

THE NEGATIVE IMPACT OF LEGISLATION PITFALLS ON MEANINGFUL PUBLIC PARTICIPATION, EFFICIENT POLICY-MAKING AND EFFECTIVE GOVERNANCE

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Abstract

This article focuses on emphasizing how a variety of apparently irrelevant legislation imperfections may induce significant misunderstandings regarding the real spirit of democratic governance, corrupting the practice of active citizenship in the policy-making processes and depriving the Romanian public administration of an important and valuable instrument for efficient governance and implementation of sustainable decisions. The authors chose to analyze aspects of the related legislation, as it represents a fundamental element needed for the development of active citizenship. This article is the result of a larger on-going research on the phenomena of public participation and policy dialogue that aims to provide a more accurate understanding of active citizenship mechanisms and to investigate the existence of a deliberative conscience at the level of the Romanian society.



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1. Public administration system reforms and active citizenship

At the European level, the need for active citizenship is more and more emphasized in promoting the institutional reforms and the local, regional, national and European sustainable development. As a result, in October 2005, the European Commission launched the Plan D for Democracy, Dialogue and Debate, a plan updated in 2008 (E.U. Commission, 2008). The plan aims to encourage the E.U. states to organize public debates regarding the future of the European Union, in order to create momentum and find mechanisms for involving the citizens, the civil society, the social partners, the parliaments, the political parties etc., in the process of creating a better, more democratic and more cohesive European Union. The same objectives are supported by the E.U. Citizen's Agenda, a document launched by the European Commission in May 2006, which proposes 12 policy initiatives to promote the European development by making the E.U. policies understandable and relevant to its citizens (E.U. Commission, 2008).

In this context, in January 2006, the Romanian Government (RG) assigned the Ministry of Interior and Administrative Reform (MIAR), by the Governmental Decision 128/2006 (RG, 2006), the Managerial Authority of The Operational Program for the Development of Administrative Capacity (OP DAC) financed by the European Social Fund. An ample analysis of the Romanian public administration was carried out, as part of this program – this underlined two major problems that the system was facing: **(i) citizens' distrust** and **(ii) failure to identify citizens' needs** (MIAR, 2007).

This circular dilemma is not unique to the Romanian public administration: to different degrees, it affects all public administration systems (U.N., 1997): no matter how high the democratic values and principles of the governance are, systems fail to identify and meet citizens' needs, consequently, citizens lose their trust in the system and distance themselves from it, making it even more difficult for the public servants to have meaningful interactions with the people whom they are supposed to serve (Meier, 1987; Martin, 1988; Mosher, 1982).

Over the last decades, in their attempt to improve the outcomes of public service and offer their citizens a more efficient, accountable, effective and transparent public administration (U.N., 2002), democratic governments have been engaged in ever more accelerated and intense reforms, reorganizations and restructurings of central and local administration (Elsenhans, 2005; Howarth, 2001; Bryer, 2004), from *the new public management* model promoted in the UK, New Zealand, Australia, the United States and Canada at the beginning of the 1980s (Osborne and Gaebler, 1993), to the model of *the new public service* (Denhardt and Denhardt, 2007) or the *new governance* (Salamon, 2002; De Burca and Scott, 2006), advocated first in the United States in the second half of the 1990s, and that today is generating forms even more adapted to the needs of a computerized, interconnected society: the *digital/online government*, the *e-governance* or the *m-governance* (Jain-Palvia and Sharma, 2006; Atkinson and Castro, 2008; Kushchu and Kuscu, 2003).

With the rapid development of the information and communication technologies (ICT), the increased computer literacy and easier access to the global communication network – the Internet, more and more people are taking serious interest in better

understanding the functioning of governance and in having a say in the process of public policy making and implementation. ICT has changed the way people perceive their status as citizens of democratic systems (Bekkers, 2004; Al-Kodmany, 2000). Not only more and more individuals are willing to get involved in the decision-making process and are, in fact, able to contribute with an informed opinion, but – and maybe most important – they have begun to see it as a fundamental citizens’ right in a democracy¹ (Illinois General Assembly, 2007), as expressed by a participant in a public meeting: “I believe I have the right to provide input to decisions or actions that affect me, my children and my money!” (IAP2, 2006).

It has been argued (Kirby, 2006) that the basis for transparent, responsible, accountable and sustainable governance is involving the publics at all levels of the decision-making process, by using tools from the fields of dispute resolution, mediation, and communication, and that individuals, businesses, NGOs and communities affected by a decision should participate in identifying the problems and the opportunities, in developing alternatives, and in reaching the final decision. As a consequence, the practice of involving citizens in all levels of the policy process has become a valuable tool for both making sustainable decisions and giving legitimacy to the governance policies (Smith and Taylor, 2000; Campbel, 2006; Halvorsen, 2003); and there are numerous success stories and best practice examples to provide evidence of how meaningful community engagement set basis for a more effective and more efficient governance (Christensen and Rongerude, 2004; Innes and Booher, 2004).

The Romanian public administration has had its part of restructuring and reforms, as well, as the Romanian Government has proved eager to follow the wave of changes at the European and global level. As a result, new laws and regulations have been designed, based on the guidelines of the European Union legislation (European Council, 2003). Nevertheless, despite clear political will and commitment, the Romanian legislation on community participation is not able to truly serve its purpose – there are still several essential elements that hold it back; some pointed out and analyzed as follows.

2. Confusing comprehension of the fundamental concepts and aspects of the public participation phenomenon

A. Meaningful public participation

Be it called *community engagement*, *policy dialog*, *citizen participation*, *civil society involvement*, or any combination of the above, *public participation*, as defined by the International Association of Public Participation (IAP2) (2006), is the process that involves the public in the course of problem solving and decision making, and

¹ Public Act 095-0506 - The Citizen Participation Act-, enacted by the People of the State of Illinois, on 8/28/2007, states: “Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence”.

effectively uses the public input in making the decision. According to Cernea (Cernea, 1985), citizen engagement means empowering people to mobilize their own capacities, be social actors rather than passive subjects, manage the resources, make decisions, and control the activities that affect their lives. Jennings' definition (Jennings', 2000) narrows the concept of public participation to the use of local knowledge in the design of public policies. Gaunt (Gaunt, 1998) sees in public participation an essential characteristic of democracy which allows for meaningful exchange and sharing of information, discussion, alternative development, and evaluation as basis of public policy development and governmental decision making. Letting aside the differences in approaches, public participation refers to *enabling all stakeholders (community members, entrepreneurs, leaders, media etc.) to meaningfully influence the decisions that could affect their lives.*

Although the Romanian law agrees with all these ideas and principles², and supports wide citizen involvement in decision-making³, when it comes to the actual public debate, the same law states that “interested citizens’ participation to the public meetings is limited to the number of available seats in the conference room; priority is given in accordance with the degree of interest manifested by the different stakeholders and is established by the person in charge of the public meeting”⁴, that “the person in charge of the public meeting will offer the invited guests and the other participants the possibility to express their opinions about the problems *on the meeting agenda*”⁵, and that the public authority will decide the date and time of the public meeting, as well as the agenda, and will let the stakeholders know at least three days in advance⁶– thus creating several major contradictions⁶ between the letter and the spirit of the law: limiting the number of potential participants both by room capacity and by schedule availability, and limiting the input from the citizens to an agenda previously established by a public authority, that might very well differ from citizens’ agenda.

B. The level of public involvement

An effective public participation process does not mean that the public gets to make the final decision all the time. In fact, it rarely does. Public administrators have no reason to dismiss public participation on this account. The actual outcome of an effective public participation may in reality encompass a wide range of results, from

² Law 52/2003 regarding transparency in decision-making in public administration, Chapter 1, Art.1, Art.2, published in M.O. no. 70, February 3, 2003.

³ Law 52/2003 regarding transparency in decision-making in public administration, Chapter 1, Art.1, Paragraph 2, published in M.O. no. 70, February 3, 2003.

⁴ Law 52/2003 regarding transparency in decision-making in public administration, Chapter 2, Art.7, Paragraph 3, published in M.O. no. 70, February 3, 2003.

⁵ Law 52/2003 regarding transparency in decision-making in public administration, Chapter 2, Art.8 published in M.O. no. 70, February 3, 2003.

⁶ Law 52/2003 regarding transparency in decision-making in public administration, Chapter 2, Art.7, Paragraph 1, published in M.O. no. 70, February 3, 2003.

gaining understanding of a problem and its proposed solution(s), to preparing the citizens for making a decision on their own – it all depends on the particularities and the requirements of the issue debated. The International Association for Public Participation has synthesized this in a tool for public participation design called *The Spectrum* (IAP2, 2006). It covers five levels of public impact on the decision-making process: *inform*, *consult*, *involve*, *collaborate* and *empower*, and also identifies the type of promise perceived by the public for each of these levels, in relation to the public participation goal: at the *inform* level, the goal is to provide balanced and objective information so as to assist the public in understanding the issue, and the only promise made to the publics is to keep them informed; at the *consult* level, though, the goal is to obtain input from the publics, in order to understand their concerns and aspirations and the promise is to let them know how they influenced the decision made; the level of *involvement* implies working with the publics to understand their concerns and aspirations, in order to include them in the solution development – and that is exactly what the promise is, too: their input will indeed influence directly the final decision and they will be informed about it; at the *collaborate* level, the stakeholders and the representatives of the public administration act as partners, working together to clarify the issues, develop alternatives, and identify the preferred solution, at this level the public provides advice, and that advice is incorporated into the final decision to the maximum extent possible; and finally the *empower* level places the final decision in the hands of the stakeholders, and the promise made is to implement it as it is.

Of all these possibilities, the Romanian law endorses only two: the ones implying the lowest public impact – *informing* and *consulting* –, and even those with deficiencies and with the least interaction possible: *public information* is generally limited to placing a notice on the agency's site on the Internet, displaying it in a space accessible to the public at the agency's premises, and announcing it to mass-media⁷, arguably restrictive ways of reaching all the publics that might be interested in participating; moreover, *consultation* is only required when specifically applied for in writing⁸. As for the citizen *active involvement*, referred to in the same law⁹, it is in fact reduced to mere *consultation*, since there is no provision for the need of getting back to the people and letting them know how they influenced the final decision, while the law does say that whatever input is collected, it only functions as plain recommendations¹⁰, which might very well be disregarded when deciding on the final solution. Furthermore, the topmost levels of participation – *collaboration* and *empowerment* – are rejected from

⁷ Law 52/2003 regarding transparency in decision-making in public administration, Art.6, Paragraph 1, published in M.O. no. 70, February 3, 2003.

⁸ Law 52/2003 regarding transparency in decision-making in public administration, Art.6, Paragraph 7, published in M.O. no. 70, February 3, 2003.

⁹ Law 52/2003 regarding transparency in decision-making in public administration, Art.2, published in M. O. no. 70, February 3, 2003.

¹⁰ Law 52/2003 regarding transparency in decision-making in public administration, Art.9, Paragraph 2, published in M.O. no. 70, February 3, 2003.

the start, as the law clearly states that the administrative decisions are to be made *exclusively* by the public authorities¹¹.

C. Responsibility and accountability

Although the Romanian law speaks about active citizen involvement, responsibility and accountability, these concepts are often misinterpreted, sometimes at the highest level of public administration bodies, the ministries, the very institutions that are supposed to understand them best. A serious misapprehension of the concept of *responsibility* is showed by its use on the website of the Romanian Ministry of Interior and Administrative Reform, where the webpage dedicated to the administrative reform states that “*the success of the public administration reform is not possible without establishing a state-citizen relationship based on responsibility. The state offers the citizens opportunities and, in exchange, it demands responsibility*” (MIAR, 2007). Hence, the responsibility is seen an attribute and even an obligation not of the state and its institutions, but of the citizen. Besides, the genuine meaning of the concept of the public administration being *accountable* (Compact Oxford Dictionary, 2005) for its actions as the source of its legitimacy (Arnull and Wincott, 2003) was not fully transferred to the Romanian legislation, since the Romanian translation for both accountability and responsibility (Compact Oxford Dictionary, 2005) is *responsabilitate*, which primarily stands for the obligation of carrying out tasks, and only secondarily implies the requirement or expectation to justify actions or decisions (DEX, 1998).

3. Conclusions

Although apparently insignificant, the legislation flaws pointed out add up and might eventually induce major errors in the comprehension of the true spirit of the democratic governance, corrupting the process of citizen participation in policy making and depriving the Romanian public administration of a very powerful and valuable tool for effective governance.

Of course, legislation is only one aspect of this phenomenon and, thus, for a more accurate understanding, further study is needed, so as to identify Romanian cultural values and their influence on citizen participation and, also, to investigate the existence of a deliberative conscience at the level of the Romanian society.

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¹¹ Law 52/2003 regarding transparency in decision-making in public administration, Art.9, Paragraph 1, published in M.O. no. 70, February 3, 2003.

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