THE PROCEDURE OF ACTS OF ADMINISTRATIVE LAW

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Abstract

The end of the twentieth century and the beginning of the 3rd millennium is characterized by a comprehensive process of transformation in all fields of human society, and all of these mutations must be subject to specific rules, principle of legality being an essential requirement of the rule of law. National legal order of each country is influenced by international and supranational legal systems, due to the trend of globalization of the world, without necessarily be negated the interdependence, according to national laws in that State, as a signatory of the some international conventions, has met certain obligations, including on the adoption of legal norms corresponding to the commitments. We can say that we are witnessing a process of convergence between administrative law in the Member States of the European Union and european administrative law, to further develop. We appreciate that, given the fact that Romania has taken the Community acquis, it is obliged to implement in national law the General principles of administrative procedure outlined at this level. Starting from the reality that the administrative procedure is vast topic and cannot be analyzed exhaustively in a single work, we try to present further, without going into details, the main topics of our research subject. Thus, we considered that it is necessary to achieve short considerations about the principles, but also administrative proceedings, by analyzing the stages and characters of it. We also reviewed briefly the administrative divorce procedure compared to the notary procedure, two elements of novelty introduced by the new civil code. On the other hand, we have presented arguments supporting the need for codified rules of administrative procedure, systematic methods used, and attempts to achieve this task. Basically, we can say that in our legal system is highly topical theme and presents a particular relevance in the context of attempts made by the legislature, since the year 2000, for the purposes of codification of the rules of administrative procedure.

Keywords: *administrative law; Member States; administrative proceedings; European Union;civil society.*

Introduction

The executive activity carried out by the state administration bodies is, as a whole, a complex activity. For this reason, it represents a true process. The characteristic of a process of this activity is emphasized especially with regard to the administrative acts or decisions, whose formation, application and verification is presented as an ensemble of operations that are in a logical and necessary sequence.

The administrative process can be defined as the ensemble of the activities (acts and deeds) carried out by the state administration in fulfilling its attributions. The administrative procedure is the form or the ensemble of formalities performed by the state administration bodies for the organization of the execution and the concrete execution of the laws and of the acts subordinated to them, acts that may emerge from the state administration or from other subjects of law. On the other hand, the administrative procedure also represents the totality of the legal norms regulating the form in which the executive activity is fulfilled[1].

In the specialized literature[2] the notion of (judicial) procedure receives several meanings. In a broad sense, it includes: norms that show which bodies are called to perform a certain activity (organizational norms); what responsibilities each body has (competence norms); what acts or operations are fulfilled by the bodies or by the persons participating in an activity (procedural norms). This last meaning, narrowed, is also the acception that we understand to use for the notion of administrative procedure.

The administrative procedure characterizes the totality of the concrete forms of the executive activity, because all the volitional activities of the administration have to fulfil a minimum of formalities. It is done in specific and different ways in the case of legal acts, of technical-material operations, deeds, and within it the procedure of the administrative acts or the decisional procedure is the most important category of the administrative procedure. The decisional procedure may be a non-jurisdictional procedure (for instance:invention patent procedure) and also a jurisdictional procedure (for instance, the procedure for resolving pension revision claims).

By analysing the administrative process and procedure, it is necessary to offer more clarifications.

A first clarification is that we have to give the notion of administrative procedure its narrowed meaning, understanding by it all the formalities that can compete in the fulfilment of the executive activity. Indeed, we cannot consider the entire executive activity itself as being the administrative procedure itself, as we would erase any difference between the content of this activity and the formalities to be carried out for its fulfilment.

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[1] Antonie Iorgovan, Tratat de drept administrativ, volumul I, Editia a IV a, Editura All Beck, Bucuresti, 2005, p. 26.

[2] V. Negru, D. Radu, *Drept procesual civil*, EdituraDidactica si Pedagogica, Bucharest, 1973, p. 17

A second clarification refers to the demarcation between the administrative procedure and the administrative procedural law[3]. The procedure is the form of performing the activity and the administrative procedural law represents the ensemble of the norms regulating the form in which the executive activity takes place.

A third clarification refers to the distinction between the material administrative law and the administrative procedural law, in the sense that the former regulates the content of the executive activity and the latter the form of carrying out this activity.

Lastly, it is also mandatory to note that to each concrete form of executive activity corresponds certain procedural form.

The administrative procedure has some characteristics that distinguish it, in particular from the civil procedure, in that:

- the judicial procedure is regulated by law (code), while the administrative procedure can also be regulated by normative acts subordinated to the law, some issued including by the state administration[4];
- the judicial procedure has a less complex character compared to the administrative one, the latter being made up of an ensemble of very different procedures (for instance, in the matter of sanctioning contraventions, patenting inventions, approving projects for normative acts);
- the administrative procedure is triggered most of the time ex officio, whereas the judicial one is triggered only with the notification of the Courts of Law by the parties to the dispute, prosecutor, other bodies provided by law;
- the court orders are not revocable, and by their pronouncement the Court of Law divests itself related to the settlement of the dispute, while the vast majority of the administrative acts are revocable.

By comparing some principles of the administrative procedure with the judicial procedure we note that:

- the principle of non-contradiction is a basic principle of the non-jurisdictional administrative procedure, compared with the principle of contradiction, whichgoverns the activity of the Courts of Law and involves at least two parties with contradictory, butprocedurally equal interests, while the executive activity presupposes subordination;
- the principle of non-publicity consists in the fact that the administrative bodies are not obliged, as well as the courts of law, to act in front of those who want to assist to the performance of their activity or who are interested in issuing the administrative acts;
- the principle of unavailability consists in the fact that the passive subjects of the administrative report cannotbenefit from the creation, modification, abolition and realization of these reports because of their subordination, compared to the civil process in which the parties have the possibility to benefit from the object of the dispute, of its extent and means of defence in the process.

Along with these principles, in the administrative procedure there are some common principles with the judicial procedure, such as the principle of legality, the principle of equality before the administration, the principle of the right to defence, the principle of the active role of the administration. The stages or phases of the administrative procedure are, in general, the stages that are being covered, in their existence, by the administrative acts, namely the preparation, issuance, execution and the control of the administrative acts.

The relation between legality and opportunity of administrative acts is a complex one, the link between them leading to ensure the best conditions for the issue and the accomplishment of an act validly[5]. The best solution is one in which the administrative act is legal and appropriate. Its legality evokes that the Act meets the letter of the law, and the opportunity it represents his conformity with the spirit of the law[6].

1. The decisional administrative procedure

The decisional administrative process can be defined as the totality of the actions required for the preparation, adoption, performance and control of the decisions or of the administrative acts. These actions may consist of prior documentation, debate and deliberation on the decision projects, on the activities of control of the execution, etc. The decisional administrative process comprises the ensemble of the formalities governing the decisional process. The administrative acts, in order to produce valid legal effects, must be issued in compliance with certain forms. The totality of the forms necessary in order for an act of administrative law to produce legal effects represent the procedure of drawing up that precise act[7]. This procedure consists of technical-material operations, also called procedural acts.

The decisional administrative procedure can be simple or complex. It is simple when, in order for the manifestation of the will contained in legal acts to take effect, the law does not require the accomplishment of a special procedure. The procedure is complex when the formalities are special in order for the administrative act to produce valid legal effects.

The notion of simple procedure and complex procedure do not identify with the notion of simple

[3] A. Balogh, „*Reglementareaprocedurii administrative in dreptul socialist comparat"*, in "Studianapocensia", vol. I, Ed. Acad. R.S.R., Bucharest, 1974, p. 84.

[4] For instance, the patent obtaining procedure for the economic agents from the internal commerce, according to the Government's Decision no. 1109/1990

[5] Rozalia Ana Lazăr, Legalitatea actului administrativ, All Beck, București, 2004, p. 166

[6] Verginia Vedinas, Drept administrativ, Editia a IV a, Editura Universul Juridic, Bucuresti, 2009, p.89.

[7] T. Draganu, *Actele de drept administrativ*, Ed. Stiitifica, 1959, Bucuresti, p. 119.

administrative act or complex administrative act. In the case of simple administrative acts, through the mere manifestation of will, valid legal effects occur, regardless of the complexity of the procedural forms. In the case of complex administrative acts, their elaboration procedure does not necessarily imply the contest of special technical-material operations, but the contest of several manifestations of will, which together produce valid legal effects (for instance, the administrative act commonly issued by several administrative bodies is a complex act). Thus, a simple administrative act can be drawn up after a complex procedure, or a complex act can be issued after a simple procedure. Therefore, the notion of "complex administrative act" does not identify with the notion of "complex administrative procedure" of drawing upthe administrative act, the latter notion being more extensive than the former[8].

The procedural forms can be classified according to several criteria[9]. According to their importance for the validity of the act, we distinguish essential and non-essential forms. According tothe exterior form of the procedural forms, we distinguish between written and non-written forms. The breach of the provisions regarding the essential procedural forms draws the sanction of the legal act, but not as an effect of these forms, but as an effect of the law, which aims to guarantee the regularity of the procedural forms in ensuring the validity of the legal acts.

According to the stage when they intervene, related to the moment of the establishment of the legal act, we distinguish procedural forms from the preparation stage (for instance, opinions), from the elaboration stage (motivation), from the execution stage (summons) and from the control stage (the control minute).

Performing an analysis on stages, in terms of legal consecration, of the procedure of the administrative acts or decisions, some clarifications are required regarding the manner of legal regulation. From the start, it should be made clear that the essence of the regulation of the administrative procedure is the administrative act, since it represents the most important concrete form of executive activity.

The preparation stage of the decision did not benefit from unitary regulation at the level of all administrative acts. In general, each issuing body or its hierarchically superior body developed its own methodology concerning the preparation of projects of legal acts, in particular normative ones. However, it was necessary to unify and coordinate the legal regulation of the preparatory stage of the projects of normative legal acts, elaborating in this respect the "General methodology of legislative technique regarding the preparation and systematization of the projects of normative acts" approved by Decree no. 16/1976. This methodology was applicable to the main projects of normative acts of our state and has undergone implicit changes, and also aims the acts of the state administration. The methodology in question also applies to individual acts, as it results from the provisions of art. 111 of the aforementioned Decree, which shows that the technical methods and procedures established for the normative acts are also applicable for the elaboration of the acts, which, without having a normative character, take the form of a decree or a government's decision, "per a contrario", the acts which do not have a normative character can only be individual acts, which, in the given case, are presented in the form of a decree or of a decision. The same decree regulated, at the same time, the operations that make up the decisional process, such as documentation[10], or the procedural formalities, such as the single opinion[11], being repealed by Law no. 24/2000, republished in 2004.

The adoption stage of the administrative decisions has been and is regulated in a different way, usually by the organizational and functioning norms of the respective bodies (thus, for instance, the decisions of the local councils are issued on the basis and in view of the performance of the law, with the vote of the majority of their members, being signed by the counsellorwho leads the meeting and countersigned by the secretary[12].

The regulation is different, since the specificity and the variety of the administrative bodies determine different ways of adopting the decisions, although some general rules may emerge, for instance, in the case of the collegiate bodies, where the principle of collegiate management determines that a decision is always adopted with the majority of the votes cast.

Sometimes, to the general requirements of the organic laws one may add special requirements from these laws or from special laws. Thus, for the category of the county councils, the permanent delegation was established, which decided on the issue of the current activity of the plenum[13], and other regulations establish, for instance, the period of time during which a body is obliged to solve a request addressed to it.

The execution stage is regulated by norms specific to each body, due to the particularity of the activity to be performed. There are also general provisions applicable to the execution in a field or branch, such as the execution of the contravention sanctions[14], or the forced execution procedure,

[8] T. Draganu, Actele administrative şi faptele asimilate lor supuse controlului judecătoresc potrivit Legii nr. 1/1967, p. 96-97.
[9] Idem, op. cit., p. 119-142.
[10] Art. 40 of Decree no. 16/1976, abrogated; art.19 of Law no. 24/2000.
[11] Art. 67 of Decree no. 16/1976, abrogated; the notice of the Legal Council, art.9 of Law no. 24/2000.
[12] Art. 45/1, 42/4 of Law no. 215/2001, republished.
[13] Art. 64 of Law no. 69/1991 (republished in 1996) abrogated by Law no. 215/2001, republished.
[14] Art. 39 of Decision no. 2/2001.

common in the field of material or patrimonial damages[15].

The control stage is differentially regulated by category of bodies and by specific regulations on areas or fields of activity. Thus, local councils monitor and control the activity of counsellors, of the mandated empowered persons of the state. Also, the Mayor guides and controls his own apparatus. In some cases, the hierarchical administrative appeal in the matter of controlling the lawfulness of administrative acts is consecrated. Regarding the specific aspects of the control, special regulations intervene, such as in the case of the Mayor's control over the way of collecting and spending the sums from the local budget of the administrative-territorial units.

In the case of the jurisdictional administrative acts, the regulation of their preparation and issuance framework is made in a thorough manner, as they are aimed at solving a dispute. Thus, the administrative-jurisdictional procedure is complemented with the regulations of the civil procedure code, as it was the case with the activity of the former County Pensions Committee, insofar as they correspond to the objectives of the body's activity.

Sometimes there is the possibility of alternating the administrative procedure with another procedure, for instance the legal one, the body having a right of option, for instance in the case of the evacuation of the persons who occupy without a Lease Agreement an area from the state housing stock (which is in the administration of a company), evacuation that can be ordered either by the decision of the competent local council or based on the decision of the Court of Law.

The administrative procedure, once established, is mandatory, the state body being unable to choose another procedure in the fulfilment of its attributions. Thus, the legal practice decided[16] that it is unacceptable the action by which the local council should also ask the court to oblige the defendant to demolish the construction after issuing a decision ordering the demolition of the built building, without the prior administrative authorization. This is because Decree no. 545/1958 (abrogated) authorized this body, on the basis of its own acts, to proceed to the demolition of the built buildings without prior authorization, and the opposition of the one concerned by this measure was not such as to affect the enforceability of the demolition act.

The decisional administrative process and procedure have a number of principles, among which an important place is represented by the principle of legality in preparing and adopting the decisions. In terms of the decisional process, this principle is based on the provisions according to which the legal norms can be elaborated only by the bodies provided by the law[17] and under the conditions provided by the law.

From a procedural point of view, all bodies must comply with those formalities that ensure the validity of the legal acts.

In the general methodology of the legislative technique it is shown that the elaboration of normative acts by all the state administration bodies is done in compliance with the principle of the supremacy of the law, the normative acts being elaborated only on the basis and in the execution of the laws. The normative acts of the state administration cannot add to or contravene the principles and provisions of the laws, the decisions and ordinances on the basis of which they are adopted.

Of course, some principles of the administrative law, characteristic of the executive activity, are also reflected in the decisional process.

Thus, the principle of collective leadership is illustrated in the decisional activity by the fact that the approval of the projects of normative acts is done by the leadership bodies and through the provisions that specify that the solution of the possible disputes regarding the projects of normative acts is also done by the state bodies' leadership.

Together with the general principles there are also some methodological principles or legislative technique principles. Among them, we mention the principle of mandatory documentation in the case of drawing up projects of normative acts, the principle of the obligatory observance of the stages and their succession in drawing up projects of normative acts, the principle of organizing and coordinating the normative activity by the Legislative Council.

The decisional administrative procedure has also a number of common principles, most of them with the principles of the administrative procedure. The principle of the official procedures, according to which an administrative body self-notices and invests itself in the issuance of legal acts, is illustrated by the fact that the central bodies of the state administration can issue, even in the absence of an express mandate, orders, instructions etc. when a higher-level act (law, decree) denounces inferior acts which would ensure them an uniform application. The principle of non-publicity, according to which the administrative activity is not meant to be publicly known, in respect with some of its aspects, is illustrated by the fact that the activity of preparing the decisions, the projects of normative acts, is secret. It becomes public only by being subjected to the public debate of more important projects of normative acts or by adopting acts, followed by their publication. The phases of the preparatory stage are generally devoid of the principle of publicity.

[15] Art. 26-28 of Decree no. 221/1960.
[16] Civil Decision no. 18/14.01.1974 of the Court of Covasna County, in ROMANIAN JOURNAL OF LAW. no. 10/1974, p. 56.
[17] Art. 4/1 of Law no. 24/2000.

2. The necessity of the codification of the administrative procedure

In the executive activity, together with the material norms, an important role is played by the procedural norms. The procedural norms regulate the various forms of performance of the executive activity, such as legal acts (and in their framework the administrative, civil or labour law ones) as well as the other concrete forms of activity.

The procedural norms to be observed by the administration are contained in the various regulations, either with a general character (such as the General Methodology of Legislative Technique), or in the organic regulations (for instance, Law no. 215/2001) or in special regulations (for instance, Ordinance no. 2/2001, Law no. 554/2004, Ordinance no. 27/2002), without being reunited in a unitary manner. Therefore, in the executive activity one feels the lack of systematization of the legislation, in the sense of a material and procedural codification of the most important norms regulating the content and the form of this activity.

In the specialized literature it has been thought that the impossibility of administrative codification, of a material and procedural nature, is due to the numerous norms governing this activity, to the diversity of legal rules and to their relatively stable character. However, the legislator expressed concern that a series of regulations would make a partial codification of certain aspects of the executive activity, especially through some special laws, which[18] did not eliminate the need to codify all the norms concerning the state administration[19].

With the same acuity, it is also necessary to draw up a code of administrative procedure, similar to those existing in several states. In this sense, we consider that "The General Methodology of Legislative Technique" was a first step in regulating the preparatory phase of the decision, although it has undergone multiple implicit changes, implying however a unified regulation of the other stages of the decisional process. The procedural norms, together with the regulation of the competence, should include rules with a general character related to the organization and functioning for the entire state administration and rules on the formalities of the administrative acts, all put together in a unitary codification.

Our legislation has a number of gaps related to the preparatory procedure; it does not establish as general rules the obligation to hear the parties before issuing the acts, the obligation to motivate the administrative acts and does not regulate strictly the hierarchical administrative appeal, which can be exercised in an unlimited manner at the time being.

A codification would offer many advantages, among which we mention the existence of a unitary concept underlying all regulations, the avoidance of repetitions and contradictions from the administrative regulations, the simplification and reduction of the number of existing procedures, and a stronger defence of the law and of the citizenship rights.

The decisional codification should encompass the most general rules of law applicable to all administrative acts, as well as specific procedural rules applicable to certain administrative acts, such as jurisdictional acts. It should indicate the conditions of validity of the legal acts, as well as the main stages of the decisional process. Within this codification, special rules of procedure, such as those concerning the setting and monitoring of taxes and fees, rules on finding and sanctioning contraventions, receiving and solving claims, complaints, notifications and proposals, currently contained in separate[20]normative acts, might be reunited. The programmed character of a part of the legislative activity implies, among other things, the development of its law and its regulatory technique in the direction of the codification of the administrative procedure[21].

The project ReNEUAL Code of administrative procedure of the European Union, drawn up at the initiative of the network of research on administrative law of the European Union (ReNEUAL), watch to ensure transposition of the constitutional values of the EU European settlement of the administrative procedure relating to the administrative implementation of the Union's legislation and policy. The project was unveiled in front of the European Parliament and the European Parliament Resolution of January 15th, 2013, which require the European Commission to submit a proposal relating to the administrative procedure act of the European Union[2012/2024(INL)]. Therefore, the project has great opportunities to become soon the law of administrative procedure of the EU. From this perspective, its influence over national legal systems will be a remarkable one, at least in procedures involving joint implementation of european law.

For Romania, which unfortunately does not have a law of administrative procedure, the code can be a model of good administrative practice and administrative law principles relevant to public administration and for administrative courts, given the fact that the project is based on these practices and principles at european level.

The Romanian Government approved in a landmark ruling, the theses of the future prior Administrative Code of Romania. Theses issues must indicate issues to be resolved by the future Administrative Code relating to incomplete provisions

[18] Dana Apostol Tofan, Drept administrativ, volumul I, Editia a IV a, Editura C.H. Beck, Bucuresti, 2017, p. 35-37.
[19] M. Anghene, „Necesitatea codificarii normelor privind administratia de stat", in „ROMANIAN JOURNAL OF LAW." nr. 3/1976, p.24.
[20] M. Anghene, op. cit., p. 60; Dana Apostol Tofan, Drept administrativ, volumul I, Editia a IV a, Editura C.H. Beck, Bucuresti, 2017, p. 89.
[21] „Dezvoltarea si perfectionarea activitatii juridice" in „ROMANIAN JOURNAL OF LAW." nr. 12/1974, p.3; I. Alexandru, „Un punct de vedere in conturarea unei conceptii privind elaborarea codului administrativ", in „ROMANIAN JOURNAL OF LAW.", nr. 9/1976, p.13.

and sometimes contradictory, contained in the 18 regulations, which currently covers Central and local administration. By developing such a Code of administrative law of public administration, it will be better understood by officials and citizens. The Romanian Government's intention to unify the legal framework codes in the field of public administration, through the administrative code and the code of administrative procedure, has been wanted since 2001, in the programmes of Government and legislative programmes. Currently, the priority of the Government on the drafting of codes, as the main instrument for the simplification of the legislation, it is reiterated in the strategy for strengthening public administration 2014-20120 approved by HG. 909/2014, and in the strategy for better regulation 2014-2020, which was approved by HG. 1076/2014. In the year 2011, was completed a first draft of the Administrative Code, which, starting in 2014, is updated in terms of taking into account both the legislative changes which have occurred, and the new proposals for the amendment of some normative acts that are in various stages of elaboration.

3. Administrative divorce procedure and the notary procedure

Regulated in art. 375-378 of the New Civil Code, the procedure in question implies that both spouses file application for divorce together at the Registrar, respectively the Notary Public, from the place of marriage or last spouses' common dwelling. At the Notary Public, the application for divorce may also be filed by an Empowered Agent, with an authentic Power of Attorney.

The territorial competence is alternative, being the choice of the spouses. The proof of the last common dwelling of the spouses is done with identity papers, ownership documents or contracts for the handing over of the use or, when this is not possible, by authenticated declarations on their own responsibility, given by both spouses.

The spouses are given a 30-day period of time for reflection and upon the expiration of the deadline the spouses must present themselves personally and the Registrar, respectively the Notary Public, must check if they are divorcing and if their consent is free and willingly.

The 30-day period of time is prohibitive and is calculated on days off. According to art. 5 par. (2) of the Instructions regarding the execution of the divorce proceedings by the Notaries Public, elaborated by the National Union of Notaries Public from Romania, the deadline cannot be extended, but according to par. (4) the Notaries may grant a longer deadline, taking into account the possibility of the spouses to be present and with the consent of the spouses.

It is not expressly provided for, but it results from the provisions of art. 375 par. (2) of the New Civil Code that when there are minor children the Notary will request within the 30-days period of time a social investigation regarding the joint exercise of the parental authority and the establishment of the children's home.

According to art. 229 par. (2) lit. b) of Law 71/2011, the report of the psychosocial investigation is drawn up by the guardianship authority. If from the social investigation report results that the spouses' consent in these two respects is not in the interest of the child, the Notary Public issues a provision of rejecting the application for divorce and guides the spouses to address themselves to the Court of Law (Article 376 paragraph 5 of the New Civil Code).

The question arises whether it is the Notary Public the one who assesses if from the data of the social investigation report results that the consent of the spouses would not be in the best interest of the child or whether this should be determined by the guardianship authority.

The best solution would be for the spouses to specify from the beginning at which of them they have settled the child's home in order for the tutelary authority to indicate in the report's conclusions whether the spouses' consent is in the best interest of the child.

According to art. 264 of the New Civil Code, in the administrative procedures concerning him/her, the hearing of the child who has reached the age of 10 years old is mandatory. The hearing of the child is done within the given period of time.

If, for solid reasons, the psychosocial investigation has not been carried out or the minor who has reached 10 years old has not been heard, the Notary may grant a new deadline, but only with this motivation.

In the case where the spouses insist on divorce, a Divorce Certificate is issued, without making any mentions regarding the spouse's fault.

The spouse's agreement on the surnames to be worn after the divorce, the exercise of the parental authority by both parents, the establishment of the children's home after the divorce, the way of keeping the personal relationships between the separated parent and each of the children, as well as the determination of the parents' contribution to the cost of raising, educating, teaching and professional trening of the children will be authenticated by the Notary and will be mentioned in the Divorce Certificate.

The marriage is considered to have been dissolved at the date of issuance of the Divorce Certificate (Article 382 paragraph (3) of the New Civil Code).

When the application for divorce is filed at the City Hall where the marriage was concluded, the Registrar, after issuing the Divorce Certificate, makes the due mention in the marriage act.

In the case of submitting the application to the City Hall where the spouses had their last common dwelling, the Registrar issues the Divorce Certificate and immediately sends a certified copy thereof to the City Hall where the marriage was concluded, in order to make the mention in the marriage act.

If the divorce is established by the Notary Public, the Notary issues the Divorce Certificate and immediately sends a certified copy of it to the City Hall of the place where the marriage was concluded, in order to be mentioned in the Marriage Act.

A problem related to law interpretation arises if the spouses with minor children reach an agreement on divorce, the name to bear after divorce and joint exercise of the parental authority, but they do not agree on establishing the children's home, how to preserve personal relationships between the separated parent and each of the children, or on the parents' contribution to the costs of raising, educating, teaching and professional training of children.

According to art. 375 par. (2), in conjunction with art. 378 of the New Civil Code, if all these conditions are not met, the application for divorce is rejected. However, from the provisions of art. 376, par. (5) and (6) of the New Civil Code, results that the Notary Public will issue the order to reject the application for divorce and will direct the spouses towards the Court of Law if they do not agree on the name and joint exercise of the parental authority, solving the claims of other effects of the divorce on which the spouses do not agree upon being within the competence of the Court of Law.

Different practices of the Notaries will be outlined.

Some notaries will consider efficient art. 375 par. (2) of the New Civil Code, which provides that the divorce can be established by the Notary if the spouses agree on all the above-mentioned aspects, and the failure to fulfil the conditions leads to the rejection of the request.

Other notaries will proceed to the systematic interpretation of the Code and will establish the divorce also in the absence of the agreement on other matters than those expressly mentioned in art. 376 par. (5), leaving the dispute to be settled by the Court of Law, according to par. (6) (opinion also shared by Professor Flavius Baias in the New Civil Code - Comments on articles, published by C. H. Beck Publishing House).

The rejection of the application for divorce is made by a provision issued by the Notary Public or by the Mayor. Although the Code provides that the Registrar issues the order to reject the application, the Methodology on the unitary application of the provisions on civil status approved by the Government's Decision no. 64/2011 provides, in art. 178, that the Registrar draws up a report proposing the issuance of a rejection proposition by the Mayor.

The provision must be reasoned in the sense of mentioning the reasons for rejection and not the arguments in this respect.

As the rejection provisions are not subject to appeal, it will be difficult to unify the notary practice for situations where the spouses have not reached an agreement on the establishment of the children's home, how to keep personal liaisons between the parent and each of the children, or the parents' contribution to raising, education, studies and professional training of children.

The abusive refusal to establish divorce through the consent of the spouses gives rise to the right to material and moral damages (Article 378 paragraph (3) of the New Civil Code).

Conclusions

In his research on bureaucracy, Max Weber was talking about the depersonalization that must exist in the functioning of the administration. Its tasks must be accomplished with the help of the rules and regulations with which it is endowed. The transmission of orders and the gathering of information take place in a hierarchical way, the intervention of each participant being carried out strictly within the framework that is reserved by the formal arrangements underlying the functioning of the bureaucratic institutions, thus achieving a high degree of efficiency, precision, as well as a great predictability of the results.

Also, in fulfilling its tasks, public administration must demonstrate political neutrality and correctness and impartiality towards citizens.

The features of the administration have the gift of transforming the activity of the public administration into one based on a series of automatisms. In fact, the German sociologist Maw Weber compared the effects of the appearance of bureaucracy on modern societies with the effects produced by the emergence of cars on the economic life. The public administration is, in Weber's opinion, a machine, an efficient tool, without personality, at the service of the society and political leaders.

What are the effects that the existence of these automatisms has on how bureaucracy is fulfilling its task?

We have to mention from the beginning that the state can complete its tasks only to the extent that there are institutions dedicated to them and the related procedures (routines).

We can easily understand that without the existence of the army the state would not be able to protect us from foreign aggressions, as it could not ensure order in the absence of justice and of the police.

The multitude of the other services that the state and other public authorities provide to the population is also based on the existence of specialized institutions.

However, the mere existence of institutions is not enough. It is also necessary to specify the concrete forms through which their tasks are carried out.

First of all, we are talking about the effectiveness of the administrative approach. The situations with which a civil servant or a public institution is confronted in its day-to-day work are numerous and the existence of standard procedures is likely to increase its performance, especially since the cases are often the same. Moreover, sometimes the lack of a methodology may lead to the impossibility of performing administrative tasks. Similarly, the absence of

predetermined procedures by the founding authority or by the hierarchically superior one could lead to some ad-hoc occurrences, which would leave room for arbitrariness in the functioning of the public administration.

Second of all, as mentioned earlier, one of the fundamental principles of a modern public administration is neutrality and impartiality towards customers (citizens). This principle is all the more important because the financing of the administration's activity is made out of public money. From here it results that procedures are necessary in order to ensure that the beneficiaries of the administration are treated equally, impartially.

Last but not least, politicians, as well as civil society, must exercise a certain control over public administration. This would be very difficult if each public institution or each clerk would work according to their own rules and methods.

Also, as every field of social life, public administration also has to improve its functioning, it must progress, keep pace with the evolution of the society, with the evolution of physical or social technologies, in a word of the new needs of the communities which it serves.

It is obvious that, in order to optimize the functioning of an institution, it must first be identified what does not work properly, in the absence of unitary procedures, this arrangement would be equivalent to looking for the needle in the haystack. Moreover, once discovered, new administrative solutions can be implemented more easily in the case of an institution that functions unitarily.

Certain events or historical developments have favoured, in turn, an increased emphasis on the strict statement of the way in which the tasks of public institutions or of those working within them must be carried out.

Towards the end of the nineteenth century in two of the most important European states, namely France and Germany, for different reasons, was developed the issue to exclude the role of rules and procedures from the activity of the administration. In France, this was related to the establishment of the rule of law after the abdication of Emperor Napoleon III. At that time many considered the bureaucracy responsible for the repeated slippages of France towards authoritarian regimes and argued that a more rigorous legislation could eliminate the liking and arbitrariness of the French administration, and the state of law being thus more protected, in Germany the main reason was the mobilization of national energies to meet the great goals that faced the German people: "unifying the country and including it among the great powers."

Everyday life illustrates the widespread trend in the public opinion of using the term "bureaucracy" predominantly with negative connotations.

Thus, the administrative procedures are the first to be accused of all the evils that are attributed to the functioning.

Indeed, the slowness with which certain tasks are accomplished, the obtuseness, the resistance to change and, last but not least, the waste of resources can all be related, in one way or another, to the existence of these routines.

Building a modern and efficient public administration, stable and responsible, is an essential objective for any democratic state.

In a society, such a goal can only be achieved with the help of appropriate administrative institutions and by allocating important resources to this goal.

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