ASPECTS REGARDING THE GENERAL PRINCIPLES OF PUBLIC ADMINISTRATION

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Abstract

The principles regulated by the Administrative Code unfortunately do not say anything in addition to the other regulations, nor do we appear to be competent to produce any effect, seeming to have only a strictly theoretical vocation. These principles will come to be configured as mere desideratum, if they are not perceived by the recipients as authentic values in relation to which to constantly coordinate their activity; precisely because of this, considering the administrative reality in which we live, the idealistic character in which these principles are regulated, we consider that their utility remains debatable.

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The principle of legality, an essential rule that requires the observance of the fundamental law and of the other existing normative acts by all state bodies, by all legal persons of public or private law and by all citizens. From a philosophical point of view, legality is a component of the normative field and, due to this affiliation, it is necessarily also a component of the field of governmental attributions, legality being defined from this perspective as a system of norms and rules of conduct that impose or prohibit. human actions and inactions, which are applied by the state by exercising its powers in the organized framework of the judicial process, under the threat of the use of specific sanctions. In this exhaustive sense, legality would also imply the state monopoly on the right to use even physical violence (Stănilă L.M., 2019).

Article 6 of the Administrative Code enshrines the principle of legality, according to which the public administration authorities and institutions, as well as their staff have the obligation to act in compliance with the legal provisions in force and the international treaties and conventions to which Romania is a party[2].

The principle of legality is also enshrined in the Fundamental Law within art. 1 paragraph 3, in the form of the principle of the rule of law, but it is found in all branches and institutions of law, such as the branch of civil, fiscal, procedural law, etc.

For example, in the field of fiscal financial law, the principle of legality is contained in art. 4 of the Fiscal Procedure Code, which stipulates that "(1) The fiscal receivables and the corresponding obligations of the taxpayer / payer are those provided by law. (2) The procedure for the administration of tax receivables shall be carried out in accordance with the provisions of the law. The tax authority has the obligation to ensure compliance with the legal provisions regarding the realization of the rights and obligations of the taxpayer / payer or of other persons involved in the procedure. "

Regarding the principle of legality, the Code of Civil Procedure, in art. 7 states that: The civil process is carried out in accordance with the provisions of the law. The judge has the duty to ensure compliance with the provisions of the law on the realization of rights and fulfillment of obligations of the parties to the process. In the civil process, this principle presupposes that, both regarding the organization of justice and its administration, the

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2 The administrative code was adopted by Government Emergency Ordinance no. 57/2019 which was published in M. Of. of Romania, Part I, no. 555 of July 5, 2019.

fundamental law and the other normative acts subordinated to it must be strictly observed by all those interested.

Therefore, the Administrative Code, like other normative acts, declaratively establishes the principle of legality, as a mandatory rule for the subjects to whom it is addressed, respectively for public authorities and institutions and citizens, without establishing obligations in addition to other normative acts.

Against these arguments, knowing the importance of the Administrative Code and its impact on public administration, in general, it would be useful if the principle of legality clearly stated the obligation of public administration authorities and institutions to, by the normative acts that will issue them, to normative act with the greatest legal force.

Therefore, the rule of law presupposes, on the one hand, the principle of legality, without being reduced to it, and, on the other hand, allows the public administration, implicitly the local one, to exercise its discretion, namely "that margin of freedom left at the free discretion of an authority so that, in order to achieve the purpose indicated by the legislator, it can resort to any means of action within the limits of its competence ”(Tofan D. A, 2014).

The principle of equality presupposes that the beneficiaries of the activity of public administration authorities and institutions have the right to be treated equally, in a non-discriminatory manner, correlated with the obligation of public administration authorities and institutions to treat all beneficiaries equally, without discrimination on the basis of provided by law.

As in the case of the principle of legality, the principle of equality is also established by the constituent legislator in Article 16, which stipulates that citizens are equal before the law and public authorities, without privileges and without discrimination. No one is above the law. Public positions and dignities, civil or military, may be occupied, in accordance with the law, by persons who have Romanian citizenship and domicile in the country. The Romanian state guarantees equal opportunities between women and men for holding these positions and dignities. Under the conditions of Romania's accession to the European Union, the citizens of the Union who meet the requirements of the organic law have the right to choose and to be elected in the local public administration authorities.

If in the case of the Administrative Code equality takes into account the non-discrimination in any aspect of the citizens from the way in which the public authorities and institutions have the obligation to treat in the relations between them, in the case of the Fundamental Law this principle is more detailed. opportunities for men and women to hold public office and dignity, but initially the principle was enshrined in the 1976 Directive on equal treatment for men and women. As more and more women enter the labor market, the EU and the Member States reaffirm their commitment to promoting gender equality, progress in women's education and progress in eliminating the pay gap and discrimination in employment between women and men.

The principle of equality is found in all spheres of social and professional life, in areas such as working conditions, labor relations, labor market developments, quality of life and public services, wages and incomes, health care, labor market participation, leave, skills and training. professional, work organization, working time, work-life balance.

In fact, the promotion of equality between women and men is a task of the European Union, in all its activities, as provided for in the Treaties. Gender equality is a core value of the EU, a fundamental right and a key principle of the European Pillar of Social Rights. It is a value that represents us and, at the same time, an essential condition for an innovative, competitive and prosperous European economy. In business, in politics and at the level of society as a whole, we cannot fully realize our potential unless we use all the talent and diversity we have. Gender equality creates extra jobs and generates increased productivity - a potential that needs to be harnessed as we prepare for the transition to a green economy and

the digital transition and face demographic challenges (https : //eur-lex.europa.eu/legal-content/RO/TXT/PDF/? uri = CELEX: 52020DC0152 & from = EN).

Unfortunately, it is not absolutely certain that progress will be made on gender equality, and if progress is made, it is not irreversible. We must, therefore, give a new impetus to gender equality. Although gender disparities in education are about to be eliminated, they persist in other areas, such as employment, pay, household chores, influential positions and pensions. Too many people continue to violate the principle of gender equality through sexist hate speech and by blocking actions to combat gender-based violence and gender stereotypes. Gender-based violence and harassment continue at alarming levels.

The principle of transparency implies that, in the process of drafting normative acts, public authorities and institutions have the obligation to inform and submit to public consultation and debate the draft normative acts and to allow citizens access to the administrative decision-making process, as well as to data and information of public interest, within the limits of the law.The beneficiaries of the public administration activities have the right to obtain information from the public administration authorities and institutions, and they have the correlative obligation to make available to the beneficiaries information ex officio or upon request, within the limits of the law.

The principle of transparency is found mainly in the field of public administration, as citizens demand more and more transparency and accountability from those who manage their interests.

This principle is put into practice in the possibility for citizens to participate in decision-making processes and is internationally recognized.Intergovernmental organizations and European countries have adopted, through various documents, rules to strengthen, guide and ensure the participation of the public and various civil society organizations in the adoption of their decisions. Although some of these documents are not binding, they set out a framework of clear rules to strengthen the legal framework and participatory practice.

From the specialized literature it is noted that the principle of transparency also presupposes, as a whole, the idea of correct information of the society regarding the organization and functioning of the public administration.

Decision-making transparency in public administration is a sine qua non condition for good administration; its lack could lead to serious shortcomings in regulatory activity and, implicitly, to a decrease in citizens' trust in public authorities and institutions and in the normative acts they issue. The lack of consultations with citizens means that these normative acts are frequently amended or repealed, creating legislative instability and depriving citizens of the certainty of a well-developed legal framework.

The real application of the principle of transparency would lead to a greater trust in laws and regulations, since they were adopted in consultation with stakeholders. Confidence in the legal framework will result in a higher degree of compliance with the law, with positive consequences on economic development and the maintenance of cooperative relations between the government apparatus and society.

The principle of proportionality, according to the Administrative Code, presupposes that the forms of activity of the public administration authorities must be corresponding to the satisfaction of a public interest, as well as balanced from the point of view of the effects on the persons. The regulations or measures of the public administration authorities and institutions are initiated, adopted, issued, as the case may be, only following the assessment of the needs of public interest or of the problems, as the case may be, of the risks and impact of the proposed solutions; this principle is for the first time regulated as such and as having this meaning.

This principle should be understood in the light of the idea of balance, fairness, fairness and reasonableness, but also an adoption in an adequate report of some measures

taking into account the aim pursued and the factual situation considered; this proportionality must exclude disproportionality, abuses, excess in general.

Even if the principle of proportionality is applicable to the entire system of administrative law, the field in which it is required and completely required to be applied and respected is the administrative process. Thus, the activity carried out by the administrative authorities must be carried out in proportion to the objective pursued and, respectively, not depriving the citizens of any aspect that would facilitate the achievement of the proposed and legally correct goal. The principle of proportionality involves two main aspects: on the one hand, the fact that the extent to which certain rights and legitimate interests of individuals are limited must be determined by a general interest of society, and on the other hand, the measure must be proportionate to the objective followed. The assessment of proportionality will be made for each specific case by analyzing alternative means of protecting the public interest in question, respectively, measures that do not involve any limitation of human rights or the necessary limitation to be as small as possible (Vacarenco I. 2016).

Another principle regulated in Article 10 of the Administrative Code is the principle of satisfying the public interest. According to him, the public administration authorities and institutions, as well as the staff within them have the obligation to pursue the satisfaction of the public interest before the individual or group one, and the national public interest has priority over the local public interest.

The interest is in itself the concern of the individual to obtain a success, advantage or a zeal deposited in an action to satisfy certain needs[1].

The notion of interest also has a content related to the individual, respectively the personal interest, but also one related to the social group, collectivity - social interests. There is an interconditioning between individual needs and social interests, in the sense that any action behavior of the personality is supported by a psychosocial motivational system, with mobile function of personality action, in the structure of which psychological motivation is the result of internalizing social needs, social interests (Pînzaru P, 1971).

By public interest we could understand those activities that are necessary to meet social needs, considered as such by political power and which constitute the very raison d'être of public administration. The purpose of public administration authorities and public institutions can not be other than to meet general needs. of the company, ie, the satisfaction of the general interest, as opposed to that of private entities that aim to make a profit.

It should be mentioned that not every activity that is useful to society is of public interest. The appreciation of a social need as being of public interest, necessarily implies the existence of a legislative regulation in order to allow and even impose the action of the administration.

Therefore, as long as there is no specific legal norm, we cannot speak of the public interest and, as a consequence, the public administration authorities are not legally obliged to satisfy this interest. We conclude by pointing out that the public interest is different in its content in relation to the political will existing in society at a given time.

The principle of impartiality presupposes that the personnel from the public administration has the obligation to exercise their legal attributions, without subjectivism, regardless of their own beliefs or interests.

Also, in accordance with the provisions of art. 368 of the O.U.G. no. 57/2019 on the Administrative Code, with subsequent additions, one of the principles applicable to the professional conduct of civil servants and contract staff in public administration is that of impartiality and independence, a principle according to which persons holding different

[1] Explanatory Dictionary of the Romanian Language - Romanian Academy, "IORGU IORDAN" Institute of Linguistics, - 2nd Edition Encyclopedic Universe, Bucharest, 1998, page 498.

categories of positions are required to have an objective attitude , neutral to any interest other than the public interest, in the exercise of the function held.

Two other principles provided by the Administrative Code are the principle of continuity, which presupposes that the activity of public administration is exercised without interruption, respecting the legal provisions and the principle of adaptability, according to which public administration authorities and institutions have the obligation to meet society's needs and adapt to these needs.

As for the principle of continuity in public administration, it should be the basis of public services, because the satisfaction of the general interest must be achieved continuously and not discontinuously, in the latter case there would be serious disturbances to the smooth running of public affairs.

The principle of continuity requires public authorities to ensure the regular functioning of public services. The state, in case of refusal or negligence on the part of the obliged agents, may provide certain public services or even replace them in order to ensure the uninterrupted provision of public services. Of course, the principle of continuity should not be absolutized considering that the public service once established is eternal. If the public interest no longer justifies such a public service, it can be abolished (Iacub I. 2016).

The principle of continuity of public services, theoretically, is the most important principle of public service, which derives from the permanence of the state, as well as from the need to ensure the needs of general interest without interruptions. By definition, the public service responds to needs of general interest, and the satisfaction of the general interest cannot be discontinuous, the interruption being able to cause disturbances in the life of the community. As a result, it is inconceivable for the service to operate intermittently, and it must operate at all costs. In France, this principle has been given a constitutional value, being applied by the court (Iacub I. 2016).

As can be easily seen, the principles regulated by the Administrative Code unfortunately do not say anything in addition to the other regulations, nor do we appear to be competent to produce any effect, seeming to have only a strictly theoretical vocation. These principles will come to be configured as mere desideratum, if they are not perceived by the recipients as authentic values in relation to which to constantly coordinate their activity; precisely because of this, considering the administrative reality in which we live, the idealistic character in which these principles are regulated, we consider that their utility remains debatable.

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