RESEARCH ARTICLE:

Synergy of reforms for modernization of governance in the Republic of Moldova

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ABSTRACT

Since independence (1991), the Republic of Moldova has initiated and implemented several reforms in order to modernize and consolidate a rule of law based on democratic principles. In this respect, many normative acts, strategies and action plans have been adopted to ensure the implementation of reforms in all areas of public administration, justice and other structures in the state power system.

After 25 years of independence, the results of these reforms are clearly lower than the expectations of the population and the volume of investments made for this purpose.

The reasons for the failure of the reforms in our country can be analyzed, but cannot be justified, even if some causes are subjective and some objective. More and more often, the fault lies in the sphere of the geopolitical situation and, less, assumes the responsibility of these unsuccessful governors who decide on the necessity and the way to implement the reforms.

This topic is very important and needs to be studied multilaterally and multidisciplinary. At first glance, each of the reforms has produced some effects of modernizing and improving the activity of a given field, but because other areas with which it intersects are delayed in reform, an increase in the general efficiency of government is not felt.

In our opinion, there is a lack of the synergy of all the reforms that allow for mutual complement and synchronization of the activity of all state structures with one goal - ensuring good governance for the benefit of citizens.

KEYWORDS: *reform, synergy, administration, justice, rule of law.*

1.Introduction

Every state in its development tends to modernize and optimize the governing system in order to serve the maximum of its people's efficiency. If the modernization actions have the effect of radical and complex changes in certain areas of the state, then they are considered to be reforms.

The prerequisites for reforms are, as a rule, deep political, economic or social crises. Therefore, in countries with political, economic and social stability, reforms are rare, and the modernization of governance is done through less radical means.

More often, reforms are taking place in the event of a change in the political regime of government, as was the case with the Eastern European (Soviet, Socialist) states of which the Republic of Moldova. Moreover, in our country the change of political form of government was followed by a prolonged political, economic and social crisis, caused by multiple factors: objective and subjective; internal and external; politicians; economic; social; cultural, etc. Under these circumstances, in order to calm the spirits and win political capital, the government has begun numerous reforms. Sometimes, the reforms were not well advanced; they intervened with counter-reform measures or diametrically opposed reforms, as was the case with the administrative-territorial reforms.

The main jury of reforms is the people who appreciate their success after one criterion - living standards. Because the living standard of the population in our country is the lowest in Europe, we can conclude that the reforms made in these 25 years of independence have not been successful enough, in other words, they have been unsuccessful. Although the generic of the reforms made, the principles and objectives declared at their start were modern and current, yet their results were minor, and the population's dissatisfaction with the government, according to opinion polls, rises year on year. In turn, the low living standard has led to an increase in the phenomenon of migration, especially among young people, the stagnation of the national economy and the deepening of the social crisis.

Many of the reforms are still ongoing. It would be important for these failures to draw the appropriate conclusions in order to correct the errors made and not to repeat them. Equally important is to learn from the experience of other states and to promote good governance practices. However, this largely depends on the political maturity and professional training of the governors, their ability to govern in the interest of all members of the community, assuring them a decent living.

2.Administrative Reform

Over the past 25 years the Republic of Moldova has implemented several administrative reforms, both in terms of the structure of public administration and on the principles and mechanisms of operation. These included, in particular, the LPA structure (administrative-territorial reforms) and the administrative decentralization of public services of local interest [1] these included, in particular, the LPA structure (administrative-territorial reforms) and the administrative

[1]See the article extensively: Orlov, M., Busmachiu, E., *L'impact des reformes territoriales sur la forme des états europeens (l'experience de la Republique de Moldavie)*, published in the volume, under the editorial Stéphane Guerard, Algirdas Astrauscas. 2016. *"L'autonomie locale au XXI^e siècle. Entre tradition et modernisation"*, Publishing house Institut Universitaire Varenne, Collection Kultura, p. 445-451.

decentralization of public services of local interest[2].

Reform is not limited to a sum of activities; it takes the form of a complex process that always relies on multiple decisions issued by public authorities (normative acts, projects, programs, strategies). Therefore, the success of the reform depends on their quality, their correspondence with the economic and social realities, with the legislation in force, and, of course, with the will of the people. Neither the appreciation of the results can be a simplistic or unilateral one. Only a correct understanding and an objective appreciation of the entire reform process can highlight the good and the less successful parts so as to determine the government to correct the errors and ensure the achievement of the proposed goal.

In this context, "through its Activity Program for the period 2016-2018, the Government has committed itself to continuing the efficiency of public administration to provide citizens with the highest level of service in line with the practices of European democracies"[3]. Also, in the preamble of the mentioned Program it is stated that "The Government of the Republic of Moldova, for the years 2016-2018, aims as the main objective to increase the citizens' well-being, safety and quality of life..." [4].

Moreover, not only the Government undertakes commitments to continue reforms and to modernize the public administration, but also the Parliament obliges it by law to do so.[5] We refer here to the Strategy of Administrative Decentralization, to be achieved by 2016, but failed and was prolonged until 2018. Although it is regulated by multiple normative acts, decentralization has not yet reached its goal of providing the population with quality services and decent living conditions, especially in rural areas.

The Government has also made some commitments regarding the reform of public services, because their situation in rural areas is quite critical,[6] The Government has also made some commitments regarding the reform of public services, because their situation in rural areas is quite critical. For example, household waste collection, transportation and management services exist in only about 13%, centralized aqueduct systems in about 55%, and partial sewerage systems in about 24% of rural communities.

From the above we observe that the government understood the mistakes and tried, at least declaratively, by normative acts, to redress the situation. The most obvious mistake, which compromised the administrative reforms, was the fact that a wide decision-making autonomy for the local public authorities and the material decentralization of public services were granted without the corresponding fiscal (financial) decentralization to allow the development of public services and strengthening the administrative capacity of local communities. Local autonomy was mistakenly perceived, initially using the term "local self-administration", that is, local authorities organize the life of the

[2]See the article extensively: Orlov, M., *Theoretical and Practical Aspects Regarding the Limits of Decentralization Based on the Experience in the Republic of Moldova*, Academic Journal of Law and Governance, Official Journal of the Academic Society of Administrative Sciences (AJLG), No. 1/2013, p. 83-89.

[3]P.10 of the Strategy for Public Administration Reform for the years 2016-2020, approved by the Government Decision no. 911 of July 25, 2016, www.gov.md.

[4]http://gov.md/sites/default/files/document/attachments/guvernul_republicii_moldova__programul_de_activitate_al_guvernului_republicii_moldova_2016-2018.pdf.

[5]Law no. 68, dated 05.04.2012, for the approval of the National decentralization strategy and the Action Plan on the Implementation of the National Decentralization Strategy for 2012-2018, Published: 13.07.2012 in the Official Gazette no. 143-148 art no: 465, www.gov.md.

[6]Government Decision no. 122, of 18.02.2014 on the Reform Program for Public Services for the years 2014-2016, published: 21.02.2014 in the Official Gazette no. 43-46 art no.: 139, www.gov.md.

community from what it has (on its own) without the support of the central administration, with the exception of civil servants' salary. The most eloquent example in this respect was the abolition of the ministry that deals with communal services, and the central government subsequently did not plan any expenses and investments in this area.

In order to correct these errors, the legislator has recently adopted some changes in the tax legislation that have additionally decentralized some taxes and duties to supplement local budgets. We will only know about the results and impact of these regulations in just a few years. As far as investments in the local public services infrastructure are concerned, they are still quite modest and come, as a rule, from foreign donors and development partners through various projects.

With the signing of the Association Agreement between the Republic of Moldova and the European Union (June 27, 2014), the issue of administrative reforms was on the agenda of the Government. As we have seen above, several pieces of legislation (laws, decisions, strategies, action plans) have been adopted for this purpose. At the same time, we cannot overlook the fact that these normative acts have a political and declarative character, they are not well aligned to the legislation in force, and do not contain any specific provisions of the responsibility of the governors in case of failure or inadequate implementation of the reforms proposed.

Under these conditions, the necessity of revising and systematizing the norms of administrative law becomes more obvious[7].

Some steps have been taken by our legislator in this respect, who examined in 2012-2013 a draft Code of Administrative Procedure, but it was not widely debated with the civil society and the civil servants who were to follow it respect and apply it. That project was not adopted.

At this time, Parliament is examining another draft "Administrative Code", this time proposed by a group of deputies. We would like to mention that this project did not enjoy wide publicity and consultation with the civil society, and from the succinct information disseminated we find that "it will be structured in three parts and will aim to clarify the principles, concepts, stages of the administrative procedure , the remedies and the legal regime of the acts, the operations and the administrative contracts..., the procedural institutions (non-contentious and contentious) will be strengthened in order to achieve the provisions that are necessary in case of resolving administrative litigation..."[8]. Therefore, it is very similar to the previous draft of the administrative procedure code. However, it is encouraging to mention the institution of administrative litigation, although this institution will not be able to function as long as it is not included in the justice reform program and is not recognized as a new form of justice, distinct from civil justice.

As I have repeatedly argued, administrative law cannot be codified in a single Code, as a model of civil or criminal law, because it is much more voluminous in terms of the rules that make it, much more diversified from the point of view of view of the relations that are born in the governance process and, much more viable (changeover), in terms of the number of legislative amendments and additions.

[7]See to that effect: Orlov, M. 2016. *Les perspectives de révision, d'ajustement et de simplification des normes juridiques concernant l'activité de l'administration publique,* dans le volume : *L'organisation de l'administration publique locale en Moldavie,* Sarrebruck, Germany: Editions universitaires europeennes, pp. 9-19 https://www.editions-ue.com/catalog/details/store/tr/book/978-3-639-52628-8.

[8]bizlaw.md.

At the same time, codification of administrative law in our country is extremely necessary and important. Codification is a perfect systematization that eliminates duplications of legal norms and makes it possible to fill in legislative gaps. But in administrative law this can only be done by codifying some of the institutions taken separately and adopting a few codes, such as the Code of Local Authorities; Code of Administrative Jurisdiction (administrative litigation); Code of Administrative Procedure (non-contestant), etc.

It is also important to note that if, in terms of material law, which regulates the structure and competence of the public administration, the situation is acceptable, then, as regards the regulation of the procedures for the achievement of competencies and the administration's responsibility for the poor governance, the existing regulations are very confusing and ineffective. As a result, some administrative reforms are also confusing and inappropriate. For example, the reform of the administrative-territorial structure that was implemented in 1998 and cancelled in 2001, and new territorial reorganization strategies.

An unresolved issue, which, in our opinion, affects the quality of administrative reforms is the responsibility of the administration (officials) for the adoption of unlawful administrative acts and other actions that damage the right of people to good governance. Although there is a law of administrative litigation in this area, however, it does not work due to the lack of a contentious administrative procedure code or administrative jurisdiction code.

Summing up all these legislative loopholes, we can conclude that these together with other political and social factors have impeded the process of administrative reforms in our country. The amendment of administrative law will inevitably contribute to the elimination of such gaps. In turn, clear regulation of the work and tasks facing the public administration is one of the keys to the success of administrative reforms and good governance.

3. Reform of Justice

Justice in the Republic of Moldova is in the process of reforming, and, along with administrative reforms, seeks to ensure democratic governance in which human rights and freedoms, as supreme values in the state, are assured. As with administrative reforms, our legislator has adopted several pieces of legislation on judicial reforms, the latest of which has been the Justice Sector Reform Strategy for years 2011–2016[9].

However, the reforms focused, in particular, on the restructuring of the judicial system, which was formed in 1995 in four stages - judges, tribunals, the Court of Appeal and the Supreme Court of Justice, after which courts were excluded in 2006 and several Courts of Appeal have been set up and, starting January 1, 2017, the Moldovan judiciary system is reorganized by merging the 44 into 15 new courts and the dissolution of the specialized courts - the District Commercial Court and the Military Court[10], However, the reforms focused, in particular, on the restructuring of the judicial system, which was formed in 1995 in four stages - judges, tribunals, the Court of Appeal and the Supreme Court of Justice, after which courts were excluded in 2006 and several Courts of Appeal have been set up and, starting January 1, 2017, the Moldovan judiciary system is reorganized by merging the 44 into 15 new courts and the dissolution of the specialized courts - the District Commercial Court and the Military Court.

[9]http://www.justice.gov.md.
[10]Law on the Reorganization of the Courts, no. 76, dated 21.04.2016, published: 01.07.2016 in the Official Gazette No. 184-192 art Nr: 387 Effective date: 01.07.2016.

Optimizing the structure of the judiciary is undoubtedly an important element of the reform of justice, but not enough to raise the level of justice. Thus, despite the efforts made and the allocated investments, these reforms did not raise the level of confidence of the pollution in justice, but on the contrary, it has diminished in the last years. In our opinion, the success of the reform can be ensured through a good organization of the judiciary system, coupled with a good professional training of the magistrates' body and with a system of law adjusted to the existing social relations.

In the above-mentioned Strategy, the reform of the Prosecutor's Office was also provided as an independent authority within the judiciary system. However, the reform of the Prosecutor's Office was further regulated by acts that ultimately determined the adoption of amendments in the text of the Constitution. However, the reform of the Prosecutor's Office was further regulated[11], by acts that ultimately led to the adoption of changes in the text of the Constitution[12]. According with this modification: "*The Prosecutor General is appointed by the President of the Republic of Moldova, at the proposal of the Superior Council of Prosecutors, for a term of seven years which cannot be renewed "and can be dismissed from office:" by the President of the Republic of Moldova, at the proposal of the Superior Council of Prosecutors, under the law, for objective reasons and under a transparent procedure* " *(Article 125 C*).[13] Also, the Constitution was completed with Art. 1251, consecrated to the Superior Council of Prosecutors, a body similar to the Superior Council of Magistracy. These changes to the fundamental law aimed at removing the Prosecutor's Office from the obvious influence of the political power and ensuring the independence of the judiciary. It is premature to talk about some results of these reforms, which, in our opinion, are more about optimizing the structure and sporadic changes in legislation. Any law that is declared new is just another face of the old law. In this context, we believe that the legislation regulating the field of justice needs a coherent review and systematization as well as that in the field of public administration.

To argue what has been said, we will only refer to an example. The general administration with the judiciary, according to the Constitution, is carried out by the Superior Council of Magistracy (CSM)[14].

The organization and operation of the aforementioned courts are governed by the Law on Judicial Organization[15]. Paradoxically, in Title II of this Law, entitled "Judicial System", a new element

[11]Law on the approval of the Prosecutor's Reform Concept, 122, dated 03.07.2014, published: 19.09.2014 in the Official Gazette no. 275-281 art No: 593, http://lex.justice.md/.

[12]Law amending and supplementing the Constitution of the Republic of Moldova No. 256, dated 25.11.2016, published: 29.11.2016 in the Official Gazette No. 415 art Nr: 845.

[13]Replacing the text: The Prosecutor General is appointed by the Parliament, at the proposal of its President .... The Constitution does not mention the term of office and the method of dismissal of the Prosecutor General, these being established by organic law.

[14]"In the Republic of Moldova the legislative, executive and judiciary powers are separate and cooperate in the exercise of their prerogatives, according to the provisions of the Constitution" (Article 6 of the Constitution of the Republic of Moldova); "The Superior Council of Magistracy is composed of elected judges and professors for a period of 4 years. The Superior Council of Magistrates are entitled to: The President of the Supreme Court of Justice, the Minister of Justice and the General Prosecutor" (Article 122 of the Constitution of the Republic of Moldova) "The Superior Council of Magistrates ensures the appointment, transfer, posting, promotion and application of disciplinary measures towards the judges" (Article 123 of the Moldovan Constitution) www.justice.md.

[15]Law no. 514 from 06.07.1995 regarding the judicial organization, published: 19.10.1995 in the Official Gazette No. 58, art no.: 641 www.justice.md.

(organ) appears in this system[16] – "*The General Assembly of the Judges, meant to ensure judicial self-administration, although the Constitution does not speak, at the level of the judiciary, about such a structure or about self-administration*". Perhaps the legislator considered that such self-administration by the General Assembly of Judges would be an important element of the reform and would contribute to the modernization of the judiciary.[17]

We should point out that the term self-administration itself is not specific to the entire judiciary, even if the legislator enshrines a definition in this sense[18]. The automotive prefix is not equivalent to the principle of autonomy and independence of the judiciary. It is precisely for this reason that the term self-administration in the Constitution was not used either for one of the three state powers. Thus, our legislator's good intentions to carry out judicial reform and to ensure respect for the principles of the rule of law are not always followed by appropriate and effective actions. It often happens that in the above-mentioned case, when the amendments and additions to the legislation, instead of simplifying and improving the work of the judiciary and the act of justice, only create confusions through the establishment of new structures that further complicate the relations in within the judiciary.

We also believe that all structural or functional reforms in the justice field must be well correlated, both with each other, and with public administration reforms. As mentioned above, one of the reasons for the failure of administrative reforms is the lack of accountability of the administration due to the malfunctioning of the administrative contentious institution, adopted by Law no. 793/2000[19]. Although this law has established the establishment of specialized courts of administrative contentious, yet to date, they still do not exist in our country. This issue was omitted in all the reform strategies and plans of the judiciary. There is the impression that none of those responsible for justice reform understood that by Law no. No 793/2000 adopted a new form of justice - administrative justice. Moreover, the provisions of the above mentioned law are misinterpreted and applied, as in the case of this procedure they are complemented by the provisions of the Civil Procedure Code, as a consequence of the cases of administrative contentious are missing from the statistics of the Moldovan justice, being classified as " in the order of administrative litigation". Such an approach and attitude towards administrative justice encourages the administration to issue illegal acts and increase the level of corruption. As a consequence, the population's discontent with both administration and the judiciary increases.

[16]Law no. 514 of 06.07.1995 was completed with art. 231, 232 and 233, and art. 24 was drafted by Law no. 153 of 05.07.12, O.G. 185 / 31.08.12 art.620, www.justice.md.

[17]"*The bodies of the judiciary self-administration are the General Assembly of Judges and the Superior Council of Magistracy*", *art. 231, par. (4) of the Law no. 514 of 06.07.1995*, www.justice.md.

[18]"*Self-administration is the right and the real capacity of the courts and judges to solve the problems of the functioning of the judiciary in an autonomous and responsible manner*", *art. 231, par. (2) of the Law no. 514 of 06.07.1995*, www.justice.md.

[19]Law on administrative contentious, Nr. 793 of 10.02.2000, published: 18.05.2000 in the Official Gazette Nr. 57-58 art Nr: 375 Date of entry into force: 18.08.2000http://www.justice.gov.md.

4.Conclusions

Modernization of the state involves reforms in all areas of activity. In particular, it refers to states that go from one political regime to another, as is the case with the former socialist states. In order to achieve the proposed modernization objectives, a synergy of reforms in all areas is needed. When these are done independently and fragmented, the result is minimal even if the investments were very high.

The example of the Republic of Moldova is an eloquent one. In our opinion, the correlation of administrative reforms with those in the field of justice on the common segment - administrative justice - would ensure at least two things: a) a good school of lawfulness of administrative acts for the public administration, and b) an additional image of justice in the fight against corruption and ensuring the principles of the rule of law.

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