

# THE LEGISLATION OF THE ROMANIAN PUBLIC ADMINISTRATION IN TODAY'S EUROPEAN CONTEXT

Florin STOICA\*

## Abstract

*In order to be able to adapt to the requirements of the current socio-economic and political context in which Romania is today, the public administration must strive for its efforts, perhaps more than ever, in the sense of its classic mission, namely the implementation of the law and providing quality public services. The connection to the European Central Public Administration obliges the public administration in Romania to keep up with the European trends in the field, and even contribute to the achievement of the Europe 2020 Strategy targets. Defective public administration legislation leads to a hindrance to a state's growth efforts. The modernization of the legislation, the modernization of the institutions in the field have the effects expected in the development of a state. If, since 1990, Romania has the excuse for the state in a "transition", a process that includes the state together with its institutions, the acceleration of the reform process can no longer be excusable due to the context. The integration of the Romanian state into the European space has come with a number of obligations but also rights, but in terms of obligations Romania is still outstanding. Political changes, frequent changes in parliamentary majority and ruling coalition have only increased the incapacity of the Romanian state to honor its obligations in line with European standards. But the common policy of the European community has not been blocked over time but has adapted to the challenges that international politics has provided, so Romania has to make major progress to assimilate the new challenges and honor its obligations.*

**Keywords:** Public Services, Europe 2020 Strategy, Public Administration, Gouvernement, Legal framework, European Union, administrative capacity.

## 1. Introduction

A chapter often brought to the attention of the public, a distinct chapter in all governmental programs in recent years, the reform of public administration has never been a zero priority, although its implications on economic reform were well known. The changes have been slow and fragmented and have had no positive impact on this area.

In each government, the eyes were fixed on economic issues, and then the reforming of the field was attempted, the failure of these changes generated distortions in the economic reform. Worldwide in recent years a phenomenon, can be easily identified, namely globalization, which is also characterized by the intense development of social systems.

So, we are faced with new situations, national states face new challenges, meaning that institutions and administrative systems, and of course everything that is public administration, must prove flexibility in the face of these transformations. Thus, we deduce that within this new geopolitical context the administrative factor is the most defining one for the economic competitiveness of a country or economic region.

By understanding the transformations that the public administration has to suffer, we can conclude that interventions made under the unfinished reform, involve major changes not only at a local and central scale but also regarding public service.

By explaining the concept of reform we should also start from legislation and the provisions of agreements and treaties to which Romania is part. So, during this study, I will try to demonstrate the need to speed up the changes of legislation in the field of public administration. We will also go through the main changes proposed by the new legislation and examine their importance in the implementation of the reform.

Public administration reform is a normal change in the process of developing democracy and in a process of harmonization with the European framework. Thus, the degree of development of a democracy involves the establishment of relations between citizens and administration, the decentralisation of the transfer of power from local to central and the restoration of a solid partnership with the civil society.

Reiterating the above, in Romania, the changes in public administration are getting new dimensions, so that it is a must to keep up with the world trends, but also with the social and political and economic context that the European Union is facing today.

In understanding the concept of reform, we need to relate to all aspects of the public sector organization. Thus, we have on one side, how the coordination of activities in the public domain is authorised, the package of laws governing this matter and administrative capacity on the other side. Administrative capacity<sup>1</sup> requires an assessment of the

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\* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University, Bucharest (e-mail: florin.stoik@gmail.com)

<sup>1</sup> For another details about administrative capacity, see Elena Emilia Ștefan, Drept administrativ. Partea a II-a. Curs universitar, ediția a 3-a revizuită, completată și actualizată, Universul juridic Publishing House, Bucharest, 2018, page 29.

functioning of the hierarchical structure of human resources in public services.

In order to support the process of transformation of the public administration, it is necessary to take a package of measures to be taken within a defined period of time. Measures otherwise foreseen in the Public Administration Strategy.

## 2. Content

During the transitional period Romania passed through, the public administration underwent major transformations, both at central and at local level. Perhaps the biggest impact this domain has suffered as a result of joining the European Union in 2007, a process that resulted in the linking of public administration with European governmental mechanisms and alignment with the standards imposed by other European administrations<sup>2</sup>. Although notable progress is being made, we identify outstanding chapters, especially in terms of efficiency, effectiveness and image, which are nothing more than a reflection of a conservative organizational culture concentrated more on a formal administration. Thus, the lack of interest in the real impact of its outcomes on society and the acute shortage of partners, such as the business environment, academic environment, civil society and relevant social partners, in the decision-making process generate some degree of mistrust between citizens and officials and between civil servants and political actors.

Although Romania has been a member of the European Union for more than ten years and is currently in the second programming period in terms of structural funds allocation and has had several support tools to strengthen administrative capacity, still overdue to reducing bureaucracy, increasing the transparency and professionalisation of the administration, and making the spending of public funds more efficient.

For the current programming period 2014-2020, in the context of negotiations between Romanian authorities and European ones on the Partnership Agreement which is the basis of non-reimbursable grants, there is a growing tendency to be noted at both internal and Commission level of modernising the public administration and creating the necessary capacity to fulfill the role in Romania's socio-economic development. Thus, within the mentioned documents Romania had to fulfill an ex-ante conditionality regarding the public administration field, meaning the

elaboration of a plan of measures in order to strengthen the administrative capacity.

The strategy for strengthening the capacity of the public administration has been elaborated in the mentioned context and is a provision included in the framework of the EU Regulation no. 1303/2013, as well as in the document entitled Position of the Commission's Services on the Development of the Partnership Agreement and Programs in Romania for the period 2014-2020.

The strategy contains three key elements, namely<sup>3</sup>:

- the need to remedy some structural weaknesses in the functioning of public administration;
- country-specific recommendations made by the European Commission for the years 2013 and 2014 on public administration;
- the need to ensure / prepare the public administration to meet the obligations assumed at European level in respect of a number of targets / targets set out in the Europe 2020 Strategy, For a Better Regulation Strategy.

At the moment, steps have been made in all three directions, but from the point of view of the legislative framework, the steps are shy, the amendments to the legislation proposed in 2014 are not even finalized today. However, it should be noted that a law change process started in 2015, at which moment the law was sent to the Constitutional Court, the petition showing an appearance of unconstitutionality, thus the law has never been promulgated.

Furthermore, we will continue to focus on proposed changes to the Civil Servants Act, since the law governing the most important institutional resource, namely the human resource, is defining the reform of a system as a whole.

The status of civil servants has its seat in Law 188/1999<sup>4</sup> a normative act that since its promulgation has so far suffered a number of substantial deformations, both at the level of 2006 and at the level of 2003. In 2007 the changes were substantive and led to the republishing of the law. However, today's form is not the one of 2007, the re-published form kept up with the socio-political changes of the times and was amended with successive modifications and additions.

At present, according to the law, the institution responsible for monitoring and methodological coordination at the administration level is ANFP<sup>5</sup>. In the exercise of the powers conferred by the law a number of malfunctions were identified in the interpretation and application of certain normative

<sup>2</sup> Marius Profiroiu, Tudorel Andrei, Dragos Dinca Radu Carp-Study no. 3 Reform of public administration in the context of european integration, European Institute of Romania, 2009.

<sup>3</sup> Annexes no. 1-3 to the Government Decision no. 909/2014 on the approval of the Strategy for Strengthening Public Administration 2014-2020 and the establishment of the National Committee for Coordination of the Implementation of the Strategy for Strengthening Public Administration 2014-2020 of 15.10.2014

<sup>4</sup> For details, see Elena Emilia Ștefan, Manual de drept administrativ. Partea a I-a. Caiet de seminar. Universul juridic Publishing House, Bucharest, 2011, page 173.

<sup>5</sup> V. Vedinas, Statute of civil servants (Law No 188/1999). Comments, legislation, doctrine and jurisprudence Second Edition, reviewed and added, Universul Juridic, Bucharest, 2016, pag.111-121; Also, see. Elena Emilia Ștefan, Manual de drept administrativ. Partea a II-a, ediția a IV-a. Caiet de seminar. Universul juridic Publishing House, Bucharest, 2018, page 88.

provisions, malfunctions motivating the necessity of technical legislative interventions.

In order to elaborate the draft for the modifying normative act, a series of programmatic and strategic documents were considered. Furthermore, I am going to reiterate what has been said about the strategies developed as a result of European agreements and regulations. The following were analysed:

- Government Decision no. 909/2014 for the implementation of the Public Administration Reform Strategy (SCAP) 2014-2020;
- Government Decision no. 525/2016 for the approval of the Public Service Development Strategy (SDFP) 2016-2020;
- Government Decision no. 650/2016 for the approval of the Public Sector Vocational Training (PFS) Strategy 2016-2020.

Based on the elaboration of the strategies approved by the Government Decision no.525 / 2016 and the Government Decision no. 650/2016 five documents were elaborated by ANFP, according to the Strategy for Strengthening the Public Administration 2014-2020, namely:

- Analysis of the current situation of the recruitment and staff evaluation systems in terms of applying the rules in force;
- Analysis on strengthening the role of ANFP and / or setting up an institution responsible for managing contract staff in public administration;
- Analysis of the establishment of an entity with responsibilities in the field of training of public administration staff;
- Analysis on the evaluation of the implementation of the YPS (Young Professional Project) programs and the BSGR (Government of Romania Special Scholarship);
- Analysis of competence frameworks on strategic and specific identified areas

At the level of 2015, ANFP prepared a research report that focused on the correlation between the education system and the labor market. As a matter of fact, it was the product of a partnership, between the ANFP and the university environment.

By Parliament's Decision no. 1/2017 for granting the Government's trust through which the Governing Program 2017-2020 was adopted and one of the provisions of this document also refers to the completion of the action plan assumed by the two strategies.

At the level of the National Civil Servants<sup>6</sup> Agency a mixed working sub-group was created for the elaboration of an integrated package of legislative solutions for amending and completing the Law no. 188/1999 on the Statute of civil servants. On the agenda of this working group was the transposition within the legislative framework of the Strategy for the development of the public function 2016-2020. The

legislative transposition should have also taken into account the draft of the Administrative Code of Romania, the draft normative act on the working table of the legislature. The inter-ministerial working group set up, also benefited from representatives from the academical environment and representatives of trade unions in this field.

Also at the level of 2016, following the partnership between the Romanian Government and the Directorate for Public Governance and Territorial Development of the OECD, a project in the field of public governance was developed and implemented. The purpose of this project was to draw up a public-policy analysis. The outcome of this project can be quantified by identifying 5 priority areas for everything that means public governance in Romania. The following areas of major importance have been identified:

- Coordination at central level, at Government level,
- Strategic management of human resources in public administration,
- Budget Management,
- Open Governance and
- Digital Governance.

For the above-mentioned areas, expert group's recommendations were established, which would be in the course of the ongoing reform process of the administration.

### **2.1. The expected impact of the legislative amendments proposed by the draft law initiated by the Ministry of Regional Development and Public Administration.**

The draft bill initiated by MDRAP proposes both programmatic changes and modifications aimed at completing and remedying some technical deficiencies identified at the level of the Officials' Statute.

Thus, at the level of the implementation programmatic theme, major changes were made aimed at extending the competences of the National Agency of Civil Servants by adding the accounting function and other categories of budgetary personnel within the public administration. Thus, at the level of the Agency, an electronic system for keeping the positions in the administration will be created, implemented and administered.

Also, under this point rules will be introduced that will form the basis of the regulation of the national competition as a means of recruiting civil servants. However, in the explanatory memorandum of the draft law, the implementation of a national recruitment contest will be carried out in the framework of a pilot project, a testing project. Initially, a pilot contest will be held, which will be regulated during the experimental period by some transitional rules. Transitional rules for non-experimental competitions will also be included.

<sup>6</sup> FUNDAMENTAL NOTE to the Government Decision no. 525/2016 for the approval of the Strategy for the development of the public function 2016-2020)

In order to occupy the central state and territorial public offices, two stages will be organised, recruitment and selection. The recruitment will be carried out by organising a national competition that will verify the general knowledge and skills. Selection will be carried out through institutional competition, for each post, and will aim at verifying the specialized knowledge and the specific skills needed to fill a vacant public position.

The contest organised for the purpose of occupying local public functions will have a more unitary organisation, so in the same competition the general and the specific and specialised skills will be checked.

For the recruitment field, the draft law proposes a centralisation at the level of the Agency, through the implementation of a recruitment plan which will be subject to the approval of the Government. The Agency will develop this plan taking into account the proposals of public authorities and institutions.

The rules governing the organisation and development of the civil servant's career are reviewed and supplemented. In this respect, associated salary rates will be introduced for all categories of officials including senior officials.

At the organisational level, the category of senior officials is redefined and a number of public functions are cancelled, namely the prefect, the sub-prefect and the government inspector, functions for which another legal regime will be established. The project also proposes transitional provisions for the implementation of these proposals.

Also within this project, the Agency has a new task, namely to develop general competence frameworks and specific frameworks.

From the second point of view of the MDRAP project, we can see changes that affect the material right of this matter. Thus, the changes and additions are aimed at some improvements for remediating the results of the practice and contributing to the implementation of the new laws.

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The draft proposes a clarification of the general framework on special statutes<sup>7</sup>. The proposed rules also make flexible the way in which vacancies are temporarily vacant, regulate mobility within the body of civil servants, and extend the ways in which a public office can be employed.

The legislation will contain a new section "The Structure of Posts", which is characterised by general rules applicable to all public institutions and authorities. These norms regulate the organisational structure and the establishment of public functions.

Here too, the attempts are made to eliminate discriminatory situations, thus amending the regulations on civil servants' rights. The rules on how to develop the careers of a civil servant are also reviewed in order to create a uniform regime.

Also from the point of view of human comprehensiveness, the provisions regarding the competence and activity of disciplinary and parity commissions are clarified.

The draft law technically clarifies the legal regime applicable to civil servants regarding the termination of service relationships.

The authors of the draft law proposed to revise the rules regarding the seniority of the civil service, but also to clarify the norms related to the actual institutional reorganization process as well as the terminology in the field.

This draft law seeks to standardise the applicable legal regime in the event of suspension of civil servants' service relationships in the conduct of their work in the governing bodies of trade unions and the conduct of political activities.

A controversial provision, respect, removal of service relationships in case of referral is provided. The project's authors also proposes regulations for contraventions and sanctions.

As a result of some divergences at the conceptual level, changes that are proposed are aimed at eliminating non-uniform interpretations of norms and simplifying the application of these norms. This explains the public institutions with which the civil servants are in legal service relations and the notion of budgetary personnel is redefined and clarified, in order to determine the regulatory object of the normative act.

Nowadays, the activities that involve the prerogatives of public power are redefined, and the duties involving the exercise of public powers are classified into two categories, namely general and special in nature. Rules on special statutes and specific public functions are introduced.

The draft law now also establishes the legal consequences that may arise if several cases of cessation or suspension of service relationships occur concurrently but also clarify the liability of civil servants in the exercise of their duties.

The rules on redistribution of civil servants and the reserve body of these are provided with clarification in this draft.

In order to obtain unitary legal provisions on reduction of the number of incomplete administrative acts, a new section "Administrative acts" will be introduced in the new laws. Within this section, the author of the text proposes definitions of the administrative act, the administrative act of appointing, amending, suspending and terminating the public office. These provisions are not only about definitions but also about how these administrative acts produce their effects.

<sup>7</sup> Draft "Law on the Statute of Civil Servants and Evidence of Budgetary Staff in Public Administration", March 2017.

The proposed project is perhaps the most complete modification and consolidation of the State Civil Servant since the Law was published in 1999. However, other proposed changes are also important, namely those related to the transposition into other programmatic documents. Thus, the transposition of the Incidental Provisions of the "Strategy for Promotion of Active Aging and the Protection of the Elderly for the Period 2015-2020" is made by introducing rules stipulating the possibility of keeping civil servants fulfilling the retirement conditions for old age in service, observing the express conditions laid down for that purpose.

The transposition of the provisions of the National Public Procurement Strategy is achieved through the introduction of a new public execution function, namely public procurement advisor.

### 3. Final changes sent to promulgation

Although the draft law initiated by the Ministry of Regional Development and Public Administration is launched in March 2017, in 2015 a group of MPs initiated another draft law amending the Civil Service Statute. Of the two projects, the one in 2015 is on the circuit of approval and approval of a normative act. This bill was submitted to the debates of the two chambers and was verified and amended by the Constitutional Court.

In the explanatory statement submitted, according to the practice and norms for the drafting of the normative acts, the authors of the proposal motivate the necessity of this act in order to strengthen the observance of the principles of equal opportunities for non-discrimination and equity between civil servants.

Among the proposed changes are the modification of the conditions necessary for the promotion, the modification of the situation of suspension of the service relationship, the possibility to continue the activity after retirement, the mobility of the public function.

The motivation of this draft law contains the supplementation required by the Constitutional Court Decision no. 1039/2009, which assumes: "One of the principles underlying the right to work is the stability of legal relationships that arise as a result of the conclusion of the individual labor contract, this principle stemming from the State's obligation to create the legislative framework meant to ensure the salaries of safety and security, the guarantee of keeping the workplace<sup>8</sup>".

A first form of this proposal was adopted by the Chamber of Deputies in 2016, as amended by the Constitutional Court by the Constitutional Court's Decision No. 667 of November 9, 2016, following the notification of the Government. Subsequent to this notification the normative act is sent to the Senate for reexamination. The reason for unconstitutionality was the amendment related to the granting of bonuses to the staff of the National Agency of Civil Servants.

Following the consolidation of a new form of the normative act was amended by notices formulated by the President of Romania for diminishing the standards of integrity. The Constitutional Court no.32 of January 23, 2018 establishes the new provisions in conflict, art. I, points 14, 18 and 22.

Following the communication of this decision, a new form for this project is reinforced.

The main changes to be adopted are aimed at strengthening the position of senior civil servant, increasing the number of years necessary for the performance of these functions from 5 to 7 years and introducing new regulations regarding the clarification of the category of staff paid from public funds.

It also clarifies the way in which senior civil servants and senior officials can be appointed to public dignity positions, namely by suspending the service relationship. The way of entry into the body of civil servants is also regulated.

The form prepared for the promulgation also contains provisions regarding the development of the career of civil servants and the way of promotion or recruitment for management positions. These changes occur to professionalize and increase administrative capacity. Norms governing the possibilities of mobility within the public service are also provided here.

Notable in this normative act is the continuation of the activity after retirement, which also offers the character of professionalization of the public administration.

By making a parallel between the two draft normative acts, we find that the project elaborated by the Ministry of Regional Development and Public Administration is much more complete and presumes a restructuring of this legislative framework. The central authority project, the most competent authority in the field, supposes the affiliation with the European standards and the strategies and agreements assumed by our state. Some of these measures are also taken up in the project prepared for publication, but the act prepared for publication leaves gaps in the field and does not complete the planned measures within the programmatic documents. These changes are more of a political nature and have no scope that the proposed amendments by the central authority, do not come to follow the plan of measures taken to develop the administrative capacity of the Romanian state.

If these provisions are promulgated and published, they will not stabilize the legislative framework governing the State of Civil Service. We reiterate the need to see all measures taken as ex-ante conditionality in the framework of agreements with European mechanisms. Thus, we see the need to republish this legislation and to follow all the strategic documents that intersect with this area. Legislation needs to be adapted at the same time as the approximation of adjacent legislation and the harmonization of legislation on public and utility services.

<sup>8</sup> Decision of the Constitutional Court no. 1039/2009

#### 4. Conclusion

Although apparently we may conclude that the reform of public administration is close to the end, the analysis of normative acts and the practice of recent years, denotes that the public administration reform is far from complete.

The various studies conducted by civil society and other non-governmental organizations have revealed a series of deficiencies in the management of public office.

All of these studies reveal that the reform of public administration must focus on this essential resource. The public administration faces an important challenge, namely the establishment of a way to create the creative potential of the human resource.

The last period was marked by the attempt to cosmetic the image of the public administration, by applying the conceptual principles regarding the increase of transparency of the administrative act and the taking of measures aimed at combating corruption measures that kept the pages of the newspapers.

The analysis made during the current study reveals precisely the lack of consistency of coherent legislative reform. However, we only refer to the proposal that followed the circuit of a normative act, a proposal that does not have an essential role in the process of reform to strengthen the administrative capacity.

If we relate to the first analyzed proposal, we find that this is incomplete as it does not contain provisions on the computerization and digitization of the

administration and does not propose clear measures in encouraging the creative potential.

Although the recruitment process for civil servants is currently regulated, the recruitment process does not reveal the best managers or the best professionals. Practice shows us that the recruitment method has not yet come under the sphere of politics and interest. In this regard, it is worth noting the numerous frauds found by the authorities and the numerous acts initiated at the level of the National Anticorruption Directorate.

If the management style at present is characterized by an authoritative style lacking in professionalism, which denotes the need to develop a new recruitment method and a new way of training for the benefit of professionals, possibly inaccessible on the basis of a contract performance so that political sympathies or other occult forces can influence their activity. What is lacking in the public authorities in the present is the lack of an organizational culture and the lack of trained managers. Officials with senior management positions, even if they often know the field quite well, do not have managerial skills.

In order to be able to complete the reform process in this area it is necessary first to follow the strategies developed in this field and then to comply with the directives imposed by the European mechanisms. As I saying, the legislative framework needs to be modernized and simplified in order to increase administrative capacity, which will have repercussions on economical growth.

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