

# VALUES AND TRADITIONS IN THE ADMINISTRATIVE CODE AND OTHER NORMATIVE ACTS

Elena Emilia ȘTEFAN\*

## Abstract

*States have always been concerned with regulating in the Constitution or in other domestic normative acts the most important coordinates according to which the good administration of the country is carried out. Depending on specific values and traditions, all states develop in normative acts what they consider most important to express their national identity.*

*The topic we propose started from the curiosity to know whether references are made to divinity or to Christian values in national law, but also in comparative law, in main normative acts. A potential topic of debate would be that of finding out if there is unitary regulation in the Constitution, but also in other normative acts, in what concerns the inclusion of the religious wording in the content of the oath. From this point of view, we consider that the topic is of interest due to the fact it provides additional information both to law specialists and to persons that could find themselves, at some point, in the situation to fulfill the formality of the oath, when assuming the mandate or public office.*

*In order to fulfill the proposed research scope, several normative acts shall be analyzed, both from national legislation, but also from comparative law, in the light of the proposed research topic. The final part of the study shall consist of the conclusions and de lege ferenda proposals.*

**Keywords:** Constitution, Administrative Code, value, religious wording, honor.

## 1. Introduction

Given our previous concerns<sup>1</sup> of scientific research of public administration<sup>2</sup>, we aimed to develop in this paperwork other aspects which can help to better knowing the legal regulations on public authorities. Furthermore, the relationship between law and morality is analyzed in all classes of general theory of law<sup>3</sup>. Nowadays, we cannot explain<sup>4</sup> a text of a normative act, without knowing the history<sup>5</sup> of the state and the law of a state. This is the only way we believe that an objective image can be drawn from which the philosophy of the respective text emerges, namely the spirit of that people. The issue of the existence of the religious wording in the content of the oath is not a simple one because it can happen that a person specifically invokes freedom of conscience and cannot say the religious wording.

The Constitutional Court noted in its case-law that, according to the provisions of art. 29 of the Fundamental Law: „No one may be forced to adopt an opinion or to join a religious belief, contrary to his convictions” (para. 18)<sup>6</sup>. According to art. 1 para. (3) of the revised Constitution: „Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be

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\* Associate Professor, PhD, Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: stefanelena@univnt.ro).

<sup>1</sup> E.E. Ștefan, *Legalitate și moralitate în activitatea autorităților publice*, in *Revista de Drept Public* no. 4/2017, pp. 95-105.

<sup>2</sup> For further details, see R.M. Popescu, *ECJ case-law on the concept of „public administration” used in article 45 paragraph (4) TFUE*, in proceedings of CKS e-book 2017, pp. 528-532

<sup>3</sup> For further details, see E. Anghel, *Values and valorization*, LESIJ JS XXII/2015 nr. 2/2015, *Lex ET Scientia International Journal - Juridical Series*, pp. 103-113 and E. Anghel, *The notions of „given” and „constructed” in the field of the law*, published in proceedings of CKS-eBook 2016, pp. 338-343.

<sup>4</sup> In what concerns the interpretation of the legal regulation, see N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.-C. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, 3<sup>rd</sup> ed., C.H. Beck Publishing House, Bucharest, 2017, pp. 197-202; M. Bădescu, *Teoria generală a dreptului*, Sitech Publishing House, Craiova, 2018, pp. 167-187.

<sup>5</sup> For further details, see E. Anghel, *Constant aspects of law*, published in proceedings CKS-eBook 2011, Pro Universitaria Publishing House, Bucharest, 2011 and E. Anghel, *Drept privat roman. Izvoare, procedură civilă, persoane, bunuri*, Universul Juridic Publishing House, Bucharest, 2021, pp. 7-81.

<sup>6</sup> CCR dec. no. 669, published in the Official Gazette of Romania no. 59/23.01.2015.

guaranteed". Therefore, the legislator expressly regulated in the Constitution that there are values and traditions of the Romanian people<sup>7</sup>.

We did not find in the doctrine an analysis of the topic as we propose it, although the classes of administrative law<sup>8</sup> or constitutional law<sup>9</sup> make reference to the formality of the oath without developing the topic, in the light of the subject matter of this paperwork. The proposed scope of this study is to provide additional information necessary to know if, on the one hand, there are references to divinity or Christian values in the normative acts and, on the other hand, if there is an unitary conception between the Constitution and other normative acts, in what concerns the oath.

In terms of the structure, the paperwork is divided into two parts. The first part begins with the research of the wording of the oath referred to in the legislation, and the second part analyzes normative acts of comparative law, in order to have a more detailed picture of the subject.

## 2. The regulation of Christian values and religious wording in national law

In our opinion, the access to knowledge is not a simple one, but it represents the result of conscious efforts to get out of own ignorance and therefore, by means of education and personal work, a person knows to make choices, in full knowledge. In our opinion, family and school<sup>10</sup> play an important role in ensuring access to knowledge. Good, truth and beauty are universal values and we note, in this respect, *Plato's Allegory of the Cave* which begins as follows: „And now allow me to draw a comparison in order to understand the effect of learning or the lack thereof upon our nature. Imagine that there are people living in a cave deep underground (...) The cavern has a mouth that opens to the light above (...)”<sup>11</sup>. We do not go into more details on Plato's work, but we believe that the example is relevant due to the fact it provides a topic for reflection which was also contemplated by the case-law of the Constitutional Court. We refer to the freedom of thought, conscience or religious belief, and the family-school binomial by means of which education is ensured in first years of life.

Therefore, the Constitutional Court provided that: „according to the provisions of art. 29 para.(1), the individual enjoys the unrestricted freedom of thought, conscience and religious belief, a situation that gives consistency to the free development of human personality as supreme value guaranteed by art. 1 para.(3) of the Fundamental Law<sup>12</sup>". In the opinion of the Court, „(...) the state guarantees freedom of conscience, which must be expressed in a spirit of tolerance and mutual respect" (para. 20)<sup>13</sup> and „as part of the constitutional system of values, the freedom of religious conscience is assigned the imperative of tolerance, especially in relation to human dignity guaranteed by (...) the Fundamental Law, which dominates the system of values as a supreme value" (par.21)<sup>14</sup>.

### 2.1. With or without religious wording?

In this section, the analysis included a wide range of information on local officials, public officials, civil servants, or even on magistrates, lawyers or legal advisers, since the latter provide a public service.

#### 2.1.1. Administrative Code

The Administrative Code<sup>15</sup> regulates in art. 1. para.(1): „the general legal framework for the organization and operation of the authorities and institutions of public administration, the status of the personnel thereof

<sup>7</sup> For another perspective analysis, see E.E. Ștefan, *Reflectarea constituțională a jurământului de credință*, in revista.universuljuridic.ro no. 4/2020, available online at <http://revista.universuljuridic.ro/reflectarea-constititionala-juramantului-de-credinta/>, accessed on 26.01.2023, and E.E. Ștefan, *Aspecte de drept comparat privind jurământul șefului de stat*, in Revista de Drept Public no. 3-4/2020, pp. 89-101.

<sup>8</sup> M.C. Cliza, *Drept administrativ Partea I*, Pro Universitaria Publishing House, Bucharest, 2011, p. 81; C.S. Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 581.

<sup>9</sup> I. Muraru (coord.), A. Muraru, V. Bărbățeanu, D. Big, *Drept constituțional și instituții politice. Caiet de seminar*, C.H. Beck Publishing House, Bucharest, 2020, p. 288.

<sup>10</sup> On the institution of family as the basic cell of society, see C. Ene-Dinu, *Istoria statului și dreptului românesc*, 1<sup>st</sup> ed., Universul Juridic Publishing House, Bucharest, 2020, p. 545 *et seq.*

<sup>11</sup> Platon, *Opere* vol. V., *Republica*, Științifică și Enciclopedică Publishing House, Bucharest, 1986, pp. 312-321.

<sup>12</sup> CCR dec. no. 669, published in the Official Gazette of Romania no. 59/23.01.2015.

<sup>13</sup> *Ibidem.*

<sup>14</sup> *Ibidem.*

<sup>15</sup> GEO no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania no. 555/05.07.2019, latest amendments made by Law no. 19/2023, published in the Official Gazette of Romania no. 28/10.01.2023.

(...)”. Considering this de facto situation, we believe that it is necessary to investigate the point of view of the national legislator on whether Christian values are regulated in the content of this normative act.

There are references in the Administrative Code to the religious wording on the occasion of taking the oath of allegiance by: local and county councillors, mayor, president of the county council, prefect, but also civil servants. The Administrative Code mentions a single time the wording of the oath of allegiance regarding local councillors, in art. 117, while for the president of the county council, county councillors or mayor, the normative act makes reference to the same art. 117 by providing that the person (...) „takes the oath referred to in art. 117” (...).

In what concerns local councillors, art. 117 of the Administrative Code details the procedure and the text of the oath, that also includes the religious wording: „The elected local councillors whose term of office was validated shall take the following oath in Romanian language: *I solemnly swear to abide by the Constitution and laws of the country and to dedicate with good faith all my strength and the best of my ability for the welfare of the people of commune/city/municipality/county.... So help me God!* The closing religious wording shall respect the freedom of religious beliefs, the oath being also accepted without the religious wording (...)”. The legislator expressly allows the taking of the oath without the religious wording, by respecting the freedom of religious beliefs for the person in question.

The Administrative Code also provides the wording of the oath for the prefect. Furthermore, it mentions the possibility of taking it without religious wording. Therefore, art. 251 para. (3) provides the following: „When assuming the office, the prefect shall take the following oath (...), in Romanian language: *“ I solemnly swear to abide by the Constitution and laws of the country and to dedicate with good faith all my strength and the best of my ability for the welfare of the people of ... county/Bucharest municipality. So help me God!”* while para. (4) provides the following: “The closing religious wording shall respect the freedom of religious beliefs, the oath being also accepted without the religious wording”.

The formality of the oath of civil servants is provided by art. 259 of the Administrative Code, para.(4): „*I solemnly swear to abide by the Constitution, the fundamental human rights and freedoms, to apply the laws of the country fairly and impartially, to conscientiously fulfill my duties in the public office to which I was appointed, to preserve professional secrecy and to respect the norms of professional and civic conduct. So help me God!*” „The closing religious wording shall respect the freedom of religious beliefs, the oath being also accepted without the religious wording (...)”.

### 2.1.2. Revised Constitution of Romania

The revised Constitution of Romania provides the content of the oath which is the same for the President of the country, the Prime Minister, Ministers and the other members of the Government. In this respect, art. 82 provides the following: „The candidate (...) shall take (...) the following oath: *I solemnly swear that I will dedicate all my strength and the best of my ability for the spiritual and material welfare of the Romanian people, to abide by the Constitution and laws of the country, to defend democracy, the fundamental rights and freedoms of the citizens, Romania's sovereignty, independence, unity and territorial integrity. So help me God!*” while art. 104 para. (1) provides the following: „The Prime Minister, the Ministers and other members of the Government shall individually take an oath before the President of Romania, as provided under art. 82”.

Unlike the Administrative Code, the Constitution<sup>16</sup> does not provide another possibility to replace the religious wording in case of the President or of the Ministers, as in the aforementioned cases, the legislator requiring the full wording of the oath.

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<sup>16</sup> [„In the debates carried out in the Constituent Assembly, there were different points of view in connection with the religious wording which was to be introduced in the text of the oath”]- D. Apostol Tofan, *Drept administrativ Partea I*, 2<sup>nd</sup> ed., C.H. Beck Publishing House, Bucharest, 2008, p. 110.

### 2.1.3. Law no. 8/2002 on the oath of allegiance to the country and the people of the senators and deputies of the Romanian Parliament

The oath of the senators and deputies is referred to in Law no. 8/2002 on the oath of allegiance to the country and the people of the senators and deputies of the Romanian Parliament<sup>17</sup>. Art. 1 para.(1) and (2) holds our attention.

The legislator expressly provides in art. 1 para.(1): „The senators and deputies shall take, in solemn meeting of the Chamber they belong to, the following oath of allegiance to the country and the people: *I solemnly swear that I will bear true faith to my country Romania. I solemnly swear to abide by the Constitution and the laws of the country. I solemnly swear to defend democracy, the fundamental rights and freedoms of the citizens, Romania's sovereignty, independence, unity and territorial integrity. I solemnly swear to fulfill with honor and loyalty the mandate entrusted by the people. So help me God!*

Art. 1 para.(2) provides as follows: „the oath of allegiance can also be taken without religious wording, by being replaced by the following: *I solemnly swear on my honor and conscience, which precedes the oath*”.

### 2.1.4. Law no. 303/2022 on the profession of judge and prosecutor

Art. 80 of Law no. 303/2022 on the profession of judge and prosecutor<sup>18</sup> expressly provides the following in para. (1): „Before starting to exercise their office, judges and prosecutors shall take the following oath: I solemnly swear to abide by the Constitution and the laws of the country, to defend the fundamental rights and freedoms of citizens, to fulfill my duties with honor, conscience and impartiality. So help me God!

The reference to divinity in the oath of the judge shall change according to religious belief of judges and prosecutors and shall be optional.”

### 2.1.5. Normative acts applicable to lawyers and legal advisers

Law no. 51/1995 for the organization and practice of the profession of lawyer<sup>19</sup> provides the oath taken by the lawyers in art. 22. Therefore, para.(1) provides the following: (...), the lawyer shall take (...) the following oath: „*I solemnly swear to abide by and to defend the Constitution, human rights and freedoms and to practice the profession of lawyer with honor and dignity. So help me God!*” and para. (2): „The oath can also be taken without religious wording, in this case the oath shall start with the following wording: *I solemnly swear on my honor and conscience!*”

According to the Law on the profession of legal adviser<sup>20</sup>, art. 17, (...) the legal adviser shall take the following oath: „*in the name of the Law, Honor and Truth, I solemnly swear to abide by the Constitution and the laws of the country, to practice my profession with independence, dignity and impartiality and to keep professional secrecy. So help me God!*”

We note a difference between the two normative acts, namely, the law provides the possibility to take the oath without the religious wording, by replacing it with honor and conscience only in case of lawyers, while in case of legal advisers, this possibility does not exist.

## 3. The regulation of Christian values and religious wording in comparative law -short considerations

Important documents at European level include provisions on values and traditions and we will mention them hereafter, without detailing the European Union policies at this point<sup>21</sup>.

<sup>17</sup> Law no. 8/2002 on the oath of allegiance to the country and the people of the senators and deputies of the Romanian Parliament, published in the Official Gazette of Romania no. 101/05.02.2022.

<sup>18</sup> Law no. 303/2022 on the profession of judge and prosecutor, published in the Official Gazette of Romania no. 1102/16.11.2022.

<sup>19</sup> Law no. 51/1995 for the organization and practice of the profession of lawyer, published in OJ no. 116 of 19 June 1995, with latest amendments by Law no. 32/2023 (...), published in the Official Gazette of Romania no. 36/12.01.2023.

<sup>20</sup> The Law on the profession of legal adviser, published in the Official Gazette of Romania no. 684/29.07.2004, with latest amendments by Resolution no. 4/2014, published in the Official Gazette of Romania no. 452/20.06.2014.

<sup>21</sup> A.-M. Conea, *Politicile Uniunii Europene. Curs universitar*, Universul Juridic Publishing House, Bucharest, 2020, pp. 10-20 or A. Fuerea, *Manualul Uniunii Europene*, 6<sup>th</sup> ed., revised and supplemented, Universul Juridic Publishing House, Bucharest, 2016.

Therefore, the Charter of Fundamental Rights of the European Union<sup>22</sup>, includes references to values and traditions in the Preamble, respectively – common values: „*The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values*” (par. 1); indivisible and universal values: „*Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity (...)*”(para. 2); common values/traditions: „*The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States (...)*” (par. 3).

The European Code of Good Administrative Behavior<sup>23</sup> regulates in art. 5 para. 5): „*The official shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion (...)*”. In this background, we found interesting to research whether in the fundamental law of different states, we find references to Christian values and beliefs and we have proposed in this sense an analysis of three constitutions of the European Union, randomly chosen.

The Constitution of the Republic of Austria<sup>24</sup> speaks of social, religious and moral values (...) and on divinity, we note art. 62 which in para. (1) provides: „(...) The Federal President shall take the following oath (...): „*I solemnly promise that I shall faithfully observe the Constitution and all laws of the Republic and that I shall fulfill my duty to the best of my knowledge and conscience*” and in para. (2): „The addition of a religious affirmation is admissible”. Furthermore, art.72 regulates the oath of Ministers and art. 101 para. (1) the oath of the Land Governor, both articles providing the following mention: „The addition of a religious affirmation is admissible”.

Art. 56 of the Constitution of the Federal Republic of Germany<sup>25</sup> shall read as follows: „(...) The Federal President shall take the following oath (...): „*I swear that I will dedicate my efforts to the well-being of the German people, promote their welfare, protect them from harm, uphold and defend the Fundamental Law and the laws of the Federation, perform my duties conscientiously, and do justice to all. So help me God!*” The oath may also be taken without religious affirmation”.

The last constitution analyzed is that of the Polish Republic. The preamble of this Constitution outlines an interesting point of view of the legislator which dedicates the Fundamental Law to all people, referring both to those who believe in divinity and to those who do not share such faith. The text shall read as follows: „We, the Polish Nation – all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources<sup>26</sup>”.

In what concerns divinity, art. 104 para.(2) of the same Constitution regulates the content of the deputies' oath: „*I do solemnly swear to perform my duties to the Nation diligently and conscientiously, to safeguard the sovereignty and interests of the State, to do all within my power for the prosperity of the Homeland and the well-being of its citizens, and to observe the Constitution and other laws of the Republic of Poland*”<sup>27</sup>. In case of the President of the Republic: „The oath may also be taken, (...) with the additional sentence: *So help me God!*” (art. 130<sup>28</sup>)

#### 4. Conclusions

In this paperwork, information necessary to know whether there are references to divinity or Christian values in the legislation has been documented.

Therefore, in what concerns the Administrative Code, there are references to the religious wording used on the occasion of taking the oath of allegiance by: local and county councillors, mayor, president of the county council, prefect and civil servants. In order to have an overview of the subject, we extended the documentary

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<sup>22</sup> Public information, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF>, accessed on 26.01.2023.

<sup>23</sup> Public information, available at <https://www.ombudsman.europa.eu/ro/publication/ro/3510>, accessed on 26.01.2023.

<sup>24</sup> Șt. Deaconu (coord.), I. Muraru, E.S. Tănăsescu, S.G. Barbu, *Codex constituțional. Constituțiile statelor membre ale Uniunii Europene*, vol. I, “Monitorul Oficial”, Publishing and Printing House, Bucharest, 2015, p. 74.

<sup>25</sup> *Idem* vol. I, p. 700.

<sup>26</sup> *Idem*, vol. II, p. 310.

<sup>27</sup> *Idem*, p. 329.

<sup>28</sup> *Idem*, p. 335.

research to judges, prosecutors, lawyers and legal advisers, because they provide a public service and references to divinity also exist in their specific legislation.

The Administrative Code provides two elements of similarity for all subjects obliged to take the oath: on the one hand, the closing religious wording shall respect the freedom of religious beliefs and, on the other hand, the oath shall also be accepted without the religious wording. In domestic law, the reference to divinity prevails in the content of the oath, but there is also the possibility to take the oath without the religious wording, as in case of magistrates or lawyers.

The reference to divinity in the wording of the oath is optional in the legislation on judges and prosecutors, compared to the Administrative Code. Unlike the judges and prosecutors, in case of senators and deputies, although the law provides that the oath can be taken without the religious wording (as in case of the Administrative Code), in addition, it provides that it can be replaced by „honor and conscience”. The text that is replaced in case of senators and deputies is not surprising, due to the fact the following are included in the wording of the oath taken by judges and prosecutors: „honor, conscience and impartiality”, while the oath of local councillors or prefect includes: “good faith”.

Unlike the content of the oath of the President and the Ministers in the Constitution, the normative acts that we have analyzed provide more than the Constitution itself and from this point of view there is no unitary conception between the Constitution and the aforementioned acts. De lege ferenda, we propose the revision of the text of the oath and to debate whether it can be supplemented by the possibility of taking it without the religious wording, as in case of other states of the world, by respecting the freedom of conscience.

A final conclusion that emerges from the paperwork is that Christian values are found both in national legislation and in comparative law, such as truth, justice, good, beauty, honor, conscience.

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