

The Directions of Public Administration Reform Due to Romania's Integration in the European Union

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Abstract. Abstract. From the formal point of view, in Romania there is an institutional framework that has looked favourable for operation in at least satisfactory conditions for the authorities at the political level and at the level of public administration . In fact, things are different, and Romanians have to admit that the signals from EU authorities made in the last few years are in compliance with the reality, namely: if the fact that we complied with the political criterion has been accepted, public administrations do not operate according to the standards established for adhesion. The faulty operation of public administration is obvious, well known: "Public administration has become uncontrollable in certain fields, and the political level does not know what decisions to make because it only listens and it is only interested in nothing else except fratricide fights or other image related matters. There is a lack of political culture in making decisions. And there is also the so called "psychological corruption" from the desire to keep the power with any price, you are absolutely opaque, closed and refuse to change the way you work, the way to make decisions"

The persistence of the administration crisis is the expression of a faulty achievement of its functions in the society and this occurs also because there is no real communication between decision makers and the ones holding the information, the one deciding "*what and how to do*" and the ones knowing "*what and how to be done*". This state of things, the lack of communication, collaboration respectively between people and structures following the same goal, is also illustrated in the lack of broad, transparent political debates on the matter of public administration.

If in other countries the activity of public administration is permanently under political debate both in Parliament and in mass-media, in our country public administration has only been discussed from the point of view of critics, sometimes unqualified ones, regarding the "*desk officer*" who is either rude, either demands bribery in order to solve the citizens' demands.

We think it is necessary to reveal the fact that at a simple observation of the Romanian press, both central and local¹, attention is paid to local public administration in 22 articles appeared in 8 and 12, respectively, publications and to the Government and central administration in 3 articles appeared in these publications. We also notice that the number of articles about local administration, no matter their appearance day, is in the same number, while central administration is paid more attention during workdays.

We have to notice that before EU's signalling, in writing, the increased disarticulation of administration as well as the urgent need to reform it, were not seen as matters to be solved in political debates or election platforms.

Therefore, confusion occurred between the various parts of the state power democratic system that exists at present also. Paradoxically in appearance, the politization of administration has caused the growth of its power and the loss of control of the state politics (of the Parliament) upon public administration. In other words, the phenomenon of administration autonomization occurred.

Although, the most part of population opposes administration politization and believes in an administration that serves everybody, two meanings of this phenomenon can be seen: on one hand, politicians interfering in administration and on the other hand, people in the administration going towards and cultivating relations with politicians.

¹ Monitoring performed in Romanian press on the 10th (Saturday) and 22nd (Thursday) of May 2003

This chameleonism of certain administration officials to move towards, adhere to right ideologies or to left ideologies, “*resourceful people*” as we could call them, cannot survive for long and we hope that this way of working in the administration shall unavoidably fail due to citizens’ pressure. As a matter of fact, there have been certain reactions that, in good reason, said that an administration is for everybody and hence it shall not serve a certain party governing at a certain time.

Administration has to play an important and unique role²: that of stabilizer. The truth is that the high public officials spend too much time drawing policies and totally lack the management ability, are not capable of efficiently organizing offices, administrative structures for reducing expenses and performing an adequate management.

The political involvement has not been observed as being achieved only at the level of central administration, but at the level of local administration as well, more precisely at the level of local leaders. Local chosen people are the ones managing local public administration; those belonging to the political level are called to perform the activity of the administrative body.

Comparing to the results achieved so far at the level of Romania, we have to agree with Gerard Timsit³, who claims that in developing or transition countries, there is not real elite, but a substitute, a pseudo-elite or an elite replacer, concurrently formed and incapable of such an activity, like the elaboration of coherent reliable strategies regarding public administration.

By adapting the government at internal level, the Union will be in a better place to contribute to new forms of global government. Therefore, according to EU’s adhesion requirements, as they appear in the related documents, in order to adhere, Romania has to prove:

- The existence of a legislative framework corresponding to the communitarian one;
- Administrative capacity;
- Financial and budget management capacity;
- Territorial organization similar to the communitarian one;
- Programming capacity;

As a training exercise in achieving these criteria, we have to adopt measures and strategies, developed based on a set of principles admitted as conditions for a good government:

- *Opening*. Institutions should work in a more open manner. An accessible and understandable language for the public has to be used in order to improve the trust in the complex institutions of the state.
- *Participation*. Policies quality, relevance and efficiency depend on a broad participation at the level of the entire political chain – from conception to implementation. A better participation can lead to more trust in the final result in the institutions applying policies. Participation crucially depends on the local administration’s adoption of an inclusive approach in the development and implementation of state policies.
- *Liability*. The roles inside the state in legislative and executive processes have to be clearer; every state institution has to explain and take responsibility for what it does in the social system.
- *Efficiency*. Policies have to be prompt, providing what is necessary based on clear objectives, an evaluation of the impact in the future and, when it is possible, an evaluation of previous experience. Efficiency depends at the same time on the implementation of policies in a well proportioned manner and by the decisions made at the most suitable level.

² Antonie Iorgovan, *Administrative Law Treaty*, 3rd edition, All-Beck Press, Bucharest 2001 page 3 and the following

³ Gerard Timsit “*Administration Theory*”, Economic Press, Paris 1982

- *Coherence*. Policies and action have to be coherent and easy to understand. Coherence requires a political management and a strong responsibility from the institutions in order to provide a thorough approach.

Every principle is important in itself, but they cannot be achieved through separate actions. Policies cannot be efficient unless they are prepared, implemented and enforced in the broadest way possible. The application of these five principles consolidates the already grounded ones in the juridical order of member states:

- *Proportionality and distribution*. From the politics conception to implementation, the choice of the level where measures are taken (from EU to local level) together with the instruments used, has to be proportional with the tasks. This means that the linear pattern of distributing politics, from the centre, has to be replaced by a virtuous circle based on feed-back, networks and involvement from the politics conception to its enforcement at all levels.

These national principles do not exclude and do not contradict with the principles of the structural operation at communitarian level; they can be also found in the White Charter of European government⁴ and define good government. Democracy and law observance are based on them in all member states and they are enforced at all governmental levels – global, European, national, regional and local. This is why, they have a great significance, because they underline the direction of national politics towards the preparation of access to communitarian politics.

Legislation accommodation has been a crucial element in the process of preparations for adhesion. There are three reasons why the legislation accommodation process in Central and East European candidate countries was more difficult than in the countries adhering to EU during the two extension waves. The first reason is the increasingly volume and complexity of the communitarian acquis and the second reason is the simultaneity of transition processes and accommodation processes of the legislative system. Although in some cases, the need to create a legislative framework for the market economy makes it easier to adjust from the legislative point of view (both being able to take place at the same time); still the weight generated by the two processes has placed a very big pressure on the new institutional system in these countries. Also, the expertise in European law in Central and East Europe is and has been relatively limited, which also limited the accommodation process.

The development of a functional system that could provide the accommodation of the new legislation to EU standards and the adoption of a clear and realistic program of granting the existing legislation make these three problems be solved, especially if an efficient training program for judges, lawyers, parliamentary experts and public officers is achieved.

In all the countries in the world, structures for providing the accommodation of the new legislation to EU standards were established and operate. Methods have been developed for providing the accommodation of the legislation designed in administration:

- Checking the correspondences by the legislative Council (Bulgaria and Romania);
- Decentralized system, where every minister is responsible with the checking of the legislation compatibility (Estonia and Hungary). In the Czech Republic and Hungary the Ministry of Justice has a coordinating function;
- Checking the correspondences by the European Secretariat (Latvia, Poland);
- Checking the correspondences by the Juridical Office of the Ministry of European Affairs (Lithuania);
- Checking the correspondences by the Legislative Office subordinated to the Office of the Prime Minister (Slovenia).

⁴ White Charter of European Government, Brussels, 25th of July 2001, COM (2001) 428 final

A decentralized system that would deal with the checking of accommodations has obviously required a higher level of expertise in EU affairs⁵ at the level of each ministry, rather than a centralized control system of the agreement. Still, if there had been the human resources for achieving an actual control system of the agreement in ministries, it would have had of course a positive effect upon the global efficiency of the legislative process. The possible lack of a decentralized institution is that the institutions responsible for the coordination of the global granting process shall find it more difficult to meter the progresses made in the implementation of the accommodation strategy. The combination of decentralized provision of the agreement with the coordination function of only one institution, like it is the case in Czech Republic and Hungary has lead to the combination of the advantages of both systems, and consequently to a better accommodation.

Checking the legislation agreement tries to avoid especially the conflict between European law and the laws submitted for adoption in Parliament. In completing the checking of the new legislation agreement, all national states have developed national programs or strategies for the harmonization of legislation. The coordination of these national programs is the responsibility of either the European Secretariat, either the minister responsible with laws adoption (e.g. The Ministry of Justice and Laws Making - in Bulgaria; The Ministry of European Affairs - in Lithuania; The Ministry of Justice – in Czech Republic).

Some states have decided to differentiate institutional responsibility for the accommodation control – which is mainly a technical function, from the responsibility with the development and implementation of the national granting strategy – which is by nature more like a political task. Such a differentiation consists in separating the technical activity from the political one. It is important to underline the need to develop a realistic granting activity, and where it is possible, based on impact analysis. Accommodation strategies have to reflect the institutional abilities and economic realities of every country and not a program established from the outside. On a long term, countries will get more advantages from a realistic activity of accommodation rather than choosing a political opportunism. In most countries a system has been established for progresses monitoring and periodical revision of harmonization strategies.

The main accommodation method consists in the amendment of the existing national legislation or in the design of a new national legislation that would provide an agreement between national legislation and EU regulations⁶. In certain countries, European text transfer into the national legislation is often practiced but, even so, this is an exception to a rule.

There are various types of action between the government and the parliament along the legislative accommodation process. In Bulgaria, for instance, there has not been any official channel of interaction between the government and the parliament within the accommodation process so far. In Lithuania, this is treated as a normal aspect of the relations between the government and the parliament. In other countries, official relations have been established between the European Affairs Committee and/or the Legislative Committee and the European integration government committee/commission. These official relations consist in current meetings between the representatives of various committees and/or in the participation of parliamentarian committees' representatives in the sessions of governmental committees responsible with EU affairs (Lithuania, Poland, Romania). This participation can be statutory (Poland) or depending on the case. In the Czech Republic, official and non-official meetings concerning legislative accommodation have taken place between the representatives of the government and the parliament, based on ad-hoc meetings.

The way in which the accommodation process is managed differs depending on the case in the new member states. Institutional relations patterns may be distinguished, for instance, by the way the accommodation check is performed and also by the interaction between the government and the

⁵ V. Vedinaş, *Administrative Law*, Juridical Universe Press, Bucharest 2006 page 27 and the following

⁶ Alina Livia Nicu „, *Administrative Law*” Didactic and Pedagogic Press 2007, page 86 and the following

parliament. Still, in this matter there is a greater diversity between countries than in other aspects of structures development for the management of EU affairs.⁷

In order for countries to reach the standards established by the European Union it is absolutely necessary to reform the material and procedural administrative law, as well as the behaviour of public services, in order to comply with the administrative principles referring to trust, predictability, responsibility, transparency and efficiency. Moreover, the integration in the European Union is a revolution process. This means that a candidate country has to prove a progress level that is enough to make a satisfactory comparison at the average level of the European Union member states.

As far as the Romanian governmental administration is concerned, the Ministry of European Integration is responsible for the coordination of the compatibility of the internal legislation with the European one. It has been passed over to the state authorities, providing the monitoring and control of communitarian regulations transposition in the national legislation. Matters are taken into consideration regarding: the stage of adhesion preparations and assessment of the Romanian legislation harmonization with the communitarian regulations.

References

- Ioan, Alexandru, (2008). *Public Administration Treaty* Bucharest: Juridical Universe Press.
- Antonie, Iorgovan, (2001). *Administrative Law Treaty*, 3rd edition, Bucharest: All-Beck Press.
- Corneliu-Liviu Popescu, (1999). *Local Autonomy and European Integration*, Bucharest: All Beck Press.
- Cristian, Ionescu, (2003) *Contemporary Constitutional Law Treaty*, Bucharest: All Beck Press.
- Dan, Claudiu-Dănișor (2003). *The Actors of Political Life*, Craiova: Sitech Press.
- Dana, Apostol-Tofan (2003). *Administrative Law*, Bucharest: All-Beck Press.
- Emanuel, Albu, (2004). *Ministerial Administration in Romania*, Bucharest: All-Beck Press.
- Emil, Bălan, (1998). *Administrative Field*, Bucharest: Lumina Lex Press.
- Ioan, Deleanu, *Introduction in the Theory of State Bodies System Control*, Dacia Press, Cluj-Napoca 1977 and *Constitutional Law and Political Institutions*, Bucharest 1991;
- Ion, Vida, (1994). *Executive Power and Public Administration*, Bucharest: R.A. Official Gazette.
- Ion, Muraru (1993). *Constitutional Law and Political Institutions*, Bucharest: Actami Press.
- Ioan, Santai, (1998). *Administrative Law and Administrative Science*, Cluj-Napoca: Risoprint Press
- Iulian, Nedelcu and A. L. Nicu (2004). *Administrative Law*, Craiova: Themis Press.
- Ivan, V., Ivanoff, (2004). *The Deontology of the Political Function*, Târgoviște: University Press.
- Popa, N. Dogaru, I., Dănișor, Ghe., Dan-Claudiu Dănișor (2002). *The Philosophy of Law. Great trends*, Bucharest: All Beck.
- Paul, Negulescu, (1934) *Administrative Law Treaty*, Bucharest: The Institute of Graphic Arts "E. Marvan".
- R. N. Petrescu, (2001). *Administrative Law*, Cluj-Napoca: Cardinal-Lex Press.
- V. Vedinaș, (2002). *Administrative Law and Political and Administrative Institutions*, Lumina Lex Press, Bucharest;
- Annie, Bartoli, (2005). *Le Management dans les organisations publiques* 2^e edition, Dunod Press.
- A. de Laubadere, (1980). *Traite de Droit Administratif*, L.G.D.I. Paris.
- Bernard, Gournay (1978) *Introduction a la Science Administrative*, Preses de la Fondation Nationale des Sciences Politiques.
- Charles, Debbasch, Frederic, Colin, (2005). *Administration Publique*, 6e edition, Economic Press.
- Francis, Fukuyama (2004). *States Construction, World Order in the 21st Century*, Bucharest: Antet Press.
- Giorgio de Vecchio (1943). *Juridical Philosophy Lectures*, translation by Iosif-Constantin Drăgan, Bucharest.
- Gerard Timsit, (1986) *Theorie de L 'Administration*, Economic Press, Paris.
- J. Rivero, *Droit administrative* (1987). 12e edition, Dalloz Press, Paris.
- Jurgen, Schwarze (1982). *European Administration Law, Office for Official Publication of the European Communities*, Sweet and Maxwell
- Raymond, Aron, (1967). *The Stages of the Sociological Thought*, Gallimard Press, Bibliotheque des Sciences Humaines, Paris

⁷ Tony Verheijen, The Management of EU Affairs in Candidate Member States: Inventory of the Current State of Affairs in Sigma Papers no. 23, op.cit., p. 16 and the following