Romanian Public Administration. Identity Elements

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ABSTRACT

The study reflects the specific identity elements of Romanian public administration.

The starting point of the study is represented by the considerations and remarks on state and public administration, advancing with the analysis on administrative organization and administrative action.

KEYWORDS: *state and public administration, administrative organization, administrative action.*

1. Introduction The state and public administration

If we consider the presence of public administration, in various connections with any component of the social environment, of everyday reality, the integration of public administration in cultural debates on the identity of Romanian society is necessary.

Human acts of understanding, knowledge, interpretation all are largely related to tradition. The human being approaches the researched object through a pre-knowledge coming from the culture in which he was born and has acquired the fundamental conceptions about the world and life. An essential feature of tradition is the rituals that link traditions to social practices and through which adherence to and respect for traditions are renewed and strengthened. The renewal, including on the normative level of a state, can be successful only if the social aspects of innovation and their evolution over time are taken into account.

The study of history, traditions, regulations and practice allows the decipherment of what is fundamental, perennial, sustainable and specific for the Romanian public administration. Regardless of their origin – loans or internal creations – the institutions of the Romanian public administration have known a development specific to the culture and traditions of the social, political, economic, spiritual environment in which they acted, ensuring their own identity.

The Romanian public law school experienced a remarkable flourishing in the first half of the twentieth century, when authors such as C. Dissescu, p. Negulescu, A. Teodorescu, C. Rarincescu, E.D. Tarangul, M. Văraru and others also focused on the administrative phenomenon and its determinations from the perspective of law, in particular, and some also from the integrative perspective of the science of administration. The time

elapsed since the formulation of such opinions, the doctrinal evolutions, the historical and comparative evaluation allow the decipherment of some constants and the outlining of some identity elements of the Romanian public administration. Referring to the Romanian doctrine of public law, especially after the Constitution of 1923, A. Iorgovan remarks "the fact that the explanation of the concept of public administration is made by reference to other notions, such as: public service, public power, administrative authority, administrative body, public interest"[1)].

In a fluid, effervescent, ever-changing political environment, the administration of a state is meant to ensure stability, continuity. "The history of mankind is, moreover, the history of the administration and government of the peoples."[2)]. At the epistemological level, it is necessary to have a coherent and homogeneous conceptual framework regarding the administration, meant to resist the profound transformations that can affect in one way or another its place in society.

The scientific research of the phenomena of the administration of a state can usually be ensured both by branch sciences – as we traditionally encounter the science of administrative law, or sub-branches of economics, sociology, political science, etc., and interdisciplinary, synthetic, by the science of administration. as a science designed to guide the public action of administrators. The constant search for depth and precision in deciphering scientific truth has led to a different dynamic of the use of –uni- or interdisciplinary research over time.

Conceptually, the public administration of a state represents a set of activities through which, in the regime of public power, the achievement of some objectives of general interest is carried out, by carrying out some dispositional or performance actions. If in the classical doctrine the emphasis is placed on the criterion of public power, there is a shift towards the public service, the service of the public good.

Under the influence of French doctrine, M.T. Oroveanu defines the public administration as an entity that includes all human and material resources, and which, under the authority of the Government, has the mission to ensure the execution of laws and to apply these laws to concrete cases and the requirements of social life[3)], emphasizing, as can be seen, the formal-organic side.

A component of the executive branch, the administration cannot be confused with the state itself, its missions being never primary, but secondary and consisting in fulfilling the tasks entrusted to it by law. The administration has the material, human and informational resources that allow it to execute the decisions of the political power transposed into law.

The research of the legal norm of the administration, even if it does not offer a complete, exhaustive image, is indispensable for the evaluation of the administrative phenomena.

Law is part of a country's culture, each society enjoying its own legal culture, able to incorporate the ideas of legality, justice, freedom, fairness, justice. At the same time, law is a defining element of the national identity of any state. In the modern history of Romania, the law of administration, through its constants, such as centralization, stability of civil servants, administrative guardianship, administrative justice has preserved its

1) Iorgovan, A., 2005, *Tratat de drept administrativ*, Bucharest: All Beck, p. 43.

2) Iorgovan, A., 2005, *Tratat de drept administrativ*, Bucharest: All Beck, p. 16.

3) Oroveanu, M. T., 1996, *Tratat de ştiinţa administraţiei*, Bucharest: Cerma, p. 26.

identity despite the constitutional changes produced. Unlike the French conception on the separation of powers, which includes the interdiction for the judicial judge to verify the legality of administrative acts, in the Romanian conception the idea of the unity of jurisdiction prevails.

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We notice that the classical doctrine uses in the research of the concept of public administration the dual meaning: an organic, formal meaning – designating structures, institutions and a material, functional meaning, designating actions or activities, dualism found in several areas of administrative law, such as for example, public service. This dual approach, structure or action cannot be avoided when in-depth research is desired in order to determine the essence of an administrative reality.

In a material sense, the public administration represents an activity of organizing the execution and concrete execution of the law, carried out through actions of a disposition or performance character. The executive activities of a disposition nature organize the execution of the law, establishing rules of conduct for third parties. Being acts issued only on the basis of law, the acts of the administration have a scope of regulation limited to the framework established by law in the execution of which they were issued and may not contain solutions that contravene its provisions.

Constitutional justice has ruled in its jurisprudence that the meaning of the notion of "organization of law enforcement" has a broader meaning than that of law enforcement, namely "organizational, financial, institutional or sanctioning measures may be ordered by Government decisions to establish the necessary framework. for the fulfilment of the provisions of the law"[5)]. However, the organization of law enforcement cannot be confused with legislation, which can only be delegated to the government, under the conditions established by the Constitution[6)]. We are, therefore, in front of a second legem activity.

The public administration in the material sense cannot be reduced to the executive activities of disposition, prescription, but it also consists in various services performed on the basis and in the execution of the law, for the fulfilment of the general interest, by providing public services. In the contemporary era, the considerable extension of the fields in which the administration intervenes determines us to consider as outdated the theory of administrative activities by their nature. The same action can be performed by public persons, but also by individuals, the same activity can be the object of public administration concerns in one historical epoch, and not in another. The choice of the political decision-maker is the one that influences the content of the concept of administration in its material sense.

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4) Iorgovan, A., *op. cit.,* p. 43.

5) The Constitutional Court of Romania, Dec. no. 51/2004, M.Of. no. 186/2004.

6) The Constitutional Court of Romania, Dec. no. 63/2018, M.Of. no. 201/2018.

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For the complete understanding of the administrative phenomenon it is necessary the research of the public administration in relation to the social environment, which exerts a considerable influence and imposes a permanent adaptation to the dynamic conditions of the society. In the doctrine it is appreciated that the public administration represents the main lever through which the values established at the level of the political echelon and transposed in norms of primary regulation are realized. Characterizing the public administration as a mainly organizational activity, the position of intermediary that it has between the plan of the political leadership and the plan where the political decisions are made is detached. This characteristic does not exclude the existence of the creative activity, of management in the public administration, realized through dispositional actions. It can be appreciated that the management activity performed by the administration is performed at a subordinate level, lower than the one provided by the political level.

As an activity, the public administration exceeds the scope of the bodies that make up the administrative system, which can be found in the legislative or judicial power, as well as in that of non-state bodies recognized as being of public utility.

For the administration of "public affairs", the state has the power to command all and to use coercion against those who do not obey. The power of command can also be understood as the power to administer, without being reduced to it. The state is the only political court that has the capacity to legitimately adopt binding decisions, expressed by laws and other normative acts. The state always has institutions, tools through which it imposes the law and, if necessary, forces its recipients to comply.

In a democratic, parliamentary system based on modern constitutionalism and the separation of powers in the state, political power is a unique phenomenon, but this does not mean that it cannot be distributed to be exercised by specialized bodies acting within the limits of the delegation received. In reality, these are competencies and not subjective rights, as power cannot be divided. The state impersonates its agents, entrusting them with the exercise of administrative command power. None of these bodies may exercise power in its own name or for its own benefit, as well as outside the control of the sovereign and legitimate holder of power.

If politicians have mainly short-term commitments, usually during their term, the public administration takes over the task of sustainable development of society, ensuring the continuity and permanence of the functioning of the state.

An intermediate body between politics and society, acting in close connection with the executive power, the Romanian public administration has its own identity, individuality influenced by the cultural, political, social environment in which it operates.

2. Administrative organization

In order to respond to the mission of rational and efficient implementation of the general interest, the public administration must go through a stage of organization,

construction of structures, formation and distribution of them in a system, positioning in certain categories of reports, after a dynamics imposed by the course of society.

Without denying the unity of the Romanian public administration, we will notice that we are in front of an administration built to ensure two main categories of general interests: the national / state interest and the local interest.

In the first category we include activities, services, which tend to ensure the interests of the state as a whole: defence of the country, foreign relations, major national public services, etc. The second category includes activities, public services that correspond to local needs, belonging to communities defined and legally recognized as local: water supply, sewerage, public transport, heat supply, primary education, etc.

Each of the two categories of administrative public interests is ensured by a set of structures that make up a subsystem of the administration:

– national / state public administration subsystem;
– local public administration subsystem.

While the first subsystem acts directly under the leadership of the Government, which is at the top of the administrative pyramid of the state, the second consists of administrations belonging to each local community: county, city, commune, administrations led by presidents of county councils, respectively of mayors.

In the opinion of Prof. M. T. Oroveanu, "the system of administrative-territorial organization is doubled in order to carry out the State Administration, the state territory is divided into hierarchical administrative-territorial constituencies, in which the state civil servants, appointed by it, exercise their competence. From the point of view of decentralized administration, the national community is made up of local authorities, politico-territorial legal entities, having the competence to satisfy their own local interests. The distinction between the administrative-territorial constituency, a framework for exercising the State Administration, but without the competence to carry out an autonomous legal life and the local human community, centre of interest and the residence of administrative actions exercised in its name and for it, is the keystone of traditional systems. administrative in modern states ... "[7)].

The Romanian public administration has a unitary character, similar to that of the state, an assured unit, based on the provisions of art. 102 para. 1 of the current Constitution of Romania, by its general leadership by the Government. This does not exclude the organization on the basis of different administrative regimes – centralization, respectively decentralization – of some components.

"It is a bad organization of the administration when it is given in the competence of the state issues that are of local interest or of purely specialized interest, on certain professions. Therefore, on the one hand, the system was designed for state representatives to deal with special local issues on the spot, and then we are facing a distraction.

The system was also designed for the local population concerned to administer itself, under the control of the central authority of the state, thus constituting decentralized local authorities and bodies, such as our communes and counties ... "[8)].

[7)] Oroveanu, M., T., *op. cit.,* p. 347.

[8)] Djuvara, M., 1999, *Teoria generală a dreptului*, Bucharest: All Beck, p. 102.

Centralization involves the concentration of all administrative tasks of a country in the person of the state, tasks whose fulfilment is ensured by a hierarchical and unified administration. When in a state all legal norms are applied from a single centre, a complete centralization is achieved, and if all legal norms are specific only to certain constituencies, one can speak of a complete decentralization. Such regimes, however, do not exist in reality, with states using only a partially centralized or decentralized regime.

Centralization defines both the problem of the state's relationship with local human communities located in natural settlements, and a method of organizing the state administration. If a state is organized in such a way that the satisfaction of local or social interests depends directly on the central public authority and is carried out by services whose holders are appointed by it, that state is centralized. By centralization is meant the administrative regime in which the specialized public and local authorities are appointed by the central authority, being subordinated to it. In the centralization system, the central authority takes the decisions and exercises the management, and the local authorities report and execute the decisions received from the centre[9)].

In its most rigorous form, centralization does not recognize the right of local human communities to administer themselves; only the state, through its civil servants and through its budget, assumes for the entire national territory the satisfaction of the general interests. This system does not exclude the organization of the state territory in administrative districts. Administrative districts, territorial delimitations intended to allow a rational organization of state public services throughout the territory, should not be confused with local authorities, which are pre-existing human communities in parts of the national territory, with legal personality and representing a seat of an administration. local. In a purely centralized regime, territorial constituencies are organized, but no administrative autonomy is granted to local authorities. Administrative districts, or administrative-territorial units are parts of the national territory that serve as a support for the deconcentration of state services and that do not have legal personality, not being subjects of law. In practice, in the centralized system, it is necessary to take into account the social realities, the existence of communes, cities, natural living centres, results of the history that the established administrative regime is going to serve. The centralized state recognizes the existence of local human communities, which have specific requirements, but it appoints and leads the civil servants and institutions that administer these human communities. Within the centralized system, the state administration is rigorously hierarchical, the right to decide being concentrated at the top of the administrative hierarchy. Thus, through centralization, a single will starting from the state centre, is transmitted to the most distant administrative-territorial districts of the country.

The practical requirements have determined an attenuation of the centralized system, by granting some structures and civil servants of the state the right to solve themselves, within the administrative-territorial constituencies, the local problems, which are no longer submitted to the centre for solution. Administrative devolution is the movement in the territory of an important part of the activity of the central public administration, constituting a diminished form of the centralization system. Hierarchical power, indispensable for maintaining the unity of action of the system, uses prerogatives such as the power of instruction and the power of control and reform.

9) Also see Bălan, E., 2008, *Instituții administrative*, Bucharest: C.H. Beck, pp.54-57.

The administration of the national community – the central administration is concentrated in the power of the state, it is carried out in its name and in its interest. For a better administration of public interests, the state administration must approach through its structures the territorial communities, applying the mechanism of administrative devolution. However, there is a need for a territorial support of the deconcentration – the administrative-territorial unit – as a necessary delimitation in order to distribute the competencies.

The optimal determination of the number and extent of administrative-territorial units results from a complex analysis: political, social, economic, cultural, etc. The historical character, different in time, of the administrative-territorial units must be accepted!

The state and its administration, concentrated at the top of it, must find ways to get closer to the communities inside the country. One method that responds to this desideratum is deconcentration, which presupposes that the state places its subordinate institutions in territorial divisions established as administrative-territorial units. Currently, these territorial divisions coincide with the territory of legally recognized local authorities, but this is not mandatory! One can also imagine an asymmetric system, in which the territorial boundaries of the administrative-territorial units and those of the local communities are partially or completely different.

Administrative decentralization in relation to the territory is, moreover, the basis for the establishment of the local public administration subsystem.

The two public administrations have a common territorial support, even if it has different meanings, namely: that of constituency/administrative-territorial unit in the state subsystem, and, respectively, of collectivity in the local subsystem.

So far, each administrative-territorial unit has coincided with the borders of a local community. However, we can also imagine the existence of some local communities that are not at the same time administrative-territorial units or of some administrative-territorial units that do not coincide perfectly with the borders of a local community.

Consequently, it would be necessary to clarify the norm and eliminate the confusion between the administrative-territorial units and the local communities. From a legal point of view, the distinction is all the more necessary, as geographically, there is often a coincidence between the administrative-territorial constituency and the local community. That is why it is necessary to understand this duality and to know for each concrete question which is the competent entity to solve it: the administration of the state from the respective constituency or that of the local community?

We could imagine, for example, the establishment of the region as an administrative-territorial unit, without recognizing its character as a local community.

The region would be, in this case, the deconcentration support for national services: prefect, deconcentrated ministerial bodies, etc., following to be established ways of communication with the legally recognized local communities: county, city, commune.

From the perspective of public administration, the concept of territorial collectivity is fundamental. It is possible to distinguish between a national community and several local communities (internal and included in the national one). The concept of local collectivity defines the unity of three elements: population, territory, administrative power. Local communities at city or commune level are, as a rule, natural communities, constituted within pre-existing human settlements. The county appears as an artificial construction,

which brings together several local communities of city and commune type, its size and location being the result of state political decisions.

Each of these communities is recognized the right to manage a certain category of public interests and is associated with a public administration, through which it fulfils its missions of general interest, established by law, in connection with the provision of public services or ensuring public order.

The local authorities have acquired, by virtue of the recognition of their administrative autonomy, the right to administer common interests, belonging to their members, in their own name and on their own responsibility. We thus identify the existence of a public administration belonging to each local community, whose mission is aimed at ensuring those interests that show solidarity with the members of the community.

The regime of administrative centralization, with the variant of deconcentration, coexists in fact with that of decentralization that allows local authorities to manage their own important common interests. The local territorial collectivity represents a part of the national territory, with the afferent population, having legal personality and constituting the seat of a local administration.

The principle of administrative decentralization allows an important part of the decision-making power in administrative matters to be transferred from the state administration to legal persons distinct from the state, which enjoys autonomy from it, having decision-making power over a territorially determined community. , power not in hierarchical relations with the central power. The legal (moral) personality of the territorial communities allows them to have their own rights and obligations, to exercise competences, to be patrimony holders, to stand trial in their own name. Decentralization is based on the principle of freedom, freedom for the communities established in the administrative-territorial units, to solve through elected authorities and through their own means, interests considered local.

The sovereign power in the state distributes the function of administration of public affairs, both to the national collectivity and to the local collectivities. This makes us talk about the existence of several powers that administer public affairs, in a complementary way, coordinated by the state power. This distribution takes place on the basis of the constitutional norms, the local communities being recognized the power to administer and not a simple competence constituted by an act of the Government. Thus, several autonomous administrators are established, without subordination relations between them, one of them having the coordination of the entire administration, in order to ensure the unity of the system.

Thus, the original power to administer belonging to the state community is also delegated to local authorities to effectively solve specific administrative problems. In this way, the national and local powers co-administer public interests under the coordination of the former.

Decentralization is a system according to which the administration of local interests – communal, urban, county – is carried out by freely elected authorities, by the citizens of the respective community. The local authorities have at their disposal, according to the constitutional provisions, their own financial means and benefit from autonomous decision-making power, this system responding to the idea of freedom.

In opposition, administrative centralization is that system which, in general, implies a close dependence of the local administration on the central, executive authority, by its appointment of local government agents, a system which is determined by the idea of authority; or, as Marcel Prelot pointed out, "administrative power gives a uniform direction in all parts of the country, leaving no part of the decision to the citizens"[10].

In Romanian law, including in the current Constitution, the recognition of the existence of collectivities is implicit, and not an explicit one, promoting the confusion between collectivity and administrative-territorial unit, two different realities, which can sometimes have in common the territory.

The concept of collectivity is more complex and captures different qualitative elements. The local community, unlike the administrative-territorial unit (constituency, in French law) has legal personality, can build its own legal will and can stand in its own name in legal relations.

It would be necessary, as often proposed in the literature, to amend the constitutional text, in the sense of explicit recognition of the local community as a subject of administrative autonomy, distinct from administrative-territorial units, understood as constituencies in which the state can divide. the territory for the better accomplishment of the central administration.

In the sense of the above, the constitutions of some developed countries bear witness: France, Italy, Spain, as well as international documents: ex. Charter "Autonomous Exercise of Local Powers".

It is also necessary to establish whether it is desired to keep the current system, in which the local communities coincide with the administrative-territorial units, or it is desired to establish a different, asymmetric system.

Only after that can strategies be built regarding the effective identification of the desired administrative-territorial units, and, eventually, of the local collectivities, based on complex analysis and of the political, social, cultural, economic values, etc. pursued.

Both centralization, with its variants, and decentralization are ways of organizing the public administration in relation to the territory of the state, in order to ensure its efficient missions.

3. Conclusions and remarks on administrative action

The normative framework of public administration

The principle of legality. Legality is the fundamental principle underlying administrative phenomena and to which the action of public administration is subordinated. Subject to the rigors of this principle, both in its material and formal aspects, the public administration must be based on the law, which is a fundamental reference base in its evaluation. Legality is synonymous with legal regularity and presupposes that the action of the administration takes into account two elements: the obligation to comply with the law and the obligation of initiative to ensure the application of the law.

The mandatory and bona fide execution of the competencies with which it was invested is the standard of a modern administration. The fundamental purpose of public

[10] Prelot, M., 1972, *Institutions Politiques et Droit Constitutionnel*, Paris: Dalloz, p. 136.

administration is to ensure the achievement of the general interest, expressed by the sovereign will of the people, transposed into law.

The current constituent legislator defined the Romanian state as a state governed by the rule of law [art. 1 paragraph (3) of the Constitution] giving this concept the value of a constitutional principle. The requirements of the rule of law presuppose that, in its activity, the public administration strictly respects the legality, and in case of its violation, the mechanisms are guaranteed to guarantee its restoration. The principle of legality, according to E. D. Tarangul, "consists in the rule that all provisions taken by the state must be given in a general and impersonal way and that all individual acts of the state must be done on the basis and in accordance with the provisions previously taken in general and impersonal. Consequently, administrative acts, which are individual acts, must be made only on the basis and within the provisions previously established in a general and impersonal way by the legislator"[11)].

The administrative act, as the main instrument through which the public administration is performed, is a unilateral act, in the sense that the enforcement authorities adopt binding and enforceable acts, without the competition or agreement of will of those whose acts regulate the conduct. In carrying out their activity, the public administration authorities exercise attributions of public power, thus being able to impose their will unilaterally.

Legality also implies the possibility that the person dissatisfied with the activity of the administration, manifested in its acts, has at its disposal a legal action, which triggers the control of the legality of the acts, sometimes this being done ex officio[12)].

Regulatory power and the general interest. The purpose of public administration is related to ensuring the public interest. There are needs that the private initiative cannot adequately satisfy, a situation in which the public administration is entitled to intervene. The notion of public interest includes both the satisfaction of essential requirements, common to the entire state community, which far exceed the possibilities of private initiative, and the satisfaction of requirements that, by their nature, are economically unprofitable. The content of the general interest varies according to the historical periods, the social forms, etc.

The mission of the public administration related to the satisfaction of the general interest could not be fulfilled by the means of an individual. The administration has at its disposal exorbitant means, which go beyond the common regime.

The decisions of the administration are binding, without seeking the consent of those concerned, or without recourse to justice. "The characteristic of administrative acts is that they are enforceable in themselves, that there is no need for their immediate application of judgment and to invest with the executory formula of decisions as in private law: it is a direct action."[13)].

The administrative act may be performed ex officio by its own agents, using, where appropriate, the means of coercion. The traditional name of public power means all the

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11) Tarangul, E., D., 1944, *Tratat de drept administrativ român*, Cernăuți: Glasul Bucovinei, 1944, pp. 4-5.

12) Also see Bălan, E., 2008, *Instituții administrative*, Bucharest: C.H. Beck, p. 24-27.

13) Djuvara M., *op. cit.*, p. 102.

prerogatives granted to the administration to enable it to achieve the satisfaction of the general interest[14)].

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14) Rivero, J. 1973, *Droit administratif,* 6emme Edition, Paris: Dalloz, p. 11.