

The impact of control in public administration

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Abstract

After the revolution in 1989, the Romanian society is trying to find a suitable structure to develop in. This was seen in the legislation adopted during this period. After decades in which the rights and liberties of citizens were violated, the moment came for the resettlement of real values and the search for the necessary leverage to adapt to new international and, in particular, European requirements. Romania is forced to make changes at legislative level, not only regarding institutional structures, but also as a reform of the entire society. It is an ongoing process. This paper aims to consider, as a whole, the impact of control and the need for changes in legislation on the functioning of public administration system.

Keywords: *control, public administration, global social system*

Introduction

Society operates in accordance with the rules in force. This is a principle of functionality, a guarantee of the existence of the global social system in the long-term. This does not necessarily imply lack of attention for the operating mode of the entire system, of all factors involved. Since the foundations of a modern state, one shall bring to question the attitude, the powers, the functions, etc, which decision-makers, as well as govern representatives should have. It's all about the politics, as it is most likely to set the tone of the respective society. Niccolo Machiavelli, considered a theoretician of the modern state, brought into discussion a series of realities that exist in contemporary society. He takes an antagonistic position to the classical philosophy of political thinking: "Machiavelli did not deny that people are compelled to live virtuous live in accordance with Aristotle's teachings. Instead, he tried to demonstrate that there is not a necessary connection between virtue and good governance. Criticizing the moral theory of politics, Machiavelli defines political activity and governance in terms of power - power whose legitimacy has nothing to do, as he says, with the good character of those who are governing. The right of a person to control others stems from power itself and not from its virtues. To be virtuous does not mean having more authority." [1] Therefore, how do

we make sure there are no abuses, that imposing justice is legitimate? Who is to decide this, and how do we make sure that society is operational? "A rule is always compulsory and only when failure to follow it justifies certain disqualifying measures against the ones who violate it ... if it is possible to assume that citizens of a society have established its laws, or that they tacitly acknowledged them, by the fact that they remained part of it, even though they might have left to live in another society, then we indeed found a contract or a consensus for the obligatoriness of the rules of justice." [2] The need for the enforcement of the rules was therefore established. How is this done? By creating structures and certain mechanisms through which these regulations, containing behavioral standards, but also promises for a normal society. These structures, collectively referred to as the administrative apparatus, have as their objective law enforcement. Public administration is called upon to ensure the citizens' interests, to be the glue between them and the governance factors through compliance with the rules. The activity of public administration is done through government control. Control of the activity of administrative structures must not interfere with their proper functioning; it must establish that objectives are achieved, work methods are fair and that there's compliance with the law.

Types of control

In current literature there are a number of approaches related to control. Before identifying control forms, we should determine its specific terminology. "The term comes from the French word *contre-rolle* where this means only accounting audit; subsequently, the concept has expanded, being used for the purposes of verifying the results of an activity. Form of assessing the effectiveness of the administration, of correction and/or punishment whose primary purpose leads to the intensification of executive activity to carry out the functions of public administration." [3]

Time is also a factor in the approach of control types. There are controls which shall be exercised after the adoption of an administrative decision and controls to be carried out before such a decision is taken. Time is important because when control is exercised in good time and whenever deemed appropriate it can prevent a series of undesirable effects.

So, we can say that there has been a change in perspective with regard to the scope of control: "If for a long period of time there were no inspectors interfering in the act of administration, as they were only providing an a posteriori activity, now they are increasingly urged to take part in the action of public administration. An a priori control means that the controlling agent can influence the decisions of the controlled authority, especially when it is authorized to assess the opportunity of all actions (acts and facts) of that authority" [4]

The literature circulates an opinion according to which there are three criteria according to which controls can be classified: according to the nature of the controlling body, there is a parliamentary control, an administrative control; judicial control; control carried out by other public authorities without the prerogatives of the three classic state forces; depending on the objective, there is a general control and a specialized control; from the point of view of the applicable procedure, we have a judicial control and a non-judicial one. [5]

By analyzing the control forms presented above we can say many things related to each form of control, each with their importance and specific needs.

The parliament can and must perform controls on government activity by addressing questions and interpellations, adopting simple motions and censure motions as well as through its commissions. This results from the fact that the Government is politically responsible only in front of Parliament. The parliament can address questions, interpellations; it may adopt any simple or censure motion or can control government activity by various committees.

The question implies requesting a response concerning the accuracy/ reality of a fact or some documents that the government and other executive agencies must communicate about, etc. Questions may be addressed in writing or orally, and in case they are written, answers may be oral or written as well. [6]

Interpellation is a request usually addressed to the government/ministers by a member of Parliament asking for explanations on a given activity/measure adopted. [7] Interpellations are addressed only in writing.

A special type of control is accomplished by censure motions which are adopted by the Chamber of Deputies and the Senate in the presence of the majority of

members. Usually a censure motion is initiated if a part of the members of parliament are not satisfied with the activity of the government or when the government assumes responsibility for a bill. If the censure motion is adopted by vote by the majority of deputies and senators, the result is the dismissal of the government.

Parliamentary Committees are established by each Chamber in part or in common and may be permanent or special. Their role is to inform the parliament in an exact manner with respect to a particular problem. The result of the commission's findings do not produce legal effects per se, but may represent a point of departure, a political foundation in respect to a specific legislative initiative, censure motion, government reshuffle or the initiation of a judicial inquiry. [8]

The control of the government and other public authorities' activity can also be achieved by means of the Ombudsman, the Court of Auditors, etc., because they are autonomous authorities which focus on compliance with the fundamental rights and freedoms of citizens.

Administrative control can be internal and external: "Internal administrative control shall be exercised by civil servants with managerial responsibilities, from inside the respective administrative body on their subordinates, whereas external control shall be exercised by responsible persons from outside the controlled public administration body and which don't necessarily belong to the same system." [9]

Judicial control is a special type of control carried out by the courts of law. This form of control has special features, because it also involves a specific procedure. As a general rule, this form of control is a way for the citizens to defend their individual rights and freedoms.

This form of control has its constitutional and legal provisions as follows: [10] article 52 is the main constitutional ground for judicial control, well-known in literature as administrative court. This Article enshrines a fundamental right of Romanian citizens, namely: the right of a person aggrieved by a public authority. Article 21 lays down the general framework of all values defended by justice, i.e. legitimate rights and interests. Article 53, to be known as restriction on the exercise of certain rights or freedoms, lays down the principles to be observed when carrying out a restriction of any nature of the pursuit of a right or freedom. Article 123, paragraph 5 regulates an important legal

institution, that of administrative oversight, which means the right of the Prefect to control the legality of acts adopted by local public authorities elected by citizens. Article 126, paragraph 6 establishes judicial control of administrative acts issued/adopted by public authorities through the intermediary of administrative litigation, with the exception of those in connection with the Parliament or acts of military command. Article 73, paragraph 3, letter k refers to the regulation of the organic law, which is also the institution of administrative litigation. On the other hand, Article 154, paragraph 1, lays down the rules of decrees based on fundamental law, establishing that they shall remain in force in so far as they do not contravene to the provisions of the constitution in force.

As specified by an author: [11]"administrative litigation represents the whole of the administrative disputes between public authorities, on the one hand, and those whose legitimate rights and interests were injured, on the other hand, that shall be deducted from typical or similar administrative acts considered illegal by the power of the administrative court, governed by a predominant legal regime of public law."

It lays down a general rule according to which, in principle, disputes in the administrative court, according to the power vested in them by competent courts or courts of appeal. [12]

Subjects that can notify the administrative court shall be established by law, [13]as follows:

- Any person who considers being aggrieved in a right or a legitimate interest of theirs, by a public authority, by an administrative act or failure to receive a solution to a request within the lawful term;
- Any person aggrieved in his right or legitimate interest by an administrative act with individual character, addressed to another subject of law.
- The Ombudsman, as a result of the controls carried out according to its organization law, if it considers that the illegality of the act or refusal of the administrative authority to fulfill its legal obligations may be removed only by the court of law;
- The Public Ministry, when, in the exercise of its functions under an organic law, it is of the opinion that breaching the rights, freedoms and legitimate interests of persons is due to the existence of unilateral administrative acts of public authorities issued with

excess of power or where it considers that an administrative act injures a public legitimate interest;

- The Prefect, when performing the control of administrative oversight;
- National Agency of Civil Servants when they consider the statute of civil servants has been breached.

The law of administrative litigation identifies the acts subject to judicial control, including the exceptions concerned, laying down a series of conditions which must be complied with for the action to be accepted with the administrative court: [14]

- the act thus challenged to be an administrative act, either typical or assimilated;
- the act in question to be the result of a public authority's will;
- the act subject to dispute injures a right recognized by law or a legitimate interest;
- compliance with prior administrative procedure in the form of disciplinary complaints and (or) a hierarchical administrative appeal;
- under the condition of time limit, the law imposing time limits for the exercise of both prior complaint, as well as of the action.

A public authority not concerned directly in carrying out a prerogative of the three powers of the state is the Ombudsman, as it is appointed for the protection of the rights and freedoms of natural persons for a term of five years.

The Ombudsman focuses on finding and combating phenomena which may be in breach of citizen rights and liberties. This authority does not replace the action of competent authorities to recognize rights or to resolve conflicts. Its power results from the recommendations he makes, by bringing to attention the abuse and in some systems of law (this authority, as one of European influence is found in most systems of law) even has the option to engage in legal proceedings. [15]

"The main job of an Ombudsman is to seek amicable settlement, therefore a mission of mediation or to plead the case of the citizen in front of administration more clearly, more intelligible. Therefore, a means of resolving a potential dispute by finding solutions within the range of available legal possibilities at the hand of public administration." [16]

Another important public authority in compliance with the principles of the rule of law is Constitutional Court - a self-contained authority whose main purpose is to check

constitutionality of laws, being the guarantor of Constitution supremacy. Its purpose is to ensure consistency in the laws with the Constitution in force. At the same time it can work out certain disputes arising between the Powers in the state, and unfortunately, in the past few years, it seems that the Court's role was more to resolve these pseudo-conflicts, showing in fact the immaturity of some political factors which are holding public offices.

When it is desirable to implement some public policies or certain measures, the necessary financial framework is also secured. To prevent any form of deviation there is the Court of Auditors, which shall exercise control on the acquiring, administration and use of the financial resources of the state and the public sector - as specified in the Romanian Constitution.

In other words, one should not ignore the control civil society holds on the activity of public administration; it is increasingly more actively involved in monitoring missions of the state and its institutions. The pressure exercised by civil society in recent years is notorious in the field of environment protection, campaigning in particular, for the purpose of combating illegal deforestation which was carried out in the last decades. In this "fight" a part of the press has been involved as well, signaling the abuses in a series of press reports and surveys; as a result, competent bodies took notice, a few criminal claims filed, but still insufficient compared to the realities in the territory.

Conclusions:

The activity of the State and its institutions must be monitored constantly. This can be done by several means and with the help of several authorities. Control is not meant to block the activity of administration but to correct and prevent breaches of the law or of the purpose set by legislature. There are a number of criteria for the classification of control, proof of the complexity of the phenomenon, which involves a lot of attention and a continuing adaptation to changes inherent in society.

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