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**Practical Aspects Regarding  
the Role of Administrative Law  
in the Modernization of Public  
Administration**

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# The proportionality principle used as standard by the European Court of Human Rights when assessing the excess of power<sup>1</sup>

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## **Abstract**

*The study herein aims at examining the implementation of the proportionality principle in the European Court of Human Rights case law, as a means of controlling the activity of the national authorities, namely limiting the excess of discretionary power. The main motivation for such an approach consists in providing the guidelines in the decision-making process of restricting certain fundamental rights and freedoms, so that the provided substantiation to form the belief that all relevant factors have been taken into account and that the measures implemented in those cases are transparent, non-discriminatory and accountable. Thus, in drawing up this study, we have taken into account the relevance that the principle of proportionality should have in the activity of the public authorities, including that of the public administration. The exercise of their powers shall be always done in accordance with the principle of legality, but also within the limits of the discretionary power accepted so as not to prejudice the fundamental rights and freedoms of individuals and not to compromise the public interest by excess power or even abuse of power. The importance of the principle of proportionality is also revealed by the Constitutional Court of Romania, which has built its own case-law in this respect on the jurisprudential elements developed by the ECHR. This is the reason for which, in this study, we shall also mention the case-law issues of the Romanian Constitutional Court, not just those of ECHR.*

*Keywords: principle of proportionality, public interest, freedom of expression, the right to peaceful assembly and association, limitation of the property right.*

**JEL Classification:** K10, K33, K38

## **1. Introduction**

Proportionality is an inherent notion of the idea of justice and it can be found in the whole legal system<sup>4</sup> and, we may add, in any legal system enshrined

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<sup>4</sup> Lamprini Xenou, *Les principes généraux du droit de l'Union Européenne et la jurisprudence administrative française*, Bruylant Edition, 2017, p. 347.