

## RESEARCH ARTICLE:

*The administrative democracy within the relationships between local communities and its administered people*

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## ABSTRACT

The examination of relationships that are established between a local community and its administered people constitutes a theme which has become a common topic in all the European countries. The legal nature of these relationships is very variable, sometimes statutory (defined unilaterally through the will of public power), other time contractual (resulting from an agreement of will) and sometimes purely factual. The architecture of any contemporary administrative system is based on a bureaucratic model, which varies by country.

Our study examines three democratic registers: participatory democracy, representative democracy and direct democracy. The objective of the research is to highlight the realities referring to these three registers, which are often mixed and highlight different moments of the policy, whether we insist on the deliberative aspect

(construction of a problem, the agenda set by the actors), or we insist on the decisional aspect (elaboration of public policy).

The purpose of our study is to identify how these instruments are assembled, intertwine and contribute to the emergence of the local public space. These circumstances will lead us to the conclusion according to which the normalization of the bureaucratic administration is characterized by the adoption of a legislation that tends to create real models in which rigidity is transformed in flexibility, uniformity in diversity, authority in negotiation, passivity in initiative.

**KEYWORDS:** *administrative democracy, participatory democracy, local communities, administered people.*

## 1. Introduction

The principles underlying the relationships between the administration and its administered people are determined by a style of social communication. The communication with the citizens is analyzed by reference to a bureaucratic administration, perceived as a genuine caste, isolated from the rest of the society and which due to its powers imposes itself in front of the administered people. It is estimated<sup>1</sup> that the degree of rigidity is directly proportional to the degree of bureaucratization, while communication is characterized by distance towards the administered people and by relationships based on authority.

The architecture of any contemporary administrative system is based on a bureaucratic model, which varies by country.

The examination of relationships that are established between a local community and its administered people constitutes a theme which has become a common topic in all the European countries. The legal nature of these relationships is very variable, sometimes statutory (defined unilaterally through the will of public power), other time contractual (resulting from an agreement of will) and sometimes purely factual. In literature, the concept of administered people has been defined<sup>2</sup> as being the person with whom the administration

has a non-patrimonial legal relationship. The same author shows that in reality the lawmaker and the doctrine use in a different way this notion of administered people, which broadly includes as well the notion of user, because his patrimonial relationship with the administration is doubled by a legal relationship. These inequalities that characterize the relationships between the administered people and the administration are no longer admitted, the notion of administrative citizenship forcing the overcome of this stage to the benefit of a global and more active outlook.

This concept of administrative citizenship is still an approximate slogan<sup>3</sup>, which answers to a deep desire of the administered people to benefit of a respectful treatment as concerns their aspirations, their beliefs, their interests and especially their dignity. In this context, we reach an important aspect of society that evolves in favour of upholding the fundamental rights of the citizen. This topic is very closely related to the one referring to the reform of the state.

The specialized literature<sup>4</sup> distinguishes three democratic registers: participatory democracy, representative democracy and direct democracy. In reality, these three registers are often mixed and highlight different moments of the

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<sup>1</sup>Chevallier, J. 2007. *Sciences administrative*. Paris: PUF, p. 340.

<sup>2</sup>Truchet, D. 2010. *Droit administratif*. Paris: PUF, p. 145.

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<sup>3</sup>Truchet, D. 2010. *Droit administratif*. Paris: PUF, p. 146.

<sup>4</sup>Holtkamp, L., Bogumil, J., Kibler, L. 2006. *Kooperative demokratie, das politische Potenzial von Bürgerengagement*. Frankfurt, New-York: Campus Verlag, p.75.

policy, whether we insist on the deliberative aspect (construction of a problem, the agenda set by the actors), or we insist on the decisional aspect (elaboration of public policy). From this point of view, the participation tools are evaluated based on the articulation of success between the deliberative and the decision-making moments. Actually, the tool sends us to a perfectible dimension: it is not directly available, it transforms through use, while the means and techniques that allow reaching a result are already validated by an experiment and integrated into a framework.

Therefore, the question is to study the way in which these instruments are assembled, intertwine and contribute to the emergence of the local public space. The specialized literature considers that the instruments of participation of the citizens to public life<sup>5</sup> cannot be reduced to a functionalist aspect, as they designate devices able to deliver a form of participation and to translate common interests.

The doctrine<sup>6</sup> considers that the decisional theory can delineate in an objective manner the decisional process within some institutions and organizations and also one can find an answer to the question whether who and under what conditions can take certain decisions that concern

politics and the public administrations.

The participation of citizens in public decision-making outside of election campaigns is an imperative affirmed in political speeches during the renewal of the political offer. The normalization of a bureaucratic administration is characterized by the adoption of a legislation that tends to create some real models in which rigidity is transformed in flexibility, uniformity in diversity, authority in negotiation, passivity in initiative.

## **2.The administrative democracy as deliberative democracy**

The formal procedures of decision, which highlight representative democracy, tend increasingly to be doubled by a deliberative moment, found upstream: before the guidelines are established, people agree to confront the various formulations of the problems, to explain the preferences and prohibitions of social actors, to update the terms of acceptance and the terms of compromise. We observe that in all countries proliferate new formulas of the public debate<sup>7</sup> around collective choices, to which the interested public is invited to attend. These formulas are part of the extension of traditional procedures of public inquiry, subject to extensions and renovations and that present features related to:

<sup>5</sup>See Law 52/2003 concerning the decisional transparency in public administration, published in the Official Journal of Romania, part I, no. 70 of 3rd of February 2003.

<sup>6</sup>Balan, E. 2005. *Procedura administrativa*. Bucharest: University Publishing House, p.7.

<sup>7</sup>Chevallier, J. De l'administration démocratique à la démocratie administrative, *Revue française d'administration publique*, 2011/1, nr. 137-138, p. 224, DOI: 10.3917/rfap.137.0217.

- the moment in which they intervene, for example some are situated far ahead the moment of decision-making;

- their purpose as the debates concern very diverse projects and are addressed to the general public;

- the flexibility of procedures that provide the forms of the debate, as they are very poorly regulated in the normative documents.

The Preamble of the European Charter of Local Self-Government states that „local public authorities represent one of the main foundations of any democratic regime”<sup>8</sup>; „the right of citizens to participate in solving public issues is part of the common democratic principles of all the member states of the European Community”.

The referendum, as the expression of a vote for a question or a text, is a modern means used to develop a majority concerning the approval or refusal of a public policy. The local echelon is regarded as a concrete level of appropriation of public challenges, as through the consultation of the public it is performed the constraint of the elected people to be as close as possible to the requirements of the administered people. The insertion of this tool within local democracies is crucial, especially when it concerns representative systems with diverse territorial configurations.

There are countries where popular initiative and local referendum are tools that are rigorously regulated and applied

(Federal Republic of Germany), yet there are countries (France, Romania) in which these tools represent a marginalized and residual practice, whereas the decisional character of the referendum threatens the power of the locally elected people.

This complex process of actively involving citizens in the administration of public affairs and decision-making is performed by granting administrative powers to local communities, to their elected authorities and by stimulating the associative structures of the civil society.<sup>9</sup>

The openness and transparency are defined by the specialized legal literature as being that phenomenon that allows the absorption of opinions, ideas coming from outside, while transparency reflects the advertisement of the actions of the administration, the participation in decision making of persons whose interests are at stake<sup>10</sup>, through direct and immediate access thus accomplishing the proximity to citizens. The objectives of these principles are to respect the public interest and the individual rights of citizens.

Accomplishing the local public interest through openness, respectively by ensuring the free access of the citizen to the administration<sup>11</sup> aims at limiting a

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<sup>8</sup>See the Preamble of the European Charter of Local Self-Government.

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<sup>9</sup>Balan, E. 2008. *Instituții administrative*. Bucharest: C.H. Beck Publishing House, p.95.

<sup>10</sup>Balan, E. 2002. *Drept administrativ și procedură administrativă/Administrative law and administrative procedure*. Bucharest: University Publishing House, p. 148.

<sup>11</sup>Law no. 544/2001 concerning free access to information of public interest has been published in

wrong administration. The relationships between administration and the administered people are regulated disparately within legislation; the levers or mechanisms through which citizens can exercise some form of control over the administration constitute in fact rights and fundamental freedoms that characterize these relationships.

Among the rights and fundamental freedoms provided in favour of citizens, we include:

- the equality before the law and the public authorities of citizens is included into the wider concept of equal rights and requires the state to ensure an impartial, equal treatment for all citizens, with the exclusion of any privileges and without discriminations.<sup>12</sup>

- the right to petition<sup>13</sup>, consisting of the right of citizens to address public authorities (administration) through petitions, exempt of any fees, it has as correspondence the obligation of administrative authorities to respond to petitions within terms and within the conditions of the law.

- constitutional recognition of the right of the injured person<sup>14</sup> in his right or into a legitimate interest, by a

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the Official Journal of Romania, Part I, no. 663 of 23rd of October 2001.

<sup>12</sup>Art. 2 from the G.O. 137/2000 on preventing and sanctioning all forms of discrimination, republished in the Official Journal of Romania, Part I, no. 99 of 8th February 2007, as amended and supplemented.

<sup>13</sup>G.O. 27/2002 on regulating the settlement of petitions was published in the Official Journal of Romania, Part I, no. 84 of 1st February 2002 and approved by Law no. 233/2002.

<sup>14</sup>The conditions and limits of this right were established by Law no. 554/2004 of the Administrative Court, as amended and supplemented.

public authority, through an administrative document or through the failure to respond within the legal term to a request, to address the judicial authority.

As a consequence of the increasing role of local communities within public life it stands the evolution of legislation towards the regulation of mechanisms that will strengthen the democratic functioning of local institutions<sup>15</sup>, founded and established by the means of international legal tools<sup>16</sup> and national ones.<sup>17</sup>

The deliberative formulas, disconnected from the decisional moment do not involve a real sharing of the power of decision, since participation involves another dimension.

### **3. Administrative democracy as participatory democracy**

Participatory practices are old within administration; however they experience a new impetus, beside the classical procedures for consulting the representatives of lobbyists, there

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<sup>15</sup>Recently it was issued Order no. 2701/2010 published in the Official Journal of Romania, Part I, no. 47/2011, for approving the Methodology of information and consulting of the public on the development or revision of the plans of landscaping and urban planning.

<sup>16</sup>The European Charter of Local Self-Government, done at Strasbourg on the 15<sup>th</sup> of October 1985, entered into force on the 1<sup>st</sup> of September 1988. Romania signed the Charter on the 4<sup>th</sup> of October 1994 and ratified it by Law no. 199 from the 17<sup>th</sup> of November 1997, published in the Official Journal of Romania, Part I, no. 331 of 26<sup>th</sup> of November 1997, except for article 7, paragraph 2 of this European tool.

<sup>17</sup>Article 120 from the Revised Constitution of Romania.

is the possibility of new interventions in favour of the administrations in the process of decision-making and in the functioning of services.

We observe a broadening of the areas where the referendum makes an intervention that benefit of a growing constitutional and legislative recognition. On the other hand, there are involved computer means, which provide the opportunity for the administered people to participate directly in decision making: the public debates are generally accompanied by a number of procedures: the opening of websites that allow the communication of information, of the citizens' opinions; we are witnessing to an online consultation, especially with regard to large projects.

The participation of the administered people to the market of services takes place through means which enable them to be heard, influencing the definition of strategic choices and the consistency of the benefits offered.

As far as the effectiveness of participation involves a condition of proximity, the local echelon tends to become a preferred area for the development of means aimed at the association of residents at the municipal administration, within associative structures (for example extra municipal committees, neighbourhood councils and so on).

The administration has become a favourable environment for a new participatory democracy, a circumstance which is likely to fill the gaps of representative democracy.

Through participatory democracy, citizens are granted

power to intervene on the market of services, based on the principle of delegation, thus giving to those interested a concrete perspective on public affairs. As a consequence, we observe that it is looming an image of an everyday democracy which is determined by the involvement of the administered people in the functioning of services with which they are in contact, during the provision of services.

The administrative democracy aims to strengthen democratic logic, overcoming the crisis of representation. The significance of the concept of administrative democracy<sup>18</sup> concerns exclusively the administrative relationships, namely the relationships that are established between the administered people and the administration of the local community. Launching a reform of the administrative apparatus should have as objective the improvement of the performance of the officials and services and not necessarily the democratization of the administration.

Concerning the institutions that form the basis of decentralization, they are considered as being the vector of democratization as far as they extend the field of application of competences that the local elected officials have been endowed with and grant citizens the possibility of a new intervention in local administration, via local referendum.

As concerns the relevant levers for the administrative democracy, the assessments are less nuanced. If recognition of new rights in favour of

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<sup>18</sup>Truchet, D. 2010. *Droit administratif*. Paris: PUF, p. 145.

the administered people would rebalance administrative relationships, then the instrument for achieving democratic exigencies would become a means that grants greater rationality and legitimacy to the administrative action, so that the principle of a good administration would determine the European judge to reconcile the exigencies of an efficient functioning of services with a correct administration; while the requirements concerning transparency do not compromise the imperative of effectiveness.<sup>19</sup>

Deliberative democracy contributes to widening the circle of actors, giving citizens the opportunity to express their opinions during procedures of public debate. Citizen's involvement in the debate involves:

- the existence of an interest that explains and legitimizes such participation;

- a series of mechanisms or tools that help him examine issues under consultation.

The doctrine distinguishes between the deliberative moment and the decisional phase as it follows: drafting the final decision corresponds to a space of closed negotiations, where only influential actors have access to, while the public debate does not imply or require a real sharing of the power of decision.

Therefore, the deliberative procedure does not appear as a tool allowing citizens to define, following

their discussions, the contour of public action, yet it highlights a means that enables government to strengthen the decision both in a practical and a symbolical plan. It is estimated that this procedure contributes to strengthening the effectiveness of public action by improving the content and promoting social acceptance and in the same time fulfil an essential legitimating function that is explained as follows:

- by using these procedures it is justified the fact that local public action is the result of some exchanges, in which all social interests were expressed and taken into account;

- organizing the procedure of public debate represents the mechanism through which it is built the consensus that fundamentals the public action.

The participatory procedure is circumscribed to a selective social process that reduces the circle of participants and limits exchanges. Participation generally is beneficial to representative categories, through which the communication with the administration takes place. Generally, participation covers a range of diverse and heterogeneous situations, giving those interested a variable degree of influence in the administrative process: it is often a disguise, to the extent that it confers only the illusion of sharing of power. Above all, participative procedures are used as socialization devices aimed at strengthening the consensus as regards the administrative action.

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<sup>19</sup>Chevallier, J. De l'administration démocratique à la démocratie administrative, *Revue française d'administration publique*, 2011/1, nr. 137-138, p. 227, DOI: 10.3917/rfap.137.0217.

#### 4. Conclusions

As concerns local legal relationships, we found that local autonomy acquires new significations, extended compared with the meaning given before. Overcoming traditional local autonomy means the recognition of a certain international legal capacity of local communities to participate in forms of decentralized co-operation.

The nature of this phenomenon calls for reflection as it may either be an irreversible process or it may disappear due to lack of financial resources for various projects? Scenarios<sup>20</sup> predict the emergence of some transnational representatives, of some transnational budgets and, why not, a representation within European institutions of the forms of cross-border co-operation.

We notice how the complexity of the state – local communities – administered people leads us to the theme of local democracy, the expression of its interaction with the principles of autonomy and subsidiarity.

These relationships indicate a profound change in the relationships between administration and democracy, in which administration tends to become the vector of reformulation and deepening of democratic logic.

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<sup>20</sup>Fabian Niculae, *Modele de regionalizare în contextul integrării europene/Models of regionalization in the context of European integration*, University of Bucharest, Law School, PhD. School, Bucharest, 2009, Summary of PhD. Thesis, p. 70.



## REFERENCES

1. Auby, J. B., Auby, J. F., Noguellou, R. 2009. *Droit des collectivités locales*. Paris: PUF.
2. Auby, J.B., Dutheil de la Rochère, J. 2007. *Droit administratif européen*. Brussels: Bruylant Publishing House.
3. Bălan, E. 2008. *Instituții administrative*, Bucharest: C.H. Beck Publishing House.
4. Bălan, E. 2002. *Drept administrativ și procedură administrativă*. Bucharest: University Publishing House.
5. Chevallier, J. 2007. *Sciences administrative*, Paris: PUF.
6. Chevallier, J. De l'administration démocratique à la démocratie administrative, *Revue française d'administration publique*, 2011/1, nr. 137-138, p. 227, DOI: 10.3917/rfap.137.0217.
7. Holtkamp, L., Bogumil, J., Kißler, L. 2006. *Kooperative demokratie, das politische Potenzial von Bürgerengagement*. Frankfurt, New-York: Campus Verlag.
8. Niculae, F. 2000. *Models of regionalization in the context of European integration*, Ph.D. thesis, Bucharest: University of Bucharest, Faculty of Law, Doctoral School.
9. Truchet, D. 2010. *Droit administratif*, Paris: PUF.
10. Schwarze, J. (coord). 2010. *L'état actuel et les perspectives du droit administratif européen*, Brusseles: Bruylant Publishing House.

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