-work-hotspots.

10) European Union Agency for Fundamental Rights ,MIGRATION: KEY FUNDAMENTAL RIGHTS CONCERNS, QUARTERLY BULLETIN, 2019, p. 3-4 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-4_en.pdf

11) *Ibidem.*

12) *Ibidem.*

hotspots. Under the existing conditions, he urged the Member States to show more solidarity and carry out relocations from the hotspots[13)].

The Greek Ministry of Citizen Protection brings about several restrictions on individual rights and procedural guarantees in the Greek asylum system. The draft law, submitted to Parliament on 21 October 2019, after a period of consultation and adopted in recent weeks by Greece, strengthens the rules on qualification, receipt and asylum procedure in a single legislative instrument[14)]. Among others, the changes to Greek law include: a single-judge composition to deal with inadmissible and accelerated procedure cases; shorter deadlines in the fast-track border procedures, namely three days to appeal a negative decision; no suspensive effect of appeals against certain inadmissibility and accelerated procedure decisions[15)].

3. Conclusions

Thus, the policy of the European Union has been accepted at national level by most Member States, being implemented by finding a balance between the needs of immigrants entering the territory of the European Union, legally or illegally, and ensuring the security of the citizens of the host states[16)]. Of course, the national administration knows best the social realities existing at the state level and implements the policies according to their own needs. At the same time, the function of the public administration is not only to manage the present tasks of the state, but also to prepare strategies, being concerned about the future of the society.

Thus, if there are deficiencies in the formulation of policies or their implementation, civil servants are looking for solutions to remedy the existing errors. The European Union's asylum system, like any other system, is not a perfect and must be constantly improved in correlation with existing realities. As a consequence, we emphasize that it is difficult to establish definitive standards regarding the size of any social science - specifically, public administration - because, being preoccupied with the future of society, public administration must adapt to its evolution. Of course, we can consider that the public administration is undergoing a permanent transformation. Moreover,

---

13) European Union Agency for Fundamental Rights, Parliament hearing focuses on Greek migration hotspots, European Parliament hearing focuses on Greek migration hotspots, 14.11.2019. https://fra.europa.eu/en/news/2019/european-parliament-hearing-focuses-greek-migration-hotspots

14) European Council on Refugees and Exiles &Asylum Information Database GREECE: NEW RESTRICTIONS ON RIGHTS AND PROCEDURAL GUARANTEES IN INTERNATIONAL PROTECTION BILL,2019, https://www.asylumineurope.org/news/29-10-2019/greece-new-restrictions-rights-and-procedural-guarantees-international-protection

15) Report from European Council on Refugees and Exiles, Greece: Legislation Reform and Chaos on the Islands amid Expected Surge in Arrivals, 2019, https://reliefweb.int/report/greece/greece-legislation-reform-and-chaos-islands-amid-expected-surge-arrivals.

16) Rijavec, D.; Pevcin, P., 2018, *An Examination and Evaluation of Multi-Level Governance During Migration Crisis: The Case of Slovenia*, in Central European Public Administration Review, Vol. 16, No. 1/2018, p. 45.

by spreading democracy, the functions and responsibilities from the administrative dimension are multiplied.

The administrations of all EU Member States, including Romania, are currently facing the challenges of achieving positive results during periods with smaller budgets, adapting to demographic and societal changes, as well as improving the climate through less efficient and effective regulations to support competitiveness[17].

With immigration, which effects are not fully foreseeable, the public administration must respond promptly and concretely and adjust the deficiencies according to the new changes.

Migration and diversity are key factors in the transformation of today's society. These transformations not only impact on immigrants, but also on society as a whole.

Adopting comprehensive policies is not the crucial factor, but their implementation is of overwhelming importance, which is also the responsibility of the public administration.

All this involves adapting the institutions and developing the capacity to make effective decisions in the shortest possible time, as well as the implementation of these decisions, through continuity.

REFERENCES

1. Rijavec, D.; Pevcin, P., 2018, *An Examination and Evaluation of Multi-Level Governance During Migration Crisis: The Case of Slovenia*, in Central European Public Administration Review, Vol. 16, No. 1/2018.
2. Moroianu-Zlătescu, I.; Bucur-Ioan, A.; Zlătescu, P.E., 2019, *Migrants, asylum seekers and refugees in a globalised world*, Bucharest, Romania: Universitară Publishing House and Universul Academic Publishing House.
3. Moroianu-*Zlătescu*; Marinică, E., 2018, *Dreptul Uniunii Europene*, Bucharest, Romania: Universitară Publishing House and Universul Academic Publishing House.
4. Skulová, S.; Potěšil, L.; Hejč, D.; Bražina, R., 2019, *Effectiveness of Judicial Protection against Administrative Silence in the Czech Republic*, in Central European Public Administration Review, Vol. 17, No. 1/2019.

European and International Documents

1. Charter of Fundamental Rights of the European Union (2000/C 364/01), https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
2. European Asylum Support Office, Latest Asylum Trends, 2019, September, https://easo.europa.eu/latest-asylum-trends.
3. European Commission, Directorate-General for Employment, Social Affairs and Inclusion, A comparative overview of public administration characteristics and performance in EU28, Luxembourg: Publications Office of the European Union, 2018.

[17] EUROPEAN COMMISSION, Directorate-General for Employment, Social Affairs and Inclusion, A comparative overview of public administration characteristics and performance in EU28, Luxembourg: Publications Office of the European Union, 2018, p. 2.

4. European Council on Refugees and Exiles &Asylum Information Database Greece: New restrictions on rights and procedural guarantees in international protection bill, 2019, https://www.asylumineurope.org/news/29-10-2019/greece-new-restrictions-rights-and-procedural-guarantees-international-protection.
5. European Council, EU-Turkey statement, 18 March 2016, https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/.
6. European Union Agency for Fundamental Rights, Migration: Key fundamental rights concerns, Quarterly Bulletin, 2019, p.3-4 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-4_en.pdf.
7. European Union Agency for Fundamental Rights, Parliament hearing focuses on Greek migration hotspots, European Parliament hearing focuses on Greek migration hotspots, 14.11.2019.
8. European Union Agency for Fundamental Rights, Asylum, Migration & Borders, 2019, https://fra.europa.eu/en/theme/asylum-migration-borders/fra-work-hotspots.
9. Official Journal of the European Union, Regulation (EU) no 439/2010 of the European Parliament and of the Council of 19 may 2010 establishing a European Asylum Support Office.
10. Report from European Council on Refugees and Exiles, Greece: Legislation Reform and Chaos on the Islands amid Expected Surge in Arrivals, 2019, https://reliefweb.int/report/greece/greece-legislation-reform-and-chaos-islands-amid-expected-surge-arrivals.

ABOUT THE AUTHORS

Irina Moroianu Zlătescu, PhD., Professor at the National School of Political Studies and Public Administration, Bucharest, Romania and Member of the Council of the European Law Institute, Vienna.

Alexandra Bucur, Phd. Candidate, National University of Political Studies and Public Administration, Bucharest, European Asylum Support Office expert, member of European Law Institute -Vienna.

Email: zlatescu.irina@gmail.com

The impact of EU decision-making in managing the migration crisis in Western Balkans, a social and legal approach

Olta QEJVANI

Elisabeta BAJRAMI OLLOGU

ABSTRACT

This paper addresses recent efforts of Western Balkan countries in managing the increasing waves of migration, in accordance with EU institutional policies and mechanisms. When it comes to administration or management, migration can be with no doubt a challenge for both, European and candidate countries. In this regard, most of Western Balkans countries aiming the membership continuously make efforts to harmonize internal or regional policies with those of EU. On the other hand, European Union has developed different practices and decision-making initiatives to manage the situation. These decisions have also affected the region. Recently, most of Balkan people migrate towards EU countries. The way how European practices are facing legal and illegal migration has imposed Balkan reality to undertake specific approaches on finding the best methods to handle the migration situation and at the same time establishing and reaching out the standards of the road towards EU integration. This paper brings some insights on the implementation and compliance of candidate states with European migration policy as part of the *acquis communautaire.* It aims to analyse the political, legislative, and social impact of EU decision making on migration in the region. It provides an analysis of recent policies in two perspectives, legal and social ones, with the aim to explain on one hand changes on legislation and on the other to analyse social consequences of such policies undertaken. Specifically, this paper attempts to answer to the following research questions: how *public institutions* of Balkan Countries are developing and implementing the migration policy following EU practices; which are the positive and negative effects of EU practices on *managing migration* in the region; what can be *improved in EU legislation and institutional mechanisms* for migration policy, especially towards the Balkan region situation.

KEYWORDS: *Migration, European decision making, Western Balkans, Public Administration*

1. Introduction

Migrants crisis is the nowadays reality of EU, a phenomenon which must be properly treated. Balkan countries are one of the regions that represent the highest numbers of migrants towards EU boundaries (legal and illegal migration). Beyond a social or political phenomenon, EU consist on a whole public administration mechanism that plays a concrete role in managing migration and on the other hand it is expected to produce real solutions, as well. When it comes to manage the migration crisis to Balkan countries, EU decision making is analysed on a specific context, because most of the Balkan countries are trying to become members of EU. In this way, the new legal or political approaches must be wisely improved and done. Once The New York Times wrote that "*...when migrants are going towards EU boundaries, the only thing that Mogherini does is crying".* Even though it is an expression coming from journalism field, in the optical of researchers it makes us to analyse, identify which is the attitude of EU public administration in managing migration crisis in Western Balkans and other countries as well. Combining the social perspective with the legislative one, gives us the opportunity to make a concrete identification of problems and challenges towards migration as a social and institutional phenomenon which needs particular attention from both approaches.

Methodology

From a methodological aspect, this paper is mainly based on literature review with a particular focus in the reading of public documents with the aim to identify the attitude of EU public administration on managing the migration crisis and explore its effects in Western Balkans. Comparative methods will be used to offer an in-depth analysis of EU policy making and Western Balkans "activation" in managing the crisis in accordance with these policies. We can consider as one of the limitations of this paper the ECJ jurisprudence for migration, which is still a vague field of study even in the framework of migration issues in European Union. Through some ECJ cases we aimed to find some alternatives and the way how Western Balkans can refer to the solution of similar situations, presented in the cases of ECJ in order to share best practices.

2. Migration and Social Policy - institutional challenges

Most of the existent research on international migration tends to generally focus on the economic, political and cultural implications of migration, and not explaining concrete links between migration and governments' mechanisms to give solution to migrant's social problems or fulfil their needs. In this regard, less is known about the relationship between migration and social policy, particularly in developing countries as are considered most of Western Balkan countries[1)]. Before analysing the relationship between migration and social policy, it is important firstly to emphasize

[1)] See, list of developing countries 2019, http://worldpopulationreview.com/countries/developing-countries/

that the Western Balkans are very diverse as regards migration issues, despite their similarities in economic and political development. They share common challenges (in the context of the EU enlargement process) and problems in managing the migration crisis, and same typology of dominant migration, which is international migration. During a decade (from 2008-2018), a total of 2, 9799,766 people left the Western Balkans. In the same period, 258,020 people from North Macedonia left the country and for year 2018, around 33,337 people[2]. Over the last two decades, all these countries have been experiencing high rates of emigration, and these waves of population leaving the countries have always been oriented towards Western developed countries. In the last recent years, besides emigration, some of them have been in challenge to manage a refugee crisis as well, (i.e. Serbia; Republic of North Macedonia; Croatia, BIH[3] etc). So, even though prevailing typology of migration from Western Balkans is nowadays emigration, in the last years some of the countries, such as Serbia, North Macedonia, and Croatia are facing a refugee crisis and must deal with it as well. On one hand the migration crisis (young people leaving the countries for better life conditions) and on the other hand the refugee crisis[4] (people migrating for other reasons – people who have been forced to flee their country because of persecution, war or violence).

In 2018, Bosnia and Herzegovina became the preferred transit country for migration flows in the Western Balkans with over 24,000 arrivals, which is twenty times more than the year before. In order to cope with the high number of arrivals, new reception facilities were put in place with the financial support of the Council of Europe Development Bank (CEB) and the European Union. An estimated 4,000-5,000 people are still in the country waiting for an opportunity to cross the border into Croatia. Croatia, responsible for the European Union external border, has also registered an increase in arrivals with a total of over 7,500 people registered in 2018, from which only 352 asylum seekers remained in the country. In 2018, Croatia has focused on policies and measures to prevent unauthorized crossing of the border, and to deter access to its territory. The implementation of these policies and measures has coincided with the emergence of reports of pushbacks[5].

This session of the paper aims to explain the links between migration and welfare state and to explore to what extent migrants attempt to influence social policy and service provisioning. Does the Welfare state respond to migrants needs? Which are main challenges for regional governments in attempt to promote welfare state? What are the organizational and political linkages that have a bearing on social policy and

[2] Source, EPIK – European Policy Institute of Kosovo.

[3] BIH – abbreviation used for Bosnia and Herzegovina.

[4] Two-thirds of all refugees worldwide come from just five countries: Syria, Afghanistan, South Sudan, Myanmar and Somalia. – according to UN https://www.unrefugees.org/refugee-facts/what-is-a-refugee/

[5] Council of Europe, 24 April 2019 - The report is based on fact-finding missions to Bosnia and Herzegovina and to Croatia on 24-27 July and 26-30 November 2018. https://www.coe.int/en/web/portal/-/two-western-balkan-countries-still-struggle-with-migration-flows-but-face-different-challenges

service provisioning? Social policy as a mechanism used from governments to resolve social problems and fulfil social needs, has shown an increasing contribution in the last years but despite that, cannot resolve newly escalating social problems such as external migration (which occurs when a person or group of people immigrate to a country from another country and which is a very common pattern of human migration). "Welfare states in particular can only function properly when the dividing line between insiders and outsiders is crystal clear, because anyone who contributes to one is also a potential beneficiary, and *vice versa*. Redistributive measures always take place from those who are better off to those who are less well-off within a given society and within one and the same system" as Entzinger stated in 2007. One of main reasons, as above mentioned in this session of the paper, for this high rate of external migration from western Balkan countries is directly related to poverty and other living conditions which do not fit with new emerging people's needs. This is a typical form of labour migration. Due to high rates of unemployment and poverty, massive groups leave these countries with the aim to labour in some other developed countries. Latest policy analyses regarding migration movements from and to countries belonging to western Balkans, such as Serbia, Albania, Bosnia and Herzegovina, Croatia, Montenegro show that most of their governments are engaged in developing migration policies without even having a clear definition of these policies. Migration policy is often used to describe a government's statements of what it intends to do or not do (including laws, regulations, decisions or orders) in regards to the selection, admission, settlement and deportation of foreign citizens residing in the country (Bjerre et al ., 2015). Migration policies may cover various areas including the labour market, integration, and humanitarian/asylum, family, co-ethnic, and irregular migration. Several migration policy indices exist, and more are under development. For most of the governments of these countries, when it comes to most evident challenges for policy makers at the national and regional levels, it might be emphasized they include difficulties on finding practical ways of integrating migrants into development processes, but also more entrenched issues related to the way social policy interacts with citizenship and the diverse forms of migration. There are a lot of difficulties which explain the weakness of the institutions in developing successfully required interventions, policies or programs. It may be argued that there is a lack of knowledge and reliable information on migration trends and on the latent migration propensity from the Western Balkan countries.

3. Social services meeting migrant's needs

Social policy and social service provisioning are mechanisms used to meet needs of individuals/groups in social risk. In terms of social policy as a government's intervention to provide social services to migrants, three most important pillars need to be highlighted: for western Balkans region migration policies tend to decrease "brain drain" which is considered a central problem; secondly there are services offered for "non-citizens" or migrants coming in the region as countries of

destination – the provision of welfare to regular/irregular migrants. The general problem is that those "non labour categories" are seen as obstacles to welfare state and only few services are offered; thirdly, there are services provided for refugees. Almost in all region welfare sectors are diversified and they include public, private, civil, and informal ways of welfare provision[6]. A central element in meeting migrant's economic and social human rights is the access to quality public services and social protection. Yet migrant in irregular status are often denied such services. There should be "firewalls" between agencies that deliver public services and enforcement agencies, so that migrants can access services without fear. Because public policies tend to give low priority to targeting migrant populations, migrant associations, trade unions and other relevant CSOs have an important role to play in providing crucial services and political advocacy for migrants to put their issues on the map. When it comes to Public sector engagement in managing the crisis, we have to keep in mind that in most of the countries, there are some typical institutions engaged in the refugee crisis management, such as official commissariats (example: The Commissariat for Refugees and Migration of the Republic of Serbia Established a total of 17 transit, reception and asylum centres throughout the country where about 87% of migrants was accommodated in the Commissariat's centres of the total capacity of 6,000 beds. In general, due to similarities regional countries have, typical local institutions engaged refer to Centres of Social Work, shelters for unaccompanied children and shelters for elderly people etc. On the other hand, civil society's assistance has been notably evident. In North Macedonia, UNICEF has been in front of the refugee crisis management by providing continually needed supplies, establish child friendly spaces to provide psychosocial support and access to learning when education is interrupted. They do also provide technical assistance to strengthen support and protection for unaccompanied and children separated from families, as well as to strengthen the capacity of front line workers, including health workers, social workers and NGO staff so that the best interest of children always comes first. Civil society has been playing a major role in advocating and raising awareness to ensure about refugee needs. Legal support and advocacy have been used as tools necessary for migrants to achieve their legal rights. Other services include psychosocial support, child protection, educational support, etc which are mainly given by civil stakeholders.

4. EU law obstacles to realize the re-integration of migrants

Among all the efforts that EU has made to legally manage migration crisis, there is still a lack of specific regulations on migration. Some of EU leaders used the concept of *"transnationality"* in order to keep alive the scope of collaboration between countries with each other to handle migration as a social problem. Transnationality is a term provided in Lisbon Treaty, but it does not have any legal impacts or restrictions if not

[6] Public sector - which comprises services provided by the state; private sector - services are provided by the market. Social services of the civil sector are those provided by non-profit organizations. According to Čekerevac, A.; Perišić, N.; Tanasijević, J., 2018, *Social Services for Migrants: The Case of Serbia*, p. 104.

being realized. So, in practical terms, there is no legal penalty if countries with each other do not collaborate in the terms of "transnationality". But, on the other hand, EU has been established and is still functioning, because there is the free will of countries to stay and cooperate under this umbrella. This means that not everything needs to be measured on legal terms and under penalty logic. For sure, the legal panorama is an emerging instrument to properly find the solutions related to migration crisis. EU needs to keep alive the principle of free movement of people as a concrete reality of its arena. We recommend that transnationality can be used as a principle to be embraced on the other legal provisions that countries and EU institutions do. Maybe, what has happened in EU recently, has demonstrated a strong need to provide legal restrictions if countries do not apply "transnational practices". *On the other hand, does it make sense if we keep the collaboration in EU through a penalty system?* There are three elements to be taken into consideration when we analyse institutional operation of EU towards migration[7]:

EU rules on the free movement of EU citizens *(Directive 2004/38*; *Regulation 492/2011*; *Regulation 1612/68*; *Article 20, 21 of TFEU*; *Article 45/1 of European Charter of Fundamental Rights)*.

EU rules on the free movement from developing countries (aiming to become members of EU). "Candidate countries" are seen on a different way. We can mention here the Agreement of Schengen, which has produced many facilities on these countries. Balkan countries are part of Schengen Agreement, which has produced both facilities and conditions to be fulfilled.

EU rules on migration for those considered as third countries (not aiming to become members of EU).

Since 2014 there are more than 50 directives and regulations, specifically: (6 on asylum**;** 12 on legal migration**;** 14 on boarders and visa**;** 16 on irregular migration**).** Even though the main focus of public opinion refers to irregular migration, in order to generally analyse the work and the impact of EU institutions on this issue, we have to pay attention to the three elements given above. Legal obstacles that do not easily let migrants to integrate themselves in EU arena are as following:

- the lack of channels of information of EU laws and policies towards migrants;
- due to the fact that migration was a rapid phenomenon in the heart of EU, persons and staff working for migration, must be trained more and specialized to properly work regarding to migration crisis needs;
- EU stakeholders must highly put efforts on local agencies of their countries in order to provide the information to migrants and orientate them on what to do to be integrated;
- EU must *"unify"* its own policy goal for reintegration of migrants choosing between "returning" or "reintegrating" them. Different countries share different opinions in this regard. As it seen from the above legal panorama for EU migration, we can see that there are many EU laws that address solutions for managing migration in the region, but considering from the other side; we can see that there are a lot of lack solutions which are not provided from

[7] Based on Kees Groenendijk, *Recent developments in EU law on migration, The Legislative Patchwork and the Court's Approach'*, in European Journal on Migration and Law 16 (2014), pp. 313-335.

EU legislation. One of the biggest forums in EU arena, held in April 2019, has identified top 10 recommendations which generally include

1. Social cohesion clause in EU/national funds that target migrants and make it mandatory to also involve people from the host community.
2. Developing multi-stakeholders' platforms at local level that can bring together local authorities, NGOs, migrants' organizations, among others, to guarantee accessible, inclusive and relevant services to migrants, regardless of their status. At this point might be emphasized that in Western Balkans (as above explained) the civil sector has been playing a major role in the crisis management.
3. Establish a structured process for consultation of NGO, local authorities and social partners in the management of legal migration.
4. Adopt a horizontal directive harmonizing admission conditions and rights for all categories of non-EU nationals that also includes equal treatment rights, intra-EU mobility and family reunification.
5. Expand extended family reunification programmes in the EU as part of complementary pathways to protection.
6. The European Commission should take steps to harmonize processes among EU countries for welcome and integration of migrants, regardless of ways of arrival, country of origin etc., with specific attention to the special needs of vulnerable groups and the critical need for specific accessible funding available in the new Multi-annual Financial Framework for civil society organizations, grassroots organizations and local authorities.
7. Strengthen cooperation among civil society and Diaspora organizations and support their effort to provide information and incentives for reintegration of migrants in the countries of origin.
8. Foster regional dialogue and platforms with a view to creating public-private partnerships for mobility.
9. Develop pilot projects in local authorities across the EU to ensure access to human rights for all, including undocumented migrants, generally aiming at supporting social cohesion.
10. Fund and support local and grassroots organizations that work with vulnerable groups to develop gender sensitive actions and policies at local/regional/national/EU level through multi-stakeholders approach[8)].

....Adopt a horizontal directive harmonizing admission conditions and rights for all categories of non-EU nationals that also includes equal treatment rights, intra-EU mobility and family reunification.

We want to focus more on this recommendation. Even though we have several juridical acts that aim to bring solutions for migration crisis in EU arena, all these acts do not explicitly explain the admission conditions and other rights related to re-integration of migrants and their families. That may be referring even to the current

8) 5th European Migration Forum, 3-4 April 2019, From global to local governance of migration: The role of local authorities and civil society in managing migration and ensuring safe and regular pathways to the EU, #EUMigrationForum.

policy of EU towards migrants, which is not consolidated and still promotes different directions of approaches.

Since 2017, the EU and its member states have criminalized NGOs' rescues at sea and imposed hefty fines on the organizations. They have denied their boats access to ports, confiscated vessels, and arrested ship captains. For instance, in June 2019, Sea Watch – an NGO led by Captain Carola Rackete – rescued more than 60 migrants off the coast of Libya. After the migrants were denied embarkation access for two weeks, several German cities indicated that they would accept them. But there was no mechanism for safe disembarkation that would allow the migrants to reach Germany. Rackete eventually defied Italy's ban by bringing the migrants to Lampedusa, invoking an obligation to do so under international law. Salvini, then in government, banned commercial and private boats from disembarkation in Italian ports. This led to a disembarkation crisis in which Italy prevented the Aquarius, an NGO vessel carrying more than 600 migrants, from entering Italian waters in August 2018. The Spanish government subsequently allowed the ship to dock in Valencia.[9] This case shows up that EU law needs immediately new provisions in order to manage migrant crisis in borders between EU countries. Delicate issues in the heart of EU should not be treated into the terms of solidarity or be treated in the national decision making of EU countries. It is highly recommended that EU must unify the policy and attitude towards migrant crisis, in order to not let sporadic mechanisms, solve the situation, but lead the whole problems of this process.

5. New approaches and perspectives from ECJ case law to manage migration crisis

Almost each EU country has institutionalized or at least has presented the need of institutionalizing the migration laws and policies in order to fasten the solution of this phenomena on their borders. The existence of local and national institutions helps a lot managing different aspects of people migrating, especially those who migrate illegally, but they are not enough. European Union needs not only institutions functioning in the framework of their country members, but moreover EU must highly act by "using" its own system of institutions as a mechanism to give proper solutions. The main institutions that do play a significant role on migration are of course Commission, Council and Parliament, Ombudsman, European Central Bank, European Court of Justice. These institutions have integrated migration agenda on their everyday work. Regarding to their competencies given by Lisbon Treaty, we expect from these institutions to give outputs on:

1. Commission: drafting different EU laws necessary for migration law, paying a special focus on illegal migration.
2. Council: orientating which must be the goals and objectives of EU policy making towards migration.
3. Parliament: should smartly play with different interventions on the decision-making process, by being closely in contact with local communities.

[9] https://www.ecfr.eu/publications/summary/all_at_sea_europes_crisis_of_solidarity_on_migration

4. Ombudsman: be aware when every migrant is "violated" by the work of EU administration and institutional mechanism.
5. European Court of Justice: must open different precedents on migration conflicts, in order to interpret EU law. Different stakeholders when drafting or implementing migration policies must "learn" from ECJ case law and practice.

Would it be enough for migration crisis of EU to be managed only by the work of these main institutions? EU policy has conceived the work related to migration, by creating different agencies being responsible for operating with solutions on migration. Some of these agencies are [10]: FRONTEX[11]: The European Border and Coast Guard Agency EUROPOL[12]; The European Union Agency for Law Enforcement Cooperation; CEPOL[13]: The European Union Agency for Law Enforcement Training; EMCDDA[14]: The European Monitoring Centre for Drugs and Drug Addiction; EASO[15]; The European Asylum Support Office, etc. When it comes to Balkan migration, the public opinion highly promotes the fact that most of the Balkan people migrates towards EU. Researching in many databases of Western Balkan forums and EU institutions we cannot find a recent statistic that reflects the situation of people migrating from Western Balkans. *Does this situation affect the way how EU policies are taken to solve this problem? Is the lack of "numbers" an obstacle for many empty words and few institutional measures taken? In the framework of proposing solution/alternatives for treating migration from EU mechanism in Balkan region, the comparison between two ECJ cases would be our focus. Can analogy of these decisions be used for Western Balkan arena and what can Balkan countries must be aware of[16]?*

The voice of ECJ must be followed in order to find out which are the current solutions that people having migrants' status need to know. In the dynamic laws and sometimes the lack of laws specifically regulating migration issues, ECJ cases may be a good alternative to truly understand the status of a person "moving" in EU area. On the other hand, ECJ case law on migration can best serve when it comes to draft new policies, changing or implementing them. Considering ECJ jurisprudence as a very important tool to analyse the feedback of jurisprudence in order to balance the impact and the EU attitude in the Balkans we have chosen two case laws from European Court of Justice, in order to compare the decisions taken in two similar situations regarding migration. *How can the philosophy of these decisions can be adapted in Balkan reality?*

Chakroun (C-578/08, judgment of 4 March 2010)[17]

Issues: Chakroun was a Moroccan man who arrived as a worker in the Netherlands in 1970 and married a Moroccan wife two years later. After having been employed

10) https://ec.europa.eu/home-affairs/what-we-do/agencies_en

11) https://frontex.europa.eu

12) https://www.europol.europa.eu

13) https://www.cepol.europa.eu

14) http://www.emcdda.europa.eu/emcdda-home-page_en

15) https://easo.europa.eu

16) http://www.europeanmigrationlaw.eu/en/caselaw/cjeu is the link where different case laws on migration are collected and analyzed. This may serve as a very good indicator not only for researchers, but even for people that need a solution referring to their status as migrants

17) http://curia.europa.eu/juris/liste.jsf?language=en&num=C-578/08

for more than 30 years he became disabled and asked for reunification with his Moroccan wife, who still lived in Morocco, to support him in the Netherlands. The request was refused on the ground that Chakroun's monthly disability benefit was €20 below the 120% of the statutory minimum income required by Dutch national law in case of family formation, as the marriage had been concluded after his first admission in the Netherlands. The referring Dutch court asked whether the 120% income requirement and the different treatment of family reunification and family formation were compatible with.

Rules: Directive 2003/86, Lisbon Treaty

Arguments and Decision: The Court gave a negative answer to both questions. The Court repeated its position in Parliament/Council that the directive grants a subjective right to family reunification (para. 41). Since authorization of family reunification is the general rule, the income requirement in Article 7(i)(c) of the Directive must be interpreted strictly. The margin for manoeuvre which certain provisions of the directive allow Member States may not be used in a manner which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness of the Directive (para. 43).

The Court explicitly refers to its own case-law on family reunification of EU citizens in *Eind and Metock* "by way of analogy" (paras. 46 and 64). Moreover, the Court implicitly refers to the rule of Article 8(4) of Directive 2004/38 on free movement of Union citizens when holding that since the extent of needs can vary greatly depending on the individuals, Member States may indicate a certain sum as a reference amount, but not as meaning that they may impose a minimum income level below which all family re-unifications will be refused, irrespective of an actual examination of the situation of each applicant (para. 48).

Trojani ECJ case (C-456/02)[18)]

Issues: A Salvation Army volunteer requested minimum subsistence social assistance from CPAS, Brussels Public Assistance Centre in Brussels, Belgium. He was from France and went to Belgium in 2000, staying at a social camp in Blankenberge and then in Brussels, the youthful Jacques Brel Hotel. He was subsequently housed in the Salvation Army Hotel since January 2002. He received housing and pocket money to do work for 30 hours a week as part of a personal social-professional reintegration program. CPAS refused because he was not Belgian and said he could not benefit from the Free Workers Regulations 1612/68. The social assistance was refused on the grounds that he was not a Belgian national, but only enjoyed a residence permit in the Belgian state.

Rules: Article 12, Article 18 of the Treaty on the Free Movement of Persons, Free Workers Regulations 1612/69

Arguments of the parties: The Belgian competent authorities strongly supported the fact that the person could not be treated with the rights and obligations of "worker" status, as the regulation did not state the granting of social assistance where the person had only "residence permit" in Belgium .

In the meantime, Trojan strongly argued that the refusal of social assistance in its case goes against the spirit of the Treaty and urged the Court to decide instead on the denied right.

18) https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62002CJ0456

Decision: In the present case, as it appears from the decision for reference, Mr. Trojan performs, for the Salvation Army and under his direction, various tasks for approximately 30 hours per week as part of a personal reintegration program in return to which he receives in-kind benefits and some pocket money. Having determined that the benefits provided by the Salvation Army to Mr. Trojani constitute consideration for the services he performs for and under the management of the hotel; the national court has established the existence of constituent elements of any paid employment relationship, that is, dependency and remuneration. The European Court of Justice has ruled that refusing social assistance when a person has only a residence permit constitutes a violation of the Treaty. Even if one is not in the "ordinary" position of a job, it is enough to see whether his pay for the job he is doing is real, objective and real. In this way, his status becomes equivalent to the status of worker for the purpose of providing social assistance. What we see from these two decisions is the "difference" between the two cases. People that have only the residence permit on one side have been given all the other rights derived from directives and other aspects of regulations. On the other hand, on the first case other rights related to "residence status of living" are limited provided. On the previous cases, we identify a "contrary" attitude of ECJ towards migration of refugees. Does this affect the migration process of Balkan people towards Europe? Many people from Balkan region are migrating continuously on European countries; some of them are working on legal permission of residence. Referring to these two decisions, how can we find the proper solutions on how these categories should be treated? For example: will a person coming from our countries that is legally working in one of the European countries with a legal permission deserve a pension? Which are the facilities that can EU policies implement for re-integration of migrants coming from Balkan countries?

Some of the discussions held on the EU Parliament have repeated the fact that EU should prevent specific regulations for Balkan countries, considering the fact that this region is trying to be part of EU? Moreover, does this situation of EU legislation affects the European citizen? What about Balkan people?

These questions can be answered throughout the following issues, that we think that can be taken truly into consideration: statistics about legal and illegal migrants, https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics. But we have to be careful to not base our solution mechanism not only in numbers.

- The decision making of ECJ jurisprudence. Due to the fact that public administration in EU and Balkan region is not so "well prepared" to understand the actual law and adding also the fact that they face a lack of provisions in *acquis communitauiare*, these structures may refer to ECJ jurisprudence to give urgent solutions when needed. This can serve for their work to be efficient to manage migration, but it would also be exceedingly difficult for them to argument the legal basis.
- The mission and vision of EU institutions in general. It has come the time that EU institutions and public authorities must present a unified practice towards migration, despite the diversity of the national approach to this issue.

Conclusions

If we make an overview of the entire mechanism of EU institutions, migration has been emphasized as an important issue in all EU policy-making agenda. This has also produced some disorientating or confusing situations when it comes to practical solutions to migration crisis. Different opinions of researchers consist on the strong collaboration that FRONTEX and EASO must have with each other, in order to manage the right of peaceful borders and at the same time respecting the rights of migrants coming through these borders. Generally, when it comes in the understanding of the EU institutions role towards migration crisis, the focus remains on the illegal migration. Illegal migration, even presenting the highest numbers of migrations facing at the same time legal, social, and political problems, it is only one dimension of the panorama. In the framework of this paper, we want to bring into attention that the role of EU towards migration must consist both on: legal migration inside EU; illegal migration (people coming from outside EU); legal migration inside EU; illegal migration inside EU (specific cases); migration of people from "candidate countries". The free movement of people in the heart of EU needs specific migration policies regarding to their legal and social position. This of course, being treated in a theoretical perspective seems to be much easier, but when it comes as a matter of everyday life of agencies and institutions dealing with migrants, this means to find fast and proper solutions responding to each difficult case. The Western Balkan countries are very diverse as regards migration issues, despite their similarities in economic and political development. They share common challenges (in the context of the EU enlargement process) and problems in managing the migration crisis, and same typology of dominant migration, which is international migration. During a decade (from 2008-2018), a total of 2, 9799,766 people left the Western Balkans. Even though prevailing typology of migration from Western Balkans is nowadays emigration, in the last years some of the countries, such as Serbia, North Macedonia, and Croatia are facing a refugee crisis and must deal with it as well. On one hand the migration crisis (young people leaving the countries for better life conditions) and on the other hand the refugee crisis (people migrating for other reasons – people who have been forced to flee their country because of persecution, war or violence). Migration policies may cover various areas including the labour market, integration, and humanitarian/ asylum, family, co-ethnic, and irregular migration. Several migration policy indices exist, and more are under development. Civil society has been playing a major role in advocating and raising awareness to ensure about refugee needs. Legal support and advocacy have been used as tools necessary for migrants to achieve their legal rights. Other services include psychosocial support, child protection, educational support, etc which are mainly given by civil stakeholders.

BIBLIOGRAPHY

1. Bjerre, L.; Helbling, M.; Römer, F. and Zobel, Z., 2015, *Conceptualizing and Measuring Immigration Policies. A Comparative Perspective,* International Migration Review.
2. Čekerevac, A.; Perišić, N.; Tanasijević, J., 2018, *Social Services for Migrants: The Case of Serbia,* Croatian and comparative public administration.
3. Entzinger, H., 2007, *Open Borders and the Welfare State*, in Antoine Pecoud and Paul de Guchteniere (eds.), *Migration without borders*: *Essays on the Free Movement of People*, Paris: UNESCO/Berghan Books.
4. Groenendijk, K., *Recent developments in EU law on migration, The Legislative Patchwork and the Court's Approach*, European Journal on Migration and Law 16 (2014).
5. Helbling, M.; Bjerre, L.; Römer, F. and Malisa Zobel, 2016, *Measuring Immigration Policies*: The IMPIC Database.

Other resources

https://www.coe.int/en/web/portal/-/two-western-balkan-countries-still-struggle-with-migration-flows-but-face-different-challenges.

http://worldpopulationreview.com/countries/developing-countries/.

https://www.unrefugees.org/refugee-facts/what-is-a-refugee/.

https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62002CJ0456.

http://curia.europa.eu/juris/liste.jsf?language=en&num=C-578/08.

https://ec.europa.eu/commission/sites/beta-political/files/the_withdrawal_agreement_explained.pdf.

https://ec.europa.eu/home-affairs/what-we-do/agencies_en.

https://frontex.europa.eu.

https://www.europol.europa.eu.

https://www.cepol.europa.eu.

http://www.emcdda.europa.eu/emcdda-home-page_en, last seen on November 2019.

https://easo.europa.eu.

ABOUT THE AUTHORS

Olta Qejvani, PhDc., Lecturer of European Union Law University "Aleksander Moisiu", Durres, Albania.
E-mail: oltaqejvani@uamd.edu.al

Elisabeta Bajrami Ollogu, PhDc., Lecturer of Social Policy University "Mother Theresa" – Skopje, North Macedonia.
E-mail: elisabeta.bajrami.ollogu@unt.edu.mk

The role of the State in implementing the legislation and public policies concerning Diaspora

Ioana-Cristina RIEDL (VORONIUC)

ABSTRACT

The present research aims to analyse, on the one hand, the Romanian legislation applicable in the area of diaspora, regarding the rights and obligations of migrants, and on the other hand, the public policies implemented by the state in support of the diaspora, in particular, in supporting those who wish to return to their country of origin.

Regarding the first aspect mentioned, this work will consist of an analysis of the rules applicable in the matter, starting from the European requirements, and continuing with those at national level, to observe, in particular, whether the right applicable to the diaspora, at national level, is directly aligned with the requirements of the European Union, in the sectors in which the Union legislation establishes common principles, rules or procedures.

Since its emigrants and descendants, continue to be relevant political and economic actors in the countries of origin[1)], despite the fact that they no longer live in their territory (they have the right to vote, pay/should pay contributions) we consider relevant not only the knowledge of the national regulations applicable to the diaspora, but also the knowledge of the public policies, considered by the state, regarding the diaspora, a brief analysis of them will be presented in the research paper.

KEYWORDS*: diaspora, migration, state of law, role of state, diaspora rights, rules*

1. Introduction

As the present study aims to follow the diaspora phenomenon at Romanian level, as state of law, a few preliminary details are required.

Therefore, regarding the diaspora, reference will be made to this phenomenon as representing "*the result of the massive migration that occurred after the fall of the communism, whether we refer to the migration of the unskilled labor force, (…), or to the migration of the professional workforce*"[2)] and regarding the state of law, the concept

1) See Lafleur, J.M., 2012, *Transnational Politics and the State. The External Voting Rights of Diasporas*, New York, United States of America: Routledge Publishing House, p. 1-2.

2) See Ciocea, M.; Cârlan, A., 2012, *Debating Migration as a Public problem: Diasporic Stances in Media Discourse,* in Romanian Journal of Communication and Public Relations, (27), 181-201.

will be used as regulated in art. 28 of the Constitution of the German Federal Republic, art. 11 of the Spanish Constitution, art. 1 paragraph (3) of the Constitution of the Republic of Moldova, art. 1 paragraph (3) of the Romanian Constitution, as representing that structure in which the state and the law are in a complementarity report.

Therefore, the state cannot exist outside the law because nothing can exist beyond the state and no one is above the law. The state must obey its own rules, being the one that limits itself[3)].

"*Migration is defined as representing the movement of a person or a group of people, either by crossing an international border or within the same state. Migration is a movement of the population, which includes all types of movements of people, regardless of distance, composition of the group of migrants and causes; this includes the migration of refugees, displaced persons, economic migrants and persons moving for other reasons, including for family reunification*"[4)].

The previous points prove to be relevant because the migration phenomenon has increased with the regulation at European level, as well as at national level, of freedom of movement.

In today's state of law, migration – a process of social change, becomes one of the most important occupational and life strategies, adopted mainly by young people. This continuous process records more and more Romanians leaving Romania or foreigners coming here. Compared to the fact that Romanian migration is one of the main migrations from the east and west of the continent, being very dynamic, a differentiated analysis is required regarding it and also very complex[5)].

From the literature, it has emerged that the evolution of the Romanian diaspora is a rather slightly debated topic. Likewise, I noticed that the need for labor force of the Western countries is determined by economic considerations. Some Western countries are beginning to experience a slight natural decline in population and immigration is replacing this natural decline.

After 1989, when border barriers have fallen, migration reached the highlight in Romania.

It is known that our country is a country of net emigration and this implies severe consequences at different levels, respectively the economic one, the social one and the demographic one.

The migration of labour force is difficult to quantify, although in recent years it has become the most important component of Romanian migration.

---

3) See Silasi, G.; Simina, O., 2008, *Migration, Mobility and Human Rights at the Eastern Border of the European Union – Space of Freedom and Security*, Timişoara, Romania: Universităţii de Vest Publishing House, p. 13.

4) As defined by the International Organization for Migration, 2015.

5) See Horváth, I.; Anghel, G.R., 2009, *Migration and Its Consequences for Romania*, Südosteuropa Publishing, pp. 386-403.

The communist regime established a severe control of the population in terms of international mobility[6]. Despite this confinement regime, the emigration during the communist period was not insignificant at all.

There were some major ways in which those who wished could leave the country: ethnic migration, legal emigration, and irregular migration, respectively, by appeal to the political asylum institution. Among these emigration routes, the most significant, and we refer here in terms of volume, was the ethnic migration – more precisely, the emigration of the Jews and the Germans from Romania.

The literature is generous regarding the analysis concerning the correlation between migration and economic growth, from the immigration countries perspective.

Even so, from our research, we can say that there are a limited number of empirical studies regarding this topic.

The results of the identified studies appear to be quite contradictory. For example, Barro and Sala-i-Martin (1992) demonstrate that migration in the United States and Japan has a positive effect, although it does not significantly impact the economic level, in contrast to the empirical results of Blanchard and Katz (1992) and Dolado et al. (1993).

The current debates on migration concerns, first and foremost, the issue from the perspective of economic effects to the receiving countries. However, neither the causes nor the consequences of migration are well understood, nor is it obvious how research will develop in this direction in the future. Immigration has become a complex phenomenon, causing controversy in the research effort, especially for the receiving region represented by Europe.

In Europe, the free movement agreement within the European Union clears the way for labour migration beyond national borders. The most common approach concerns the impact of immigration on the domestic labour market. Most of the existing studies refer to the effects of the immigrant labour market on the domestic labour market.

Regarding the external migration of Romania, we believe that, in the next period, it will be influenced by how high and sustainable the economic growth rate will be, by the extent to which this growth will raise the standard of living and of course, the immigration policies of the Western countries (Roman & Voicu, 2010). According to the existing scenarios, after a severe destabilization caused by the economic crisis, in Romania the first signs of recovery are extremely uncertain.

Romania subscribes to the migration phenomenon worldwide, having a history of migration marked by periods of ascension and decline, based mainly on the internal economic, social and political conditions.

Human nature requires trying to find better living conditions, naturally the more developed regions attract population from poorer parts of the world. The migration process involves a subject (emigrant or immigrant), at least two countries (the country of origin and the country of destination, but also the transitional countries), as well as the intention of obtaining a residence permit or finding a job in the country of

[6] See Mueller, C., 1999, Escape from the GDR, 1961-1989: *Hybrid Exit Repertoires in a Disintegrating Leninist Regime*, The American Journal of Sociology, 105(1999/3), pp. 697-735.

destination. Romania's external migration has two sides: a legal one, statistically registered in the form of emigration and immigration, as well as labour migration. The first component is not especially important in size being between 10 – 15 thousand emigrants and several thousand immigrants per year. You can see the large proportion of emigrants who have University studies, which is close to 25%, the main countries of destination being Germany, Italy, USA and Canada.

2. Public Administration and its Role in Migration

The migration phenomenon, as we have presented it, is influenced, first of all, by economic evolution, which opens up new possibilities for future analysis[7)].

At the OECD level[8)], the Romanian diaspora is the fifth in size, after the Mexican, the Chinese, the Indian and the Polish ones, and it continues to grow, shows a report made by the OECD commanded by the Ministry of Foreign Affairs of Romania. In 2015 – 2016, 3.6 million people born in Romania (17%) lived in OECD countries, of which 54% were women. Between 2000 – 2001 and 2015 – 2016, the number of Romanian emigrants increased by 2.3 million. Italy, with almost a third of the Romanian emigrant population (over 1 million), was the leading host country, followed by Germany (680 000) and Spain (573 000), according to the document, entitled "*Talent Abroad: A Review of Romanian Emigrants"*.

About 25% of Romanians living in Romania have expressed, in the last two years, the desire to settle permanently abroad if they would have the possibility, one of the highest percentages registered in the region.

Also, almost half of the people aged 15 – 24 from Romania, have declared that they intend to emigrate, informs Agerpres. The report says that Romanian immigrants work mostly in low-skilled trades and of those with University education are many overqualified. In OECD countries, Romanian emigrants are three times more likely than citizens of the country in which they emigrated to work in activities that involve unskilled or semi-skilled work and half of them have the chance to work in high-skilled jobs.

Between 2000 – 2001 and 2015 – 2016, their number increased by 2.3 million to 3.4 million. Most of this increase (1.1 million emigrants) occurred between 2005 – 2006 and 2010 – 2011. The OECD European countries included 90% of the total Romanian emigrants from the OECD area in 2015 – 2016 and 67% lived in Italy, Germany or Spain. The increase of their number was particularly high in Italy, Spain and the United Kingdom, mainly driven by young and recent emigrants, although the growth occurred at different times in each country.

Most of the Romanian emigrants are not citizens of the host country. Recently, naturalizations (granting a foreigner the quality and right of citizenship of the country

7) See Silasi, G.; Simina, O., 2008, *Migration, Mobility and Human Rights at the Eastern Border of the European Union – Space of Freedom and Security*, Timişoara, Romania: Universităţii de Vest Publishing, p. 6.

8) See OECD and the European Commission, Indicators of Immigrant Integration 2015.

in which he lives) from countries from the European Union, such as Italy, Germany and the United Kingdom, have strongly increased. In contrast, naturalization in the United States and Hungary has declined.

Both Romania's accession to the European Union and the global economic crisis have strongly influenced the evolution of the trends of Romanian emigration and of the specific countries of destination. In 2016, Romanian emigrants accounted for 6% of the entries into the OECD countries, increasing from only 3% in 2000.

The characteristics of the Romanian emigrants were quite stable over time: on average, most of the new arrivals from Romania between 2004 and 2016 were women, almost two thirds (62%) were under 30, more than one third (37%) were not married at the time of arrival and 78% lived in a household without children.

The problem of employment opportunities is the main reason the Romanians invoke for their desire to leave their country. The educational level of the Romanian diaspora in OECD countries is relatively high, with a quarter of emigrants having higher education.

Although Italy hosts the majority of Romanian emigrants and those with the lowest education among all OECD countries, Germany is the main destination for Romanian emigrants with higher education. The levels of education among Romanian emigrants vary widely according to the countries and the countries of Southern Europe, such as Spain or Italy, are the countries where the low-educated emigrants are the most represented. In the last 15 years, the education level of the Romanian emigrants is not increasing, but it is relatively stable, and it even tended to decrease slightly.

According to the OECD report mentioned above, Romanian emigrants still face frequent discrimination. The integration of the Romanian diaspora into the labor market in OECD countries is complex on a global level. Despite higher rates of employment, the unemployment rates among Romanian emigrants are higher than those of the native population and these gaps have increased after the economic crisis

Also, despite higher rates of employment, job creation has been particularly slow for high-skilled workers. In addition, the main jobs occupied by Romanian emigrants in OECD countries are poorly qualified, especially those for women. At the same time, the over qualification rates of Romanians remain high and have increased over time.

Although Romanian migrants between sectors are oriented towards low-skilled sectors of activity, the emigration of healthcare professionals from Romania represents a large and well-established diaspora in the OECD area. The Organization for Economic Cooperation and Development acknowledges that the large flows of Romanian emigrants from the last 10 – 15 years in the OECD countries, especially in the EU member states, have led to significant return flows to Romania. However, it is exceedingly difficult to determine the exact degree of these return migration flows[9)].

9) Andreescu, M., 2010, *Raport internațional: Diaspora românească, a cincea cea mai numeroasă din lume/Aproape jumătate dintre românii cu studii universitare care lucrează în străinătate au locuri de muncă destinate muncitorilor necalificați*. https://www.g4media.ro/raport-international-diaspora-romaneasca-a-cincea-cea-mai-numeroasa-din-lume-aproape-jumatate-dintre-romanii-cu-studii-universitare-care-lucreaza-in-strainatate-au-locuri-de-munca-destinate-muncito.html, accessed on 19.09.2019.

Beyond the diaspora phenomenon, because the paper aims to investigate the role of the state on this phenomenon, at the beginning of the research initiative, we conducted a comprehensive analysis on the specificity of the public administration on what the public power means, on the acts and facts emanating from the administration public, on the state of law in which administrations are built which should respond to the needs of the Romanian diaspora, focusing our attention, both on the administrative theory and on the public policies developed in the field, until this moment

As a result of conducting the initial research, finding that one of the topics, less treated in the doctrine and in the literature, is the one regarding the role of the state, implicitly, of the public administration, in the control of the diaspora, we focused our attention to study this topic, trying to build a series of questions to help us finally find the following:

- If there are regulations, applicable at European level, as well as at national level, regarding the fiscal rights and obligations of Romanian migrants;
- If there are public policies developed in the context of the Romanian state of law, regarding the diaspora;
- To the extent that there are special regulations to protect the diaspora and, at the same time, public policies developed in this area, how they should be systematized, so that the diaspora can appeal to them in an easy way, when necessary.

In the process of transforming the Romanian society from the perspective of migration, the public administration cannot be ignored. In all the complexity of the social life, implicitly of the diaspora, the administration is one of the most important human activities. "*The public administration is inextricably linked to the state*"[10)],, even though by decentralization the administrative autonomy at local level can be achieved.

Over time, the concept of public administration has come to know various meanings, and one of them that we consider to be appropriate in the context of carrying out this work is that of Andre de Laubadere, according to which the administration is defined as "an assembly of authorities, agencies and organisms in charge, under the impulse of the political power to ensure multiple interventions of the modern state"[11)].

The Romanian public administration operates according to the regulations of the Romanian Constitution[12)], as well as the legislation elaborated in compliance with the constitutional principles, mainly: Law of the local public administration, 215 of 201[13)] (republished in 2006). The framework law of decentralization 195 of 2006 and the methodological norms for its application; Law 273 of 2006, regarding the local public

10) See Brezoianu, D.; Oprican, M., 2008, *Public Administration in Romania*, Bucharest, Romania: C.H. Beck Publishing House, p. 3

11) See de Laubadere, A., 1973, *Traite de Droit Administratif*, 6th edition, vol I, Paris, France: L.G.D.J, p. 11.

12) See Romanian Constitution, *Amended and supplemented by the Law of revision of the Romanian Constitution no. 29/2003*, published in the Official Gazette of Romania, Part I, no. 758 of October 29, 2003.

13) The Law of the Local Public Administration no. 215/2001, republished in the Official Gazette no. 123 of February 2007.

finances. Also, in the field of public service there are regulations such as Law 51 of 2006 of the community services of public utilities.

The birth of the administrative phenomenon is closely linked to the birth of the state and the separation of powers in the state. As a result of the development process of the society, the state appears as a social – economic phenomenon, political, legal and historical alike.

The state cannot exist outside the law, because nothing can exist beyond the state and no one is above the law. The state must obey its own rules, being the one that limits itself[14].

In the Romania state of law, the labor migration phenomenon has become a permanent agenda item.

After Romania's accession to the European Union, on 1th January, 2007, there is a certain "institutionalization" of this theme: *"institutionalization can be understood as a property of specific organizations/institutions, but it also means consolidating a daily practical knowledge and some values"*[15]. Thus, the press and the TV reconfigure their editorial format by introducing special headings and adopting media strategies. The same theme becomes a constant of political speech (governmental, electoral, etc.), by legitimizing public policies and institutional reconfigurations. The decision makers use the diaspora argument to promote various policies. The experience of delocalization, of various forms of mobility and, in general, of the image of the foreigner are arguments frequently used by politicians looking for efficient models or ways of public action. It has become a widespread reflection, in the making decision sphere, reporting to other forms of transnational otherness and mobility – a phenomenon theorized in the political sciences by the term policy transfer[16]. For example, the diasporic phenomenon reopens the debate on the international image of Romania and contributes to the instrumentalization of this theme, by imposing in the public space the concept of "country brand" (the same phenomenon generates, at present time, a debate about the opportunity of introducing the voting system by correspondence.). Labor migration and the "new diaspora" are therefore found at the level of various "agendas" (media, politics, various institutions, etc.), of daily life and national imaginary. As a result, "headings", "policies" and "speeches" appear – various "*communication contracts"* (in the public space in Romania, "the new diaspora" and/or "the new migration" is a conventional term and refers to the phenomenon of labour force migration, as a result of the liberalization of labour movement in the European space; the term is therefore equivalent to "intra – EU migration"). Romanian communities abroad indicate a certain economic, socio-institutional, and cultural reality.

---

14) Gheorghe, M., 2002, *The Inevitable Law, Bucharest*, Romania: Lumina Lex Publishing House, pp. 116-118.

15) Edensor, T., 2006, *Reconsidering national temporalities: institutional times, everyday routines, serial spaces and synchronicities*, in European Journal of Social Theory, 9(4), pp. 525-545.

16) Frinault, T.; Le Bart, C., 2009*, L'exemplarité de l'étranger,* in Revue française de science politique, vol. 59, nr. 4, pp. 629-631.

Around this phenomenon is rearticulated the social imaginary regarding the national identity, the country image, and the repertoire of opportunities for the individual and society. Implications include both the country of origin and the host territory. On the other hand, labour migration is a constitutive phenomenon of the so-called Europeanization of national policies and public cultures.

In this framework, the questions are asked: 1. What is the role of the state in supporting and controlling the diaspora? 2. Are there any public policies from the perspective of the current programs of government, regarding the problems of the Romanian communities abroad, whether we are talking about the mobility diaspora or the minorities around the borders?

Important to note from the very beginning, is the fact that, in Romania, there are a series of Laws (Law5), which come to support the Romanians from the diaspora, on areas such as:

- the support given to Romanians abroad;
- establishment of Romanian community centres abroad;
- approval of the National Strategies for Romanians abroad;
- the vote in the diaspora;
- taxation of income from abroad and avoidance of double taxation.

Once the Ministry of Romanians Abroad was abolished, the laws have undergone a number of amendments, which were necessary considering that the normative acts referred to this public institution.

From an economic perspective, we mention that at government level, in 2018, the transposition into Romanian legislation of the European Union Directive 2015/849 which require Romanians from diaspora to justify the amounts transferred into the country, when exceeding 2000 euros, was discussed. (Hotnews, Barbuta, 2018). This is about adopting a draft law to prevent and combat money laundering and terrorist financing, as well as to amend and complement some normative acts. To date, this European provision has not been transposed into Romanian law.

As a recommendation, we believe that there should be a legislative uniformity on the rights and obligations of diaspora, so that Romanians in diaspora could cover it more easily and could understand with greater clarity all the rules of Law applicable thereto.

Beyond the normative acts in force on Romanians in diaspora, it is paramount that states, through their public authorities and institutions, ensure relations with Romanians in diaspora.

A key role lies here with the national, independent, equidistant institutions created by law, with dispositions containing warranties of this independence and equidistance, with specific powers, irrespective of their name — institutes, centres, departments, committees, ombudsman, etc. They can effectively contribute to training and informing people in public structures and institutions with duties in the field of protection and promotion of diaspora rights — legislative, executive, legal, educational, etc., at national, regional and local level.

Civil society, composed of non-governmental organisations, in a wide and diverse range, trade unions and the media, has a huge potential and a consistent contribution to informing, training and educating in the field of human rights, a contribution it brings through means specific to each of its components, but also to the creation of a climate conducive to respect for human rights; civil society also exerts strong pressure on decision-makers to boost the adoption of those legislative, institutional and other measures that are necessary for the progress of the effective consecration and observance of rights and freedoms enshrined in the Universal Declaration of Human Rights and in the Treaties which constitute, together with the mechanisms it establishes, the international human rights system.

Between state bodies and civil society, national institutions must fulfill and fulfil a function that some call "bridge", and others "articulation", realizing through partnerships with both state and non-governmental entities a context for dialogue and cooperation in the common interest of advancing on the difficult, but generous path of the actual respect of Romanians in diaspora[17)].

In this order of ideas, by way of example, we indicate that in Romania there is the Department for Relations with Romanians outside the Borders. It represents the structure of the Presidential Administration that ensures the relationship between the President of Romania and Romanians abroad and the communities to which they belong.

The Department has as main tasks the collaboration with Romanian state institutions in the field and the representatives of Romanians abroad, the elaboration of specific documents, the organization of actions dedicated to Romanian communities, networking with them, as well as the representation of the president at various events. I order to fulfil these tasks, the Department performs preparatory actions with the aim of planning, organizing, and conducting activities in the country and abroad where the President of Romania participates and dialogue with Romanians abroad is discussed.

The department is strategically aimed at ensuring and strengthening the relationship between the President of Romania and Romanians outside the country's borders by creating new mechanisms of dialogue. To this end, it brings before the President of Romania proposals for establishing and improving the objectives on the strategy to be followed for better relations with Romanians abroad, by intensifying dialogue with their representatives. The Department's main concern also aims to improve the mechanisms of representation and consultation of Romanians abroad by directly engaging them in defining the policies of the Romanian state.

To support Romanian citizens and communities outside the boarders, the department aims to initiate action directions leading to the correct implementation of the main commitments made publicly by the President of Romania. From this point of view, the Department will pursue all necessary steps for the presidential administration to be an integrator harmonizing the efforts of all actors involved: State institutions and Romanian citizens.

---

17) See Moroianu-Zlătescu, I., 2007, *Drepturile omului - un sistem în evoluție*, Bucharest, Romania: I.R.D.O. Publishing House, p. 3.

In this field, dialogue between institutions and citizens is particularly important, and complementarity of state policies and real needs decided upon permanent consultations with citizens must lead to what all Romanians expect: a National policy for Romanians Abroad.

In the long term, the goal of the president of Romania is to build a strong relationship of the Romanian Society and the Romanian state with diaspora, beneficial in both directions. It implies, on the one hand, the ability to harness the strategic potential of the Romanian diaspora, as a bridge of connection with the other states, and, on the other hand, it clearly implies what we must do for diaspora, we, the ones at home.

The Romanian State must make increased efforts to meet the legitimate expectations of Romanian citizens abroad for consular services and assistance to the specific standards of a Member State of the European Union.

The preservation and affirmation of Romanian ethnic, linguistic, cultural and religious identity among communities abroad is one of Romania's most important objectives in foreign policy. Traditional values must represent the binder between Romania and Romanian communities abroad.

Living and working abroad must become just a matter of choice, not one of coercion. This will be accomplished when Romanians outside the borders will have the option to return to the country, knowing that their work and performance are acknowledged and rewarded at home.

Like the important states of the world, it is time for Romania to provide the possibility for members of Romanian communities abroad to form an advisory Council of Romanians outside the borders. Constant dialogue with Romanians abroad and providing the possibility for their representatives to convene periodically is necessary to constitute a debate.

This body, set up at the initiative of the Presidential administration, will be the formal framework within which the most important topics involving and preoccupying Romanian communities, their transposition into public policies and harmonization with those initiated by the State institutions in order to improve performance of the obtained results are to be debated.

In this order of ideas, we show that in Romania, until November 6, 2019, the Ministry of Romanians Abroad existed. It was disbanded[18)] and instead of it and the Eudoxiu Hurmuzachi Institute, the Government established a department without legal personality under the Prime Minister's responsibility, by taking over activity in the field of Romanians in diaspora and specialized structures in this field.

---

18) See Andrei, N., 2018, Ministerul Românilor de Pretutindeni şi Institutul „Eudoxiu Hurmuzachi" au fost desfiinţate. În locul lor, Guvernul a înfiinţat un Departament, fără personalitate juridică, în subordinea Premierului, https://www.activenews.ro/stiri-diaspora/Ministerul-Romanilor-de-Pretutindeni-si-Institutul-%E2%80%9EEudoxiu-Hurmuzachi-au-fost-desfiintate.-In-locul-lor-Guvernul-a-infiintat-un-Departament-fara-personalitate-juridica-in-subordinea-Premierului-158682.

3. Public Policies concerning Diaspora

With regards to the public policies developed by the Romanian State, on diaspora, from the research carried out, we found that the state, through its government, drafted the government program on public policies for the period 2018-2020[19].

In this governance program, in the chapter entitled *"Policies for diaspora"* we have identified that, starting from the concerns and problems of Romanian and foreign communities, the Government presents a number of public policies that are to be implemented in the period 2018-2020[20].

In this context, the following are shown:

- Historical communities around the boarders are particularly interested in the:
  - Respect for the rights of persons belonging to the communities of Romanian minorities in the neighboring countries of Romania, in accordance with European standards;
  - Affirmation, preservation and promotion of cultural, linguistic and spiritual identity;
  - The right to learn and freely express themselves in Romanian language;
  - The development and affirmation of the associative environment of those communities;
  - The study and developments related to the European integration process of the Republic of Moldova;
- Diaspora mobility has a specific problem primarily linked to:
  - Equal and non-discriminatory treatment, guaranteeing full exercise of European citizenship, full integration into the Schengen area and eliminating restrictions on the labour market (Labour law, free movement, trafficking in human beings, etc.);
  - Relationship with the authorities of the Romanian State;
  - Situation of families remaining in the country
  - Ways of reintegration of Romanians from Diaspora wishing to return to the country
  - Affirmation, preservation and promotion of cultural, linguistic and spiritual identity;
  - Development and affirmation of the associative environment;
  - Regional and international political developments (Brexit, xenophobic and racist manifestations, the migrant crisis).

In view of observing economic rights, the application of policies for Romanians abroad will be done in the new legislative framework offered by the 2017 update of Law No. 321/2006 on the regime for granting of non-reimbursable financing for

[19] See Lex5, https://lege5.ro/Gratuit/gi3donzxgi2q/politici-pentru-diaspora-program?dp=gi2tcobuga2dcny.

[20] See Government Program on public policies for the period 2018-2020.

programmes, projects or actions to support the work of Romanians abroad and their representative organisations.

The changes mainly targeted greater accessibility to the non-reimbursable funds offered by the Romanian State for Romanian citizens/ethnic abroad and better adaptation of public policies to thematic and geographic priorities in the field. It will continue to follow the adaptation of the existing regulatory framework to new realities in diaspora communities.

Legislative updates include supporting the process of Romanians returning from abroad, notably by facilitating the match between workforce and work demand, as well as by providing assistance and advice for reinsertion into the market and development of entrepreneurial initiatives.

To this end, facilitating the process of recognition in Romania of formal and informal qualifications obtained by Romanians who worked/are working abroad will also be aimed.

At the same time, the amendment of the legislative framework will also be envisaged so as to enable the local public administration authorities in Romania to conclude partnering/cooperation agreements and local public administration authorities in other States to achieve and finance investment objectives, common cultural sports, youth and educational programmes, vocational training placements and other actions contributing to the development of friendship relations.

The institutional plan will be aimed at strengthening the administrative capacity of the Ministry for Romanians Abroad, with a view to better coordinating programmes and projects that are for Romanians abroad. In this respect, an important role will be that of the interinstitutional group for Romanians abroad.

What are, in particular, the measures proposed/ taken to support diaspora?

The government program on public policies for the period 2018-2020, in the chapter entitled "Policies for Diaspora", provides as follows:

Program for preservation, development and affirmation of Romanian identity-CULTURE

This program aims, on the one hand, to preserve, develop and assert the ethnic, cultural, religious and linguistic identity of neighbouring Romanians, those from emigration and the diaspora of mobility, as well as strengthening the links between Romania and the Romanian communities outside the country's borders. In this respect, the Government will continue the programmes foreseen in the existing strategy, which, over time, have proved useful to the purpose for which they were initiated, and new ones will start. The government will continue the "Constantin Brâncusi" program. There will be increased emphasis on promoting Romanian cultural and spiritual values, in the public opinion of the state of residence/home, the support of Romanian local traditions and customs, as well as better identification and promotion of Romanian elites.

The program will be supported by:

- setting up 5 (five) new cultural centres of Romanians abroad and supporting existing ones;
- conducting studies on the heritage of Romanian communities;
- organizing and supporting the current activity of Romanian libraries;
- supporting the affirmation and promotion of artists of Romanian origin from abroad;
- the establishment of the Romanians Abroad museum, in virtual format and by identifying and arranging an establishment in the municipality of Bucharest;
- recovery, restoration, maintenance of museums, memorial houses, historical and art monuments, etc. The arrangement of the Memorial House "Aron Pumnul" of Cernăuți and the organization of a museum in the memory of Mihai Eminescu and Aron Pumnul will constitute a priority;
- the opening of 5 (five) new information centres of Romania on Comrat's model.

Program for preservation, development and affirmation of Romanian identity -EDUCATION

In the field of education, the government will continue the "Nicolae Iorga" programme, which aims to support the integration process of Romanians residing abroad parallel to preserving and affirming the linguistic identity of Romanians abroad and forming new generations representing Romania and Romanian interests abroad.

The achievement of these objectives is to be done by:

- organizing language, Romanian culture and civilization courses in university centres and schools from countries with Romanian communities;
- supporting the establishment of teaching classes in the Romanian language;
- development and modernisation of the network of schools, kindergartens, libraries and cultural centres in countries with Romanian communities focusing on neighbouring communities;
- organizing summer camps and schools in Romania. Thus, the "ARC" project, where in 2017 more than 2000 students from Romanian communities abroad participated, will continue and will be extended for the winter period;
- continuation of the program for distribution of manuals, handbooks and other materials of an identical nature among the Romanian communities abroad;
- support for students and Romanian language teachers from Ukraine through an educational package that will include financial support in the form of scholarships and the expansion of this initiative at a later stage and in other communities;
- continuation and extension of training programmes for diaspora specialists.

Program for preservation, development and affirmation of Romanian identity - SPIRITUALITY AND TRADITION

In the field of spirituality and tradition, the government aims to preserve the spiritual identity and respect for the religious freedom of Romanians abroad by continuing the "Andrei Şaguna" program.

Thus, are proposed for support:

- organizing, within paries, of traditional events;
- supporting the development of educational actions within paries;
- supporting charitable actions initiated by churches;
- building, preserving, repairing churches in places where there are large communities of Romanians.

Program for preservation, development and affirmation of Romanian identity - MASS-MEDIA

When it comes to media, the Government will continue the "Mihai Eminescu" programme in order to preserve and assert the cultural identity of Romanians, the promotion of Romania and the values of Romanian communities, the preservation of better links with the country of Romanians residing abroad and defending the interests of Romanians ' communities.

In this respect, there will be support and expansion for:

- supporting the functioning of the Romanian language media in the virtual environment;
- organizing and supporting vocational training stages;
- supporting partnerships between the media in the country and the foreign Romanian language media;

development of the common communicational space with the Republic of Moldova and its extension to other neighbouring countries.

Program for preservation, development and affirmation of Romanian identity – CIVIL SOCIETY

Civil society will be supported by the government through the "Dimitrie Gusti" programme, aiming to support, consolidate and expand the associative environment in the communities inhabited by Romanians and solidarity that the civil society generates among the Romanian communities.

Other objectives will be pursued by:

- encouraging the initiation of large-scale projects;
- supporting networking activity between associations or between associations and authorities;
- supporting projects and programmes for knowledge of the rights that Romanians have in their home/residence countries.

The implementation of the "Discover and know Romania" project will be continued, aiming to ensure the relational continuity of Romanians outside the borders with Romanian language, the spiritual component, ethnic identity and Romanian cultural heritage by organizing itinerant activities in Romania. Hundreds of young Romanians from outside the borders, especially from neighbouring states will participate in these activities.

– 2018 Centenary

An objective that was sought to benefit from the government's support was the "2018 Centenary ". It should be approached in the light of preserving and promoting the idea of belonging to Romanity, promoting the image of Romania and the education of the young generation in the spirit of respect for Romanian values.

To this end, the government should support:

- local celebration initiatives of the "2018 Centenary" (by creating the "Centenary Fund 2018");
- organizing conferences, seminars, symposia, cultural actions, etc. with the theme "Centenary 2018";
- supporting large-scale actions contributing to the promotion of Romanian values in countries where there are significant Romanian communities;
- access to the contribution that artists of Romanian origin from abroad have had in promoting Romanian culture;
- initiating the project "Romanian Champions in Diaspora" which seeks, in the context of the centenary year, the expansion to the diaspora communities of the national programme "Romanian Champions in school, high school and university";
- organizing the "Centenary by partnering" programme, the campaign to twinning the counties of Romania and the sectors of Bucharest with similar administrative-territorial units in the countries where there are Romanian communities;
- initiating the project "100 for Centenary", which seeks to award and promote Romanian personalities outside the borders.

Programme for the protection of the rights, freedoms and dignity of Romanians

The government will guarantee the unrestricted expression of political options by all Romanians. In this respect, the Government will ensure, in the executive plan, all the conditions for Romanians, including those outside the country's borders, to exercise their right to express their political choices.

At the same time, the Government will support Romanian communities in such a way as to ensure respect for human rights and fundamental freedoms and non-discrimination by the administrations of the countries in which they live. The Government will provide support and assistance services, in agreement with the rules in the field and with the status of Romania as EU member State.

In bilateral relations with the neighbouring and Balkan states in which ethnic Romanians live, the government will pursue the proper application of European rules on the treatment of national minorities in the territory of a State, as well as a balance between the rights provided in this area to national minorities by the Romanian State and those insured to the Romanian minority in the territory of the partner state.

The Government will act for the access of Romanian workers to the labour market to be non-discriminatory. At the same time, the Government will contribute to strengthening the partnership between the Romanian authorities abroad in order to find new solutions to the problems faced by citizens, in view of defending the rights, freedoms and the dignity of Romanians.

The number of consulates will increase according to existing demands and conditions. The quality of consular services will be improved for the purposes of applying new technologies and new means of communication. At the same time, itinerant consulates will find their usefulness in areas where the conditions for setting up new consulates are not met.

The government will support the preservation and affirmation of Romanian identity from an ethnic, cultural, religious and linguistic standpoint.

An important role in this process will continue to have the Interdepartmental Action Group, established in 2017, which assesses and proposes measures in cases of abuses against Romanian citizens abroad.

Programme to support the process of integrating Romanians into countries where they live, study or work

The government, parallel to its support for the preservation, development and affirming of Romanian identity, will also pursue the simplification of the integration process of Romanians in countries where they live, study or work.

Thus, the Government will make every effort to facilitate contact with local and central authorities in the adoption countries.

At the same time, Romanians will be encouraged to participate in decision-making in the countries where they live, also taking into account existing legislation.

Projects and programmes which seek a better informating on local working and living conditions will be encouraged, in this respect the associative environment, civil society, the church and the media having a very important role to play.

The informing campaign will be continued: "Information at home! Safety in the world! ", intended for Romanians who want to work, study and live abroad. The general object of this national campaign is to increase the knowledge and awareness of Romanian migrant workers on their rights in the EU states.

In parallel with the preservation of Romanian identity, integration into the local education system will be encouraged. The Government will initiate information campaigns for Romanians to leave the country through institutions that have expertise in the field for integration to be an easier process.

4. Conclusions

Past times have marked the role of the state in the lives of citizens as a low one. This principle, however, began to prove its limits quite quickly, as state power intervened in many areas. Today, as a result of a gradual transformation, practically the overturning

of the principle has been achieved, and the role of the state, through its authorities, has become quasi-absolute in supporting its citizens, both in identifying them the most important resources in order to consolidate a healthy life in the country of origin, but more to the support of those who have left their country, identifying opportune ways to reintegrate "home", facing all the factors that could lead them to (re) immigration.

Important to note from the very beginning, is the fact that, in Romania, there are a series of Laws (see Law5), which come to support the Romanians from the diaspora, on areas such as:

- the support given to Romanians abroad;
- establishment of Romanian community centres abroad;
- approval of the National Strategies for Romanians abroad;
- the vote in the diaspora;
- taxation of income from abroad and avoidance of double taxation.

Between state bodies and civil society, national institutions must fulfil and fulfil a function that some call "bridge", and others "articulation", realizing through partnerships with both state and non-governmental entities a context for dialogue and cooperation in the common interest of advancing on the difficult, but generous path of the actual respect of Romanians in diaspora.

In this order of ideas, by way of example, we indicate that in Romania there is the Department for Relations with Romanians outside the Borders. It represents the structure of the Presidential Administration that ensures the relationship between the President of Romania and Romanians abroad and the communities to which they belong. To support Romanian citizens and communities outside the boarders, the department aims to initiate action directions leading to the correct implementation of the main commitments made publicly by the President of Romania.

Also, we show that in Romania, until November 6, 2019, the Ministry of Romanians Abroad existed. It was disbanded[21)] and instead of it and the Eudoxiu Hurmuzachi Institute, the Government established a department without legal personality under the Prime Minister's responsibility, by taking over activity in the field of Romanians in diaspora and specialised structures in this field.

With regards to the public policies developed by the Romanian State, on diaspora, from the research carried out, we found that the state, through its government, drafted the government programme on public policies for the period 2018-2020.

Such programme refer to:

- Program for preservation, development and affirmation of Romanian identity-CULTURE;
- Program for preservation, development and affirmation of Romanian identity-CULTURE;

21) See Andrei, N., 2018, Ministerul Românilor de Pretutindeni şi Institutul „Eudoxiu Hurmuzachi" au fost desfiinţate. În locul lor, Guvernul a înfiinţat un Departament, fără personalitate juridică, în subordinea Premierului, https://www.activenews.ro/stiri-diaspora/Ministerul-Romanilor-de-Pretutindeni-si-Institutul-%E2%80%9EEudoxiu-Hurmuzachi-au-fost-desfiintate.-In-locul-lor-Guvernul-a-infiintat-un-Departament-fara-personalitate-juridica-in-subordinea-Premierului-158682.

- Program for preservation, development and affirmation of Romanian identity -EDUCATION;
- Program for preservation, development and affirmation of Romanian identity - SPIRITUALITY AND TRADITION;
- Program for preservation, development and affirmation of Romanian identity - MASS-MEDIA;
- Program for preservation, development and affirmation of Romanian identity – CIVIL SOCIETY;
- Programme for the protection of the rights, freedoms and dignity of Romanians
- Programme to support the process of integrating Romanians into countries where they live, study or work.

As we can see, the state, through its institutions, is concerned about developing public policies to support the diaspora. But it is not enough. More important is that they be, for real, implemented.

As a recommendation, we believe that there should be a legislative uniformity on the rights, obligations and public policies of diaspora, so that Romanians in diaspora could cover it more easily and could understand with greater clarity all the rules of Law applicable thereto.

REFERENCES

1. Andreescu, M., 2010, *Raport internațional: Diaspora românească, a cincea cea mai numeroasă din lume/Aproape jumătate dintre românii cu studii universitare care lucrează în străinătate au locuri de muncă destinate muncitorilor necalificați*. https://www.g4media.ro/raport-international-diaspora-romaneasca-a-cincea-cea-mai-numeroasa-din-lume-aproape-jumatate-dintre-romanii-cu-studii-universitare-care-lucreaza-in-strainatate-au-locuri-de-munca-destinate-muncito.html
2. Balabanova, E.; Balch, A., 2010, *Sending and receiving: The ethical framing of intra-EU migration in the European press*, in European Journal of Communication, Vol.25: issue 4.
3. Brezoianu, D.; Oprican, M., 2008, *Public Administration in Romania*, Bucharest, Romania: C.H. Beck Publishing House.
4. Ciocea, M.; Cârlan, A., 2012, *Debating Migration as a Public Problem: Diasporic Stances in Media Discourse*, in Romanian Journal of Communication and Public Relations, 14(4).
5. de Laubadere, A., 1973, *Traite de Droit Administratif*, 6th edition, vol I, Paris, France: L.G.D.J.
6. Elliot, E.; Payne, J.; Ploesch, P., 2007, *Global Migration, Social Change and Cultural Transformation,* US: Palgrave McMilan.
7. Fine, Sarah & Ypi, Lea., 2016, *Migration in Political Theory. The Ethics Movement and Membership*, Oxford, Great Britain: Oxford University Press.
8. Georgiou, M., 2006, *Diaspora, identity and the media: diasporic transnationalism and mediated spatialities*, New York, United States: Hampton Press.

9. Gheorghe, M., 2002, *The Inevitable Law*, Bucharest, Romania: Lumina Lex Publishing House.
10. Kaczmarczyk, P; Okólski, M., 2005, *International Migrations in Central and Eastern Europe: Current and Future Trends, UN Expert Meeting on Migration and Development*, New York, United States of America: United Nations.
11. Lafleur, J.M., 2013, *Transnational Politics and the State. The External Voting Rights of Diasporas*, New York, United States of America: Routledge Publishing House.
12. León–Ledesma, M.; Piracha, M., 2004, *International Migration and the Role of Remittances in Eastern Europe*, International Migration, Vol. 42, Issue 4.
13. Marinescu, V., 2011, *Analiza comparativă a prezentării în ziarele centrale naţionale a fenomenului migraţiei forţei de muncă româneşti în Uniunea Europeană*, Raport de cercetare, Grant CNCSIS PN II IDEI ID 1113, 2009–2011 *Fenomenul migraţiei forţei de muncă şi formarea publicului diasporic: impactul asupra spaţiului public şi practicilor instituţionale*.
14. Moroianu-Zlătescu, I., 2007, *Drepturile omului – un sistem în evoluţie,* Bucharest, Romania: I.R.D.O. Publishing House.
15. Robins, K.; Aksoy, A., 2016, *Transnationalism, Migration and Challenge to Europe. The enlargment of meaning*, New York, United States of America: Routledge Publishing House.
16. Roman, M.; Voicu, C., 2010, *Câteva efecte socioeconomice ale migraţiei forţei de muncă asupra ţărilor de emigraţie*, in Economie teoretică şi aplicată, vol XVIII.
17. Şandor, S.D., 2013, *Metode şi tehnici de cercetare în ştiinţele sociale,* Suport de curs pentru studenţii Facultăţii de Administraţie Publică, din cadrul Universităţii Babeş-Bolyai, https://docplayer.net/21004557-Metode-si-tehnici-de-cercetare-in-stiintele-sociale-sorin-dan-sandor.html.
18. Silasi, G.; Simina, O., 2008, *Migration, Mobility and Human Rights at the Eastern Border of the European Union – Space of Freedom and Security,* Timişoara, Romania: Universităţii de Vest Publishing House.
19. Thévenot, L., 2006, *L'Action au pluriel: sociologie des régimes d'engagement*, Paris, France: La Découverte.
20. IOM (2003): World Migration 2003 – Maps, Geneva: International Organization for Migration
21. Lex5,https://lege5.ro/Gratuit/gi3donzxgi2q/politici-pentru-diaspora program?dp=gi2tcobuga2dcny
22. Government Programme on public policies for the period 2018-2020.

ABOUT THE AUTHOR

Ioana -Cristina Riedl (Voroniuc), Ph.D. in Administrative Sciences, Doctoral School of SNSPA; Scholarship holder - The Scholarship SNSPA Programme for the Investigation of the Romanian Scientific Diaspora *„Spiru Haret"* (PN-III-P1-1.1-BSH-2-2016-0005)

Email: ioanav91@gmail.com

5 G Revolution and the Right to Health

Denis-Roxana GAVRILĂ

ABSTRACT

In a time when the society is dependent of the Internet and everything that involves its use, and competition on the international market is fierceful, the emergence of a new technology can only arouse interest and increase the number of users.

In this context, the question arises how safe 5G technology is for humans and the environment, as more and more researchers begin to discover the harmful effects of its implementation. This is why it is important for international human rights institutions to draw attention to the authorities, when they are aware of possible violations of these rights.

The article wishes to underline the importance of human rights institutions, such as the Ombudsman in respecting the right to health and in effective involvement in stopping any scourge against human and its best interests. Thus, the application of the precautionary principle must be respected, as more and more voices, with expertise from the public space, draw attention to the latent danger of 5G technology.

KEYWORDS*: Human rights, environment, Ombudsman, 5 G technology, health protection*

1. Introduction

The right to a healthy environment is one of the fundamental human rights indispensables to humanity.

With the UN Stockholm Convention of 1972, in which the participating countries, in number of 113, brought to the fore the destructive activity of human beings in terms of relation with the environment, the need for national human rights institutions and implicitly of the fundamental right to a healthy environment, closely linked to the right to life and physical and mental integrity, was evident.

During the conference, several topics were discussed, namely global pollution, disappearance of resources, environmental degradation, disappearance of certain species and the need to improve the standard of living of people, etc[1)].

[1)] Moroianu Zlătescu, I., 2007, *Human rights: a system in evolution*, Bucharest, Romania: IRDO Ed., p. 168.

Theoretical aspects

Last but not least, the new millennium has brought with it the protection of fundamental values, such as freedom, as the supreme right that implies respecting the dignity of the human being, whether male or female, with all that it entails. Then there are the other rights, namely: equality in rights and opportunities, between men and women, solidarity between individuals and society, in accordance with the principles of equity and social justice, tolerance towards all human beings, regardless of race, nationality, religion., sex, respect for the environment, so for nature, a principle that implies the management of the resources that have been given to us in a prudent and judicious manner, the responsibility, which implies the management by the states of the economic and social development of the world and of the threats to address of international peace and security. These values were stated in the Millennium Declaration, a United Nations conception. Even though these values are outlined in the document in the context of relations between states, they are human rights, from where they were, in fact, taken over and extended to the level of international cooperation, taking into account both the obligations of the states towards their own citizens, as well as and the collective responsibility they have assumed in the conditions of increasing interdependence and deepening the process of globalization[2)].

The year 1991 is of particular importance for the national institutions for the promotion and protection of human rights because Paris was the host of the international meeting on these issues. The conclusions of this seminar were retained and used by Resolution no. 54/1992 of the UN Commission on Human Rights, entitled Principles on the Statute of National Institutions, briefly named "Paris Principles", and subsequently, the General Assembly of the United Nations approved them by Resolution no. 48/134 of December 20, 1993.

These "principles" were intended to encourage states to set up or strengthen national human rights institutions.

Both the Declaration and the Program of Action, adopted by the 1993 World Conference in Vienna, reaffirmed the paramount role of national institutions, "especially as advisers of the competent authorities, in the action aimed at remedying violations of these rights. as well as regarding the dissemination of information on human rights, education in this field"[3)].

One of the most beautiful and useful human rights institutions is the ombudsman institution. Whether we speak of the European Ombudsman, the Ombudsman of the Republic (France) of the People's Advocate of Romania, we cannot omit the *Treaty on European Union*, signed by the European Council on February 7, 1992, by which this institution was established. By the way this institution was conceived, it must represent a guarantor of respect for human rights, a mediator, a citizen trainer, for

---

2) Moroianu Zlătescu, I., 2007, *Human rights: a system in evolution*, Bucharest, Romania: IRDO Ed., p. 200.

3) Moroianu Zlătescu, I., 2007, *Human rights: a system in evolution*, Bucharest, Romania: IRDO Ed., p. 4.

the purpose of his education in relation to bureaucracy, as well as an instrument to protect it.

Dean M. Gottehrer, former president of the Association of Ombudsmen in the United States compares the Ombudsman to a canary in the hands of democracy, who, if it benefits from good legislation in which it can carry out his activity, will be able to sing, demonstrating through its singing, the state of health of itself and its country[4].

Regarding the right to health, it cannot exist separately from the right to a healthy environment and to the right to life and physical and mental integrity.

In recent years we are witnessing a breakthrough in technology, to a degree that we cannot cope with. We are connected to technology, in all our activity and we are almost powerless when some of the technology we are surrounded with does not work at normal parameters.

But is everything that surrounds us only for our own good, or are there hidden dangers that, in time, become the enemies of man, the one who adopted the technology, as an inseparable tool?

2. Scientific research

In this sense, many voices are raised today at the national and international level, requesting stopping the implementation of 5G technology, because its effects will, in a short time, affect the human, through the consequences, which can develop, at the health level. Prominent scientists continue to draw attention at the onset of 5G wireless networks, which promise customers faster internet speeds. They express concern, first and foremost, about climate change, as 5G networks will use a frequency band very close to that used by satellites to observe water vapor, which would lead to disastrous weather events[5]. There are already studies at international level, which are the basis of many petitions regarding the potential effects that the implementation of 5G technology can have, not only on health, but also on the environment, respectively:

Affecting DNA structure, Oxidative damage, Interruption of cellular metabolism, decreased melatonin secretion, sleep disturbances, influence of weather forecasts that warn about possible extreme weather events, electromagnetic pollution, dermatological disorders, vision disorders, neurological disorders, depression & anxiety, carcinogenic risk, constant migraines, increased permeability of the blood-brain barrier,

In 2011, the World Health Organization stood that radio frequency radiation is a possible cancer factor 2B.

Switching from 3G to 4G does not mean the same as switching from 4G to 5G. 5G technology does not only mean 3.5 - 5.5 GHZ but can include equipment emitting up to 24GHZ and even above, up to 71GHZ. EU Member States, with a very high

[4] DEAN Gottehrer, M., *Fundamental Elements of An Effective Ombudsman Institution*, Stockholm 2009 Conference, International Ombudsman Institution, p. 1.

[5] https://www.theverge.com/2019/10/28/20936197/5g-world-radiocommunication-conference-weather-forecasting-egypt

level of development, have already rejected this technology. The Belgian Minister of the Environment has taken a stand against the implementation of a pilot project to provide wireless internet at 5G speed, in the country's capital.

"I cannot encourage such a technology if the radiation standards, which must protect the citizen, are not respected, with or without 5G," said Environment Minister Céline Fremault. "The residents of Brussels are not guinea pigs, they can sell their health for profit[6)].

On the other hand, there are signals at the level of the insurance companies, thus, the famous insurance company, Lloyds of London, refuses to insure the health risks caused by the 5G wireless technologies.

There are researches in the field that have been published in the BioInitiative Report, a report that was prepared by 29 researchers worldwide, in which the biological effects caused by exposure to radio frequencies and radiation are described in detail. 5G, such as cell dysfunction, free radical formation[7)].

Astrophysicist Aurélien Barrau drew attention a severe alarm about 5G technology.

On March 10, 2019, the astrophysicist posted on his Facebook account his reaction to the news of the launch of 5G technology. "So we are preparing for the 5G telephony network. Active. With frenzy and impatience! We will mount countless antennas, destroy the old ones, renew everything. This is the archetype that leads to disaster. Our structural inability to say it is enough, we do not need, nor crave for this useless pleasure, we reject this lethal idea, according to which everything that is technologically possible must be put into practice, just for the sake of pure consumerism. The question is not whether to build nuclear or wind power stations to supply all these[8)].

Researchers in the field draw attention to the harmful effects of radiation on plants, so on consumer foods.

And Armenian researchers have shown that low-intensity MWs "invoke changes in the spectrum of peroxidase isoenzymes of wheat shoots." Peroxidase is a stress protein in plants. Thus, that 5G will be just as harmful to plants as it is to humans.

On the other hand, the activity of birds and bees will be affected by the effects of 5G technology, according to another researcher in the field, Alfonso Balmori. He studied the behaviour of sparrows and rattlesnakes, concluding as a result, "deterioration of feathers, problems of locomotion, the disappearance of some species and the death in worrying number of other species

A study by the Loyola College in Chennai in 2012 concluded that out of 919 studies on birds, plants, bees and other animals and humans, 593 of them showed the worrying impact of RF-EMF radiation.

---

6) https://www.brusselstimes.com/brussels/55052/radiation-concerns-halt-brussels-5g-for-now/

7) https://bioinitiative.org/

8) https://www.facebook.com/photo.php?fbid=2149628725115796&set=a.579149472163737&type=3&theater

Even in Romania, the voices of those who oppose 5G technology are few, so that there were several debates and conferences on this topic.

In Romania there is a draft emergency ordinance, which was launched in public debate, on the website of the Ministry of Communications and Information Technology, to simplify the procedure for authorizing the execution of construction works on the physical infrastructure of electronic communications networks. Thus, the urgent installation of the components of the 5G communications networks and the functioning of the RO-ALERT system are envisaged, allowing the installation of the electronic infrastructure on any kind of terrain.

One question that remains is whether there will be public institutions that will take the lead, as has been done in other EU countries.

Maybe the Ministry of Environment should review the studies in the field to show the effects that this new technology could develop among the population of Romania.

National Ombudsmen, through their legal prerogatives, can take attitude and signal certain problems that they, in their turn, can find out from the media, or from any other source, aiming at possible violations of citizens' rights and freedoms. Whether it is ex-officio reports, investigations, special reports, it can trigger certain alarm signals, acting as a mediator between the citizen and the public authorities.

Every 3 or 4 years the Global Radiocommunication Conference takes place, this year, in Egypt, at Sharm el-Sheikh, where authorities around the world will conclude international agreements on how companies will be able to use the frequencies for 5G transmissions.

But all these changes do not give us the right to remain indifferent to what is happening around us.

3. Conclusions

Even if the new technology comes packaged attractively, pointing out the speed will have implementing 5G technology, ombudsman institutions should not remain indifferent to the possible effects that its implementation will bring. Through the attributions they have been invested by the law, it must be ensured that the fundamental rights provided by the Constitution will be respected.

Thus, a debate in Parliament in such a sensitive field for our country, will be necessary, as constitutional rights are being discussed, and in the field of constitutional laws no emergency ordinances are adopted, according to the provisions of paragraph (6) of art. 113 of the Romanian Constitution.

On the other hand, the Ombudsman must ensure that the precautionary principle, which European states have already adopted, is respected due to the alarm signals received from scientists and environmental organizations.

Therefore, the role of the institution is to monitor, at all times, the observance of the rights and freedoms of citizens, whether it is the respect of the right to life and physical and mental integrity, or the respect of the right to health or to the healthy environment.

REFERENCES

1. Activity reports of the People's Advocate Institution 2017-2018.
2. Balan, E., 2008, *Administrative institutions*, Bucharest, Romania: Ed. C.H. Beck.
3. Bioinitiative Report 2014-2019, a Rationale for Biologically-based Exposure Standards for Low-Intensity Electromagnetic Radiation.
4. Bizjak, I., 1998, *The Role and Experience of an Ombudsman in a New Democracy, in The International Ombudsman Yearbook*, The Hague, Kluwer Law International, Vol. 2.
5. *Moroianu Zlătescu, I.,* 2012, *European Law* , Bucharest, Romania: Pro Universitaria Ed.
6. *Moroianu Zlătescu, I., 20 years since the adoption of the Paris Principles. In Human Rights*, NR. 3/2013.
7. *Moroianu Zlătescu,I,* 2017, *The importance of human rights education in the U.N.* Critical Point 22 (3), 11.
8. *Moroianu Zlătescu,I,* 2019, *The Global Compact on the Right to the Environment - Unique Global Legal Framework for Environmental Protection,* I, Critical Point, 1.
9. *Moroianu Zlătescu,I,* Marinică, E, 2017, *Law of the European Union*, Bucharest, Romania: Academic University Ed.
10. *Moroianu Zlătescu,I,*, 2017, *Human rights - present and future in the European Union* Critical point 21 (3), 12.

ONLINE RESOURCES

- http://www.brusselstimes.com/brussels/14753/radiation-concerns-halt-brussels-5g-for-now, viewed 11 October, 11.00.;
- https://www.telecompaper.com/news/germans-petition-parliament-to-stop-5g-auction-on-health-grounds--1287962, viewed 11 October, 13.00;

  – https://takebackyourpower.net/5g-the-dominoes-are-starting-to-fall/, published April 4, 2019 viewed 15 October, 9.00
- https://zero5g.com/2019/california-supreme-court-sides-with-cities-in-small-cell-faceoff/, viewed 20 October, 11.00

  – https://takebackyourpower.net/5g-vaud-switzerland-adopts-moratorium/, viewed 22 October, 11.45

  – https://www.letemps.ch/suisse/geneve-adopte-une-motion-un-moratoire-5g viewed 23 October, 10.00

ABOUTH THE AUTHOR

Denis-Roxana Gavrilă, PhD., National School of Political Studies and Public Administration, Bucharest, Romania.

E-mail: denirodenis2014@gmail.com

The concept of organization and methods in the Science of Administration

Iulian NEDELCU

ABSTRACT

Daily reality shows a rapid increase in shares volume of the administration in general, towards public administration.

Efficiency can be reduced by excessive bureaucracy due to the slow circulation circuits or complicated documents coming from those administered to the administration or vice versa.

The necessity to methodically organize the administrative action in a rational manner, has determined the appearance of the notion of organization and method[1)].

Daniel Moulias[2)] considers that the concept of organization and method[3)] comprises of two components: organization - component having concrete character - and method - abstract component, in the form of ways of thinking.

Charles Debbasch[4)] defines organization and method as a set of techniques intended to improve the functioning of the public administration.

In specialized literature the definition was formulated, to which we subscribe, that organization and method constitute a set of processes and methods that can be used to obtain a rational organization of public administration action and on the basis of this organization there is effective action. Although the result of the organization and method is improving the functioning of the public administration, thus improving the whole administrative action, however, the scope of application remains exclusively that of the organization of the administrative action.

Because private administration and public administration have different characteristics, they have different methods of organization.

KEY WORDS: *private administration, public administration, the concept of organization, the science of administration*

1) Nedelcu, I.M., 2009, *Administrative law and elements of administration science*, Bucharest, Romania: Ed. Universul Juridic.

2) Moulias, D., 1966, *Organisation et methodes în Traité de science administrative*, Paris, France: Ed. Mouton, p. 532.

3) In the specialized works of administration science the notion is known under the initials O.M.

4) Debbasch, C., 1989, *Science administrative*, Paris, France: Dalloz.

1. Introduction

Management, a term that has emerged in the context of business management applied in public administration, pursues specific goals such as[5]: decentralization of responsibilities and rationalization of the decision, approaching the administration of those administered, creating a working environment that facilitates the accomplishment of tasks in administration, increasing the efficiency of administrative activity.

The specific of the social environment in which the administrative act is realized, confers the particularities of the methods of organization that cannot be applied to the administration of other countries that have their own social, historical, cultural particularities.

The organization of any administrative action involves the following steps:

- stage I: information and analysis stage;
- stage II: study stage;
- stage III: synthesis stage.

In the first stage, there is extensive information and research on the whole complex that is the object of the organization.

The information is found with various techniques, specific to the gathering of information, their grouping and representation.

For collecting information from public administration officials, the method of the interview is used for the administrative purpose that is the object of the research.

To present the organizational relationships and to express the frequency of a certain phenomenon in the organizational action, it has is resorted to graphical and statistical techniques.

In the study phase of the informative material, the critical method is used to highlight the poor aspects of the organization.

In the synthesis stage, rational organization solutions are formulated, based on those found in the previous steps, using the synthesis method.

In the information and analysis phase, the organizer must gather all the information possible to know about the component elements of the analysed organ and about the actions that it must carry out, from the following sources:

- normative acts and individual acts that include dispositions or relations regarding organization and functioning of the analysed body;
- officials of the analysed body, using the interview method;
- by observing the organizer personally on the phenomenon studied.

The interview technique involves taking interviews with the officials they hold key positions within the investigated body or even to all officials operates in the same framework[6].

---

5) Baratin, L.; Guedon, M.J., 1971, *Organisation et methods dans l'administration publique*, Paris, France: Ed. Berger, Levrault, p. 38.

6) To deepen the problem of the interview technique it is recommended to see: Daniel Moulias, *op. cit.*, p. 260, Jerzy Starosciak, *op. cit.*, p. 18, Alexandru Negoiță, *op. cit.*, p. 247-248. The interview should start with the head of the administrative body studied, then continue with the officials holding the key positions in the respective body and the interview can be extended to all officials,

As soon as the organizer collected all the information that was accessible to him (regarding the actions that the administrative body studied carries out, to the circuits administrative actions through which these actions are carried out, on human and material resources which is available) uses the analytical method[7] to interpret and draw some bonuses.

Following the information and analysis stage, there is an image of the situation existing and the organizer must select the points to be improved from the point of

which presents *"the advantage that reinforces the conviction that their activity is valued today and that they participate in the creation of a collective work*" (Al. Negoiţă, *op. cit.*, p. 247). In order for the interview subjects to be targeted and to formulate honest answers, the organizer must have the ability and approach to them, obviously avoiding an attitude of inspector or controller. This approach to those interviewed will use the organizer in the implementation phase of the solutions formulated in the synthesis stage.

7) To this method, as D. Mulias also shows in *op. cit.*, observing the facts and acts of which the organizer must be oriented according to the following benchmarks that form the main axis of the research: structure object; workstations; documents and positions; the administrative circuit; the material means used. The structure object is a landmark with which the organizer establishes the theoretical outline of the service, that is: the tasks entrusted to the studied administrative body and what goals are pursued through the action it. In this approach, the organizer uses the legal regulations regarding the investigated body, reports, reports, investigations coming from public administration bodies that have management duties, the information provided by the officials by the interview method. Once the theoretical outline of the study object has been established, the structure of the study will be investigated by examining its hierarchical and functional lines and by studying its relations with other organs of the public administration. Using the sources already mentioned, the organizational chart will be drawn up of the analyzed service specifying itself together with the internal structure and the relations with other organs of the administration public or two separate organizational charts, one with internal structure and the other presenting the reports with the mentioned structures. The job postings guide guides the organizer in specifying the positions of officials and duties they have (L. Baratin, M.J. Guedon, *op. cit.*, quoted by Alexandru Negoiţă in *op. cit.*, pp. 240-242). In addition to the sources of information already mentioned, the organizer can also use the site research work of each official being able to know exactly the concrete activity of the officials, the efficiency their actions, their shortcomings and difficulties in the work process, all with a view to formulating them optimal solutions to rationalize the work of each official. In this process, the organizer will draw up sheets of duties for each official, files that will include as data: the name, the degree, the position, the use that it has, the name of the hierarchical superior; the duties that the official has; the time used to perform the tasks; the number of operations you do in a day, in a month or in one year; the level at which it intervenes for each of the operations (preparation of the decision, control or execution material of the decision); number of collaborators; the rooms in which they work; the administrative equipment used. The organizer must analyze the documents used by the administration studied and the positions on which the documents have them in the hierarchy of the respective administration. Administration documents can be classified into fixed and circulating documents. The fixed administrative documents are those kept by the studied administration and contain information on who uses it or who should own it. As an example: registers with data on the field in which the body works respective administrative. The circulating documents come to the respective administrative body for resolution. As an example: addresses, circulars, forms, opinions, notifications. To analyse the information, the organizer can use charts. The examination of the administrative circuit gives the organizer the opportunity to observe the evolution of the fact administrative throughout the employees' workstations and to conclude whether the circuit is rational or there are unnecessary routes that complicate the action of the administration. Studying the material means allows the organizer to find out what material resources he has the administrative body studied and what measures are necessary from this point of view for the efficiency of its activity.

view of the efficiency of the administrative action. The critical method will be used, the organizer using the criteria[8]:

- the criterion of the utility of the organ and of the service that it performs;
- the criterion of simplification;
- the criterion of the cost of the respective service;
- the criterion of the time in which different activities of the body are carried out public administration subject to analysis;
- the criterion of optimizing the factors of environment and human relations within of the public administration body under examination.

As we have already shown, in the synthesis stage organizational solutions are formulated rational, based on those found in the previous stages, using the synthesis method[9].

The organizer applies the method of synthesis of the heterogeneous mixture of information collected in the previous stages and elaborates a reorganization project to eliminate the deficiencies also found to rationalize the structure and action of the investigated body.

The organizer (either the one who completed the information and analysis stage and the study, or another organizer specialized in syntheses for certain fields or branches activity of the public administration) must develop an organizational project, orienting in the direction of the criteria used in the research (study) stage, more precisely, it will elaborate a reorganization scheme by adapting the particular case of the researched service to the general principles of the organization and functioning of

[8] Daniel Moulias, in *op. cit.*, presents these criteria. The criterion of the utility of the organ and of the service that it performs expresses that the organizer will report the situation found to the purpose for which the service exists, so the critical examination aims to ascertains the usefulness or uselessness of the respective service, related to both the whole of the body and its constituent elements. It is studied how actions are taken in terms of speed, opportunity and achievement timely not late. The simplification criterion can intervene only after the results of the information and analysis phase have been elaborated because it is necessary to avoid the risk that the organizer has the a priori desire for simplification, losing in view that the activity of the public administration bodies is complex in itself and that only that must be simplified which is in fact an artificial complexity generated by various factors. The criterion of the cost of the studied service implies the determination of the actual cost of the service so that in within the detailed analysis of the service an abnormally high administrative cost can be identified and conclusions can be drawn regarding the possible improvements of the activity that will determine its decrease. The criterion of the time in which the different activities of the public administration body are carried out the analysis aims to allow the organizer to take measures to improve and simplify the work and, implicitly, to reduce the cost price of the service. The research of the working time of the public administration bodies can be done by: the method of the survey that the organizer does on the activities that they perform officials, noting the time during which these activities are performed; as an alternative to the survey method, the self-analysis method of the performer himself may be performed, in case in which the official is the one who records the time duration of the activities that he performs; the method of measuring the elementary time, which is applied in the administrative operations that have character repetitive and for manual operations, a method that involves decomposing the activity studied in elementary movements, observing the time required to execute each of them.

[9] Alexandru Negoiţă, *op. cit.,* pp. 248-251.

the public administration. In the elaboration for the project, the organizer must select the necessary elements, eliminating them the unnecessary ones, and to rationally group the tasks that the officials have to perform of the investigated body starting from the draft diagram of the administrative circuit in which the operations to be performed within the service are mentioned. Must be made, then, job descriptions (job descriptions) for each official, eliminating the parallels in the activity of the officials, the proper overload or non-loading with their tasks. With these elements of detail the organizational chart is realized of the service.

The organizer also has the task of choosing the technical equipment and materials corresponding to the optimal performance of the activity within the analyzed body, establishing the optimum technique for preparing and circulating documents, choosing ways of informing the public, outlining audience programs for the public to different officials of the respective body, etc.

2. Parkinson's Law[10)]

The main objective of rationalizing administrative work is to develop efficiency administrative work.

The development of the initiative should not be seen as only a cause but also a consequence of rationalization. Regarding the tendency towards progress as an object of the rationalization of the works administrative officer, it must be shown that the administrative officer is receptive to the conditions and influences outside his/her workplace.

Any process of rationalizing administrative work involves going through some stages, as follows: the first step is the formulation of the problem until its examination, the second stage runs from the examination of the problem to the elaboration proposals, and the third stage of the problem begins with the elaboration of proposals and ends with their materialization. Rationalization does not mean exclusively technicalization, like not everything technicalization of administrative fact is a rationalization. Rationalization with help of the technicalization must be preceded by rationalization through organization, which, however, encounters great difficulties. It can be said that there is too much talk about the need to extends the endowment with cars, but little about creating the conditions under which cars would work with maximum efficiency.

The reasons for which the administration often chooses the most important route expensive, leading to ”mechanization” are: fetishizing the omnipotence of machines; knowledge, in most cases insufficient, of the operational purpose on which cars have to do it; not knowing the true meaning included in the term of rationalization; rationalization through organization also has its limits. You get into a situation in which the organization, however precise, may not replace certain means missing techniques. Then the administration must proceed with the rationalization through technicalization, that is, by using certain technical means to execute the works administrative.

10) N. Radu, Gh. Ciulbea, *World experience in local administration*, Part I, Institute Central Technical Documentation, Bucharest, 1972, pages 40-42; V.C. „1 = 2 ou les règles dâor de Mr. Parkinson”, traductions francaise, 1957.

It should be mentioned that the public administration in general and the administration local as well as financial and insurance institutions, in particular, are part of that sector in which the preponderance of natural persons will always exist, because the service direct of the human being as a side of the activity of performance and prescription exercised by administration requires permanent contact between people.

From the point of view of the topic "Modern organizational structures in administration" a research direction of particular importance is the study of the internal workforce structure.

The type of organizational structure of public administration is still characterized by the division into hierarchical steps and their rigorous subordination.

Although according to the constitutional provisions and those of the Law of administration the principle of local autonomy is increasingly present, however, in theory the organization still has a very high share of the vertically directed service connection which it connects each official to his well-determined boss. In the future, however, the field of decisions taken independently by the organs of the upper hierarchy, these are becoming more and more popular organs give way, subject to the need to submit to the demands of autonomy local and technological processes. Traditional service connection based on the principle the hierarchy will give way to the modern connection that combines the jobs that are engaged between them through technological processes and is characterized by interdependence and not by the hierarchical relationship between the superior and subordinate partners.

Especially in the local administration under the influence of social reality will take place the gradual transformation of tall structures into flat structures.

The high structure is composed of a relatively large number of organizational units with a large vertical division (by steps).

The flat structure is opposite to it, being composed of a small number of organizational layers that comprise more staff and are characterized by its distribution, vertically much narrower.

The increase of the administrative expenses is also due to an increasing tendency of the number of administrative employees according to a law known as his Law Parkinson's[11)].

An English researcher, Professor Northote C. Parkinson, began his studies there field starting from the following findings: work extends as much as needed fills all the time affected by its fulfilment; there is no link between workload what needs to be done and the number of employees to whom this work is assigned.

These findings express some of the factors that generate them over-development of administrative work, which is elastic in terms of the time it requires to be executed. If certain operations are repetitive, after a while they can be measured and standardized as runtime, and the need for a permanent adaptations of these operations to the purpose for which they are performed always exposed to the subjective interpretation, both of the operator who executes them and of to the user requesting a certain mode of execution of the operation.

---

11) N. Radu, Ciulbea, Gh., *op. cit.,* p. 40.

The increase in the number of civil servants is governed by a law that does not intervene workload factor and more than that, Parkinson shows, this increase will be the same, regardless of whether the volume of work will increase, decrease or even disappear.

The author to exemplify the multiplication of subordinates took the following example: considered an official named A, whose tasks are to perform correctly some operations provided for in certain working procedures, applied constantly by several years. It is true that during these years, the frequency of operations performed by its civil servant has grown as a consequence of the development of the organizational structure in which he works and perhaps because of this, the official A is considered overburdened. But that is not the case it can quantify the degree of overburdening and it cannot be proved that this is over-solicitation is real or imaginary. The author hypothetically points out that it can be admitted that the feeling of overload is due to a decrease in work capacity, a symptom normal at a certain age.

In the face of this situation, for the official concerned there are three possible solutions: resigns; asks to share tasks with a colleague; asks for help from two subordinates.

From the research carried out, it seems that there is no history of administrative activity either an official who, in this situation, would have preferred a solution other than the third, because:

- resignation is a solution with consequences on income and rights, and in in most cases, changing the workplace presents a certain risk that it does not take on anyone easily;
- hiring or relocating another official at the same level as the one concerned will only managed to create the latter a rival when promoting in that position one third, when he will retire;
- the official concerned will seek to receive two subordinates, whose existence will add something to the importance of his duties and position.

It is thus concluded that all conditions are created for many more officials to execute a work that only one did before.

3. Methods

Brainstorming method

This method is also called the mobilization of ideas, and it is likely to create a relaxed, creative atmosphere in which nothing hinders the fantasy of the individual.

A Brainstorming session brings together a group of 5 to 16 participants representing various specialized fields that discuss a particular issue in one completely unconventional way. The principle of the system of this style of work is like all the participants to express their ideas regarding the decision to be made in the way spontaneously without any restraint even if their opinion is sterile and meaningless. It's strict forbidden to use discouraging appreciations of the type: ”I did not do so never” or ”this doesn't work”, which slows the flow of ideas of the participants.

On the contrary, it is necessary for the other participants to grasp the present idea, to combine it with the others and further develop it. In this way, the formation of some is stimulated sides of mutual appreciation through which one reaches ideas that would not have crossed his mind either to an isolated individual. Each "Brainstorming" session is limited in time to a maximum of one half an hour. The noted proposals are subsequently used by specialists.

The rules of the method are simple:

- the participants express their opinions no matter how bold they may seem at first;
- critical comments are not admitted during the meeting, they can be made later;
- the leader of the collective constantly urges unlimited thinking.

Brainstorming – which means finding a solution to a problem by a group of people – is currently a method that has proven particularly useful in solving a multitude of situations in the activity of a community. The success of Brainstorming, which is a team game, is conditioned by an attitude relaxed intellectual. Each member of the group must make their own its latent traits, and the attempt to achieve this through external pressures does not give results.

Through free association, Brainstorming is a creative method of solving problems during a conference that is based on stimulating a person's thinking with the help of other people's ideas.

Synectics method

By the synectics method, a method that derives from the psychology of thought, from the psychology personality and from social psychology, the aim is to simulate a creative process. Idea basic synectics (in Greek = the combination of realities that apparently do not have any link between them) is that by intensive analysis and the specification of a problem one obtains an infiltration of the structure of this problem into our subconscious. This implies a detachment of our thoughts from the respective problem. After that, the problem is brought again, a proposal to show the way will come to light spontaneously towards the solution.

The synectic process is strictly regulated: it is worked in small groups; one of the members function as a leader, directing the discussion and controlling the conduct synectic. The steps of the process of a synaptic session can be compared with an algorithm for solving numerical problems.

These steps are:

- analysing and specifying the problem;
- the participants formulate their inspirations regarding the possibilities of solutions that, as a rule, are not too fruitful and can take part in discussions in a way released;
- developing direct analogies with other spheres of life; a complex is chosen important of the analogies thus found, and participants must identify with this part and express their feelings (personal analogy);

- some of these manifestations are condensed in an analogy symbolic, dynamic;
- choosing a symbolic analogy and forming direct analogies corresponding to;
- the analysis of one of these analogies and its relation to the problem;
- the question is asked: what connection the last analogies have developed with the problem proposed.

The procedural steps of a synaptic session should not be completed until the end. If any useful connection is made during the course of the decision to be taken the process will be interrupted. If no reasonable result is reached, a new one will be fixed meeting. As can be seen from these stages, the leader of a synaptic session must meet high demands. He should conduct the discussion constructively that is, to interpret correctly all the statements and associations of ideas of the members and then direct the synaptic process. Proposals resulting from these processes Synectics will be analysed by technicians and scientists analogous to Brainstorming. The Brainstorming operation can be used for any purpose gifted person and without too much training. Instead, the synaptic procedure requires a special training in which the collaboration of the group is especially learned. Candidates with the following characteristics are required: age between 25 and 40 years old, be ready to bear risks, have a multilateral culture, perseverance and tenacity.

Synectics attaches great importance to the psychological states of the driver, in especially the feeling of delight he knows when approaching the solution to the public good. This state of mind is a good indication of the public vocation of those who make decisions under these conditions, as well as the fact that the decision it brings together the elements of social efficiency.

Method of the incident

This method consists in presenting some problems to those who are going to take them a decision and who are not previously armed with all the necessary information so they are in a position to document the issue under discussion, because only then can they perform the analysis and find the solutions. In these cases, it is not a detailed presentation of the situation is necessary, as it is enough to sketch the case broadly. In the method of the incident, the telling of a real situation is not done with all the data and is summarized at the presentation of the difficulties as short as possible, therefore of the essence of the real event. So, through this method the degree of participation of those who will make a decision increases by the necessity of making an analysis effort in a limited time, a cause that is approaching even more much of the specificity of the actual activity in relation to the analysed field. Once the framework is established fact of the incident, to a greater or lesser extent the problem is solved usually adopting the solution that is best justified by reporting also to its opportunity.

Simulation methods

In making the decision, many of the methods discussed above are lacking in one of them the essential elements of the reality in which the participants work in the

places their work, namely the opportunity to know and use the results of their own decisions. To train them in order to make some decisions as efficiently as possible practice simulation methods. These are: the scenario method and the game method enterprise.

A. The scenario method

This method consists in presenting the participants to the decision making situation conflict generally between two persons usually in a subordinate relationship hierarchical to each other. Apart from the summary description of the causes that led to the respective situation of deadlock, the participants receive a series of data regarding the psychological specificity of each of the two persons involved in the conflict. After one previous set time, which may not exceed 30 minutes, the scenario also stops the participants assistants criticize the behaviour of the people in conflict proposing solutions different solutions in the form of conferences.

B. The method of enterprise games

This method represents a kind of dynamic case study. Participants receive, either individually or in groups, data regarding the activity of the administrative authority respective and depending on them must make a series of decisions regarding the operation it. Depending on these decisions, a number of new information is communicated the results obtained by applying the respective decisions.

Considering this new information on the effectiveness of previous decisions, participants still make other decisions. This activity of elaboration and taking of sequential decisions for carrying out the activity of the administrative authority allows the participants in the decision-making process to carry out an activity in a proportion of one hundred percent, similar to the one that the management cadres should carry out.

4. Leadership

Exceptional leadership[12)]

Exceptional leadership encompasses a systematic conception of division problems in the management process and decision making in the unit concerned. At least three are required to apply this method essential premises:

a) management must be willing to delegate tasks, competences and subordinates to subordinates responsibility;

In the matter of delegation, it is necessary to respect the principle according to which the organs superior not to delegate down only the tasks and competences that they can no longer cope alone, but to take from the subordinate compartments only the problems that they I can't solve them myself.

12) N. Radu, Gh. Ciulbea, *op cit.,* p. 54.

Decisions and actions of subordinates shall be governed by directives in which the emphasis should be placed not on the actual processes determined quantitatively, but on qualitative specification of the modes of personal behaviour. These directives must prevent the occurrence within the administrative authority compartments of the events of local selfishness, so harmful;

b) the management must have within the unit a secure information system whereas the task of making as many decisions as possible independently involves a volume of accurate and current information;

There are four phases in exceptional management:

- the phase of establishing the planned standard;
- the phase of fixing the tolerances;
- the comparison phase, between the planned and the realized;
- phase of action.

In the phase of establishing the planned standard, preliminary levels for the activity.

The phase of fixing the tolerance implies admitting more or less deviations big compared to the situation "plan made".

The phase of comparison between the planned and the realized consists of the following stages:

a) establishing the levels actually achieved;

b) confronting the planned levels with those achieved and establishing the deviations inadmissible;

c) analysis of significant deviations.

The phase of action is the corollary of the preceding phases and implies making the necessary decision by the senior management. This method of management has the following advantages:

- gives the division of labour within the management process a depth and a greater rationality;
- ensures a hierarchically superior management of the problems of detail, routine, helping to overcome the feeling of low guardianship and allowing them to at the same time to devote most of his time to matters of importance special in the management of the respective administrative authority;
- ensures the middle and lower levels of management a concrete sphere of activities of own responsibility, therefore an integration of the collaborators in the decision-making act.

Goal-based leadership

This form of leadership implies a high degree of participation of each officials of the respective public administration authority when defining its own objectives.

The basis and justification of goal-based[13)] management is the search for an identity (or at least the alleviation of internal tensions) between the goals of the community

13) N. Radu, Gh. Ciulbea, *op. cit.,* p. 56.

and those of the individual. It follows that this goal-based leadership includes, or, rather, it is ahead of the results-based leadership because it does not allow that in the decision act the instrument is confused with the purpose. The objectives set for the different ones functions are only partially expressed in financial terms, and therefore they had to look for other quantitative indicators to be able to assess the results obtained, search which requires more imagination than a mere financial confrontation.

These indicators can be the training and improvement of the administration staff, its public vocation, social responsibilities towards the communities it has represents.

5. The method of participation-based management[14)]

Transposed in the practice of administrative work as a method presenting multiple Advantages, participation-based leadership requires strict respect for some principles such as:

– no mixture in the sphere of attributions delegated to the collaborator;

The realization of this principle poses a central problem for transformation the administration in a management according to the principles of modern management.

The decision whether, to what extent and in what sense the subordinate is allowed to take initiatives it belongs to the superior. The superior is used more than the exercise of the right to decides the behavior of its subordinates rather than giving special directives.

– not to impose his own opinion towards collaborators;

The superior has no right to impose a different opinion on the employees if they find themselves with their decisions within the directives and within the limits of competences. In the obvious contradiction with this is the principle that determines the superior's behavior in administration. According to this the superior is entitled, based on his situation hierarchically superordinate, to impose its different opinion at any time and to give its subordinates indication how to proceed in isolated cases.

– the supervisor should not give any direct indications to the labour force subordinate to its collaborators;

He effectively manages the level that is directly subordinated to him, so the next step is to the hierarchy, but not to all the collaborators in all the plans subordinated to its domain. it notes that in the public administration this principle is in contradiction with present representations of the administration according to which the superior has the right to give directly, to each subordinate, general or special instructions regardless of the step on which this is found. He can skip the upper echelons and, as a result, it can lead by disobeying the hierarchy. If such a superior does not respect the hierarchy informs or does not inform the supervisor or intermediate superiors about his intervention is left to his appreciation.

In opposition to the civil administration, in the army such a right of intervention is unknown principle. Here it is considered impossible for a brigade commander to

[14)] N. Radu, Gh. Ciulbea, *op. cit.,* p. 60.

sends orders directly to a company. The brigade commander is allowed to intervene only in case of acute danger, where it follows that:

- there can be no withdrawal of the responsibility transmitted to the employees; The superior is not allowed to take over the processing of a problem that belongs to the field of delegation given to his collaborator, being obliged to maintain the distribution the tasks performed with the creation of the areas of delegation, as well as the limits imposed and himself through these delegations. The superior in the administration, however, has within to the relations between the superiors and the non-commissioned officers, the right to take over or surrender a matter again which belongs to the domain of a subordinate. This right is in fact a special case of the right of intervention and directive of the superior.

- the control of the activity of the collaborators is not exhaustive;

The superior does not have the right to ask like all the problems on which the collaborator he decided to be subjected to retroactive analysis in order to exercise such total control as is usually done in authoritarian management. He actually needs to convince more, through selectively made controls, if the employee behaves according to the directives.

- no mixture in the decision making by a collaborator;

The superior is not allowed to intervene in any way in the area in which he gave delegation to the employee and not to influence his behavior. If the urge for this starts from the top is only a covered form of taking back a responsibility in an isolated case. The superior would intervene in this case in a decision which it would be the job of the collaborator. If the exhortation starts from the collaborator, then we find ourselves usually in the face of a masked form of withdrawal of delegation of responsibility. Collaborator it attracts its superior in finding the solution and making the decision to procure it the desired coverage. If this new conception were fully respected in administration, this would mean a fundamental change in the position of superiors in administration, change that has constitutional coverage.

6. Conclusions

Due to the increasing complexity of the processes that occur within the sectors the economic and administrative life in recent years has seen more innovations in this area.

These innovations are:

a) the critical road method, which represents an organizing technique applicable to a succession of stages that are connected to each other and concomitant so that they be coordinated to ensure completion of the works in accordance with the schedule established.

By the technique of the critical path method the shortest durations and the longest ones in which the decisions taken can be executed. The longest lasting wear the name of "critical time".

A great advantage of this technique is that decisions can be made to be executed concurrently and those which can be executed only successively.

b) the method regarding the technique of revision and evaluation of the program, which consists in determining, a cost prices, in controlling, evaluating and reorganization of activities that have physical or concomitant stages.

This technique is considered as an extension of the critical path method particularly used today. This method is useful in certain stages exercise of leadership. It should be specified that the act of management generally comprises six stages, namely:

- setting goals;
- organization;
- establishing the graph;
- supervision of the progress of the works;
- decisions and measures;
- adopting new decisions and measures according to changes.

Any application of this method of driving begins with a sequence work whose activities are interdependent or concomitant or both. In a way normally no other activity can be performed before the first one is completed activity.

REFERENCES

1. Alexandru, I., 2003, *Drept administrativ comparat*, Bucharest, Romania: Ed.Lumina Lex.
2. Alexandru, I., 2007, *Dreptul administrativ în Uniunea Europeană*, Bucharest, Romania: Ed. Lumina Lex.
3. Alexandru, I., 2008, *Tratat de administraţie publică*, Bucharest, Romania: Universul Juridic.
4. Alexandru, I.; Cărăuşan M.; Bucur S., 2005, *Drept administrativ*, Bucharest, Romania: Ed. Lumina Lex.
5. Alexandru, I., 1999, *Administraţia publică, Teorii, Realităţi, Perspective,* Bucharest, Romania: Ed. Lumina Lex.
6. Alexandru, I., coordonator; Negoiţă, A.; Santai, I.; Brezoianu, D.; Vida, I.; Ivan, S.; Popescu Slăniceanu, I., 1999, *Drept administrativ*, Braşov, Romania: Ed. Omnia.
7. Apostol Tofan, D., 1999, *Puterea discreţionară şi excesul de putere al autorităţilor publice,* Bucharest, Romania: Ed. All Beck.
8. Bălan, E., 1997, *Prefectul şi prefectura în sistemul administraţiei publice*, Bucharest, Romania: Ed. Fundaţiei "România de mâine".
9. Bălan E., 2007, *Dreptul administrativ al bunurilor*, Bucharest, Romania: Ed. CH-Beck.
10. Bondrea, A., 1996, *Opinia publică, democraţia şi statul de drept*, Bucharest, Romania: Ed. Fundaţiei "România de Mâine".
11. Dănişor, D.C., 1996, *Drept constituţional şi Instituţii politice*, vol. II, Bucharest, Romania: Ed. Europa.

12. Ionescu, C., 2002, *Regimul politic în România*, Bucharest, Romania: Ed. All Beck.
13. Lazăr, R.A., 2004, *Legalitatea actului administrativ. Drept românesc şi drept comparat,* Bucharest, Romania: Ed. All Beck.
14. Levy, D., 1977, *Aspectes généraux du contrôle. Traité des sciences administratives*, Paris, France: Dalloz.
15. Moulias, D., 1966, *Organisation et methodes în Traité de science administrative*, Paris, France: Ed. Mouton.
16. Nedelcu, I.M., 2009, *Drept administrativ şi elemente de ştiinţa administraţiei*, Bucharest, Romania: Ed. Universul Juridic.
17. Negoiţă, A., 1993, *Drept administrativ şi ştiinţa administraţiei*, Bucharest, Romania: Ed. Atlas Lex.
18. Negulescu, P., 1934, *Tratat de drept administrativ. Principii Generale*, vol. 1, ed. a IV-a, Bucharest, Romania: Ed. Marva.
19. Nicu, A.L., 2007, *Drept administrativ*, Bucharest, Romania: Ed. Didactică şi Pedagogică.
20. Nicu, A.L., 2007, *Statutul funcţionarului public între plus şi minus*, Craiova, Romania: Ed. Universitaria.
21. Popa, N., 2002, *Teoria generală a dreptului*, Bucharest, Romania: Ed. All Beck.
22. Santai, I., 2004, *Drept administrativ şi Ştiinţa administraţiei,* vol. II, Cluj Napoca, Romania: Ed. Rosoprint.
23. Schwarze, J., 1992, *Drept administrativ european*, London, UK: Sweet and Maxwell.
24. Schwarze, J., 1994, *Droit administratif europeen,* vol. I, Office des publications officielles des Communautes Europeennes, Paris, France: Bruylant.
25. Stilman, R., 1978, *Public Administration: concepts and cases*, Boston Hanghlon Wifflin.
26. Teodoroiu, I., 1991, *Drept administrativ şi ştiinţa administraţiei,* Craiova, Romania: Tiprografia Universităţii.
27. Vedinaş, V, 2006, *Drept administrativ*, Bucharest, Romania: Ed. Universul Juridic.
28. Vedinaş, V, 2009, *Statutul funcţionarilor publici*, Bucharest, Romania: Ed. Universul Juridic.
29. Ziller, J., 1993, *Administrations comparees, Les systemes politico-administratifs de L'Europe des douze*, Paris, France: Montchrestien.

ABOUT THE AUTHOR

Iulian Nedelcu, Ph.D., PhD. supervisor Professor; Lawyer within Dolj Bar Association, UNBR, Romania.
Email: avocatnedelcu@yahoo.com

Book Review: *Remedies and Appeals in the field of Public Procurement. Law no. 101/2016-genesis, interpretation, limits, perspectives*

Emilia Lucia CĂTANĂ

Remedies and Appeals in the field of Public Procurement. Law no. 101/2016-genesis, interpretation, limits, perspectives by Dumitru-Daniel Şerban, 2019, Bucharest, Romania: Ed. Hamangiu.

In 2019, Hamangiu Publishing House issued *Remedii şi căi de atac în domeniul achiziţiilor publice. Legea nr. 101/2016-geneză,* ***interpretare****, limite, perspective (Remedies and Appeals in the Field of Public Procurement. Law no. 101/2016 – genesis, interpretation, limits, perspectives*), written by Mr. Dumitru Daniel Şerban, appeal resolution counsellor in the field of public procurement with the National Council for Appeal Resolution, with a doctorate of law awarded by The Faculty of Law of Bucharest University, under the supervision of Professor Dana Apostol Tofan, PhD.

In the beginning, we note the importance of the topic analysed in the book, as well as the interest such a scientific work holds for the doctrine and for public procurement practitioners. From its first pages, this work proves its relevance in the context in which public procurement is a continuous challenge for researchers, largely determined by frequent legislative fluctuations, which force one to create and adapt works to legislative changes, but also to analyse them according to current doctrine and jurisprudence.

The book is the result of a consistent scientific approach on the part of the author, known as a public procurement practitioner with vast experience in the administrative-jurisdictional activity of the Council for Appeal Resolution; his experience is all the more notable given that it is doubled by rigorous scientific and academic training in the field of law.

In the introduction of our analysis, we note the book's coherent structure, consisting of three parts, beginning with introductory aspects, continuing with a detailed commentary on Law 101/2016 and on unconstitutionality breaches in the remedy law.

Among the aspects we consider to be strengths of this work, we note: an analysis from the perspective of current legislation and consecrated doctrine in the field, while emphasising the author's opinions, with the purpose of underlining the necessity to identify reforming solutions in public procurement (such as, for instance, the author's proposal to create a Code of Public Procurement); an analysis of Law no. 101/2016

both from the point of view of its provisions and of Romanian and European court doctrine and jurisprudence; a special regard given by the author to decisions passed by the Constitutional Court as well as by the High Court of Cassation and Justice on remedies at law, but also in untangling certain issues of law.

In the **Introductory Part**, the author treats the concept of rule of law, stating that the book systematises, in an original manner, not only national and European relevant regulations, but also the jurisprudence of the Court of Justice of the European Union, the High Court of Cassation and Justice, other judicial courts, as well as, last but not least, of the National Council for Appeal Resolution, together with elements of inconsistency and controversy, accompanied by the author's clarifications.

Part II of the paper gives a detailed commentary of Law no. 101/2016 on appeals and remedies in the matter of assigning public procurement contracts, sectorial contracts and works and services concession contracts, as well as with regard to the organisation and operation if the National Council for Appeal Resolution[1)].

Referring to the regulation object of this law, the author emphasises (at page 89) that the existence of a derogatory regulation, consecrated by the provisions of the law of remedies, forces the interested party to follow the procedure regulated by this normative act, and not the procedure provided by common law, contained in the Law of Administrative Contentious or in the Code of Civil Procedure.

The author also emphasises (page 90) that, by extending their sphere of application, the procedural norms of framework-law 101/2016 are general norms in the matter of litigation regarding the assignment, execution, annulment, resolution, cancellation or unilateral termination of public/ sectorial/ concession procurement contracts (with some exceptions), but, related to the procedural norms (including jurisdictional competence) of Law 554/2004, they become special norms exclusively dedicated to the aforementioned litigations. The particular norms of the first law, and not only, are an application of the *specialia generalibus derogant* rule, with regard to the competence assigned to the lawmaker by article 126 paragraph (2) of the Constitution, which, in extraordinary circumstances, can institute special rules regarding establishing the competence of courts and trial procedure.

In this context, the author makes reference to the European directive on remedies – Council Directive of December 21, 1989 regarding the coordination of acts with the

[1)] This law was published in the Official Gazette no. 393 of 23/05/2016, and was later altered and completed by the following normative acts: Emergency Government Ordinance no. 107/2017 for the alteration and completion of certain normative acts with an impact in the field of public procurement (published in the Official Gazette, Part I n. 1022 of December 2, 2017), EGO no. 45/2018 for the alteration and completion of certain normative acts with an impact on the public procurement system (published in the Official Gazette, Part I no. 459 of June 04, 2018), Law no. 212/2018 for the alteration and completion of the Law of Administrative Contentious no. 554/2004 and other normative acts (public shed in the Official Gazette, Part I no. 658 of July 30, 2018); the most recent alterations and completions to Law 101/2016 are included in the recent EGO no. 23/2020 for the alteration and completion of certain normative acts with an impact on the system of public procurement (published in the Official Gazette, Part I no. 106 of February 12, 2020).

power of law and of administrative acts regarding the application of procedures relevant to remedies at law in the matter of assigning public procurement contracts for goods and for works (89/665/CEE) (referring to a wide European jurisprudence), as well as to the National Strategy in the field of public procurement[2)].

We highlight the rich jurisprudence accompanying the author's commentary of each provision of Law 101/2016, both from Romanian and from European courts, as well as decisions of the Constitutional Court.

Among the author's ideas, notable in the not very abundant literature in the field of appeal and remedy law analysis, we have already underlined one regarding the necessity to combine the four laws regulating public procurement in Romania – Laws no. 98-101 of 2016 – in a Code of Public Procurement. We share this opinion and we consider the idea to be a natural endeavour, after adopting the Administrative Code[3)].

We also subscribe to the author's opinion that the law of remedies does not only regulate procedural deadlines, but also other time limits, such as: deadlines for the contracting authority or the National Agency for Public Procurement (ANAP) to post the decision of the Council and the decision of the court of appeal into the SEAP (art.27 par. 11 and art.35 par. 5); waiting periods for concluding a contract, established by article 59; the due date for notifying ANAP of actions by which one requests ascertainment of absolute contract nullity (art. 60 par.2); deadline for convening a Council plenum meeting by its president (art. 63 par.3); deadline for adopting Government decision to supplement the number of posts for judicial courts (art. 71).

Special attention was granted by the author to the administrative-jurisdictional procedure before the National Council for Appeal Resolution (CNSC, the Council), which is explicable given the expertise acquired by the author as appeal councillor in this independent body conducting administrative-jurisdictional activities in public procurement, a virtual first court in this matter by specialised panels, whose specialists carry out their work with integrity, professionalism and professional expertise.

A pertinent idea is that double appeal of the same act, both by CNSC and in court, is rather a theoretical move, the author stating that he does not see '*the reason why an aggrieved party would be inclined to constitute recognizance twice (or pay judicial fees as well)*' (page 201).

The author also notes a hypothesis which the lawmaker omitted in the stage of administrative-jurisdictional appeal, namely the deadline for contesting acts which are not communicated by the authority to the participants in the assignment procedure. The typical example given by the author is that of the procedure report, which is not sent to the bidders. The answer to the question becomes complicated, according to the author, when the public procurement file is consulted by an economic operator with a legitimate interest after a long period of time, for instance three months from

---

2) The national strategy in the field of public procurement was approved by Government Decision no. 901/2015, published in the Official Gazette, Part I no. 881 of November 25, 2015.

3) The Administrative Code was adopted by EGO no. 57/2019, published in the O.G. no. 555 of July 05, 2019.

when the bid result was announced, a situation which the law should have prevented or resolved (pages 261-263)

We have also noted the author's opinion, also correct, that the Council cannot itself declare a winning offer – with certain waivers – taking into account that one of the evaluation committee's attributions is to establish the winning bid (including those which were unacceptable/ inconsistent/ admissible), and through such an intrusion of the Council into the committee's responsibilities, the principle of separation and balance of powers in a state would be breached (page 585).

A correct opinion on the author's part is also that according to which parties can agree that litigation related to the interpretation, conclusion, execution, alteration and termination of contracts be resolved by arbitration, a possibility which cannot be extended to litigation related to acts of the authority during the contract assignment procedure (pre-contractual), which are reserved for administrative-jurisdictional or judicial remedy at law. For investing the arbitral body with resolving a conflict, a preliminary procedure is not required (page 822).

The author takes notice of the unconstitutional aspects of article 56, paragraph (1) of Law 101/2016, regarding the percentages of judicial stamp fees established by this article. Thus, claims the author, *'it is unheard of that a claim taxable based on value for an object estimated to be worth up to 100,000,000 RON be taxed more (double) than a claim with an object whose value exceeds 100,000,000 RON, respectively that the tax decrease (not even stay the same, if not progressively increase)*'(page 827).

Part III of the work analyses unconstitutionality breaches in the law of remedies; here the author details personal opinions, such as the one referring to the bail established by article 61^1, regarding which he believes that freezing the financial assets of a person who considers itself the aggrieved party has the potential to hinder or at least reduce the attractiveness of free service provision, as it is guaranteed by the Treaty on the Functioning of the European Union (page 957).

Part IV of the work contains the author's conclusions, both generally and compared to the normative framework in force before Law 101/2016, with his final opinions regarding the litigant's option to go through an administrative-jurisdictional procedure or directly seek resolution in court.

In conclusion, we recommend this work, the importance of the field proving that public procurement is a permanent challenge for researchers and practitioners alike.

ABOUT THE AUTHOR

Emilia Lucia Cătană, PhD., Assistant Professor, University Dimitrie Cantenir, Tîrgu-Mureș, Romania.

Email: luciacatana@yahoo.fr