CONSIDERATIONS ON GOOD ADMINISTRATION

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Abstract
The concept of good administration has a double meaning, concerning on one hand the means of providing services by the public authorities, and on the other hand, measures concerning the relation between the public authorities and the citizens. We believe that good administration considers the manner in which the State structures holding powers in matters of administration acts within the limits of the law and using the social power entrusted on them, in order to carry out these tasks in the most reliable, ideal and flawless manner.
The principle of legitimacy is set out in the preamble of the European Convention on Human Rights under the words "rule of law", which, in public administration, means that the organization and activity of public authorities should be made on the basis of law and within the limits set by law

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1. The concept of good administration

The concept of good administration has a double meaning, concerning on one hand the means of providing services by the public authorities, and on the other hand, measures concerning the relation between the public authorities and the citizens. In this sense, the right to good administration includes not only the right of the citizen so that the authorities observe a number of standing orders, but also the right to make sure that they generate the best results.[1]

Another opinion states that good administration has been defined as a fundamental principle of the Administration, which presumes the objective assignment of power at each level, with the well-defined specification of the manner of operating at these levels, an important role in its accomplishment being held by the involvement of the civil society in the act of government and making the society accountable for it[2].

Concerning the legal nature of the right to good administration in the doctrine, it has been shown that it represents a complex institution and has the legal nature of a fundamental right, with a wide-ranging content that includes a multitude of attributes relating to the organization and functioning of the Administration, acknowledged as independent rights[3].

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[1] Naomi Reniuț-Ursoiu, "Dimension of a good administration from the perspective of the Convention for the Protection of Human Rights and Fundamental Freedoms" (Dimensiunea bunei administrări din perspectiva Convenției pentru Apărarea Drepturilor Omului şi a Libertăților Fundamentale), in the revue "Good administration, from vision to action" (Buna administrare de la viziune la acțiune), Comunicare.ro Publication, Bucharest, 2011, p. 257.

[2] Ion Popescu-Slăniceanu, Diana Marilena Petrovszki, Cosmin Ionuț Enescu, "A better conduct of the public officers for a better administration" (O mai bună conduit a funcționarilor publici pentru o mai bună administrare), in the revue "Good administration, from vision to action" (Buna administrare de la viziune la acțiune), Comunicare.ro Publication, Bucharest, 2011, p. 180.

[3] Emanuel Albu, "Percepts of the right to good administration under the authority of the European Court of Human Rights" (Principiile dreptului la o bună administrare în jurisprudența Curții Europene a Drepturilor Omului), in E. Bălan, C. Iftene, G. Varia, M. Văcărelu, "The executive contemporary right-towards an unitary notion of the Romanian doctrine and practice" (Dreptul administrativ contemporan-spre o concepție unitară în doctrina şi practica românească), Comunicare.ro Publication, Bucharest, 2008, p. 128.

The right to good administration should be understood as a particularly complex legal institution that seizes the legal nature of a fundamental right which includes in its contents a series of aspects on the organization and functioning of the Administration; however, this right must be regarded also in the terms of the requirements the State has to organize and to guide as efficiently as possible the public administration and to guarantee the effectiveness of and compliance with the law of the whole activity of public authorities and institutions.

We believe that good administration considers the manner in which the State structures holding powers in matters of administration acts within the limits of the law and using the social power entrusted on them, in order to carry out these tasks in the most reliable, ideal and flawless manner. Only if these authorities fulfil properly their duties we can speak of a good administration. Beyond these limits, we refer only to a citizen's right in its relation to the public administration authorities.

2. The evolution of the concept of good administration in national legislation

Living in a given community requires knowing and keeping its fundamental values. It is also necessary the observance and enforcement of the rules of conduct imposed by the judicial norms accustoming to good discipline the human behaviour in social relationships formed in that community to create and protect these values[4].

The principles standing at the foundation of the relations between the administration and the administered ones are determined by a social communication style. The communication with the citizens is examined by reference to a bureaucratic administration, seen as an authentic caste, separated from the rest of the society and which, due to the prerogatives it disposes of, inflicts itself to the administration[5].

The Constitution of 1965 regulates very briefly, having rather a deductive character, in Article 34, the right of the citizens to good administration "right to petition is guaranteed. State agencies are required to resolve citizens' complaints concerning personal or public rights and interests", and in Article 35 "those injured in a right or a wrongful act of a state agency may request the competent bodies, in accordance with the law, the annulment of the act and the restitution".

Therefore, under the Communist rule, one could not speak objectively about good administration; all governments that have succeeded at the head of the Romanian State accused the disastrous legacy left by the previous government to justify the failure of a fair and consistent administration. The worse is that this administration crisis that has been perpetuated from a political stage to another had a very negative impact on the citizens and taxpayers who, ill-informed or, above all, for lack of other opportunities, chose those who were part of the public administration leadership.

Following 1989, a first regulation that could address citizens' right to good administration emerges from Article 51 of the revised Constitution which states that: "Citizens have the right to address public authorities by petitions formulated only in the names of the signatories. Legally established organizations have the right to forward petitions, exclusively on behalf of the bodies they represent. The public authorities are bound to respond to petitions within terms and conditions established by law".

We think that this statement is not comprehensive enough to entitle us to conclude that it would represent the right to *good administration*; we can say that this article only covers certain

[4] Alina Nicu, "The European Code of Good Administrative Behavior and the Romanian administrative phenomenon" (Codul european de bună conduită administrativă şi fenomenul administrativ românesc), University of Craiova, p.108.

[5] Dana Georgeta Alexandru, "Evaluating the right to a good administration in the context of the strategies concerning the implementation of the Charter of the Fundamental Rights" (Evaluarea dreptului la o bună administrare în contextual strategiilor privind implementarea Cartei Drepturilor Fundamentale), in the revue "The consolidation of the administrative capacity in the context of good administration" (Consolidarea capacității administrative în contextul bunei administrări), Comunicare.ro Publication, Bucharest, 2011, p. 275.

rights the citizen acquires in his/her relation with the government, as well as certain correlative obligations incumbent upon public authorities in regard to the citizens.

Moreover, the Basic Law states in Article 52 that "the person injured in his/her right or a legitimate interest, by a public authority, through an administrative act or an outstanding application in legal terms, is entitled to acknowledgment of those rights or the legitimate interest, the annulment of the act and the restitution".

In the same register, the Constitution stipulates in Article 54: "Citizens holding public offices, as well as officers are responsible to faithfully fulfil their obligations and, to this end, shall take the statutory oath".

In our opinion, these constitutional provisions are not such as to justify but the need to observe certain basic and fundamental rights of the citizen in his/her relation with public administration authorities, rights emerging from the purpose of establishing these authorities and not a right to good administration. Beyond these regulations - to be able to speak about the right to good administration - it is necessary that public administration authorities' powers of organization and of the practical implementation and enforcement of the law be self-fulfilled, without the intervention of the State's coercive force, without other forms of interference.

Following 1989, Romania has known a series of laws that regulate broadly or narrowly the activity of the public administration authorities in its relation with the citizens, but none of them define the concept of *good administration*. These laws can include:

- Law no. 188/1999, on the Statute of Public Servants, republished, amended and updated[6];
- Law no. 7/2004, on the Code of Conduct for public servants[7];
- Law no. 477/2004, on the Code of Conduct of the contractual staff of public authorities and institutions[8];
- Law no. 52/2003, on decisional transparency in public administration[9];
- Law no. 571/2004, on the protection of personnel in public authorities, public institutions and other units reporting violations of law[10];
- Law no. 161/2003, on a series of measures to ensure transparency in the exercise of public dignities, public functions and business environment, preventing and punishing corruption[11].

Law no. 188/1999 on the Statute of Public Servants counts as stated aims "to ensure, in accordance with the legal provisions, a secure, professional, transparent, efficient and impartial public service, in the interests of citizens, but also of the public authorities and institutions in central and local public administration"[12], which presumes providing a basic right of citizens and we can not speak about a definition of the concept of good administration.

Law no. 477/2004 on the Code of Conduct of contractual staff of public authorities and institutions, in Article 2, similarly to Law no. 7/2004, sets as main objective "improving the quality of public service, a good administration in achieving the public interest, as well as eradication of bureaucracy and of corruption in public administration". Therefore, without defining the concept of good administration, this Law establishes as objective the performance of good administration.

Law no. 52/2003 on decisional transparency in public administration is limited to determining the minimal procedural rules applicable to ensure the decisional transparency within public administration authorities.

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[6] Law no.188/1999 has been republished in the Official Gazette of Romania, Part I, no. 251/March the 22nd, 2004 subsequently amended by Law no. 344/2004, Government Emergency Ordinance no. 92/2004, Law no. 511/2004, Law no. 512/2004, Law no. 76/2005, G.E.O. no. 39/2005.

[7] Published in the Official Gazette of Romania, Part I, no. 157/February the 23rd, 2004.

[8] Published in the Official Gazette of Romania, Part I, no. 1105/November the 26th, 2004.

[9] Published in the Official Gazette of Romania, Part I, no. 70/February the 3rd, 2003.

[10] Published in the Official Gazette of Romania, no. 1214/December the 17th, 2004.

[11] Published in the Official Gazette of Romania, no. 279/April the 21st, 2003.

[12] Article 1, align. (2) of Law no.188/1999.

Law no. 571/2004 on the protection of personnel in public authorities, public institutions and other units reporting violations of Law is to regulate measures concerning the protection of citizens having noticed violations of Law by public authorities and institutions.

Law 161/2003 establishes measures to ensure transparency in the exercise of public dignities, public functions and business environment, preventing and punishing corruption.

Therefore, not even the legislation that followed Law no. 188/1999 has defined the concept of good administration, limiting itself to only list the objectives that formed the basis of these regulations. These objectives, almost common to these laws, consider regulating the professional conduct rules of public servants in order to achieve social and professional relationships able to maintain to the highest level the reputation of the civil service institution, the knowledge of professional conduct that citizens are entitled to expect from public officials in the exercise of public functions and, not least, the establishment of a climate of trust and mutual respect between citizens and institutions or public administration authorities.

We appreciate that these laws issued separately have not fulfilled their designation to create a coherent reform in public administration and did nothing but to resume, to repeat the already existing resolutions without bringing an addition of quality in the administrative work and their accumulation in a single act (perhaps having the dimensions of a code) would be an ideal solution.

As noted, even after 1989, so much the less before that time, the concept of good administration has not been defined by a coherent law, even the constitutional legislator regulating only provisions concerning the rights and obligations that public administration has in relation with the citizens.

However, in Europe, the concept of good administration is shaped indirectly in Article 41 of the Charter of Fundamental Rights of the European Union, which, without defining it, states that this right includes:

- "The right of every person to be heard, before taking any individual measure which would affect him;
- The right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- The liability of the Administration to give reasons for their decisions"

As a result of Romania's accession to the European Union, it has been imposed the need to observe the rules of European institutions for the purposes of adapting national legislation to the EU. This activity of transposition in the national legislation concerning all areas, of the Community documents with provisions on the contrary, has generated the need for radical reforms in public administration and, naturally, a number of shortcomings, in the sense that the difficulty level of the tasks for staff in public administration has increased.

Therefore, as a result of these obligations established by the European community for Romania, but also for the necessity to create a document encompassing and ensuring the implementation of the principles underlying the exercise of a public function, the Code of Conduct for public servants was adopted pursuant to Law no. 7/2004. This code was created after developing the European Code of Good Administrative Behaviour based on the idea of MEP Roy Perry, idea stated in 1998.

On September the 6th, 2001, the European Parliament adopted a resolution on a Code of Good Administrative Behaviour which would be met by the staff in the EU institutions, in order to strengthen the relations between the EU and its citizens. Clear, short and concise drafting of the rules of this Code stands out. After the scope of the regulation is set out in Articles 1 and 2, one moves on to present the principles of good administrative behaviour in a direct manner, naming each article with the title of the regulated principle, the regulation itself containing no more than four paragraphs[13].

[13] Alina Livia Nicu, "The European Code of Good Administrative Behavior and the Romanian administrative phenomenon" (Codul European de bună conduită administrativă şi fenomenul administrativ românesc), paper published

This Code of Conduct is based on the following principles:

- The Constitution and the rule of law. This principle should underpin any non-legal document, as its establishment mainly ensures that the Basic Law is particularly observed. This principle appears as a normal aspect, well known, undisputed in the legal literature; the rule of the Constitution reveals its unique quality to base at the top of the hierarchy of the legal system in any state law. Consequently, in the given circumstances, by ruling one must understand the subordination of public authorities, public servants, to the Constitution, which gives it more efficiency, necessary to guarantee the fundamental rights and freedoms of citizens.

The principle of legitimacy is set out in the preamble of the European Convention on Human Rights under the words "rule of law", which, in public administration, means that the organization and activity of public authorities should be made on the basis of law and within the limits set by law[14].

- The principle of priority of public interest, whereby any public servant has the duty to place the public interest above the personal one while performing job duties;

- The principle of equal treatment of citizens before the public institutions and authorities;

- The principle of professionalism requires that the public servant performs his duties with responsibility, competence, promptness, reliability and efficiency, the public servant being responsible to thus fulfilling his work tasks, both in regard to his superiors, and to the public authority they represent.

- The principle of impartiality and independence states that public servants are required to show an impartial attitude towards any kind of interests in exercising their duties. The independence principle recurs in numerous regulations on the organization and functioning of national and European institutions, and its observance does not rule out the items of the relation of authority the public servant finds himself in regard to the institution or the authority he works for.

- The principle of moral integrity requires that public servants are prohibited to ask or to receive, directly or indirectly, for themselves or a third party, any material or moral advantage due to their exercise. According to the Explanatory Dictionary of Romanian Language, integrity includes the quality of being honest, fair and incorruptible. The concept of integrity is based on a solid set of principles which require that, in exercising their work, public servants must be fair, honest, just, act according to reality, treat people on an equal basis, without prejudice, consider the public interest and comply with the law in all his undertakings. In the case of civil servants, integrity should encompass a set of values necessary for him to be able to perform all duties he was vested with and to achieve the ultimate goal, which is to protect the fundamental rights and freedoms of citizens.

- The principle of freedom of thought and expression is to be respected also by those holding public office. According to this constitutional principle, public servants are entitled to express their opinions freely and this freedom cannot be achieved without observing moral norms, rules and laws of common sense. As shown, freedom is a fundamental right every man is born with and whose regulation should be reflected in the Basic Law of each democratic state, as well as in international and local documents. Analysed in the given circumstances, freedom is not physical, but spiritual, concerning thought and free speech.

Considering, however, the freedom of thought (inserted in numerous international legal or non-legal documents, including the Charter of Fundamental Rights, Article 10) as a whole, one finds that, as it is a specific human emotion so deep and personal, it could not be censored or restricted by

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in the volume "European Integration-facts and perspective" (Integrarea europeană-realităţi şi perspectivă), Didactical and Educational Publishing, Bucharest, 2006, p.112.

[14] Emanoil Albu, Percepts of the right to good administration under the authority of the European Court of Human Rights (Principiile dreptului la o bună administrare în jurisprudenţa Curţii Europene a Drepturilor Omului), in the revue "The executive contemporary right-towards an unitary notion of the Romanian doctrine and practice" (Dreptul administrativ contemporan spre o concepţie unitară în doctrina şi practica românească), Comunicare.ro Publishing, Bucharest, 2008, p.130.

any means. Prohibiting someone's freedom of thought means to deny the existence of the main feature of man: thinking. Therefore, any man is free and cannot be prevented from thinking and believing anything, and this faculty is not to be stopped by any law; only the free expression of his thoughts can/cannot be restricted or censored; in the case of the public servant, this expression must be done in compliance with the rule of law and morals.

Therefore, we consider that the principle of freedom of thought and expression should be rephrased as such – the principle of free speech or, as governed by the Constitution of Romania – of freedom of expression of thoughts.

On the other hand, the requirement to respect citizens' opinions is set up for the officials, even to promote a dialogue with the citizens, without letting be influenced by considerations of personal nature or by popularity.

- Honesty and fairness. This principle, implying that public servants must exercise their duties in good faith, seems to duplicate the requirements already outlined for the principle of moral integrity. Honesty and fairness are attributes that should be imposed on exercising any function or profession, not only the public one, but especially public servants are required to perform their tasks in good faith, with honesty and fairness, as, by the nature of their duties, they come in direct contact with citizens;

- The principle of openness and transparency means that "the activities of civil servants acting in their function are public and can be monitored by the citizens"[15].

The principle of transparency is that principle to be observed in applying of Law 544/2001 through which public institutions and authorities are required to operate in an open manner towards the public, where the free and unhindered access to public interest information is to be the rule, and limiting the access to information is to be an exception in the law[16].

Knowing from the experience of the years of communism that politicization of public administration is an obstacle to reform this area, as well as a means to politically violate the human rights, the Code of Conduct regulates that the public servants are not allowed to participate to collecting funds in order to support political parties or to work, even outside employment relationships, with people making donations or sponsoring political parties. This prohibition appears as necessary in order to keep the impartiality and independence principle, as well as the moral integrity requiring public servants an impartial behaviour concerning any political or other interest.

Precisely in view of the public positions they hold, public officials are not allowed to use their own image or name for advertising or elections. This prohibition completes the public servant's obligation not to become politically involved in any way and we appreciate that the rule should be implemented to other professionals, given the fact that the last parliamentary elections allowed the names of famous artists with good moral and professional conduct to be associated with logos of political parties, precisely in order to promote the interests of these parties and to win the sympathy of the voters.

Article 14 of the Code of Conduct for Public Servants regards directly matters concerning corruption in public administration; therefore, under the law, public servants are not allowed to accept gifts, services, favours, invitations or other advantages, for themselves or for their families or friends, which can influence their impartiality in carrying out tasks they hold or could become a reward for service already rendered.

This prohibition re-emerges an issue always hot - corruption in public administration. Starting from the expression "small attention", "gift", the issue took the dimensions of a phenomenon, a scourge that hinders the development of a people and puts a stigma on a nation.

As shown, although present even before 1989, this phenomenon did not have the same shapes and intensity, expanding and becoming more violent after 1990. For this reason, the Romanian

[15] Law no. 7/2004 on the Code of Conduct of Public Servants, Article 3, letter i).
[16] Article 2, letter a – The methodological norm of applying Law 544/2001.

legislation was not ready in this respect; only after 1996 the government began to turn their attention, virtually through political statements, to fighting corruption.

At that time, the Romanian Parliament considered that the Government, in carrying out its role and functions, must act more forcefully, with greater commitment and efficiency to fight corruption phenomena, consistently pursuing the State's laws in all cases, regardless of the function and social position of the persons involved in corruption. Moreover, The Court of Auditors, the Financial Guard, the Police, the Public Ministry and other agencies authorized by law to exercise control functions and prosecution were required to make full duty, in the spirit of Constitution and laws, and to increase efficiency in finding and investigating corruption, in researching, to the end, those among them who had great resonance in public opinion, to apply the legal sanctions to be taken[17].

As it can be seen, although there is a legislative abundance in corruption, no visible progresses appeared in stopping and controlling this phenomenon.

After integration into the European family, corruption in Romania seems unstoppable; if until this event it had lighter "forms", after that date it took the form of "attentions" for winning licenses, facilitating customs procedures, gaining priority in provisioning of government services, of public procurement contracts, diverting public funds for private use of these public servants, often seniors.

The even worse fact is that corruption has taken alarming forms also in the medical and legal domains, spheres of general interest to citizens and that can have major negative consequences, often irreversible, over the destiny of those involved.

Hence, we are talking about corruption whenever a holder of power, a public servant or any occupant of a public office is determined by financial or other rewards, such as the promise of a promotion, that are not required by law, to take actions that favour the one that offers rewards, thereby causing harm to the public and its interests[18].

To summarize, but keeping constant elements, in our opinion, corruption in public administration is an act, attitude or behaviour of a person who has acquired a dose of power in certain spheres of social life, political, economic, legal etc., or certain professional fields in which he meets/does not meet certain tasks and aims to obtain goods, benefits, services for himself or for his family. Thus, corruption is an example of maladministration and is directly related to holding power in a particular area.

We notice that corruption is a threat to democracy, rule of law, social justice and the judiciary, undermining the principles of an effective administration, disrupting the market economy and jeopardizing the stability of state institutions[19].

It is known that corruption is most commonly found in acts involving the misuse of public power, and to prevent or limit this phenomenon it is required a series of reform measures at the legislative and institutional level, higher living standards, higher wages in the public sector and observance of social principles and moral values.

Therefore, it is important to understand that the official-citizen relationship is not a relationship of subordination, but only of collaboration, thus the citizen has also a civic obligation to take appropriate and decent conduct when applying for a civil service, to suppress the temptation to facilitate that service by "small gifts", knowing that corruption cannot be eradicated unless the corrupted and the person that corrupts both discourage such acts.

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[17] Anca Daniela Giurgiu, Adrian Baboi Stroe, Simona Luca, "Corruption in local public administration", the Publishing of the Establishment for the Development of Civil Society (Corupția în administrația publică locală, Editura Fundației pentru Dezvoltarea Societății Civile), Bucharest, 2002, p. 6.

[18] Friedrich, C.J., "Corruption Cases in Historical Perspective", in Heidenheimer, A.J., Johnston, M. and LeVine, V.T. (editors), Political Corruption. A Handbook, New Brunswick, NJ: Transaction Publishers, 1999, p. 15.

[19] Dorin Ciuncan, "Study concerning the causes that generate and the conditions that favor corruption" (Studiu privind cauzele care generează şi condițiile care favorizează corupția), in Documentary Bulletin („Buletin documentar") no. 4/2003, p. 3.

Conclusions

Although good administration is a concept more and more used in the administration and beyond, representing one of the fundamental principles of the European Union, its definition is coherently elaborated neither at a national lever, nor at a European level, being considered only as an indicator of performance in the public administration.

So, if at a national level, the right to good administration includes improving the quality of public service, cutting bureaucracy and corruption from the Charter, apparently, the right to good administration is limited to these two rights of the person, together with government obligation to give reasons, and beyond these elements one can not speak of a good or a bad administration.

In our opinion, the right to good administration should be subject to uniform regulations both at national and European level and should include in its content overall activity of public authorities and institutions, regulations and administrative actions within their competence, explaining all rights a citizen holds in his relation with public authorities and its correlative obligations as echo of the citizens' problems. All these aspects should be accompanied by specific penalties applicable to infringements in one form or another of the right to good administration.

The lack of a generally accepted definition of the concept of good administration, both at national and European level, is matched with the regulation of a set of general and specific principles detailing the composing parts of this right.

As noted in the scientific endeavour, in our opinion, the right to good administration is not objectively set forth in special national legal documents, the revised Constitution of Romania limiting itself to delegate to the legislative power the prerogative to regulate the conditions under which individuals can exercise certain rights in relation to public institutions and claim compensation due to damages caused by illegal acts by public administration authorities.

We deem as necessary to implement a coherent and consistent framework, but also a consistency of the public function, of diversification and deepening of the stages of training public servants so as to modernize and emancipate strategies in the domain of public administration.

Thus, in order to improve the services provided by public institutions and authorities, training of public servants should be continuous, thorough, at all levels, but especially at the top, should cover the use of advanced technology, knowledge of law, languages, as well as extensive knowledge specific to the domain the respective officials are operating in.

Especially to ensure a more effective protection and promotion of a citizen's right to good administration, it is necessary to intervene more forcefully also concerning the corruption. One notices that the corruption phenomenon is found in all spheres of social life but it is stronger, larger and more dangerous in the public sector.

The Code of Conduct for Public Servants bases its objectives precisely on increasing the quality of public services by cutting bureaucracy and corruption. The principles governing the rules of conduct stated in the Code should be placed in the Rules of Procedure of any public authority and institution and, in specific terms, it should also include penalties for violations.

The principle of the freedom of thought and expression should be rephrased as provided in the Constitution: "the principle of free speech". This would take place in the context in which thinking is a human cognitive function that cannot be controlled, restricted or punished; that which can be controlled or restricted is the result of thought - expressed opinions, with regard to which man is responsible.

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