Evolutionary aspects regarding Romanian legislation. Some present-day problemes in administration and justice

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Abstract
Legal systems and legal families are studied by legal, historical, as well as political researchers. The constitution of legal systems, the factors which influenced and still influence legal families, the interaction thereof continue to be of interest, being a present-day topic.
The evolution of the legal systems is correlated with the development of the society, being practically dictated by the new requirements of a forever changing world.
Administrative law is not an exception to these realities, being the mirror of society development, as well as of public administration in particular. At the same time with the enforcement of the principle of local autonomy, it became necessary to develop a mechanism – administrative tutelage, which verifies and sanctions, with the consent of the administrative court, the administrative documents which break the law. If the old law 29/1990 did not include this institution, the evolution of the society made it necessary as a means of re-establishing legality.
Keywords – *legal systems, administrative court, administrative document, administrative tutelage*

Section 1. Short historical considerations on the evolution of law in Romania

The study of national legal systems, as well as of the legal families catches the attention of legal, historical and political researchers. Since ancient times researchers have tries to elucidate the way in which legal systems were created, to discover the conditions which have influenced legal systems and legal families, the way in which they interact, as well as the specific relations established between the family of systems and the national system.

Nowadays, a legal system represents a real vector for the configuration of the society.

Romania's acquisition of the status of full-fledged member of the European Union presupposes the integration of the national legal system within a community legal order, where various models of positive law coexist and interact: the continental system, represented by the Romano-Germanic legal family and the common-law system, represented solely in Great Britain, but with an unexpected extension in the European Courts – European Court of Human Rights (ECHR) and the European Court of Justice (ECJ).

Subsequent to the revolutionary changes which occurred in Eastern Europe, at the same time with the disappearance of the legal system of the socialist countries, the legal system of Romania took its seat within the great Romano-Germanic legal system, its origins being traced back to the classical Roman law, as well as to the ancient Dacian law.

In its research on the Romanity of the Romanian law, Professor Andrei Rădulescu was showing that the influence of the Roman law is felt in a series of institutions, both in family law and in civil law.

Along the century, the legal sources have evolved in keeping with the needs of the society, both in terms of form and in terms of content.

It was barely in the 18th century that the enactments came to be called “registers” or “codes”, as a sign of the Western influence, and later, “acts”.

The Civilian Code of Moldova, also known as “Calimach’s Code”, was enforced in 1817, the used sources indicating its orientation towards the modern law of Central and Western Europe.

According to Professor Ioan Rusu, the Organic Regulation was the first fundamental act of the Romanian States, which replaced the “custom of the land” and the arbitrary practice of government, regulating the principles and rules of state organisation.

French law continued to influence the Romanian Principalities after 1830 as well, the French Commercial Code being introduced in Muntenia, then the Napoleonic code, and in 1864 Wallachia adopted the same French Commercial Code.

Historian Nicolae Bălcescu was writing that “in spite of all of its evils, the Regulation had brought some sort of useful principles and it was a tool of progress. It had admitted the principle of commercial freedom, separating judicial, administrative and legal powers and had introduced the parliamentary regime”.

A distinct chapter in the process of modernisation of the Romanian law is represented by the legislation of Cuza who, through the Royal decree of July 11, 1864 was initiating the elaboration of a new Civil Code. This Code, with strong European influences, was enacted on December 4, 1864 and enforced a year later. F. Sion4 pointed out that “in its time”, this code “represented a strong foundation, taking into

consideration the latest trends and achievements in the political, scientific, economic and legal areas.

After World War II, the civil legislation adopted by Cuza underwent substantial changes due to the integration of the Romanian legal system within the socialist one.
The Civil Procedure Code of 1865 was abolished on February 15, 2013 and the new Civil Procedure Code came into force, however, the lawsuits which had begun under the old code remained to be governed by the same law.

Section 2. Some present-day issues related to the administrative due process

After a short general presentation of the evolution of the Romanian legal system, we turn our attention to a particular branch of public law, namely, the administrative due process in Romania. Nowadays, its base is represented by Law 554/2004 on the administrative due process, the Romanian Constitution, as well as other provisions of some special laws, the enforcement of Law 554/2004 abrogating Law 29/1990.

The administrative due process represents the activity of specialised courts faced with cases which involve a legal / natural person on the one hand and a public authority on the other hand.

The contentious character of the action is given by the provisions of article 1 paragraph 1 of Law 554/2004, respectively “Anyone who considers themselves aggrieved by a public authority, through an administrative document or failure to settle a request in due time, may refer to the competent administrative court for the cancellation of the document, recognition of the alleged right or legitimate interest and remedy of the damage. The legitimate interest may be private, as well as public.” Therefore, not any file on the cause list of courts pertains to the administrative due process if one of the involved parties is a public authority, as the legal requirements have to be cumulatively met. Thus, apart from the legal standing, the person must allege that a legitimate interest or right of theirs has been trespassed or impaired by a public authority, in one of the ways required by the law, that is, either through an administrative document or failure to settle a request in due time.

In administrative law disputes, the public authority may also be plaintiff (legal standing) in the case of requests for which the competence for settlement is provided by special provisions of laws or decrees.

A particularity of administrative law or administrative due process disputes is represented by the prior procedure, known as “graceful appeal” or “administrative appeal”, procedure regulated by article 7 of Law 554/2004. According to this piece of law, “before referring to the competent administrative court, anyone considering themselves aggrieved by a particular administrative document must request to the issuing public authority or to the superior authority, if applicable, the total or partial revocation of the said administrative document, within 30 days from the communication thereof. In the case of the normative administrative document, the prior complaint may be formulated any time”.

If the plaintiff does not resort to this prior procedure and the defendant invokes the absence thereof within the legal term (at the same time with the counterclaim or, if the counterclaim is not compulsory, at the first audience at the latest), the administrative court shall dismiss the action as inacceptable. The order thus pronounced is not a case law, the plaintiff having the possibility to submit a new action to the court, after the administrative appeal, subject to the observance of the term provided by the dispositions of article 11 of Law 554/2004.

Another issue related to the authority of the public administration and the administrative courts is qualifying a document as administrative. The law of administrative due process expressly defines it in article 2 paragraph 1 letter c as “the unilateral document of individual or normative character issued by a public authority, with the statute of public power, for organising the law or actually fulfilling the law, which gives rise to, amends or extinguishes legal relations; within the meaning of this law, the contracts entered by the public authorities with the object of valorising public property goods, performing works of public interest, rendering public services, public procurements fall within the scope of administrative documents; special laws may also include other categories of administrative contracts subject to the competence of administrative courts.

From the above definition it results that the administrative document is a document issued by a public authority for organising the law or actually fulfilling the law, which gives rise to, amends or extinguishes legal relations. The contracts entered by

the authorities, with the above-mentioned objects, fall within the scope of administrative documents as well.

Therefore, not any document issued by a public authority may be qualified as an administrative document. For instance, a sales agreement entered between an administrative-territorial division (locality, town, city) and a natural or legal person with the object of a private property, cannot be qualified as an administrative document, but as a civil document and any disputes which may arise thereof shall not be settled by the administrative court.

In practice, the ignorance of the exact notion of administrative document by plaintiffs leads to the extension of the duration of the proceedings, as the administrative court relinquishes its competence over to the civil court if the concerned document is contested.

The same holds true when a plaintiff addresses to the civil court for requesting the cancellation of an administrative document, case in which the court shall relinquish its competence over to the administrative court. There also may be situations in which the two courts – civil and administrative – mutually decline their competence, case in which the dispute shall be settled in accordance with article 135 of the New Civil Procedure Code by the superior court, based on the competence regulator.

However, all of these extend the duration of the proceedings, which might trespass the principle of settlement of the litigation in an optimal and predictable amount of time, as well as of article 6 of ECHR which consecrates the reasonable duration of the proceedings.

On the other hand, this aspect burdens the courts of law which, undoubtedly, are faced with a great volume of work.

Consequently, as outlined above, the ignorance of the essential notions by the people resorting to justice is of great significance.

The principle of local autonomy, passed in the fundamental law – the Romanian Constitution, as well as in Law 215/2001 on the local public administration, expression of democracy, is sometimes abusively or incorrectly understood or applied by the local public administration. In the conditions of excessive manifestation of local autonomy, trespassing the principle of equality, Law 554/2004 - article 3 -regulates the institution of

administrative tutelage, according to which “The Prefect may submit directly to the administrative court the documents issued by the authorities of the local public administration should he find them illegal; the action shall be formulated within the time frame stipulated in article 11 paragraph (1) which begins from the communication of the document to the prefect, according to the conditions of the present law. The action submitted by the prefect is exempted of stamp fee. (2) The National Agency of Civil Servants may submit to the administrative court the documents of the central and local public authorities which trespass the legislation on the public function, according to the provisions of the present law and of Law 188/1999 on the Statute of Civil Servants, republished. (3) Up to the settlement of the case, the disputed document, as per paragraphs (1) and (2), is rightfully suspended.”

The High Court of Cassation and Justice – the Panel for the settlement of judicial issues, rules in Decision no. 11/11.05.2015 that “through the interpretation and enforcement of the provisions of article 3 of Law 554/2004, corroborated with the provisions of article 63 paragraph 5 letter e and article 115 paragraph 2 of Law 215/2001 and of article 19 paragraph 1 letters a and e of Law 340/2004 and of article 123 of the Romanian Constitution, the Prefect is recognised the right to submit to the administrative court the administrative documents issued by the local public authorities, within the meaning specified by article 2 paragraph 1 letter c of Law 554/2004”.

The institution of administrative tutelage represents, therefore, a legal tool provided to the prefect, with the purpose of eliminating the abuses of the local public authorities with respect to administrative documents, as analysed above.

The administrative tutelage is also regulated by the European Charter of local autonomy, even if in article 8 this institution is called “administrative control”.

The institution of administrative tutelage grants legal standing to the National Agency of Civil Servants as well in relation to the documents of the central or local public authorities, but only with respect to breaches of Law 188/1999 on the Statute of Civil Servants. The goal of these actions is to partially or totally abolish the administrative document which trespasses the law.

Section 3. Conclusions

In the light of the above, we may state that the Romanian legislation in terms of the administrative due process is harmonised with the legislation of the Member States of the European Union, offering sufficient judicial instruments to the authorities in charge with establishing or re-establishing law enforcement.