

## ABOUT PUBLIC POLICY AND DECISION MAKING IN THE LIGHT OF THE CONSTITUTIONAL TEXT AND CURRENT LEGISLATION

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### **Abstract**

*The process of decision making is extremely complex and difficult, involving many political, social, economic and administrative factors, but unfortunately neglecting a factor that is, in itself, fundamental in all this mechanism – the human factor, the ordinary citizen.*

*Our study aims to demonstrate the influence of decision makers on the smooth functioning of society in general and government in particular, both at a European and national level.*

*Describing a number of current issues at the level of the local decision makers, the study was meant to focus on current, practical issues, specific to the Romanian administration authorities and to the territorial administrative unit of Galați County, analyzing many of the factors that negatively influence decision making and also those national and local legislative issues in support of the authorities and the citizens for better cooperation between them and to respect a transparent decision-making.*

**Key words** - Citizen, decision, authority, transparent decision making, factor.

### **Section 1. Introduction**

In the course of their daily lives, people are affected, directly and indirectly, obviously and subtly, by an array of public policies. [1].

Policy making is political. It involves politics. That is, its features include conflict, negotiation, the exercise of power, bargaining, and compromise and sometimes, such nefarious practices as deception and bribery. The policy process (sometimes called the policy cycle) approach to policy study has several advantages. First, and most important, the policy process approach centers attention on the officials and institutions who make policy decisions and the

factors that influence and condition their action. Consequently, the policy process approach not only helps us learn about policy making and policy it also causes us to take a more holistic view of how government works. [2].

Politicians have also voiced disquiet about the policy making process. Perhaps, unsurprisingly, their criticism often focuses on the advice provided to ministers. Kenneth Clarke<sup>1</sup>, for example, argued in 2008 that *The civil service lost its policy role* ....and that is why, maybe, those who observe and analyze policy making are often even more critical. [3].

The decision making process is the mechanism by which individuals, public actors or not, institutionalized or not, make decisions that are found later in behavior, individual or group action, in the institutional plan at all its levels. Decision is the driving force of the action and the action means dynamics, evolution, transformation, no matter which field these concepts are applied to. [4].

Decision and the decision-making process in terms of public policy means the more or less exploited success of these public policies in the community, at an institutional or state level, in relation to what we call as the general welfare identified or identifiable in the public space. [5].

In Romania, the provisions of Law no. 52/2003 on transparency of decisions are designed to establish minimum procedural requirements applicable to ensure decisional transparency in central and local public administration authorities, elected or appointed, as well as other public institutions that use public financial resources, in the relationships established between them, with citizens and their legally constituted associations.

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<sup>1</sup> Kenneth Clarke evidence to the Public Administration Select Committee in 2008, available at <http://www.publications.parliament.uk/pa/cm.200708/cmselect/cmpubadm/c983-iii-c98302.htm>., apud. Michael Hallsworth, Simon Parker, Jill Rutter, Institute for Government, *Policy making in the real world, Evidence and Analysis*, 2011, pag 16. Details at [www.instituteforgovernment.org.uk/policy](http://www.instituteforgovernment.org.uk/policy).

According disp. art. 2 para. 2 letters b and c of this law, the principles underlying decisional transparency in Romania are those of consulting citizens and the legally established associations, on the initiative of public authorities, in the process of drafting legislation and active participation of citizens in administrative decision-making and in the process of drafting legislation. According to art. 3 paragraphs. (1) b of Law No. 52/2003 on decisional transparency in public administration, political administrative decisions are obviously made after a deliberative process conducted by deliberative central and local authorities.

On the one hand, the specificity of political-administrative decisions derives from the fact that they are adopted by state or local administration authorities and reflect the political will of the parties that hold the majority in those public authorities. Such decisions have a profound democratic character just because they are the result of the confrontation of ideas between individuals, groups, parties, all participating in the decision-making phenomenon, which is the case of local or county councils where decisions are taken by majority vote. [6].

On the other hand, purely administrative decisions are developed by managers of authorities, public institutions or services, elected or appointed, and usually have an organizing character of the execution and/or concrete enforcement of laws.[7] .

The present study aims to highlight the fact that, regardless of the nature of the decisions taken, the procedure of making them, filtering them and, especially, their implementation is not a simple process, it requires management skills, administrative and life experience, patience, understanding of the social political environment and the ability to adapt the decision to the environment which applies and observes it, engaging more specific aspects of government policy making activity, both at European and Romanian level.

## **Section 2. Adopting and implementing decisions at European level. General context.**

Development of the decision within the European Union is a process involving several institutions and bodies of the Union, the legislative procedure being based on the principle of institutional balance so that all institutions are participating in the legislative process. European Union institutions that interact in decision-making are: the European Council, the European Parliament, the Council, the European Commission or other bodies with an advisory role, the Economic and Social Committee and Committee of the Regions.[8], [9]. Decisions are taken as openly as possible within the European Union, according to the second subparagraph of Article 1 of the Treaty on the European Union. This principle is reflected in Article 15 of the Treaty on the Functioning of the European Union ("TFEU"), which requires the Union's institutions to conduct their work as openly as possible.

The ability of the institutions to make acts which they adopt public is therefore the rule. EU law may provide for exceptions to this rule and prevent the disclosure of such acts or certain information contained therein [10].

The Council of the European Union is the EU's main decision-making body. It represents the Member States, and therefore, is composed of one representative of each EU national government. Each Minister is empowered to commit their Government during meetings and is politically accountable to their own national Parliament and to the citizens that Parliament represents. The acts of the Council can take the form of regulations, directives, decision, common actions or common positions, recommendations, conclusions or opinions. When acting as a legislator, it is in principle the European Commission that makes proposals that are examined by the Council, which can modify them before adopting. Council meetings are limited to specific subject areas, like health and attended by the relevant Ministers from each Member State. [11].

The Council is an *essential EU decision-maker*. It negotiates and adopts new EU legislation, adapts it when necessary, and coordinates policies. In most cases, the Council decides together with the European Parliament through the ordinary legislative procedure, also known as 'codecision'. Codecision is used for policy areas where the EU has exclusive or shared competence with the member states. In these cases, the Council legislates on the basis of proposals submitted by the European Commission. In a number of very specific areas, the Council takes decisions using special legislative procedures - the consent procedure and the consultation procedure - where the role of the Parliament is limited [12].

The EU's standard decision-making procedure is known as 'Ordinary Legislative Procedure' (ex "codecision"). This means that the directly elected European Parliament has to approve EU legislation together with the Council (the governments of the 28 EU countries).

The ordinary legislative procedure gives the same weight to the European Parliament and the Council of the European Union on a wide range of areas (for example, economic governance, immigration, energy, transport, the environment and consumer protection). The vast majority of European laws are adopted jointly by the European Parliament and the Council [13]. The codecision procedure was introduced by the Maastricht Treaty on the European Union (1992), extended and made more effective by the Amsterdam Treaty (1999). With the Lisbon Treaty that took effect on 1 December 2009, the renamed ordinary legislative procedure became the main legislative procedure of the EU's decision-making system. [14].

*According to the 288<sup>th</sup> article of TFEU to exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved upon each Member State to which it is addressed, but shall leave to the national authorities the*

choice of form and methods. A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

The Treaty of Maastricht (the Treaty on European Union-TEU) has introduced co-decision procedure by which the European Parliament is associated with the Council, being given effective legislative competence. The Treaty of Amsterdam has simplified the co-decision procedure and reinforced the role in appointing the Commission. The Treaty of Nice extended the co-decision application in almost all areas where the Council decides by qualified majority. [15].

This form of decision-making about governance is reflective of a more generalised pattern of regulation which has been spreading across Europe, regulation which is directed not at member states or specific sectors or businesses, but at public organisations and public servants (high-level appointees, legislators and civil servants). This pattern of regulation is now also visible in the EU institutions, and has recently begun to be structured inter-institutionally. This idea of regulating the governance of the EU institutions collectively, but outside of any intergovernmental agreement, seems to point to a new trend in inter-institutional relations. [16].

### **Section 3. About public policy and decision making in Romania, in general and in Galați county, in particular. Approach in the light of the constitutional text and current legislation.**

If we look back on the Romanian path for developing policy capacity, several reforms focused on that direction can be found. For example, after its accession to the European Union, Romania developed an institutional structure to ensure the coordination of public policies, a mechanism for inter-institutional consultation, and a normative framework to carry out the public policy documents. [17], [18].

The Lisbon Strategy, adopted in March 2000 at the high-level summit of the European Union, proposed the objective according to which Europe should

become the most competitive and dynamic economy in the world in the next decade. To achieve this goal, the states must be able to use budget planning and public policy in the medium and long term, including initiatives such as better regulation, impact analysis of public policies and improving consultation and participation of civil society structures in developing public policies. [19].

These development directions are followed by new approaches to Government action and its institutions, to make the transition from technical understanding of the legislative process to a thorough analysis of the pre-legislative phase – called public policy analysis - and developing a development system of public policy as the main tool for improving, establishing and promoting quality in the decision making process in the complex socio-economic environment of modern society. [20].

According to the principles described in this Annexe non-governmental organizations, the private sector, local authorities and international institutions contribute to the public policy planning and the institution involved in formulating public policies must prove its readiness for cooperation with other public institutions, as with other civil society organizations interested or affected by a particular public policy initiative, thereby ensuring a coherent conception of the objectives to be fulfilled and the measures to be taken. [21].

In Romania the Constitution is the fundamental document that mentions the right of citizens to engage in social and political decision making that will affect them. Thus, art. 9 -called "*Trade unions, employers and professional associations*" states their right to defend the rights of citizens who are members through actions which protect their rights and interests with respect to the executive representatives or other factors - namely that they contribute to defending their rights and promoting professional, economic and social needs of their members.

According to Article 21 para. 4 special administrative jurisdictions are optional and free, and in accordance with paragraph. (1) of the same text, any

citizen can remove the unfair decisions of an authority or person, being able to go to court to protect the rights, freedoms and legitimate interests.

*The right to information* is guaranteed by disp. art. 31 - which, in para. (2) states that public authorities, according to their competence, are obliged to provide correct information to citizens in public affairs and matters of personal interest, the mass media being obliged to provide correct information to the public, who, in this way will have a chance to counter the inappropriate actions of policymaking forums or to contest them, including the use of the lever provided by administrative litigation in art. 52 of the Constitution.

*The right to petition*, the state's obligation to respond to the damage caused, *the right to propose laws* are just a few examples proving the possibility for a citizen of Romania to be part of the decision making process and to engage effectively in most steps leading to the implementation of public policies .

Returning to the executive in Romania, in accordance with Annexe 1 of Government Decision no. 909/2014 approving the 2014-2020 Strategy to strengthen public administration and the establishment of the National Committee to coordinate the implementation of the 2014-2020 Strategy to strengthen public administration, from 10.15.2014 (published in the Official Gazette, Part I no. 834bis of 17 November 2014) in the design and provision of services as in and in making other kinds of decisions, public administration wants to rely on citizen participation, the involvement of experts and key actors in society, through stable mechanisms for consultation, so as public authorities and institutions respond to societal needs, directly supporting its initiatives.

Focus on the citizen is a requirement for any institution that aims to satisfy the needs of citizens. For example, in Romania, Law no. 52/2003 on decisional transparency in public administration, lists the objective of increasing the accountability of the public administration to the citizen, as a beneficiary of the administrative decision and fostering active participation of citizens in the administrative decision making and in the process of drafting normative acts (art. 2 letter a and b). [22], [23].



The 2014-2020 Strategy to strengthen public administration is aimed at the predictability and lawfulness of the decision-making process (article III, Annexe 1 of Government Decision no. 909/2014), so that, by using systematic dialogue, genuine dialogue about the options available, the public administration develop and maintain a culture of anticipatory knowledge, constantly using new information technologies (art. II, art. III, Annexe 1 of Government Decision no. 909/2014, 2014-2020 Strategy to strengthen public administration).

In defining strategic objectives for 2014-2020, the institutions involved have proposed to outline a coherent approach whose application to generate a substantial improvement in business administration activity, which entails the establishment of a mechanism of cooperation and consultation with civil society and also its accountability in order to support implementation, monitoring and evaluation of these reform initiatives, namely establishing a mechanism for coordination of implementing reform measures supported at the highest level, managed by the Prime Minister and the Ministry of Regional Development and Public Administration, which should be accompanied by transparent monitoring and evaluation and which allows the involvement of representatives across the political spectrum, academia and civil society. [24].

To create a context for the involvement of citizens in decision-making, and to prove the compliance with the principles of decision making transparency within the county of Galați, the County Council made an annual transparency report for 2015 at the level of Galați County Council at the end of 2015, according to Law no. 521/2003 , which emphasized the following:

1. Transparency towards the citizens in the decision making process;
2. Cases in which the authority was sanctioned in court for failure of transparency in decision making;
3. The actual number of people who attended public meetings;
4. The number of public meetings that were announced through media, display at its headquarters or on its website;

5. The number of projects submitted to business associations and other legally constituted associations that have submitted a request to receive information on the draft laws in their field of activity [25].

The conclusion, we believe, was a positive one, to the extent that:

- The number of draft laws adopted in 2015 was 10, while the number of draft laws that were publicly announced was also 10;

- The number of projects submitted by business associations and other legally constituted associations that have made a request to receive information on the draft laws in their field of activity was a small one -10 - but it shows their interest in making decisions, that is, the open approach of the authorities to other structures in order to take appropriate measures to the local social and economic environment;

- There were 2 persons appointed to facilitate the relationship with civil society;

- The total number of persons who were present at public meetings of the County Council was 520, which shows some increase of the ordinary citizen's interest, non- politically involved, in the phenomenon of making decisions important for the community which they belong to. [26].

All these demonstrate that the local government authority respects the principles governing decision transparency, under article. 2 of Law no. 52/2003, respectively informing the people in advance, ex officio, on matters of public interest which will be discussed by central and local public administration authorities, and on draft legislation; consulting citizens and legally established associations on the initiative of public authorities, in the process of drafting legislation and the elaboration of a realistic program to improve communication with citizens, a component that must become essential in the phenomenon of law enforcement.

However, as regards the perception of ordinary citizens across Galați<sup>2</sup> county, when questioned about the factors that may influence the public decision in the territorial administrative unit which they belong to, they had varied answers, like:

- Public decision is affected by the indifference of public officials or the different types of public relations between decision-makers;
- Public decision is deeply affected by European policies and the vision of the Council of Europe on the course of political affairs in the E. U. Member States;
- Public decision is affected by the prevailing interests of the majority groups;
- Public decision is influenced by citizen feedback, the experience of the decision makers or the media;
- Public decision is influenced by economic factors (the budget of the administrative unit and its management).

#### **Section 4 . Conclusions**

The public decision making process is a complex phenomenon that involves both legal knowledge and a realistic involvement of the decision maker in the political, social and administrative context.

Most times there is an estrangement of those who are meant to take decisions from those on which decisions are to produce effect, which indicates an insufficient experience of the administration, superficiality in the approach to the needs of the citizen who feels like an insignificant element in a process that, even if it must include and consult them, it constantly neglects them.

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<sup>2</sup> The questionnaire was applied to a group of approximately 25 young people, aged between 18 and 22, secondary education graduates or university graduates, in Galați county.

We note, however, as evidence of the Romanian administration authorities' desire to adopt European modernization techniques, that there has been a phenomenon of improving the way the administration highlights the social and human capital at the level of local groups, of assuming an open communication with those who bear the tough impact of decisions, which is an advantage for society and a step forward in the process of modernization and reform of the Romanian administration.

The questionnaire applied to citizens belonging to Galați county shows, in a limited but realistic way, the current impression of the ordinary citizen on the relationship between the administration and the citizen, between the decision-maker and those who must accept and bear the effects of decisions which are sometimes perceived as having an emphasized political background to the detriment of the public interest or the proper functioning of the administration.

The future of the administration and the quality of the decisions depend, to a large extent, on the real closeness of the national authorities to the citizen and the actual involvement of the latter in all its administrative processes that concern the local community and the social, cultural, economic, local priorities.

#### **References /Bibliography:**

- [1]James E Anderson, (2015), Public policymaking. The eighth edition, Texas A and M University, pp. 1.
- [2]Ibidem, pp. 5;
- [3]Michael Hallsworth, Simon Parker, Jill Rutter, (2011), Institute for Government, Policy making in the real world, Evidence and Analysis, pag. 16;
- [4]Dorina Țicu, (2014), Politicile publice, Raționalitate și decizie în spațiul administrativ, Ed. Adenium, pp.. 2;
- [5]Ibidem, pp. 2;
- [6]Anton P. Parlăgi, (2013), Tehnici și metode ale adoptării deciziei publice, Suport de curs, Edit Pro Universitară, București, pp 15;
- [7] Idem;
- [8]Dan Vătăman, (2010), Institutional law of the European Union, Bucharest, Universul Juridic Publishing House, pp. 179;
- [9].Dan Vătăman, (2016), Decision making process in the european union after entry into force of the treaty of Lisbon in Law Review, no 1/2016, pp. 2;
- [10].See Judgment of the General Court of 28 January 2015, Akzo Nobel NV and Eka v Commission, T-345/12, ECLI:EU:T:2015:50, paragraph 60, Judgment of the General Court of 28 January 2015, Evonik Degussa v Commission, T-341/12, ECLI:EU:T:2015:51, paragraph 89 and Judgment of the Court of First Instance of 30 May 2006, Bank Austria Creditanstalt v

Commission, T-198/03, ECLI:EU:T:2006:136, paragraph 69, in Guidance on the preparation of public versions of Commission Decisions adopted under Articles 7 to 10, 23 and 24 of Regulation 1/2003; at [http://ec.europa.eu/competition/antitrust/guidance\\_on\\_preparation\\_of\\_public\\_versions\\_antitrust\\_04062015.pdf](http://ec.europa.eu/competition/antitrust/guidance_on_preparation_of_public_versions_antitrust_04062015.pdf));

[11]. [http://www.eurocare.org/resources/policy\\_issues/eu\\_health\\_strategy/the\\_eu\\_institutions\\_and\\_the\\_decision\\_making\\_process](http://www.eurocare.org/resources/policy_issues/eu_health_strategy/the_eu_institutions_and_the_decision_making_process);

[12]. <http://www.consilium.europa.eu/en/council-eu/decision-making/>;

[13]. <http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00004/Legislative-powers.>;

[14]. <http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00004/Legislative-powers>);

[15]. Dan Vătăman, ( 2016), Decision making process in the european union after entry into force of the treaty of Lisbon in Law Review, no 1/2016, pp. 2;

[16]. Michelle Cini, The Limits of Inter-Institutional Co-operation: Defining (Common) Rules of Conduct for EU Officials, Office-holders and Legislators, in Decision-Making in the European Union Before and After Lisbon, 3-4<sup>th</sup> of November 2011, Leiden University, Sholary Workshop, at [http://ces.ufl.edu/files/Cini\\_DEUBAL\\_110311.pdf](http://ces.ufl.edu/files/Cini_DEUBAL_110311.pdf));

[17]. Ani, Matei,, Tatiana-Camelia, Dogaru., (2013). Coordination of Public Policies in Romania. An Empirical Analysis, Procedia - Social and Behavioral Sciences 81, pp. 65 -71;

[18]. Tatiana - Camelia Dogaru, (2014), The national policy-making process in the context of the international economic and financial movements, in Procedia Social and Behavioral Sciences, 143/2014, pp. 965;

[19]. Annex 1 of Government Decision no. 870 of 28 June 2006 approving the Strategy for improving the development, coordination and planning of public policies at central government level, Official Gazette no. 637/24. 07. 2006;

[20]. Annex 1 of Government Decision no. 870 of 28 June 2006 approving the Strategy for improving the development, coordination and planning of public policies at central government level, Official Gazette no. 637/24. 07. 2006;

[21]. Annex 1 of Government Decision no. 870 of 28 June 2006 approving the Strategy for improving the development, coordination and planning of public policies at central government level, Official Gazette no. 637/24. 07. 2006;

[22]. Dan Șandor, (2006), Romania's Digital Divide and the Failures of E-Government", Transylvanian Review of Administrative Sciences, vol. 16E, pp. 154;

[23]. Raluca Andrada Baltaru, (2012), Reforma în administrația publică. studiu privind e-guvernarea la nivelul uniunii europene, Revista Transilvană de Științe Administrative 1(30)/2012, pp. 23;

[24]. Also see the suggestions of this strategy in the National Gazette no. 834/17.11.2014, [http://www.mdrap.ro/userfiles/strategie\\_adm\\_publica.pdf](http://www.mdrap.ro/userfiles/strategie_adm_publica.pdf));

[25]. <http://www.cjgalati.ro/images/stories/Comunicate11/raport-transparenta-2015.pdf>;

[26]. <http://www.cjgalati.ro/images/stories/Comunicate11/raport-transparenta-2015.pdf>.