

THE GOOD ADMINISTRATION PRINCIPLES AND NORMATIVITY

Mihaela Miruna Tudorascu
Dean. Faculty of Law and Social Sciences
University 1 Decembrie 1918 Alba Iulia, Romania

RESUMEN:

El poder de la administración pública encuentra su legitimidad en el cumplimiento de la ley, que reconoce su fuerza discrecional, adecuada a los intereses públicos que la administración pública debe cumplir. Una buena administración significa, en primer lugar, que la legalidad debe ir acompañada de principios complementarios, capaces de garantizar la transparencia de la administración de bienes públicos; en segundo lugar, que las personas cuyos intereses y derechos están en manos de la administración pública deben tener el derecho de participar en la toma de decisiones; en tercer lugar, que las decisiones deben estar motivadas y los criterios de evaluación deben comunicarse a los interesados. Dichos principios deben establecerse y respetarse en el Derecho Administrativo y en sus normas procedimentales.

ABSTRACT:

The power of public administration finds its legitimacy in the observance of the law, which recognizes its discretionary force, suited to the public interests that public administration should fulfill. A good administration means that legality should be accompanied by complementary principles that serve to ensure the transparency of public assets in administration. It also means that persons whose interests and rights are in the hands of public administration should be given the right to participate to decision making, that decisions should be motivated and criteria of assessment should be communicated to those concerned. Such principles must be established and respected in the administrative law and in its procedural standards.

PALABRAS CLAVE: *Administración Pública, Ley, Derecho Administrativo*

KEYWORDS: *Public Administration, Law, Administrative Law*

The power of public administration finds its legitimacy in the observance of the law, which recognizes its discretionary force, suited to the public interests that public administration should fulfill. In contemporary society it is necessary to achieve a new balance between government rules and democratic principles. Public administration should return to its fundamental joints - to serve the interests of

citizens - and not to exacerbate its dominant character¹.

Government activity takes place in a certain order and procedural forms, strictly determined by normative legal. Legal Empowerment of the government steps, is a necessary, but not sufficient for good administration. It is necessary to rely on complementary principles to ensure transparency in public administration, participation in decision making in an

¹ BĂLAN, Emil. Facultatea de Administrație Publică, SNSPA, București, România

appropriate manner of persons whose rights and interests are at stake, motivating decisions, listening to the person involved, communication of assessment criteria, etc².

Thus, under the Charta of fundamental human rights contained in Part II of the Treaty establishing a Constitution for Europe, Art. II-101, the right to good administration is, as follows:

1) Everyone has the right to receive, in terms of its problems, an impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies.

This right includes:

a) the right of everyone to be heard, before any individual measure could formally touch that person;

b) the right of everyone to access to personal file, respecting the legitimate interests of confidentiality and professional and business secrecy;

c) the obligations of the administration to motivate the decisions.

2) Everyone has the right to have the damage repaired; damages caused by the Union institutions or agencies of the Union, in the performance of their duties in accordance with the general laws.

3) Every person may write to the Union institutions in one of the languages of the European Constitution and must be answered in the same language.

Good governance is necessary to find the consecration in administrative law and in its implementing procedures. Also in the administrative law we will be able to distinguish between substantive right and a procedural right, although the boundaries between the two categories of rules are not always marked accurately.

Building a healthy legal framework and adequate legal institutions - fundamental issue in a democracy - are not sufficient, unless it is done a correct implementation of law.

In most cases - reveals a study conducted at the end of the twentieth century - in the first instance administrative decision does not end up being appealed, they remain final. Control mechanisms, even when they are easily accessible are little effective to remedy the mistakes and abuses committed in the first instance³.

Thus, for most of the subjects of an administrative measure, the first act or the first decision is final. Therefore, it is fundamental to good governance and to ensure administrative justice for these acts and decisions to be fair, to be legal.

For this reason the existence of legal norms and institutions devoted public to administration tasks, must be accompanied by an indication of concrete forms in which these tasks shall be fulfilled, forms specified by procedural rules.

What is the need for an administrative procedure? First it's effectiveness administrative approach. Situations of public official or of a public institution is facing in their daily existence are numerous and the existence of standard procedures is for increasing efficiency, especially since most of the times, the cases are similar.

Likewise, the absence of pre-established procedures could lead to ad hoc ones, arbitrary fact conducive to the functioning of public administration.

Secondly - given that one of the fundamental principles of a modern public administration is neutrality and impartiality with customers - citizens, the procedures are necessary to ensure equal treatment; non-discrimination of beneficiaries of public administration is guaranteed, to be against administrative arbitrariness.

Thirdly, both politics and civil society must exercise control over public administration. This would be very difficult in a situation where every public institution or each officer would work to their own rules and methods. Administrative procedure in

² *Id.*

³ *Id.*

the literature is defined = as the set of legal rules on specific forms and modalities of the development, adoption, enforcement and administrative control and operations to achieve administrative and technical materials to government structures⁴.

To improve the quality of administrative processes it is necessary, among other things, of a good training and forming of civil servants who can take legal decisions, documented and relevant.

A very important factor is the adoption of deontological rules, professional ethics, to address to the civil servants and to the leaders of public administration at all levels of it. Rules of administrative procedure are to be systematized and concentrated in an Administrative Procedure Code of Romania.

Administrative Procedure Code is the legal document which sets rules to guide them, in a clear prescriptive, on those who take decisions, rules that assures government transparency, listening to the party concerned, motivating decisions, setting mechanisms of administrative or judicial control easily accessible.

One dimension of public administration reform refers to legal normativity application thereof. Two levels of concern related to administrative law and its application:

- On the first level lays the development of a regulatory framework and a system of needed institutions to showcase these rules. We consider that is fundamental in Romanian positive law, to adopt an Administrative Code and a Code of Administrative Procedure.

The legal framework thus determined, it must be continuously adapted to the challenges of the society, according to the deepening of democracy.

- The second level, relates to the implementation of these legal rules in the social life, to their assimilation, a prerequisite

for the functioning of the public administration structures, respecting the principles of good governance.

The transparency of governance process and rationality of the regulatory process are prerequisites for a more rapid assimilation by the body of social law.

Scientific studies realized in the administrative sciences have revealed the precariousness of the training process of the regulatory and managerial abilities to public administration. To this situation contributes the lack of adequate training of government staff in areas of specific knowledge of good administration.

The requirements, in permanent changing that impose administrative tasks can not be satisfied only by highly qualified staffs, who constantly update their knowledge. An enhanced training and development are essential for public entities not to be exceeded by a context of rapid transformation.

So, here comes a word of public service ethics or public official, serving the needs of citizens.

The phrase, DEON comes from the Greek words, which means science-DEONTOS. Initially it was identified with morality⁵, and we find this idea in «Ethical or moral science» - 1834, by English philosopher and jurist Jeremy Bentham. The paper is structured in two parts, dealing with a theory of virtue and the other, the practice of virtue. On this occasion is marking the distinction between ethics, which deals with what it should be and conducts to what «must be respected».⁶

Ethical norms adopted by society, bears political fingerprint unfortunately, but they naturally tend to accede to satisfy public interests of all citizens who normally should be treated equally, regardless of their legal status or religious beliefs. If it had not

⁴ *Id.*

⁵ BENTHAM, Jeremy: *Ethical or moral science*, 1834.

⁶ VOICULESCU, Florea: *Handbook of contemporary pedagogy*, Cluj Napoca, Ed Risoprint, 2005.

followed this path rules and practices had become dogma and in the same time brakes in the civilizing human relationships, always favoring the company's strong protest in unison against which we all are, the dictatorship, corruption, inequality, differential treatment of gender, etc., all democracies required to eliminate the risk of politicizing the civil service, but this is only a wish. There is no society to slice real distinction between political power and an administration that is requiring to run, even if the administration is working and developing trends to have an autonomous power.

In the above idea is natural that public officials in their work to be continually guided by moral and legal rules. Only civil servants acting on these coordinates contribute to ensuring effective implementation of rights and liberties and also to perform properly their functions.

The deontology of public official functions must be understood as something that needs to be done in the exercise of employee and volunteer who is rewarded and which includes without comment, fulfill obligations to the rules of conduct and carry out the duties of a moral profession.⁷

The deontology of public official functionary does not need to ignore the general rules; it must be present in all forms of individual expression.⁸

National civil servant deontology has indicated that they act on behalf of public power; they are tools to you and the authority to act.⁹

In our country, the process of administrative reform is a reality of the post-1990 reform period in this state, when old institutions are no longer viable, and new ones have not got the strength to resist to

negative developments. There were almost natural tares that generated much critical appreciation to public official and public functions. First level is called corruption plague. It operates easily crossing national borders, marking the legal movement of goods, finances, and people, and even penetrating in the legal system.

We can admit that it has been stated many times that the image of a country depends on its administration, so that our task is to take those measures to build an administration that is respected by all citizens because of the way officials behave is formed .

Changes can be achieved through different approaches, based on various operations, such as:

1. Substitution or replacement of structures, institutions, content, etc., outdated, obsolete, in other modern, efficient, etc.

2. Reshuffle - resulting in complete change of management composition, etc;

3. Addition – to the structure, content, etc., other new elements;

4. Restructuring - by promoting other relationships between components, etc., and other functions.

5. Removing those components which are outdated, obsolete, outdated, etc..

6. Strengthening those practices, compartments with yield positive tradition etc.

We must be aware that in most cases there will be bottlenecks and factors of resistance to reform, to implement the above-mentioned operations, because any change causes a reaction, according to natural tendencies, physiological manifested by any body to maintain a certain balance that you do not want to be disturbed.

Here are some of these factors:

A- the respect for a tradition;

B- the lack of resources or their poor management;

C- the lack of sufficient prepare of public officers for reform;

D- one type of managerial illiteracy;

⁷ TUDORAȘCU, Mihaela Miruna: *The deontology of public function*, Seria Didactică, 2010, p. 6.

⁸ COCHINESCU, M.: «*Introduction in public deontology*», Revista Dreptul Nr. 4/1995.

⁹ NEGULESCU, P.: «*Administrative Law Treatise*», Ed. a II-a, București, 1943, p. 52.

E- building management teams on the wrong principles;

F- the little experience in the alternative administrative structures;

G- the absence of clear regulations on staff and administrative structures;

H- inadequate definition of the functions and inadequate salary scales;

I – the fragmentation of the reform process because of the alternation in power of different political parties;

The reform is necessary for the following four main reasons: Economic reasons, low economic growth and reduction of budgetary resources allocated to public administration, private sector need to have a modern, flexible and open to public - private partnership.

Technological reasons, the introduction of information and communication technology in public administration.

Sociological reasons, citizens, as beneficiaries of public services are increasingly demanding and they do not accept that, their needs should be determined exclusively by what the administrations are offering.

Institutional reasons, Romania's integration into EU structures is involving another mode of administration services. Strong hierarchical structure gives way to new types of organizational reforms based on decentralized structures. The reforms can be of different types: sectoral or global, systemic, bottom-up, pressure from the masses to political makers, from top to bottom, of the cabinet, etc.

The doctrine knows two broad categories¹⁰ of sources of public service ethics: written and unwritten sources. In the category of written sources we remind: the Constitution, laws, conduct code for civil servants and government decisions, orders of government, international regulations, which

if ratified by our country become part of domestic law. As unwritten sources we mention the custom, especially regarding the diplomatic officials and the jurisprudence.

THE BASIC PRINCIPLES IN CIVIL SERVANT DEONTOLOGY

We understand by the principles of ethics, those guiding ideas that public servants should be in outright, mandatory basis for all activities that place a person who is a civil servant, ideas which aim to determine and ensure the efficient functioning of operation service or of the institution where the officer is working.

Following principles are known, are considered fundamental in science of ethics of public officers:

1. Equal treatment to all beneficiaries of public services;
2. Defense of the Constitution and respect the rule of law;
3. Defense of the institution prestige they represent.
4. Permanent event on the professional discretion, regarding of all information, in the exercise of its civil servant. They must defend and respect the dignity of public service users, to respect and protect the intimate life, family life or private life.
5. The public officials should express faith and fidelity to the country to which they belong.
6. Public officer in his work shows obedience to his or her supervisor (but not illegal acts).
7. Transparency.
8. Orientation to citizen.
9. Stability in doing the public work.

¹⁰ POPESCU, D.; DRĂGHICI A.: «Deontologia funcționarului public», Pitești, Ed. Paralela 45, 2005, p. 26.

