

CONSTITUTIONAL COURT JURISPRUDENCE AND ITS ROLE IN SHAPING PUBLIC ADMINISTRATION REFORM IN ROMANIA

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Abstract

This article aims to investigate the jurisprudence of the Constitutional Court regarding the public administration reform in Romania. We take into consideration the motivation of the public authorities involved in the law-making process, as well as the interpretation of the judges of the Constitutional Court concerning the legislative steps regarding the adoption of an Administrative Code, decentralization, the transfer of competences, the status of civil servants, and finally the legal regime of the newly established or reorganized institutions/authorities.

The study also evaluates the steps to reform the public administration concerning the observance of the principles of constitutional loyalty, the separation of powers, the supremacy of the Constitution, and the role of the Parliament.

Keywords: reform in public administration, jurisprudence, legitimacy, accountability, separation of power.

1. Introduction

Until 2019, the political system in Romania failed to codify the legal norms of administrative law in a comprehensive code based on common principles. On the one hand, there was no consensus or joint projects among the political elites regarding the structural and sustainable reform of public administration. On the other hand, the content of the regulated rules did not comply with the requirements of coherent organization of public authorities, namely the clarity and accuracy of the rules. As a result, the necessary conditions of unity and cohesion, needed to interpret or apply the rights and obligations characteristic of the legal relationship of administrative law, were not met (Săraru, 2017, p. 234).

Adopting the Administrative Code through an emergency procedure, rather than naturally and organically through parliamentary debate (Dahl, 1989; Dryzek, 2000; Elster, 1998; Schmitt, 1988) reconfirms the political elite's lack of interest, and lack of a general political consensus among them (Lijphart, 1984; Sartori, 1975; Shugart and Carey, 1992). This creates a barrier – exacerbated by the reluctance on the part of central and local public administration – to effective decentralization, depoliticization, independence, and professionalization of public officials. In consequence, it also interferes with adopting a coherent, stable, and functional legal framework in the newly established or reorganized institutions, as well as with delegating and transferring competences.

The above arguments are validated by the activity of the Legislature and the Executive in the field of reforming local administration. Only a single law on decentralization has been adopted (Law no. 339/2004), according to the debates during the sitting of the Chamber of Deputies on June 14, 2004.

Since 1990, 2,902 out of 19,487 draft laws and legislative proposals (14.89%) have been pending before the Parliament. In terms of the law-making activity of the parliamentary committees, public administration represents the third largest policy area (after the committee for legal matters, discipline, and immunities, as well as the committee for budget and finance), according to the statistics provided by the Romanian Senate.

Such a reactive approach has made the reform process less steady and predictable, as the steps have not formed a part of a long-term strategic vision or reflected the objective of having an efficient, functional public administration reform. While there is a significant volume of regulation, this contrasts with the lack of a coherent reform project; there is also no assessment of whether the current legal framework is applicable, resilient, and sustainable.

1.1. Research objective and hypotheses

The objective of this research is to identify the status of public administration reform in Romania taking into consideration the Constitutional Court's decisions. We refer to the constitutionality and legality of the most important normative acts of reform in order to emphasize both the role the Constitutional Court exercises in the reform process and the constitutional model (standards, values, and limits).

The main hypothesis of our research highlights the fact that the public administration reform in Romania was slowed down by the poor quality of the legislative process. There

was no correlation between the legislative practice and the activity of the Court, but only compliance with the Parliament's obligation to reject the draft laws declared unconstitutional (Benke and Costinescu, 2020; Muraru and Tănăsescu, 2022; Tănăsescu, 2013). We have a low level of accountability and a poor quality of the legislative process, both of which are responsible for reform measures whose integration into administrative law only exacerbates the structural weaknesses already faced by the public administration and the reform process.

Our secondary hypothesis captures a high level of dissatisfaction with legislation, measured by complaints of illegality and unconstitutionality. The lack of cooperation and loyal collaboration between institutional actors (Decisions no. 356/2007, 1431/2010, 307/2012, 924/2012, and 972/2012) further deepens the deficit of legitimacy and responsibility.

1.2. Addressing the research gap

There has been a debate in the national academic literature on public administration reform, highlighting the challenges of regulating the field of administrative law, among which we mention: (1) the diversity and range of the regulated objects; (2) the plurality of public authorities competent to issue rules and administrative acts; (3) the multitude of normative acts applied to the activities of public administration; (4) the continuously changing specificity of public administration, as the social and institutional reality it relates to is also in a constant state of transformation (Nedelcu, 2006; Săraru, 2017, p. 235; Vedinaş, 2015; Vişan, 2005, p. 71; Raiu and Juknevičienė, 2021). However, the research in this field has so far been related only tangentially to the legislative procedure, analyzing the roles and competences of the relevant authorities in adopting legislative initiatives and the constitutional control, but not highlighting their actual contribution to the reform process.

For this reason, we consider it relevant to conduct a more applied analysis of the parliamentary practice and the jurisprudence of the Constitutional Court, illuminating the trends and characteristics of the public administration reform process in Romania during the period of 1990–2022. These questions remain unasked: What is the state of play of the public administration reform in Romania, in relation to the legislative activity and the case law of the Court in the period of 1990–2022?, and: To what extent did the legislative drafts for the public administration reform comply, in the period of 1990–2022, with the requirements of legality and constitutionality, and express good coordination and collaboration between the authorities?

In qualitative terms, good regulation has been operationalized in the contemporary public administration scholarship according to (1) effectiveness, (2) cost efficiency, (3) clarity, (4) accuracy, (5) simplicity, and (6) neutrality of the language in order not to generate contradictory interpretations, and not to accentuate national, ethnic and linguistic sensitivities (Xanthaki, 2018, p. 31). In quantitative terms, it is defined through the standard cost-benefit model – a method used to measure the burden of regulating and implementing legislation by public administrations at all levels (Weatherill, 2007, p. 84).

2. Theoretical framework

2.1. *The basis and role of constitutional review*

The paradigm of constitutional justification for the rule of law gives both national courts and constitutional courts the prerogative to analyze and interpret the normative framework and administrative acts related to the status, duties, and responsibilities of civil servants based on constitutional philosophy (Dicey, 1959, pp. 187–196). The rule of law is a constitutive element of democracy, and it is not limited to legal and constitutional procedures (Dicey, 1959; Gowder, 2016; Hayek, 1960; Maravall and Przeworski, 2003; Rawls, 1999; Shapiro and Sweet, 2002; Tamanaha, 2004). It is also concerned with democracy's fundamental principles (autonomy of law, foreseeability, separation of powers), which is why courts must not overuse their power of constitutional review to scrutinize the will of the Legislature (Jowell, 2000, p. 671; Harlow and Rawlings, 2009, pp. 60–62; Raz, 1977, p. 195).

The discrepancies between law, politics, and administration have increased the role of decisions made by the Constitutional Court – the only court with jurisdiction in analyzing legality and exceptions of unconstitutionality (Harlow and Rawlings, 2009, pp. 60–62).

In Romania and other democratic countries, the Constitutional Court plays a crucial role in the validation and rejection of legislative reform projects, as there is an obligation to adhere to its decisions. The influence of the Constitutional Court is evident alongside the role of administrative law courts. For example, in France and Germany, specialized administrative courts have exclusive jurisdiction over the legality and constitutionality of decisions and laws (Harding, 2017).

De jure, the jurisprudence of the Constitutional Court helps define the boundaries of reforms to ensure compliance with constitutional provisions. This is seen, for instance, in the way specific controls address issues of unconstitutionality in countries like Belgium, Germany, Italy, Spain, and Romania, or in resolving complaints about fundamental rights violations in Austria, Germany, Spain, the Czech Republic, Slovenia, and Slovakia.

De facto, the Constitutional Court significantly influences public administration reform. Legislative projects often reference the Court's jurisprudence to align with the principles and directions outlined in its validation or rejection decisions; this influence varies depending on the political and public consensus regarding the powers of the Constitutional Court.

Independence, communication, consultation, coordination, and consensus are all expressions of the rationality of public policy strategies (Metcalf, 1994 and 2000). They reflect the institutional and administrative capacity to adapt legal norms and a constitutional framework that can mitigate the rigidity of specialized structures, without prejudice against the expertise and professionalization of the civil service (Matei, 2007, p. 23, pp. 36–37; Raiu and Juknevičienė, 2021).

The division of power and organization of public administration on several levels emphasizes the importance of maintaining a balance and constitutional order (Benz, 2016, pp. 1–2). In order to reduce the 'adversarial potential of institutions located at different

levels of governance' (Onoma, 2009, p. 65), it is necessary to adopt common patterns of jurisprudence for constitutional courts (Benz, 2016, p. 67). In the classical models of governance, the 'new political disorder' contributes to the emergence of a political and constitutional space, defined through the relationships between the different levels of authority (local, regional, national, and European), and their interdependence (Ion, 2013, p. 110; Marks, 1992, p. 12).

2.2. The public administration reform in context

Public administration, governance, and constitutional architecture are a reflection of society. This is why public mechanisms, norms, and policies must be evaluated and understood in relation to the economic, social, and political context in which they are applied (Harlow and Rawlings, 2009, p. 55). The coherence between the function of governance, its organizational form, and its managerial autonomy is in direct relation with the cultural and legal context governance exists in, the stability of its legislative and institutional framework, as well as political and constitutional constraints (Matei, 2007, p. 23, p. 29).

In Romania, central and local public administration has been defined as an important factor of economic competitiveness and a faithful indicator of democratization. It is responsible for ensuring proper management (Andrei, Profiroiu and Turturean, 2006, p. 55). The objective of the public administration reform process was to include the European dimension, decentralize power in a coherent and continuous manner, and increase the efficiency and quality of public services for sustainable development (Andrei, Profiroiu and Turturean, 2006, p. 55). In practice, even if important changes were made to the legal framework, the public administration reform did not make significant contributions to the managerial effectiveness and efficiency of the administration, as it was not sufficiently focused on obtaining results and performances (Profiroiu *et al.*, 2005, p. 5).

The above-mentioned issues can be illustrated with the adoption of the Administrative Code through an emergency ordinance in July 2019. Previously, Draft Law no. 369/2018 on the Administrative Code was initially adopted, but later it was rejected by the Legislature, following the Constitutional Court's decision of its unconstitutionality (Decision no. 681/2018). The emergency ordinance adopted by the Executive enforces, at the normative level, the organization and *de jure* functioning of the public administration according to the following specific principles: (1) decentralization, (2) local autonomy, (3) citizens' consultation in matters of particular local interest, (4) eligibility of local public administration authorities, (5) cooperation, (6) liability, and (7) budgetary constraint. The normative act was adopted to avoid, through strategic documents, the risk of suspending the provision of European funds to Romania in case the latter failed to meet its commitments and deadlines. This aspect highlights the fact that we currently have an Administrative Code adopted not as an expression of a broader vision for public administration reform, but as a solution to an external crisis.

The need to adapt the legal framework coincided with the goal of resolving the malfunctions and blockages reported by local public administration authorities, in accordance

with the socio-economic realities of the moment (Government Emergency Ordinance no. 57/2019). The intention behind simplifying and streamlining the decision-making process and institutional procedures was to increase the administrative capacity and seize development opportunities. However, this had to be reflected in harmonizing the legislation and institutional practice at all levels. The measures targeted the field of civil service by regulating the recruitment procedure, recording all categories of personnel, and adapting the institutional framework to ‘ensure the premises of stability, independence and professionalism in the exercise of public functions’ (Government Emergency Ordinance no. 57/2019).

3. Methodological design

3.1. Approach and limitations

This analysis of the Romanian context is important to highlight and explain the failed ‘model’ of public administration reform characterized by poor, unclear, and incoherent regulation. A scrutiny of the legality and constitutionality of public administration reform approaches in Romania, since 1990 until now, requires a methodological framework adapted to the legislative practice and the jurisprudence of the Constitutional Court (Brown *et al.*, 2016; Creswell, 2014; Rihoux and Grimm, 2006). In order to precisely analyze the reform, we structured our research based on the three most representative pillars for the organization and coherent functioning of public administration: (1) the Administrative Code, (2) the civil service, and (3) the process of decentralization. The complexity of these pillars and their relevance to public administration reform allow us to carry out a macro-level assessment of the structural flaws within the ambitions and approaches to the reform. We refer to the legislative practice and jurisprudence of the Constitutional Court in addressing complaints of illegality and unconstitutionality, as they allow us to highlight the low level of legal certainty characteristic of the regulatory framework when it is applied to public administration.

In order to identify both general and particular trends in the field of constitutional law-making and review, we have made official requests for information to the Parliament (through specialized committees in the field of legal and public administration) and to the Constitutional Court; as a result, we obtained a complete database of legislation aimed at regulating the field of public administration from 1990 until the present. Due to this large timeframe and the age of some of the documents, the database was not available in a uniform digital format, and could not be analyzed or searched automatically for the topics of interest to this study. Our manual examination of the source materials was therefore somewhat limited in comparison to analyses of modern, fully digitalized datasets. Nevertheless, processing and analyzing the database has given us ample evidence for the existence of a *pro forma* reform, devoid of content and lacking concrete legal effects in terms of the organization and functioning of public administration.

As our analysis of the draft legislation and of the case law of the Court was mainly qualitative (Ashworth, McDermott and Currie, 2019; Miller and Yang, 1999), we used

document analysis (Bowen, 2009) and case studies (Garson, 2002) to emphasize the content and importance of normative acts subject to constitutional review. We selected draft laws and the Court's decisions that were relevant to the reform, in terms of the impact and extent of the changes made in the regulatory framework, and in terms of the arguments and findings of the Constitutional Court. This approach was useful for us in assessing the quality of the legislating process in relation to the requirements of legality and constitutionality.

The high volume of legislation highlights the tendency to introduce successive regulations and changes that have only a tangential impact on the three important pillars of reform. However, legislation prevails as a targeted solution to administrative issues. For this reason, quantitative analysis alone does not give us a fair representation of legislative reform practices. Additionally, the quality of the source material (its relatively low level of completeness and interoperability) prevented us from obtaining a complete set of quantitative data for each pillar of public administration reform. Specifically, the data issued to us by the Parliament and the Constitutional Court did not allow us to apply filters to generate comparative statistics on the legislative activity and the Court's jurisprudence on the Administrative Code, the civil service regulations, and decentralization. For this reason, an in-depth analysis of the quality of the law-making and the way of regulating is a necessary requirement in order to go beyond methodological limitations. However, our approach aims to give the research some quantitative dimension as well (Balnaves and Caputi, 2001; Gray *et al.*, 2007; Groeneveld *et al.*, 2015).

4. Examining the Constitutional Court's jurisprudence on public administration reform

In order to ensure the extrinsic and intrinsic agreement of the adopted normative acts with the Constitution (Decision no. 1237/2010), the Constitutional Court ruled *a priori* on the constitutionality of the laws (before their declaration), and *a posteriori* on the exceptions of unconstitutionality that have an 'obvious constitutional relevance' (Toader and Safta, 2021, p. 720). In its case law, the Court has called on the principles of legality, the principle of loyal collaboration between state authorities and institutions, as well as the principle of exercising the right in good faith (Toader and Safta, 2021, pp. 721–722). The 'procedural and substantial requirements' enshrined in the text of the Constitution and invoked by the Constitutional Court refer to the aim of preserving and protecting the constitutional order and legal certainty. Additionally, the review of legality and constitutionality focuses on eliminating defects and non-uniform practices, which is why the Court has the jurisdiction to propose interpretations of a criticized norm (Toader and Safta, 2021, pp. 725–726).

The extrinsic objections of illegality and unconstitutionality relate to the procedure of adopting the normative act, while intrinsic criticisms concern the content and effect of the regulations. In order to gain an overview of both, we will analyze the Constitutional Court's

decisions in three cases that we consider relevant for a coherent reform in public administration: the Administrative Code, regulations on the civil service, and decentralization.

4.1. The Administrative Code

Extrinsic unconstitutionality defects found by the Constitutional Court expose two issues: firstly, the violation of the principle of functional bicameralism, balance and separation of powers; secondly, a breach (by the initiators of the legislative drafts) of the obligation to request an advisory opinion from the Economic and Social Council, and from the Legislative Council. Limits of the bicameralism principle were violated by changing both the legal content and the form of the version adopted by the two Chambers of the Parliament; the breached obligation related to the centralization, unification, and harmonization of the norms. Together, the two issues ensured that the law, as a whole, was unconstitutional. In this situation, the Constitutional Court concluded that ‘there is no longer any need to examine the criticisms of intrinsic unconstitutionality’ (Decision no. 82/2009) and declared the entirety of the ordinary law on the adoption of the Administrative Code to be unconstitutional.

The Court’s analysis focused on the significant stages and changes adopted in the legislative procedure, without examining the criticisms against the quality of the law-making process as well. As a result, the Parliament fulfilled its obligation to legally terminate the legislative process wherever a law in its entirety was declared unconstitutional in order to comply with the Court’s decisions, but objections towards the intrinsic unconstitutionality of the reform measures have remained unanswered by both the author of the law and the Constitutional Court. Moreover, most of the provisions included in the Law on the Administrative Code of Romania (PL-x no. 369/2018) were taken over by the Government, three months after the final rejection of the law was declared unconstitutional by the two Chambers of the Parliament, thus confirming once again the fact that the Government substituted the Legislature. In the Government Emergency Ordinance no. 57/2019, the Government complied with the Court’s Decision no. 681/2018, as it did not relate to the substantive aspects (Decision no. 60/2020).

4.2. Civil service regulations

In contrast, the Constitutional Court’s case law has greatly contributed to the analysis of the unconstitutionality of regulations applied to the civil servant statute, which regulate the service relationship (Decision no. 818/2017). Unclear and incomplete regulations limit the predictability and accessibility of the law and place the civil servant’s service relationship in a more vulnerable position. The unconstitutionality of the steps to regulate the statute of the civil servant found by the Court constituted a guarantee on the termination of the service relationship following the dismissal from the public office as a result of the disciplinary investigation, in violation of the principle of separation and balance of powers

The judges of the Court have placed the imperative condition of respecting legality, impartiality, and objectivity on the civil servant, as well as the requirements of professionalism

and moral integrity when exercising their public power. In order to define the civil servant role in this way, the Court referred to the theory of the administrative act, which contains the principles of the presumptions of legality, veracity, and authenticity (Decision no. 32/2018). At the same time, the relationship between the civil service and that of public dignity has also been correlated, in the case law of the Court, with constitutional provisions ensuring equal rights, stability in the exercise of office, compliance with the incompatibilities' regime applied at the time of appointment, and suspension or termination of service relations (Decision no. 790/2021).

Currently, after more than thirty years of reform attempts, regulations in the area of the duties and responsibilities of a civil servant remain exposed to the criticism of illegality and unconstitutionality. More specifically, the regulatory framework currently in force makes it possible to apply a different legal treatment to senior or management civil servants, and lower-level executive or administrative officers, in terms of the resumption and continuation of service relations.

The principles of rationality and proportionality are linked to the requirement that the Legislature should serve a legitimate and necessary purpose on one hand, while ensuring a fair balance between the public and individual interests on the other. In the absence of a proportional intervention of the State, the Constitutional Court ruled that the amendments made to the termination of service relations unduly affected the fundamental rights and freedoms enshrined in the Constitution, and in the legislation in force. In the Court's interpretation, the Legislature had the obligation to adopt alternative rules, which would achieve the competing interests. The inequality between the category of senior or management civil servants and that of lower-level officers was not based on 'an objective and rational criterion' of providing the civil service with a stable working environment (Decision no. 790 /2021).

4.3. Regulations on decentralization

In the Constitutional Court's case law, administrative and financial decentralization represents a major commitment from the Government, usually mentioned in all Government programs, being a central element of the public administration since 1991. However, the Court – while exercising its competences – has pointed out the vagueness of transposing the concepts of regionalization and decentralization in the content of normative acts. In its analysis of the criticisms of the law's intrinsic unconstitutionality, the Court has specifically mentioned the principles of legal certainty and local autonomy, in the context of the immediate application of the reform measures. In the Court's interpretation, the intrinsic unconstitutionality of the law is triggered when there is a failure to comply, within very short time limits, with immediate measures. By way of example, the author of the law based his reform steps (according to his own assessment included in the Statement of Reasons) on the analysis of over 500 normative acts, but made the necessary amendments and additions only to twelve of them. The Government left the task of legislative correlation to ministries and specialized bodies, allocating the period of 30 days to it,

even though it had not fully identified the normative acts to which it had implicitly made the changes (Decision no. 1/2014).

The judges of the Court pointed out that, when regulating the transfer of competences and assets from the central to the local level, the author of the law is obligated to respect the provisions of the Framework Law on Decentralization no. 195/2006, which ensures the ‘quality standards of the administration’s activity and the necessary financial resources’. Concerning this requirement, the Court declared as illegal and unconstitutional the reform measures lacking an impact analysis and a specific methodology including monitoring indicators, quality and cost standards, or testing and impact assessment by organizing ‘pilot phases’ (Decision no. 1/2014).

In addition, the Court sanctioned the vagueness, imprecision, uncertainty, and unpredictability of the rule applied to the transfer of exclusive, shared, and delegated powers. Objections to the poor quality of the law and the law-making process focus on the mismatch between the reform measures and the entire legal and constitutional structure – resulting in the need to implicitly repeal certain norms in order to avoid the appearance of blockages and malfunctions. On the one hand, the author of the law did not make the necessary amendments, additions, and repeals to harmonize it with the framework in force. Moreover, the confusing and contradictory legislation granted several public administration authorities with identical decision-making powers to carry out the same activity. Therefore, the author’s omission creates a prerequisite to produce some legislative parallelisms and triggers ‘a conflict of competence between the central and local public administration authorities’ (Decision no. 1/2014).

Some legislative initiatives on decentralization have also used non-uniform terminology. As the legal meaning of the terms is relativized, the norm becomes unpredictable, and the addressee of the rule no longer knows what their legal obligations are, or what conduct will prevent the law from being applied in a discretionary manner. According to the Court, such serious problems in the legislative technique itself aggravate the poor quality of the law and the incoherence of the amendments made by the author of the law to the pre-existing legal framework. Inadequate, imprecise, and vague regulation breeds legal uncertainty. In this context, public institutions – but not their assets – were included by the author of the law criticized in the public domain of the administrative-territorial units (Decision no. 1/2014).

The Constitutional Court has reiterated that the principles of administrative devolution and decentralization may coexist and are not mutually exclusive (Decision no. 148/2003). Consequently, at the level of local public administration authorities, the transfer of competences must be linked to the actual administrative capacity represented by the management of the transferred competences. In its analysis of regulations on decentralization, the Court emphasized the ‘recognition of the local interest, distinct from the national one’, which is preserved in the arrangement of both organizational structures, and of its own patrimony within the administrative-territorial units. However, the Court pointed out that there was an ‘isolated approach of constitutional texts’, and that their

analysis and application lacked a unified vision. To illustrate this, the transfer of financial powers is hampered by the lack of approved cost standards. In order to achieve successful decentralization of competences, the author of the law needed to include the condition ensuring *ab initio* sufficient financial resources ‘from local budgets and only exceptionally from the state budget’. Otherwise, functional decentralization would become unreasonable (Decision no. 1/2014).

The common law of the right of administration, enshrined in the Constitution and – at the infra-constitutional level – by the Civil Code, gives the administrative-territorial units the right of public ownership. For this reason, according to the Court’s interpretation, the State does not have the constitutional right to transform the same local authorities into subjects of the right of administration. In setting up a real right of administration, the Court highlighted that public and private property rights of the State are required to be treated differently. The transfer or establishment of management rights must not, *de facto*, cause a transfer of ownership, as such a situation would generate ‘an obvious legal antinomy’ (Decision no. 1/2014).

Secure legal relations constitute a fundamental dimension of the rule of law. They depend on the clarity, precision, and foreseeability of the norm, which is why the principle of legality has been attributed in the case law of the Court of Justice with the importance of ‘constitutional rank’ (Decision no. 901/2009 and Decision no. 783/2012), a requirement linked to the relevant case law of the European Court of Human Rights and the Court of Justice of the European Union. The Constitutional Court thus highlighted the risk that any conduct that contributes to circumventing the regulatory framework gives public authorities the possibility ‘to bypass the legal framework at any time and under any conditions while citizens are required to comply with it’ (Decision no. 1/2014).

The recurrence of the above-mentioned unconstitutionality and illegality defects identified in the examples of case law of Romania’s Constitutional Court highlights the existence of structural and functional deficiencies in the reform process. The deficiencies appear in the legislative technique and in the configuration or structuring of laws; this overlaps with an incoherent vision for the reform, which bears no relation to the consequences generated by the reform changes in the constitutional structure, or in the competences and duties of central and local public administration authorities.

The criticisms that the Court deals with are prominent and have an even greater impact as they concern important pillars of a possible coherent reform in the area of public administration. Our research focused mainly on but was not limited to, the three dimensions represented by the adoption of the Administrative Code, the civil service regulations, and the achievement of administrative and financial decentralization. The Court’s case law confirms that a condition for public administration reform begins with a legislative process compatible with the requirements of law-making procedure and technique, and with the requirements of democracy (Brun and Diamond, 2014; Campbell, 2019; Roberts, 2010; Tomini and Sandri, 2018).

5. Conclusions

In light of the Constitutional Court's decisions, the status of public administration reform in Romania remains dependent on the model of the legislative process in response to internal and external crises. In the absence of a vision and a strategic, sustainable project to reform the structure of public administration, the ambitions of the Legislature (and of the Executive) are *de facto* aimed at capitalizing on the potential of public administration for yielding political gains. For this reason, the incoherent, unclear, ambiguous regulations on recruiting human resources, as well as the powers of public authorities constitute a real opportunity for exercising the position of power, negotiating, and influencing the public administration apparatus and institutions at all levels.

Overall, the reform steps relate directly to the quality of the legislative process, and to a clear distinction between professionalization and politicization. The progress of the public administration reform in Romania is inversely proportional to the level of complaints against parliamentary practice, correlated with referrals to the Court and its reviews of legality and constitutionality. In our examples of the case law of the Court, the low level of responsibility coincided with the low quality of law-making, which not only maintained but also amplified the structural deficiencies of the organization, performance, and reform of public administration. As the criticisms of illegality and unconstitutionality are not integrated into subsequent initiatives, the legislative process is caught in the vicious circle of a 'reformless reform'. In the absence of loyal cooperation between institutional actors, the deficit of legitimacy and responsibility expands and becomes the source of malfunctions in the application of the legal framework.

After more than thirty years, the steps 'in search of a reform' require, first of all, a thorough reflection on the role the public administration currently holds in relation to the entire institutional and constitutional structure. The relationship between politicization and professionalization is the main indicator for assessing real reform ambitions and objectives faithfully and correctly (Raiu and Mina-Raiu, 2023, p. 123). Secondly, the (re)construction of the legal framework based on the criteria of legality and constitutionality needs to be reached through consensus and political support. Otherwise, public administration becomes the object of political dispute, and of competition for the influence and control over human and institutional resources.

The reform of public administration in relation to the jurisprudence of the Constitutional Court is not an isolated case. The obligation to comply with the decisions of the Constitutional Court places it in a position where it can adopt either a narrow approach, focusing strictly on adherence to constitutional principles and values (thus defining the limits of the reform), or a broader approach, which involves projecting how the reform should be implemented. The division of competences between the Constitutional Court and administrative courts, as well as the incorporation of reform recommendations from the Court's decisions, stems from political, institutional, and public consensus regarding the Court's role and position. The conclusions of this research can be applied to any constitutional democracy where the constitutional, institutional, and political

framework grants the Constitutional Court a significant role in shaping the directions and limits of reform.

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