

The Public Administration and the Current Social and Political Environment in Romania

PhD. student Florin CAZACU¹

Abstract

Before talking about the structure of the public administration in Romania, we must consider the social and political environment of our country. Romania is a country with a democratic regime and it has been so for the last 30 years, but which has been under the umbrella of communism for several decades. Communism meant a centralized, closed administrative and economic system.

Keywords: public administration, administrative law, political environment, decentralization.

JEL Classification: K23

1. Introduction

The communism was born from the evolution of modern societies, “as it was in the process of building systemic coherence, of defining its own reproductive processes, the capitalist society generates visions, theories or reflections about its own contradictions, crises or failures. The socialist doctrine coagulated by perceiving from a specific perspective of the capitalist economy and civilization. It was not a reply to liberalism, but it configured its own identity through the key to reading historical reality, through the decryption of contradictions and through the solutions it formulated, over time, to the problems it highlighted”².

The main characteristic of man is that he is a “social animal”. Man cannot live alone and for this reason he associates himself with his fellows. Man was free in his natural state, but he gave up a number of rights in order to acquire others³. Jean Jacques Rousseau stated as follows: “the better constituted the state, the more important public affairs than private ones in the minds of the citizens [...] in a well-governed city everyone flies on the road to public assembly [...] Good laws lead to other, even better laws, but bad laws lead to some terrible ones. Immediately the man gets to say “Why should I care?” and we can be sure that the state is lost. The exhaustion of the love for one’s country, the activities of the private interest, the immensity of the state, the conquests and abuses of the rulers led to the imagination of a solution by establishing deputies or representatives of the people”⁴.

Nowadays, “society presupposes a relational community existence of human individuals articulated in organized ensembles, such as systems, structures, organizations and social institutions, communities, the family”⁵, and the social system is considered to be “a plurality of individual actors interacting with each other in a given situation”⁶. The public administration is a component of a macro-system and operates in a given social environment. As pointed out in the literature, the relationship between the public administration and the social environment determines what we call “a social personality of public administration”, characterized by the following:

- “the duration of an administrative structure is conditioned by the continuity or modification of social structures”⁷;
- “the social pace imposes a different pace on the public administration which either supports successive reforms or adapts through measures imposed as a result of social pressures”⁸;
- “the mobility and the dispersion in space – the territorial implantation of the administration

¹ Florin Cazacu - Bucharest University of Economic Studies, Romania, cazacugflorin@gmail.com.

² Florian, A., *Fundamentele doctrinelor politice*, University Publishing House, Bucharest, 2006, p. 103.

³ Rousseau, J.J., *Despre contractul social sau principiile dreptului politic*, Nemira Publishing House, Bucharest, 2007.

⁴ *Idem*, p. 156.

⁵ Debbasch, Ch. *Știința administrației*, Dalloz, 1989, p. 1.

⁶ Hetsvi, T., *Sociologie*, Scientific and Encyclopedia Publishing House, Bucharest, 1982, p. 233.

⁷ Scutariu, P., *Știința administrației*, Distance learning course, 2017.

⁸ *Idem*.

is determined by the social environment. The principles of organization and functioning of the public administration, of spatial concentration and dispersion are known”⁹.

Concerning the political environment, we can state that the structures of the public administration are determined by political regimes, which condition the organization and functioning of the public administration. What we want to emphasize is that “the public administration that implements political values is in an imminent connection with the ruling party(s), whose political program it carries out. In the political regimes with a single ruling party and to a certain extent also in the multi-party regimes, we are witnessing the phenomenon of “politicization” of the public administration, both by subordinating it to the party and by recruiting civil servants who occupy the leading position in the administration”¹⁰.

One of the important aspects that deserve to be mentioned is related to the rule of the law, considered to be an aspiration, but also an ideal – which is supported by organizations and governments around the world¹¹.

The next subchapter will analyze the structure of the public administration in Romania and will focus on the institutions that form the public administration and the relationship between these institutions and the citizen.

2. The structure of the public administration in Romania

The term *administration* comes from the Latin *ad* – meaning *at* and *ministry*, which translates to *servant*. The term *administer* therefore appears in two senses, meaning on the one hand “helper” and on the other hand “instrument”. Therefore, the concept of public *administration* can be translated as “service meant to serve many”. In Romanian, the term “administration” or the verb “to administer” means “to lead”, but if we refer strictly to the term “administration”, we understand all the administrative institutions of a state.

In the communist Romania the administrative system was centralized, specific to both the right and the left totalitarian systems. The post-communist transition determined a transformation of the institutions and the evolution began from a closed society and reached a democratic society, with premises for achieving prosperity. The transformations that occurred after the fall of the communist regime (1989) can be classified into two categories: on the one hand, the political democratization, and on the other hand, the economic-administrative reforms.

From the viewpoint of the public administration system in our country and in accordance with the Constitution, the public administration consists of: the central administration, i.e. the President, the Government, the Ministries and other bodies belonging to the Government, autonomous authorities and budgetary institutions. On the other hand, there is the territorial public administration, which consists of the government representatives in the counties, the public services of ministries and other central authorities; the county councils and the public institutions; autonomous administrations, and so on. Thirdly, when we talk about public administration, we also refer to the local administration, which is made up of mayors and local councils, but also of public institutions and services subordinated to local councils¹².

The administration belongs to the executive power and is carried out through the administrative institutions that are subordinated to the legislative power, collaborating at the same time with it. As regards the activity of the public administration, it consists in the implementation of normative acts that have been previously adopted by the legislature.

Administration – as an activity – can be considered to a rational action that uses human and material resources in order to achieve high efficiency with minimal effort. We want to emphasize the concept of rational action in parallel with the concept of rational organization. The state, as described

⁹ *Idem*.

¹⁰ *Idem*, p. 106.

¹¹ Available at: <https://rwi.lu.se/app/uploads/2013/04/Statul-de-Drept.pdf>, accessed on 09.09.2020.

¹² See in this regard Cătălin-Silviu Săraaru, *Dreptul administrativ principalul instrument de reglementare a activității administrației publice*, ASE Publishing House, Bucharest, 2020, p. 21-24.

in the political philosophy, is a rational construction, and the rule of law regards a series of images and representations aimed at the exercise of power “postulating an idealized conception of the law”, by optimistically implying the idea that rulers, as well as the ordinary citizens, they all are “bound by the legal norms in force; they are not above the law, but they exercise a function fully framed and governed by the law”¹³.

A special importance is given by the symbolic dimension of what the rule of law represents, given the fact that it provides a vector of legitimation of authority: on the one hand it is about the ideological dimension, and on the other hand it is about the mythical dimension¹⁴. The latter presupposes that the trust in the law transcends its rational character by acquiring a different aura (mystical and which is invested with a sacred dimension), i.e. the possibility of the right to surpass the domination of the legitimacy by making it an offer of rational, self-sufficient justification¹⁵.

However, we must specify that the activity of the administration is to meet the requirements of general interest by using the prerogatives of the public power. From a legal perspective, “the administration is defined as the set of human and material resources, which under the authority of the Government, has the mission to ensure the execution of laws and to apply them to concrete cases and the requirements of social life. The latter definition confirms the subordinate position of the administration to the law, while holding the prerogatives of public power that allow it to impose itself on the will of the individual(s)”¹⁶.

The Law on the “Administrative Code of Romania” defines a series of concepts, as follows:

a) the “Administrative action” stands for a unilateral action, of an individual or normative nature, issued or adopted by a public authority or institution under public power, based upon or for the execution of the law, which gives rise to, modifies or settles legal relations;¹⁷

b) the “Normative administrative action” stands for “the administrative action which includes impersonal, general rules of conduct of repeated applicability, for an indefinite number of subjects”¹⁸;

c) the “Individual administrative action” stands for “an administrative action which creates, amends or settles rights and obligations for the benefit or burden of (a) particular person(s)”¹⁹;

d) the “Public administration” stands for “the totality of activities carried out under public power, of organizing the execution and the concrete enforcement of the law and of providing public services, in order to satisfy the public interest”²⁰;

e) the “Central public administration” stands for “the totality of activities carried out under public power, of organizing the execution and concrete enforcement of the law and of providing public services, in order to satisfy the national/general public interest”²¹;

f) the “Local public administration” stands for “the totality of activities carried out under public power, of organizing the execution and concrete enforcement of the law and of providing public services, in order to satisfy the local public interest”²².

Concerning the “framework principles” of the public administration, we are talking about:

- “The principle of legality”²³;
- “The principle of hierarchy”²⁴;
- “The principle of continuity”²⁵.

¹³ Goudenhoft, G., *Legitimitatea. Ritualuri ale legalității și autoritate discursivă*, Adenium Publishing House, Bucharest, 2016.

¹⁴ *Idem*.

¹⁵ *Idem*.

¹⁶ Onofrei, M., *Elemente de știința administrației*, Course support, “Alexandru Ioan Cuza” University of Iasi, p.9, available at: <http://portal.feaa.uaic.ro/definitivare/licenta/PublishingImages/Pages/default/1AP%20Note%20de%20curs%20Elemente%20de%20%C5%9Ftiin%C5%A3a%20administra%C5%A3iei.pdf>, accessed on 24.01.2019.

¹⁷ Available at: http://www.cdep.ro/pls/proiecte/docs/2018/pr369_18__1_.pdf, accessed on 10.09.2020.

¹⁸ *Idem*.

¹⁹ *Idem*.

²⁰ *Idem*.

²¹ *Idem*.

²² *Idem*.

²³ Lionela Madescu, *Bazele constituționale ale administrației publice*, available at: <https://www.spiruharet.ro/facultati/drept-craiova/zone/27076e8bf632edb2c33bc349a6ba3187.pdf>, accessed on 10.09.2020.

²⁴ *Idem*.

²⁵ *Idem*.

In addition, we talk about:

- “The principle of efficacy”²⁶;
- “The principle of opportunity”²⁷;
- “The principle of revocability”²⁸;
- “The principle of eligibility”²⁹;
- “The principle of local autonomy applied to the public administration”³⁰;
- “The principle of decentralization”³¹;
- “The principle of decentralization of the administration”³²;
- “The principle of decentralization of the public services”³³;
- “The principle of citizen consultation”³⁴.

The organization and functioning of the public administration is a serious issue that raises many questions for researchers in the field of political science. The controversy arises when we speak rather of decentralization, given that “the decentralization is a long-term effort, which requires systematic actions to know the institutions, the public policies and the perception of the local and regional actors on the overall phenomenon of decentralization”³⁵. Regarding this aspect, the next subchapter will analyze the concept of decentralization and the related legislation.

3. The decentralization

The decentralization in the public administration refers to the solution of problems by the local public administration as the latter benefits from autonomy in terms of decision-making and budget management³⁶; the “legal existence of local authorities” is recognized³⁷. In this context it is important to note that the decentralization “is not an end in itself, but only a means of allowing citizens to participate directly in solving the problems that concern them”³⁸. What one should mention is that through decentralization, the “task” of the administration does not belong entirely to the state, but also to the local authorities, i.e., it is based on the recognition by the “central powers” of the local interests specific to geographical areas, more specifically “it is entrusted to territorial public institutions set up specifically for this purpose”³⁹.

“Decentralization is the principle that gives the local public administration the opportunity to manifest a degree of originality in carrying out its activities”⁴⁰.

In the Romanian law, more specifically, in the Romanian Constitution of 1991, which was revised, in article 120, paragraph (1) it is provided that: “The public administration in the administrative-territorial units is based upon the principles of decentralization, local autonomy and the decentralization of the public services”. By Law no. 215/2001 of the Local Public Administration and of the Framework Law no. 195 of 2006 on the decentralization, of Law no. 199/1997 on the ratification of the “European Charter of Local Self-Government” adopted in October 1995 in Strasbourg, the two principles announced above in the Romanian Constitution are regulated.

²⁶ *Idem.*

²⁷ *Idem.*

²⁸ *Idem.*

²⁹ *Idem.*

³⁰ *Idem.*

³¹ *Idem.*

³² *Idem.*

³³ *Idem.*

³⁴ *Idem.*

³⁵ Anatolie Bantuș, „Principii de organizare și funcționare eficientă a administrației publice”, *Revista de Administrație Publică*, no. 2, 2014, pp. 38-49.

³⁶ Regarding the content of decentralization, see Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 653-662.

³⁷ Irina Bilouseac, *Descentralizarea administrației publice locale*, „Ștefan cel Mare” University of Suceava, 2019, p. 13.

³⁸ *Ibid.*, p. 14.

³⁹ *Idem.*

⁴⁰ Gheorghe Voinea, Elena Rusu, „Teorema descentralizării și impactul ei asupra bunăstării unităților administrativ-teritoriale”, *Analele Științifice ale Universității „Alexandru Ioan Cuza” din Iași*, Tom LII/LIII, Economics, 2005/2006, pp. 67-70.

Therefore, the legislator must focus upon the local autonomy, and from the standpoint of the legal regime of decentralization, the Framework of the Administrative Code (taking over the provisions of Law no. 195/2006) states the following:

- the decentralization means “the transfer of administrative and financial competence from the level of central public administration to the level of the local public administration or to the private sector”.

- the transfer of competence represents “the set of attributions established by the Constitution and by the laws that provide to the administrative authorities rights and obligations to carry out in their own name, in the exercise of the public power and under their own responsibility, an activity of administrative nature”⁴¹, finding “its limit in the unitary character and the indivisible character of the state sovereignty”⁴².

The decentralization is described as a process “which is ongoing and which must be based upon a series of principles such as: the principle of subsidiarity, the principle of ensuring resources corresponding to the transferred powers, the principle of responsibility of the local public administration authorities in relation to the competences they have, the principle of ensuring a stable, predictable decentralization process, based upon objective criteria and rules, the principle of equity and the principle of budgetary constraint”⁴³. In this context, one may consider that there is a transfer of competencies that should take place “at the same time with the ensuring of the necessary resources to the exercise thereof”⁴⁴.

With regard to the legal regime of the local self-government, it is considered that the structures of the local public administration are governed by two principles, as follows: on the one hand, the relations between the local public administration authorities in communes, cities and municipalities and the public administration authorities at county level are based upon the principles of autonomy, legality, responsibility, cooperation and solidarity in solving the problems of the entire county, and on the other hand, in the relations between the local public administration authorities and the county council, on the one hand, as well as between the local council and the mayor, on the other hand, there are no subordination relations.

Given the above, it is considered that the public affairs aim to transfer the decision-making power from the central to the local authorities, in order to solve a number of issues such as those related to poverty, for example, or those related to the “sustained increase in living standards” and quality of life, but also those related to the “social equity”⁴⁵.

What is worth noting is that there are several forms of decentralization, including:

- “the territorial decentralization”;
- the “technical decentralization” (i.e. for services)⁴⁶.

We took into account the evolution of the public administration starting from the fact that after the year 1989, Romania had to change the legislation. What interested us was the way in which the transition from a totalitarian to a democratic system was made.

4. Conclusions

In this paper we analyzed the way in which Romania passed from the communist to the democratic system and what this process entailed. Certainly, the process of decentralization was lengthy and it is considered to unfold even today. We were also interested in a number of principles applying in the public administration and how they are emphasized.

⁴¹ George Gîrleşteanu, Lavinia Smarandache, „Decentralizarea și autonomia locală în sistemul de drept român”, *Revista de Studii Juridice*, no. 2, 2009, pp. 38-47.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Irina Bilouseac, *op.cit.* p. 15.

⁴⁶ *Ibid.*, p. 17.

Bibliography

1. Anatolie Bantuș, „Principii de organizare și funcționare eficientă a administrației publice”, *Revista de Administrație Publică*, no. 2, 2014, pp. 38-49.
2. Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016.
3. Cătălin-Silviu Săraru, *Dreptul administrativ principalul instrument de reglementare a activității administrației publice*, ASE Publishing House, Bucharest, 2020.
4. Debbasch, Ch. *Știința administrației*, Dalloz, 1989.
5. Florian, A., *Fundamentele doctrinelor politice*, University Publishing House, Bucharest, 2006.
6. George Gîrleşteanu, Lavinia Smarandache, „Descentralizarea și autonomia locală în sistemul de drept român”, *Revista de Studii Juridice*, no. 2, 2009, pp. 38-47.
7. Gheorghe Voinea, Elena Rusu, „Teorema descentralizării și impactul ei asupra bunăstării unităților administrativ-teritoriale”, *Analele Științifice ale Universității „Alexandru Ioan Cuza” din Iași*, Tom LII/LIII, Economics, 2005/2006, pp. 67-70.
8. Goudenhooff, G., *Legitimitatea. Ritualuri ale legalității și autoritate discursivă*, Adenium Publishing House, Bucharest, 2016.
9. Hetsevi, T., *Sociologie*, Scientific and Encyclopedia Publishing House, Bucharest, 1982.
10. Irina Bilouseac, *Descentralizarea administrației publice locale*, „Ștefan cel Mare” University of Suceava, 2019.
11. Lionela Madescu, *Bazele constituționale ale administrației publice*, available at: <https://www.spiruharet.ro/facultati/drept-craiova/zone/27076e8bf632edb2c33bc349a6ba3187.pdf>, accessed on 10.09.2020.
12. Onofrei, M., *Elemente de știința administrației*, Course support, "Alexandru Ioan Cuza" University of Iasi, available at: <http://portal.feaa.uaic.ro/definitivare/licenta/PublishingImages/Pages/default/1AP%20Note%20de%20curs%20Elemente%20de%20C5%9Ftiin%C5%A3a%20administra%C5%A3iei.pdf>, accessed on 24.01.2019.
13. Rousseau, J.J., *Despre contractul social sau principiile dreptului politic*, Nemira Publishing House, Bucharest, 2007.
14. Scutariu, P., *Știința administrației*, Distance learning course, 2017.