Valorisation of the Science of Administration in the Governmental Process of the Republic of Moldova

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ABSTRACT

The advanced technologies of the last decades have contributed enormously to the development and dissemination of research results, including those in the field of administrative sciences. Thus, states that manage to make the most of these scientific results, including good practices, can ensure good governance and a decent standard of living for the entire population of the country.

The Republic of Moldova, according to the Constitution, is a democratic state, a rule of law. Therefore, public authorities are obliged to ensure a decent living for all citizens. In order to achieve these objectives, it is necessary to continuously modernize the administration by implementing the most efficient tools and governance practices that the science of administration offers. Unfortunately, in the last two decades, the standard of living of the population in our country has been the lowest in Europe, which proves once again the lack of a clear and constant interaction between the science of administration and the activity of public authorities. The fragmented and temporary interaction that exists is not able to ensure the achievement of the objectives of good governance. This is largely due to the level of vocational training of civil servants in the field of administrative sciences. In addition, knowledge of administrative sciences is necessary both for the legislator, who adopts the regulatory framework for public administration, and for all citizens, so that they can exercise their rights in their relations with the public administration, knowingly and efficiently. Therefore, the successful modernization of public administration in the Republic of Moldova depends directly on the development of schools of administrative sciences.

KEYWORDS: *science of administration, fundamental law, good governance, decent living.*

1. Introduction

From ancient times the rulers of the states have been surrounded by philosophers, scientists who have been their most trusted advisers. Few of them, who took full advantage of their advice, secured a memorable place in history.

Over time, society has evolved, and the system of government has become increasingly complex. This is due to the increase in the number and variety of services requested by members of society, which the administration is obliged to organize and provide. To this end, new public authorities, institutions and services are set up, which leads to an increase in the number of civil servants in the public sector and the number of legal rules governing public administration. Therefore, the administrative phenomenon is in a continuous dynamic, which requires the continuous modernization of the administration so that it can respond to the growing needs of society. And, in order to know what these needs are and to include them in the governance strategies in order to solve them, it is necessary the interdisciplinary and deep scientific research of the administrative phenomenon, carried out by a network of national schools of administrative sciences.

The Government of the Republic of Moldova attests multiple arrears, both in terms of the quality of legal norms governing public administration and, in terms of training of civil servants, the development of administrative science schools and capitalizing on the results of administrative science in the governing process. As a consequence, the administrative reforms and the modernization of the administration are carried out with great difficulties in our country.

2. The correlation between the law governing administration and the science of administration

The rule of law is the state governed by law. Public administration, in turn, being a system of public authorities and institutions, created in order to satisfy the public interest of society as a whole, is also subject to law, which sets out the objectives, methods and means of achieving the purpose for which they were created. In this context, Prof. Ioan Alexandru mentions that "the administration moves in a network of laws and fulfils two main categories of tasks: some of execution, others of elaboration. Execution involves the interpretation of texts, the search and execution of means, coordination between various activities ... ", and "elaboration involves the preparation by the administration of texts that become mandatory for this administration, once they are accepted by the government or the legislative bodies ... "[1]. In order to successfully complete these two important categories of tasks, the administration must have a body of well-trained officials from a professional point of view.

The complexity of the public administration system and the multitude of fields of activity also determine the complexity of the tasks that the public administration performs. In turn, the pace at which public administration is developing implies a permanent transformation of administrative legislation by adopting a large number of new legal regulations, in particular those of administrative law. In these circumstances, generated by the large number of legal rules and their instability, a good correlation is needed between the rules of administrative law and the activity of public administration in order to ensure the efficiency and continuity of operation of both administrative authorities and services of public interest, given in their competence. The message sent to the administration by

[1] Alexandru, I., 2007, *Administrația publică: teorii, relități și perspective*, 4th Edition rev., Bucharest: Lumina Lex, Bucharest, p. 72.

the legal rules must be clear, precise and appropriate to the conditions, means and powers of enforcement available to the administrative authorities.

At the same time, a good correlation between administrative law and public administration is difficult to imagine without the involvement of the science of administration in this "equation". Even if, in our legal system, the doctrine is not officially recognized as a source of law, nevertheless, the legislator must take into account its important role in the elaboration and modernization of legal norms. In this context, there is a special relationship between administrative law and the science of administration, because both have the same object – the activity of public administration, even if each of them uses different methods and principles. In this context, the literature mentions that administrative law studies the administrative phenomenon from a legal point of view, while the object of administrative science is broader, studying the administrative phenomenon, both from a legal point of view, implicitly of administrative law, and under political, psychological, sociological, economic, demographic aspect, etc.[2)].

Therefore, the administrative phenomenon, which derives from the complexity of building the institutional system through which the administration is carried out in its various fields, requires a comprehensive and interdisciplinary research to serve the government as a basis for developing strategies to modernize the administration. Interdisciplinarity in the research of the administrative phenomenon, mentions prof. Ioan Alexandru, will replace the “strict specialization” and the lack of communication between the specialists thus trained, as well as, will “overcome the stage in which the research, the studies, deep synthesis on the object of research "[3)]. Unfortunately, the Republic of Moldova is at such a stage. To overcome this situation, the government must be aware that public administration modernization reforms cannot be carried out without serious investment in the development of the national school of administrative sciences, and must take all measures to make full use of the results of interdisciplinary research. administrative phenomenon in the process of drafting, adopting and enforcing administrative legislation.

3. Legality in the activity of administration: legislation versus doctrine

Starting from the pace of democratization of the country and from the standard of living of the population, we can conclude that the Republic of Moldova encounters great difficulties in implementing modernization reforms of the public administration, generated, in our opinion, by lack of adequate correlation between public administration activity. the science of administration and administrative law. As a consequence, the standard of living of the population is the lowest in Europe, and the democratic and effective instruments of government, whether they are adopted in fragments or are definitively ignored by the authorities meant to implement them.

An overview of the current government in the Republic of Moldova gives us the impression that administrative law and public administration are two completely different

2) Catană, E., L., 2017, *Drept administrativ*, Bucharest: C.H. Beck, p. 21.

3) Alexandru, I., 2010, *Interdisciplinaritatea: noua paradigmă în cercetarea și reforma administrației publice*, Bucharest: Romanian Academy Publishing House, p. 30.

phenomena, which develop separately (in parallel), and both have nothing in common with the science of administration. In order to argue this conclusion, we will analyze the legislation dedicated to the mechanism of ensuring legality in public administration, through the prism of the theory of law, the science of administrative law and the science of administration. In our opinion, the great difficulties of government in our country are related to this field.

Legality is a fundamental principle of the rule of law, but also a universal one by its nature, because it refers, in general, to all members of society, and in particular to each public authority or institution, which is vested with powers. of public power, or of the adoption of binding legal norms, or of the organization of their execution and execution, or of control and application of legal norms in order to restore legality.

Modern states give a special role to ensuring legality in the administration. Starting from the fact that it includes a large number of public authorities, institutions and services, in which an impressive number of dignitaries, civil servants and other categories of employees work, truly democratic states have set up systems of administrative justice, courts and tribunals. specialized, which carry out the control of legality over the activity of the administration.

In this sense, the Republic of Moldova also adopted, in 2000, a law on administrative litigation (no. 793/2000), based on an extensive research of the administrative phenomenon and, taking into account the traditional factor and the historical precedent. We refer here to the interwar period, when on the current territory of the Republic of Moldova functioned the administrative contentious enshrined in the Constitution, from 1923, and in the Law of administrative contentious, from 1925, of Romania.

Unfortunately, the implementation of the law and the establishment of specialized administrative courts, was boycotted by all governments, from 2001 to 2018, when the law was repealed, without any scientific or other arguments. When destroying this classic instrument of ensuring legality in the administration, all three branches of power competed. Thus, the Government did not execute the provisions of the law regarding the establishment of specialized administrative contentious courts, in their turn, the common law courts, specialized in civil law, unequivocally agreed to take over the examination of administrative contentious cases, assimilating soon to the civilians,[4)] and, finally, the Parliament, under the pretext of codifying the administrative law, abrogated the Law on administrative litigation, no. 793/2000. Law, which aimed to defend the right of the injured person by a public authority, as a fundamental right of the citizen enshrined in art. 53 para. (1) of the Constitution,[5)] as well as counteracting the abuse and overpowering of public authorities, thus ensuring legality in the governance process[6)]. It is unfortunate that the repeal of this law was done under the guise of adopting an Administrative Code,

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4) See, Orlov, M., 2009, *Curs de contencios administrativ*, Chișinău: "Elena VI" SRL, p. 158.

5) "The person injured in his right by a public authority, by an administrative act or by not resolving a request within the legal term, is entitled to obtain the recognition of the claimed right, annulment of the act and reparation of the damage", Art. 53, par. (1) of the Constitution of the Republic of Moldova of 29.07.1994, Published: 12.08.1994 in the Official Gazette no. 1, Date of entry into force: 27.08.1994, www.lex.justice.md/document_rom.php?id=44B9F30E:7AC1773. viewed 20.10.2020.

6) See: Orlov, M., *Necesitatea și importanța asigurării legalității în administrația publică*, in Bălan, E., Iftene, C., Troanță, D., Văcărelu, M., 2019, *Volume "100 de Ani de Administrație în Statul Național Unitar Român – între tradiție și modernitate"*, Bucharest: Ed. Wolters Kluwer Romania, pp. 93-103.

thus compromising the idea of codifying administrative law, put forward by public law specialists more than a century ago.

Although the codification of administrative law raises certain problems and encounters some difficulties in practice, due to the large number of legal norms and their instability, however, in the opinion of Prof. Verginia Vedinaș, codification also brings multiple benefits and advantages in achieving good governance[7]. We would like to mention the fact that the main codification difficulty consists in the impossibility to systematize the entire branch of administrative law in a single Code, following the model of other branches of law (criminal, civil). For this reason, several European states have carried out segmented codification, in the areas regulated by the most important institutions of administrative law, such as: administrative procedure, civil servant status, organization and functioning of local public authorities (local authorities), and others.

Instead, the Republic of Moldova was the first country to adopt an Administrative Code, only that it has nothing in common with the rigors of codification of law, having only one goal – the abolition of the institution of administrative litigation, although, in our opinion, it was much more importantly, to adopt a Code of Administrative Litigation, which includes both the material and procedural rules of this important institution of administrative law, designed to ensure the legality of public administration activity[8] . The statements of some specialists that this institution is found, in a modernized form, in the Administrative Code, can be easily contradicted by a simple comparison of their provisions, made through the theory of law, the science of administrative law and the science of administration.

Thus, if we compare the title of these two laws and the purpose for which they were adopted, we notice the following:

– from the title of Law no. 793/2000 it is clearly understood that this is an organic law, which regulates the field of administrative litigation, as established in art. 72, para. (3), lit. e) of the Constitution, and the purpose is to achieve the provisions of art. 53 para. (1) of the Constitution, being enshrined, in detail, in art. 1 of the Law[9];

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7) See: Vedinaș, V., 2018, *Tratat teoretic şi practic de drept administrativ*, Volume I, Bucharest: Universul Juridic, p. 127 and following.

8) See in details: Orlov, M., Ianachevici, M., *Administrative justice as a tool of human rights protection***,** in International Journal of Law and Jurisprudence, Vol. III, 2017, pp. 47-54, available at: http://www.internationallawreview.eu/article/administrative-justice-as-a-tool-of-human-rights-protection; Orlov, M., Grosu, M., *Compliance with the principles of the state of law in the Republic of Moldova*, Proceedings of the International Conference "European Union's History, Culture And Citizenship", 12th edition, 17 – 18 May 2019, Pitești, Romania, Published: E Book, Bucharest: C.H. Beck Publishing House, 2019, pp. 267-276; Orlov, M., Condurache, G., *Moldova 2018*, in Revue Est Europa, Political and Constitutional Chronicle of the Post-Communist Countries of the Balkan Space – Year 2017-2018 (directed by Odile Perrot), available at: https://www.est-europa.univ-pau. fr/images/archives/enligne/moldavie2018.pdf

9) *"(1) The administrative contentious as a legal institution aims at counteracting the abuses and excesses of power of the public authorities, defending the rights of the person in the spirit of the law, ordering the activity of the public authorities, ensuring the rule of law. (2) Any person who considers himself harmed in a right of his, recognized by law, by a public authority, by an administrative act or by not resolving a request within the legal term, may address the administrative contentious court competent for to obtain the annulment of the act, the recognition of the claimed right and the reparation of the damage caused to him", art. 1 of the Law on administrative litigation, no. 793 of 10.02.2000, Published: 18.05.2000 in the Official Gazette no. 57-58, http://lex.justice.md/md/311729/,Viewed 15.10.2020.*

– while, the title of Administrative Code does not directly suggest to us the fact that, here we will also find the institution of administrative contentious, and, for the purpose established in art. 3 of the Code[10)], no reference is made to the provisions of art. 53 paragraph (1) of the Constitution, although, this norm constitutes the main constitutional foundation, which expressly enshrines the object and the parties in the litigation of administrative contentious. The latter being also regulated in the Administrative Code in a manner clearly detached from the constitutional and inexplicable provisions from the point of view of the science of administrative law and the science of administration. For example, if according to the mentioned constitutional norm, object of the litigation can be "an administrative act" or "failure to resolve a request within the legal term", then, according to art. 189 of the Code,[11)] object of the action may be: "The administrative activity of a public authority" by which a person is injured or the fact that he "has not legally resolved a claim". As we can see, the legislator retained only the refusal to resolve a claim as the object of the administrative litigation dispute, while the administrative act was replaced by "administrative activity". In our opinion, such a substitution of legal terms, with an absolutely different meaning, is inadmissible, because, there will be confusions, which will make impossible the realization of the fundamental right of the citizens provided in art. 53 (1) of the Constitution. Thus, if the administrative act is a legal act, strictly determined, the issuance of which is given in the competence of public authorities by law, then the administrative activity of public authorities includes, in addition to issuing administrative acts, a wide range of activities that do not produce legal effects (material facts, activities of organization and provision of public services, etc.), which cannot be subject to judicial control through administrative litigation.

In addition, the Administrative Code contains a large number of terms and notions as an absolute novelty, both for our legal system and for specialists concerned with researching the administrative phenomenon. These terminological interferences in the Code are foreign to the science of administrative law and the science of administration in our country, because they developed under the influence of the French school, even in the Soviet period, while the authors of the text of the Administrative Code were inspired by German law, using terms specific to this legal system. Confusions arose because these legal terms have lost their essence in translation, in addition, they have never been the subject of research in treaties, courses and studies of administrative law and the science of administration in our country. For these reasons, the notions of administrative legislation, which are foreign to the legal language of the national law system, will continue to cause great difficulties, both in their scientific interpretation and in their implementation and execution by the public administration. In principle, all members of the company will be

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10) *"Administrative legislation aims to regulate the procedure for carrying out administrative activity and judicial control over it, in order to ensure respect for the rights and freedoms provided by law for natural and legal persons, taking into account the public interest and the rule of law". Art. 3 of the Administrative Code of the Republic of Moldova, no. 116 of 19.07.2018, Published: 17-08-2018 in the Official Gazette no. 309-320 art. 466, available at: https://www.legis.md/cautare/getResults?doc_id=122610&lang=ro#, viewed, 13.09.2020.*

11) *"(1) Any person who claims a breach of his right by the administrative activity of a public authority may bring an action in administrative proceedings. an application", art. 189 Administrative Code ...*

affected, because they enter various legal relationships with the administration on a daily basis and must understand the official language of communication with it.

With the adoption of this code, the whole theory of administrative acts existing in the Republic of Moldova was overturned, and the way in which they are enshrined in the legislation in force. For example, art. 11 of the Code establishes two categories of individual administrative acts: „A) unfavourable acts – acts that impose on their recipients obligations, sanctions, burdens or affect the legitimate rights / interests of persons or that reject, in whole or in part, the granting of the requested advantage; b) favourable acts – acts which create for its recipients a benefit or an advantage of any kind". The very phrase of favourable or unfavourable act raises several questions, because the administrative acts do not pursue the purpose of doing favours and creating advantages of any kind, as it appears from the explanation given in this norm, but to organize enforcement and law enforcement. Also, we cannot unfavourably call an administrative act, which affects the legitimate rights / interests of persons, because it is considered an illegal act, issued by abuse or excess of power of the public authority. Likewise, it is not clear whether the phrase the person affected in a legitimate right, from the norm mentioned above, has the same meaning as "the person injured in his right ...", provided in art. 53 (1) of the Constitution. The use of legal terminology arbitrarily and incoherently from the Administrative Code, contradicts both the constitutional provisions and other laws, as well as the norms of the Code itself. Thus, if, art. 11, mentioned above, uses the phrase of affected law (affects rights), then, art. 17 of the same Code defines the notion of "injured right". Again, the question arises if these two notions are identical, and if they are not, then what is the difference? and, if they are identical, then why are different terms used? Therefore, we are in the situation where, things are reversed, the rule of law precedes the science of law and determines its object of research, by using new terms in administrative legislation.

Such inconsistencies and legislative confusions, generated by the inappropriate use of legal terminology, are found in large numbers in the text of the Administrative Code, which shows that in its elaboration was not taken into account, neither the science of law nor the science of administration. Its ambiguous content largely contradicts the Constitution and the rule of law, encourages illegal activity and corruption in the administration. Paradoxically, this happens precisely in the legislation that replaces the institution of administrative litigation, that is, it replaces that important instrument of the rule of law, which is intended to ensure legality in the activity of public administration.

4. Conclusions

The efficient accomplishment of the modernization reforms of the public administration is determined, on the one hand, by the level of professionalism of the civil servants and, on the other hand, by the quality of the normative framework for regulating the public administration. Both, in turn, are closely related to the science of administration.

As mentioned in the previous paragraphs, many of the rules governing the activity of public administration have an ambiguous and confusing content. Therefore, any strategy for administrative reform or any initiative to implement good governance practices risks being compromised.

In order to overcome these governance difficulties, the Republic of Moldova must remove the causes that generated them. In our opinion, they are:

- Lack of a well-structured national school of administrative sciences to ensure the continuing vocational training of the entire body of civil servants;
- Lack of a Ministry of Administration to develop qualitative draft administrative laws, in order to ensure the proper functioning of public administration;
- Lack of an Advisory Council within the Parliament to ensure a legal expertise of the draft laws at the highest professional level, etc.

No less important is the spread of administrative sciences throughout the population, so that each person acquires sufficient knowledge from the general school,[12)] about the relations between the administration and those administered, in order to ensure a harmonious social conduct of the entire population. Because a good part of the conflicts between the administration and those administered are based on the insufficiency of such general knowledge at the level of the whole society.

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12) The Republic of Moldova is not making visible progress in this regard either. See: Maria Orlov, *Educaţia juridică*, in the volume: Evoluţia dreptului şi a societăţii româneşti în context internaţional – 1918-2018, ed. coord: Irina Moroianu Zlătescu, Bucharest: Universul Academic: Editura Universitară, 2019. The study represents the development of a report presented during the Session "Evolution of Romanian law and society in an international context" of the International University of Cheia, August 26-30, 2018.

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