

GENERAL PRINCIPLES OF THE ADMINISTRATIVE PROCEDURE. THE ROMANIAN PERSPECTIVE

Abstract

From our perspective, the administrative procedure represents in a simple way the rules that apply to the activities of public administration structures (even if it concerns the drafting, the execution or the control of administrative acts or the realization of administrative operations).

In the context represented by the need for reform and modernization in the public sector, the administrative procedure has to systemize, simplify and unify public administration activity eliminating the contradictions between the administrative actions.

The reform and modernization of public administration needs in our opinion to state and establish in a clear and prescriptive way the rules concerning the general administrative procedure, in other words – the rules that guide the decision making process, that assures openness and transparency, the respect of citizens' rights and interests, the efficiency of public administration.

Our paper – "General principles of public administration procedure. The Romanian perspective" analyzes some of the general principles that apply to the administrative procedure as they are formulated in the internal legal order, principles governing the administrative procedures that are not yet systemized and unified in the form of one complex law, representing the first stage of our project.

Taking into consideration the internal experience, our future research in this project will continue this study, in order to realize the comparative dimension in two directions – one representing the level and experience of the European Union Member States and the other representing the European Union dimension.

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Introduction

The study has as a starting point the premise that public administration represents the activity by which public authorities on the basis of public power prerogatives insure the accomplishment of all needs of public interest.

Public administration is closely and indestructibly related to administrative law, which is comprised of the ground juridical rules applicable to administration, the last one representing the source of the administrative law's existence.

Administration appears as a component of public space, understood as the space of manifestation of general interests and of specific mechanisms of their assurance.

The public space we are heading to is the European one, understood as it was described by Francois Guizot¹ – “the space where the general interests and public ideas specific to European civilization met, characterized by some features which clearly distinguish it from other civilizations – justice, liberty, equality etc.”

The entire process of the European construction and integration is based on the common wish of creating a trans-national public space to allow the legitimacy of European institutions and the creation of a common European identity, so that European public space becomes a space of freely and democratic manifestation of citizens fundamental rights and freedoms.

This space also contains the European administrative space, in whose centre lays the European public administration, a space which was created as a result of the convergent forces and of the phenomenon of Europeanization of public administration², and related to the broad field of juridical cooperation.

The European administrative space can also be understood as representing a space of manifestation for common principles that are to establish standards regarding public administration's organization, their functioning, as well as the relations between administration and citizens.

The principles stated by the European Court of Justice include: reliability and predictability, openness and transparency, responsibility, efficiency and efficacy.

The state of law also implies the obligation to adopt an impartially and correct administrative procedure.

It is well known the fact that the regulations and principles which govern the structures and public administration's functioning in the EU Member States, represents a field where authority is held by national parliaments and governments. By international documents there were identified and recognized common values, including the ones which regard the division of powers among European, national, local or regional authorities, as well as procedural aspects, which regard the relations between authorities and citizens.

The elements of the juridical architecture of the European administrative space are found in the primary and secondary legislation of the EU: the for cooperation

¹ F. Guizot – History of civilization in Europe. From the fall of the Roman Empire to the French Revolution, ed. Humanitas, Bucharest, 2000, p. 38

² Also see OECD, European Principles for Public Administration, SYGMA PAPERS, no. 27, 1999

premises in the field of administration, elimination of administrative barriers, the right to a good administration, the stability of the civil servants, the equality of treatment of the citizens in their relation with administration, the right to petition, etc³.

At the national level, in countries like Austria, Denmark, Hungary, Poland, Portugal, Greece, and Spain, these principles were systemized and included in administrative procedure codes. The persons taking part in administrative reports are obliged by the law to comply with these general principles, their enforcement being guaranteed by judicial control.

Which is Romania's situation a state newly entered among the members of the European Union?

I. The Romanian juridical constitutional tradition

The Romanian juridical life is under the influence of the ethnic origins of the Romanian people, of its history and its becoming.

The evolution of the Romanian constitutional institution is closely related to the political realities that took place on the territories inhabited by Romanians. The investigation of these realities imposes the study of „the land custom (cutume)” – consuetudinary law – which constitutes the primordial source of the Romanian constitutional life.

In the Romanian people's spirit it was and it is deeply grounded the sentiment of fairness, of justice.

In the Romanian people's conception, the fairness, the judgment on the basis of conscience and equity was imperious. Liberty was related to land property and religion.

In a wide sense, by the ancient Romanian law it is understood the written or unwritten law which regulated the activities of the Romanian society since ancient times until the half of the 19th century – when in the life of this society appears the new law, driven by the occidental spirit.

In the history of the ancient Romanian law, the conquest of individual rights and liberties and the creation of national juridical institutions have happened slowly, taking into consideration the general rhythm of the similar movements in Europe, because of the ceaseless threats coming from the neighboring empires.

The Paris Convention from 1858, international document resulting from the politics of compromise of the European powers, stated fundamental norms referring to the political and juridical situation of the Romanian Principalities and their reorganization, constituting the premises of the adoption of the first national Constitution.

In 1864, in the framework of the executive function was created the Council of State, inspired by the French model, having as duties the preparation and writing of law projects and the legal rules given to it by the Government, as well as duties of administrative court.

³ C. Pollit – Clarifying convergence. Striking similarities and durable differences in public management reform, published in *Public management review*, 4(1) 2002

From this period also dates the adoption of the first Romanian complex laws, the Civil Code and the Civil procedure code – 1864; the Criminal code and the Criminal procedure code – 1865.

The Constitution from 1866, having as a model the Belgian Constitution from 1831, represented an act of political independence inspired by liberal principles; it stated the principle of parliamentary bicameralism, the individual rights and freedoms were affirmed and the absolute property right was proclaimed.

After the First World War, with Transylvania's union with the Ancient Kingdom the birth of the unitary state takes place, the new political and social realities imposing the adoption of new constitutional norms.

The Constitution from 1923, based on the Romanian traditions and realities, by recognition of the universal vote, grounds the real possibilities of democratization of the Romanian state. This fundamental law also states the idea of legality, as a base for the State's activity, realized by:

- the constitutionality control of laws and of the administrative acts' legality, given to justice;
- Magistrates' stability.

The communist era imposed by the soviet occupation brought the unexpected interruption of the political and juridical tradition of the Romanian people, marking the beginning of a period of martyrization and oppression.

The Constitutions from 1948, 1952 and 1965 set a hyper-centralized political and juridical system, based on a single party, in which human rights and liberties couldn't be used against the socialist order and against the interests of the working people.

The Communist constitution from 1965 was de jure and de facto abolished by the will of the Romanian people, by the political and revolutionary act made on December 22nd, 1989, which eliminated the communist dictatorship. As a consequence it was urgently imposed the adoption of a Constitution to ground the democratic tradition of the Constitution from 1923, and put to good use the experience of the occidental states.

The Constitution of Romania from 1991 (modified and completed in 2003) proclaims Romania as a state of law, democratic and social, in which the dignity of man, the rights and freedoms of the citizens, the free development of human personality, justice and political pluralism represent supreme values which are guaranteed. According to this fundamental law the State is organized after the principle of separation and equilibrium of powers – legislative, executive and judicial – within constitutional democracy.

The new juridical constitutional framework allowed the manifestation of a reformist politic more articulated, which gave the possibility of stabilizing the new political system with the elections from 1992, and after that the governance alternation begun with the elections from 1996, and continued in 2000 and 2004.

II. The administrative legal framework

The today's Constitution establishes a semi-presidential political regime or semi-parliamentary which incorporates the solution of a bicephalous executive, with the president of Romania directly involved in governance only in some fields of activity (external politics, and public order) and with a Govern that appears to be the essential authority of political nature of the Executive⁴.

The Government, according to its governance program accepted by the Parliament, assures the accomplishment of the purpose of internal and external politics and exercise the general leadership of public administration. Thus, the Government is placed at the top of all public administration's structure, that it supervises. Sure, the juridical form by which the Government realizes „the general supervision” of some administrative structures or of the others, depends on whether it is about subordinated structures, autonomous central structures or about elected structures that realize local autonomy.

Exercising its constitutional competences, the Government adopts acts of government, political acts, specific to the executive sphere, as well as administrative acts by which realizes the state administration, as a dimension of the public administration.

In the structure of the Romanian public administration system are distinguished two components constituted according to the public interest; they assure: the subsystem of the state public administration (central administration) and the subsystem of the local public administration.

The specialized structures of the Executive by which are accomplished the tasks of governance in one sector or in other are traditionally named „ministries” and are conducted by ministers who make part from the competence of Government. The necessities of the governance and administration imposed also establishing of some structures subordinated to the Government, and named otherwise (committee, council, department, and agency). The ministers and these structures, placed under the direct subordination of the Government, are called in the Romanian doctrine by the expression „ministerial administration”.

In the framework of the state administration there are also placed other special organs which can be organized in the subordination of the Government or of the ministers or like administrative institutions autonomous regarding the Government or any other ministers.

The autonomy of the organs in the last category regarding other administrative authorities does not exclude the existence of the judicial control on the administrative acts they issue, and for some others, the specific parliamentary control. Also, the Government's decisions, by virtue of its function of exercising the general conduct of public administration are also binding for the autonomous administrative authorities, having a greater judicial force than the normative acts issued by these authorities.

From the standpoint of organization, the state administration in Romania is organized according to a principle, known in the literature as „deconcentration”.

⁴ M. Constantinescu and others – “The Romanian constitution revised. Comments and explications”, Ed. All Beck, Bucharest, 2004

In the view of a better administration of the tasks of central administration, primarily related to the national defense, the territory of the state is delimited in administrative circumscription: villages, towns and counties. In these circumscriptions the state administration constitutes itself de-concentrated structures, under its subordination. The conduct of the de-concentrated structures at the level of every county is realized by the Government through the institution of the Prefect that is its representative in the territory.

Local public administration, having the purpose to assure the interests of the local communities, is based on the principles of decentralization, local autonomy and deconcentration of public services.

The deliberative authorities by which local communities realize local autonomy in villages, towns and counties are named councils. At the level of villages and towns are constituted, as executive authorities, the mayors. The councils as well as the mayors are elected according to conditions established by law.

The county council represents the public administration's authority whose role is to coordinate the activities of the village councils and town councils, in order to realize the public services of county interest. Local autonomy can be realized only in the state of law principles' framework, the principle of local autonomy being one of these principles. In order to assure the organic relation between local and national interests, at the level of counties there is a representative of the state, more precisely a representative of the central executive, with the role to monitor the appliance of the law by the local public administration's authorities. Following the French system, the prefect played this role.

As an authority which enforces the rule of law, the prefect has the right to challenge in front of administrative courts any act of a village council, town council and county council, or an act coming from any executive organ created according to the law at county level, when it appreciates it is illegal. In order to avoid the production of irreparable effects, Constitution states the principle of suspending the challenged act, being considered a protection norm both for the person in front of abuses of the local public administration authority, and for the national interests, in relation to the local interests.

III. Public administration and the power of procedures

Public administration in every democratic state must function in a legal framework. Relations between public authorities and citizens must be based on political neutrality, correctness, and impartiality.

Every administrative public authority must be subordinated to the control of other public authorities as well as to the control of justice.

It is noticed that every country approaches these issues in the context of its own history and of its own traditions.

In his researches regarding bureaucracy, the German sociologist Max Weber was talking about the depersonalization that must characterize the functioning of administration⁵. Public administration is, in the author's opinion, a machine, an efficient tool at the society's and at the political leaders' disposal.

⁵ Max Weber- *Essays in Sociology*, Oxford University Press, London, 1973

Analyzing the features mentioned above, it can be affirmed that they have the gift to transform the activity of public administration into an activity based on a series of automatisms, of routines.

Public authorities can fully accomplish the tasks they are vested with, only to the extent to which there are also appropriate procedural rules.

What does the importance of administrative procedures' existence consist of?

In the first place, it is about the efficacy of the administrative steps. The situations a civil servant or an institution has to face every day are numerous and the existence of some standard procedures has the nature to increase his efficiency, especially that many times the situations are alike. The absence of some procedures pre-established could lead to the appearance of some ad-hoc procedures, fact that has the nature of leaving room for arbitrary in public administration's functioning.

In the second place, procedures are necessary in order to assure the equal and impartial treatment of the administration's beneficiaries.

Not at last, both politicians and the civil society must exercise a control upon public administration. This would be very difficult in the situation that every public institution or every civil servant would work after his own rules and methods.

Procedure and administrative law establish not only parameters for exercising the powers conferred to public authorities, but they also contribute to the quality of the process of decision-making. Norms that impose transparency, the reasons given for decisions, a reasonable duration of the administrative steps and modalities to challenge administrative acts can be considered as modalities of increasing the quality of the results, and consequently, of the public administration's efficiency.

Public administration must be preoccupied not only with efficacy, but in the meantime with assuring an appropriate and equitable treatment of the persons against actions and decisions by administrative public institutions.

Administrative authorities exercise considerable powers on the citizens, through public services put at their disposal, by giving authorizations or permissions etc.

When it is about distributing some advantages or about imposing some tasks on persons, public administration must take into consideration an equitable treatment for everyone. In a society based on the principles of the state of law it is important that such „powers” given to administration to follow and to be stated in a clear way by Constitution and law and, where it is the case, to be the masterpiece of the courts of justice⁶.

Legal empowerment represents an essential condition for the legitimacy of administrative powers, but it is not sufficient. It is not enough that administration's powers result from a legitimate source, but it is also necessary to use other principles, for the administrative process to assure to citizens an appropriate and equitable treatment.

These complementary principles are established by procedure and administrative law⁷. Thus, it is desirable to be assured the transparency of the public administration,

⁶ I. Alexandru – European Administrative Law, Lumina Lex, Bucharest, 2005

⁷ Claudio Franchini, European Principles Governing National Administrative Proceedings, Law and contemporary Problems, Vol. 68:183, 2004

participation in an appropriate way at decision's adoption of the persons whose rights and interests are affected, communication to the interested people of the criteria of adopting decisions, obligation of giving reasons for the decisions and indicating the recourse modality⁸.

That is why the Administrative Procedure Code appears to be the normative act by which must establish in a prescribed way clear rules to guide the ones who adopt administrative decisions in a democratic and participative sense.

IV. Principles and procedural rules reflected in the sources of Romanian public law

The norms that govern the Romanian administrative procedure are found in various laws, not being unified and systemized in a code, as a complex law. Some of the procedural rules have a general character, but there are also sectorial norms, valid in a certain field of administration.

Regarding the general rules, we are going to discuss the ones of constitutional origin.

1. Official language in public administration

According to article 13 of the Romanian Constitution, republished: "In Romania, the official language is Romanian."

The official language is the language in which are edited the juridical acts of the Romanian State, in this way being it possible the understanding, and, if it is the case, the diffusion of these acts on the whole national territory.

The law for the constitutional revision, from 2003, completed its text with a provision consecrated to the use of mother tongue in relations with authorities of local public administration. Thus, according to article 120 p.2: „In territorial-administrative units where citizens belonging to a national minority have a significant weight, provision shall be made for the oral and written use of that national minority's language in the relations with the local public administration authorities and the decentralized public services, under the terms stipulated by the organic law.

The organic law referred in the constitutional text is the local public administration's law, this stating that the significant weight means more than 20% from the number of inhabitants of the respective administrative circumscription.

According to the procedural norms found in the Law of public administration, it is permitted the submission of petitions in front of the administration, justificatory documents, certificates in other language than the official one, with the obligation that these acts are accompanied by their translation into Romanian language, certified translation by official translators. The citizens of national minorities can address to the administration in writing or orally, according to the conditions of the Law of local public administration also using their mother tongue, and the answer is communicated both in the official language of the State and in their mother tongue.

⁸ Jurgen Schwarze, *Judicial Review of European Administrative procedure*, European Principles Governing National Administrative Proceedings, Law and contemporary Problems, Vol. 68:85, 2004

Administrative acts with normative character adopted by local authorities are edited in the circumstances mentioned – obligatory in Romanian, but they are brought to public knowledge also in the mother tongue of the citizens of the minority that has a significant weight in the total population. Administrative acts with individual character are communicated, upon request, also in the mother tongue.

It is seen that procedural administrative forms may be sometimes effectuated also in other language than the official language of the State, but editing in writing of administrative acts must be accomplished in Romanian language.

2. The right to petition

The right to petition regulated by article 51 from the Constitution represents the traditional citizen's right in the Romanian judicial system, whose exercise allows solving some personal matters or which regard a community. This right is placed in the framework of scientifically classification in the category of guarantee rights, representing a general judicial guarantee for the other rights and freedoms. To accomplish this role and to assure the possibility of its full achievement, the fundamental law states that the exercise of the right to petition is not charged with taxes.

According to constitutional norms, the right to petition can be exercised individually, by the citizen, or by a group of people, or by organizations legally constituted. Petitions addressed to public authorities, and which benefit by the juridical regime stated by the article 51 of the Constitution, are made only on the behalf of the petitioners or on the behalf of the people represented by the organizations-petitioners.

It seems that any petition must be signed and must contain the identification data of the petitioner. The constitutional norm does not offer judicial protection to anonymous petitions, in this way having also a moral characteristic.

Correlative to the citizen's right to petition, constitutional norms also state the obligation of the public authorities to examine and to answer the petitions in the time limits and conditions established by the law. The law, adopted in 2002, states the procedure and the responsibilities that come from violating the right to petition. It also sets four forms of petition: application, reclamation, intimation and proposal. Each of them has a different content, specific time limits and conditions. The law comprises procedural norms regarding the organization of receiving petitions, the rules of examination and resolving, and the control of this activity, the responsibility that comes to civil servants for violating the legal provisions on this matter.

Procedural norms regarding the petition's circuit inside public authorities or referring to their guidance between authorities when they are wrongly transmitted are quite indefinite, and leave room to various interpretations.

In this sense, a situation widely mediated in the spring of 2007 in Romania had in its centre the institution of the President of the republic, being called by the press „the slips' scandal”.

In fact, press revealed many situations in which petitions of some private companies, by which were claimed various administrative litigations with some ministries, submitted by their authors to the presidency, were redirectioned by the chief of state, by olograph resolutions, to the respective ministries.

By the fact that not all the petitions registered to the presidency did benefit from this treatment, their large majority being directioned by its services and not by the president's resolution, it appeared the suspicion, highly exploited politically and by media, of some situations of traffic of influence. This situation was also maintained by the president's decision to address in these cases directly to some ministers, not communicating through the Prime Minister and avoiding him, the one who, constitutionally, heads and represents the Government.

Analysts appreciated that the situation presented above represents the late effect of the populism and hyper centralism that dominated the communist society before 1989, in which instead of adopting the decision on the first level, it was pushed to the highest hierarchical level.

Clear and precise rules of administrative procedure regarding the system of petition are called to put order in this type of situations.

3. The duration of administrative action

In actual view and in the spirit of article 41 from the Charter of Fundamental Rights of the European Union a good administration represents, among other, the right of every person to benefit from the solving in a reasonable time limit of his problems by the public administration.

The notion of reasonable time limit expresses the reality that administration must not be realized with delays that compromise its efficiency and its credibility.

By its norms the legislator must establish administrative procedure rules to permit the exercise of the act of administration, in full accordance with the rights of all the citizens.

In exercising the discretionary power with which is empowered public administration, by its structures, it has the right to choose the modalities of intervention and the time of those interventions.

Exceeding legal time limits turns the administration's intervention into arbitrary, being excessive regarding the powers it was conferred with.

Romanian legislation which regulates the judicial control of the administrative acts' legality – administrative courts – define as a legal general time limit for solving a petition addressed to administration, the term of 30 days from the petition's registration.

Non-observance of this term constitutes the ground for a judicial action of the person who was damaged this way in his legitimate right or in a legitimate interest.

4. Alternative administrative procedures for solving of some applications

In numerous cases citizens address to the legally competent public administration with applications of authorization for undertaking some activities or for building constructions.

In general, the approval procedure in these cases is an explicit one, by issuing the authorization as a concrete administrative act.

By a law adopted in 2003 it was regulated also a procedure applicable in the situations like above – the procedure of silent approval, as an alternative modality of issuing or

renewing the authorization by public administration's authorities. Some fields are except, like the nuclear one, arms, munitions, explosives, the field of national security.

The procedure of silent approval is that procedure by which the authorization is considered given if the public administration's authority does not answer the petitioner within the legal time limit for its issue.

The negative answer of the competent administrative authority, within the legal time limit for issuing the authorization does not mean silent approval.

After the expiration of the legal term and in the absence of a written communication from the competent public authority, the petitioner may undertake the activity, may provide the service or may exercise the profession for which he requested the authorization. To obtain the official document by which it is ascertained and attested the authorization for undertaking the activity, the petitioner may address to that authority or directly to the court.

Public administration's authority will defeat the official document which permits undertaking an activity, providing a service, or exercising a profession, given to the procedure of silent approval, in the case it notices that there are not fulfilled some conditions which bring a severe harm to the public interest, national security, to the public order or health, or which were not remedied in the notified term.

The main reason of regulating the procedure of silent approval was the wish of improving the activity of public administration by simplifying administrative procedures and by making the public administration's activities responsible in order to respect the time limits prescribed by law.

5. Openness and transparency

Openness and transparency, as principles of public administration, suggest the fact that public administration has the availability to accept also points of view from outside, by assuring citizen's participation in the decisional process, to its debates, and the access to administration's documents.

The two characteristics allow observance of the course of administrative procedures by any citizen involved but also a better evaluation of administration by the authorized institutions.

The importance of these principles is revealed by inscribing the right to information as a constitutional right - article 31, public authorities being obliged to assure correct information of citizens on public affairs and on problems of personal interest.

Leaving from the premise that the lack of decisional transparency, the absence of public consulting and their inconsequence can lead to a decrease of the society's trust in the force and importance of administrative acts, the Parliament of Romania adopted in 2003 the law regarding the decisional transparency in public administration.

This law establishes minimal procedural rules applicable for assuring decisional transparency in the activity of central and local public administration authorities, named or elected, as well as of the other public institutions which use public financial resources in the relations established between them or between them and the citizens and their associations legally constituted.

The principles the law is based on are the following:

- a) the prior information ex-officio, of the persons on the problems of public interest which are going to be debated by the local and central public administration's authorities, as well as on the projects of normative acts;
- b) consulting the citizens and the associations legally constituted, at the initiative of public authorities, in the process of elaboration of the projects of normative acts;
- c) active participation of citizens in the adoption of administrative decisions and in the process of elaboration of normative acts' projects, respecting the following rules:
 - the meetings of the authorities are public;
 - the debates must be recorded and made public;
 - the minutes of these sessions will be registered, archived and made public.

During the proceedings of drafting the projects of normative acts, public administration's authority has the obligation to publish, at least 30 days before analyzing, advising and adopting, an announcement referring to this action on its own website, to post it at its own headquarters and to transmit it to mass-media.

At the announcement publication the administrative authority will set a period of at least 10 days to receive written proposals, suggestions or opinions regarding the project of normative act that makes the object of the public debate.

The public authority in cause has to decide the organization of a meeting in which to debate in public the project of normative act, if this thing was requested in writing by an association legally constituted.

The principle of administrative transparency finds its content in the law regarding the free access to information of public interest adopted in 2001. According to this law, public authorities have the obligation to undertake their activities in a way opened to the public, in which the free unrestricted access to information of public interest represents the rule, and the limitation of the access is the exception.

The access to information of public interest is assured by public authorities ex-officio or upon request, by the means of the public relations departments. The modalities of access are the following:

- a) posting it at the headquarter of the public authority, publication in the Official Journal of Romania or in the mass-media, as well as on the own internet website;
- b) their consulting at the headquarter of the authority or of the public institution, in spaces specially established for this purpose.

Public authorities have to assure to persons, upon their request, the information of public interest requested in writing or orally.

As a guarantee for the application of procedural norms which assure the free access to information of public interest, the law also comprises norms which regard the judicial responsibility of the persons who violate these dispositions.

6. Public administration's responsibility and the free access to justice

In the Romanian constitutional system justice became one of the guarantees for the effective exercise of the citizen's rights and freedoms. This role is motivated by

the judicial authorities' place in the public powers' system and by their functions. The justice is made in the name of law by judges who are independent and who are subordinated only to the law.

The text of the article 21 of the Romanian Constitution states that "every person is entitled to bring cases before the courts in order to defend legitimate rights, liberties, and interests".

The fundamental law regulates in a distinct text – article 52 – the right of the person aggrieved by a public authority, fundamental right placed by the doctrine in the category of guarantee rights, together with the right to petition with which, it is closely related.

Article 52 of the Constitution represents the constitutional basis of the authorities' responsibility for the damages made to the citizens, by violating or not taking into consideration their rights and freedoms, damages produced by the activity of public administration.

According to article 52 of the Constitution, the responsibility of administrative public authorities takes place when:

- a) they issue an administrative act that damages a person;
- b) they do not solve a person's application in the lawful time limit.

In the second situation can be surprise two practical procedural aspects.

The first one refers to solving an application beyond the legal terms, namely by overdoing the time limits. The second aspect regards the silence of public authorities, the absence of any answer from the administration that was submitted an application. In this case the constitutional text gives the administrative silence the judicial effects of an administrative act.

Then, the constitutional regulation does not allow public authorities to just ignore an application of a citizen. The last one has at his disposal a judicial action by which he can ask:

- a) recognition of the supposed right or of the legitimate interest;
- b) defeat of the act;
- c) damage reparation.

As it can be observed, it is a natural order. Damage reparation can not be obtained without the right's recognition and defeating of the damaging act.

Judicial control of the administrative acts of public authorities is realized by courts specialized in the matter of administrative litigations.

The sole administrative acts which are excepted by the Constitution from this type of control are those regarding the relations with the Parliament (acts with a very strong political character as well as the commandment acts with military character).

Without entering into details regarding the judicial procedure, we must underline that in order to get the claims formulated through the action in front of administrative courts solved the citizen does not have the obligation to prove the guiltiness of the civil servant or of the public authority which issued the act. He must justify his right and the fact that the act issued by the public authority produced him a damage. Accordingly, the citizen has only the duty to prove the causal relation between the public authority's act and the damage/injure produced to him.

If the public authorities wish to recover the eventual losses resulting from the activity of their own civil servants, they can do such thing by means of legal procedures regarding labor relations. We notice from the things presented above the way of applying the European principle of public administration's responsibility in the Romanian law.

Administration by law is essentially for the observance of the general interest and of the individual ones.

The judicial surveillance mechanisms for the observance of law by the public administration allow any person to benefit of reparations for the damages caused by public authorities in the exercise of their legal competences.

V. The issue of codifying the Romanian administrative procedure norms

In the first half of the 20th century administrative procedure was given quite little attention in the Romanian public law.

Traditionally, the legislators' and researchers' preoccupations were heading towards the administrative act resulted after applying a procedure, as being relevant from a judicial point of view. Preparatory procedures had a marginal value. Procedural aspects were getting importance only to the extent that they would generate the invalidation of a decision or of an administrative act.

The diversity and complexity of administrative practice, the huge amount of acts and the other steps of the public administration determined, in the second half of the last century, the shaping of an opinion among the specialists regarding the necessity of increasing the efficiency of the public administration by adopting unitary, complex, systemized regulations concerning the Romanian administrative procedure.

Systematization of administrative procedural rules in a Code was regarded as necessary and, in order to assure an active and guaranteed participation for the citizens in preparing, issuing and executing administrative acts, adding themselves to the existing legality guarantees and to the control instruments, new means able to avoid the issue of some illegal or inefficient administrative acts, as well as their consequences, from the phase of act's preparation.

As D. Apostol Tofan pertinently observed in a study on this matter, in the early beginning of the codification's steps, it was appreciated that the norms which should be comprised in an administrative procedural code are the ones referring to individual administrative acts. But in the way the problem of codification is viewed today, the distinction between individual administrative acts and normative administrative acts does not hold any significance, the last ones being necessary to obey in an equal measure the principle of legality⁹.

In the opinion of Professor I. Santai, the administrative procedural code must comprise general norms applicable to all administrative acts, as well as procedural

⁹ D. Apostol Tofan – The necessity of writing an Administrative Procedure Code, "Public Law Magazine", no. 1/2002, p. 80-82

rules applicable to specific categories, like the judicial-administrative acts, also regulating the main stages of the decisional process¹⁰.

In spite of this opinion favorable to the codification of administrative procedure, Romania is at present among the few European countries which do not have a unitary and specialized regulation on this matter.

After year 2000, the preoccupation of the Romanian administrative codification knew a intensification at the level of scientific research, as well as at the level of legislative initiative.

Insufficient communication between the political environment and the academic one led to the situation of adopting, by the legislative in 2003 of two sectorial administrative codes – the Fiscal Code and the Fiscal Procedural Code, before adoption of an administrative code and of an administrative procedure code, as laws with general character.

The last ones exist for several years on the table of researchers, but by now they were not taken into debate of politicians.

Analyzing the norms of the Fiscal Procedure Code we notice that in its contents are inscribed some of the principles promoted by European administrative law, as it follows:

- *the right of the taxpayer to be heard*: before taking the decision, the fiscal organ has to assure to the taxpayer the possibility to express his point of view regarding the relevant facts and circumstances for the decision's adoption. Also, the fiscal administrative acts produced with this occasion must comprise in their contents mentions regarding the hearing of the taxpayer;
- *the right of the taxpayer to be assisted by a lawyer or by other specialists*: in relations with the fiscal organ the taxpayer may be assisted by a lawyer chosen by himself or by a legal commissioner. During the administrative procedure the taxpayer may also name an expert to assist him at his own expense;
- *the right of the taxpayer to be informed*: the taxpayer will be informed during fiscal inspection's course on the findings resulted, and at its ending the fiscal organ will present to the taxpayer the findings and their fiscal consequences, giving him the possibility to express his point of view;
- *the obligation of the fiscal administration to present the reasons which at the basis of its decisions*: the administrative-fiscal acts must comprise in their contents, necessary, the factual reasons as well as their legal base;
- *the obligation of the fiscal administration to point the legal ways of attacking its decisions*: in the contents of administrative-fiscal acts must be shown the possibility to be contested, the term for submitting the contestation and the fiscal organ where the contestation is submitted.

¹⁰ I. Santai – Administrative Law and the science of administration, vol. II , ed. Riso – Print, Cluj Napoca, 2003, p. 66-67

Conclusions

The problem of administrative law and its principles, with a special preoccupation for the problem regarding administrative procedure, in European context, represents at the present an important goal for the Romanian political and administrative research.

The formal adoption of some common principles and creating a similar modality of their application, can be a desiderate of the integration in the European administrative space of promoting cooperation and of coordination between national administrations and the European one.

Tradition, culture, national specific, history of every state, can constitute elements which can favor or can hinder this process.

Now administrative procedure norms are not systemized in the shape of only one complex law, but they are dissipated in multiple regulations, making it difficult their observance and their application.

The administrative procedure code, claimed by the Romanian legal order, must have as basis the principles of European administrative law, in order to be able to serve a unification function and to assure the systemic coherence and uniformity.

Through a more precise regulation of the discretionary decisional proceeding, the Code will strengthen the predictable character of Romanian public administration, restricting the arbitrary in public affairs, and increasing the judicial protection of citizens.

A special preoccupation for the authors of the code must regard the increase of public services' efficiency and efficacy, encouraging the use of the instruments specific to e-government.

It also imposes monitoring and a permanent evaluation of the regulated administrative procedure norms in order to observe their adequacy to the realities of a society in a continuous change.

Not at last, an important role comes to the legal means of social, political and juridical control, of the process of application and observance of procedural norms, as a guarantee for the procedural fairness and for the responsibility of public administration for its decisions.

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