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STRATEGIES OF EUROPEAN GOUVERNAMENTAL GOOD PRACTICES

Theoretical article

Keywords
Public administrations,
European juridical order,
Depoliticization of public officers,
Proposal of legislative projects

Abstract

The article goal is to reveal the necessity of strategies in order to increase the responsibility level of local public administrations and to settle the obligation imposed to the administrative and territorial units to launch public debate topics needed for the regional development, in which the civil society should also participat. The credo of our debates is that the state is equally fundamented on the protection of the personal rights and liberties, no matter to whom it refers to. In art.1 point 3 from the Romanian constitution there is instituted as a constitutional principle the fact that „Romania is a democratic and social state, where the dignity of the man, the rights and the liberties of the citizens, the free development of the human personality, the justice and the political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution from December 1989 and all these are guaranteed".

1.INTRODUCTION

Romania has become a member of the European Union in 2007, and the accession process has changed the foundation of the national juridical order, which had to align with the European juridical order. This has opened the access of Romanian citizens to the Court of Justice in Luxemburg of the European Union, within national processes, as judges were obliged to address preliminary questions (*in what concerns the preliminary questions procedure, we can refer to the provisions of article 267 from the Treaty concerning the Functioning of the European Union, abbreviated TFUE. This treaty was adopted after the Treaty establishing a Constitution for Europe (TCE), as the European Union has substituted and succeeded the European Community, through the Lisbon Treaty*) to the Court, because the latter is the competent authority to interpret the manner in which the European law is applied and the manner in which the National law is in line with the European juridical provisions, as they are registered in the treaties, directives, regulations and decisions of the Court, documents that we have mentioned above.

For the Romanian public officers working within the central or local administrative system, this was the moment when they started to benefit, according to the author of this study, from a new range of attributions related to the process of harmonization of the national legislation with the European legislation. Also, Romanian public officers had to adopt a certain impartial deontological conduct (**[C1]:*The Law no. 7/2004*** *concerning the Code of Conduct for Public Officers, republished in the Official Journal no. 525/2.08.2007 (initially published in the Official Journal No. 157/23.02.2004);* ***the Law no. 161/2003*** *concerning certain measures meant to ensure transparency in the exercise of public dignities, of public functions and in the business environment, the prevention and penalization of corruption, published in the Official Journal no. 279/21.04.2003;* ***the Decision of the Government 432/2004*** *concerning the professional file of public officials, published in the Official Journal no. 341/19.04.2004*), focused on the concept of transparency of the administrative and decisional action, on the free access of citizens to public information and to implement a citizen-oriented administrative system, for the benefit of the Romanian citizens **([C2]:***The free access to public information was established through the Law no. 544/200; this administrative reform has been continued through the law no. 52/2003*).

In the manual concerning the transparency in the public administration system, promoted by the Romanian Government through the Agency for Governmental Strategies and its webpage (www.publicinfo.ro), it is mentioned that, despite the existing legislative framework, the latter is insufficiently known at local level, as the legislative structures were resistant to the changes brought by the implementation of the Law no. 544/2001 and of the Law no. 52/2003 and citizens were not interested in these new legal means, whose aim was to stimulate active participation of citizens and of nongovernmental organizations in the decision-making process; at the same time, the public administration system became more responsible towards citizens.

This *de facto* situation, according to the author of the study, was registered in 2003; in what concerns the year 2004, we can state that, as a result of the information campaigns carried out by the media, according to the provisions imposed by the European Union, citizens became more active in what concerns the exercise of their rights to make formal requests, as well as the access to public information they were interested in and which had a direct impact on them.

In return, we consider that the administrative system, despite the need for continuous professional training introduced by the **Law no. 188/1999** concerning the status of public officers, effectively carried out through the training promoted by the National Agency of Public Officers **([C3]:***the Decision of the Government 1000/2006 concerning the organization and functioning of the National Agency of Public Officers, published in the Official Journal no. 698/15.08.2000),* did not adapt itself and did not manifest a voluntary orientation to the needs of the citizen who, through the exercise of his/her contestation right, asks for various pieces of information and interpretations concerning the manner of implementation of certain juridical norms that concerns him/her directly.

In order to depoliticize the public functions, the **Law concerning the Prefect and the Prefecture no. 340/2004 ([C4]:** *initially published in the Official Journal no. 658-21.07.2004 and republished in the Official Journal no. 225/24.03.2008***)** was adopted and promulgated; this normative framework lead to the creation of a new category of public officers, namely the high officials. Even if the prefect is the Government's representative at the local level, (s)he occupies this executive function after (s)he is declared successful in the contest corresponding to this function, according to the provisions of **art. 21** from the abovementioned legislative framework.

In this new juridical context, the prefect cannot be removed from office according to political criteria; (s)he can be dismissed only based on criteria that are objectively related to the way in which (s)he has carried out his/her activity, according to the principles of legality, impartiality, objectivity, transparency, free access to public

information, effectiveness, responsibility, professionalization and citizen care.

The objectives of the study are the following:

a). The effective depoliticization of public officers, not only at the formal level, but also as a principle established for the central and local public administration, became an important issue with the promulgation and publication of the Law no. 188/1999 **([C5]:***Republished in the Official Journal no. 365/29.05.2007*) - the Law concerning the status of public officers, of the Law concerning the Prefect and the Prefecture no. 340/2004, of the Law no. 215/2001 concerning the local public administration **([C6]:***republished in the Official Journal no. 365/29.05.2007*), of the Law no. 67/2004 for the election of local public authorities **([C7]:** *republished in the Official Journal no. 333/17.05.2007, with further modifications and addenda, also brought by the Decision of the Constitutional Court no. 1219/2007 concerning the exception of unconstitutionality of the provisions contained in art. 96, sub-paragraph 10 in the Law no. 67/2004 for the election of the Authorities of local public administration, decision published in the Official Journal 117/14.02.2008*), as well as of the Law no. 393/2004 related to the Status of Local Authorities **([C8]:** *published in the Official Journal no. 912/7.10.2004. The legal framework of the Status of Local Authorities has the purpose to allow local counselors, departmental counselors, mayors and deputy mayors to exercise their mandate in good faith, despite their political affiliation, according to the oath taken in respect of the Constitution and of the laws of the country. The mandate will be exercised for the benefit of the citizens of the administrative unit represented by the respective public officials; their guaranteed immunity is strictly related to the freedom of opinion and action, in case of political opinions expressed during the exercise of the mandate, as well as in what concerns possible aggressions affecting them and their families for opinions and decisions related to the exercise of their mandate; the obligations of local elected officials, according to the legal norms stipulated in the provisions of art. 45-54 had the aim to make them more responsible and to oblige them to attend all meetings of the forum to which belongs the Local Council and, respectively, the Departmental Council).*

The abovementioned legal framework has *as suggested target the depoliticization of the system, reasonable career prospects and a steady and permanent public service, according to the European model.*

The imposed desiderata determined the creation of a uniform legislative framework, whose aim was the unanimous settlement of the legal liability – the administrative, patrimonial, disciplinary and criminal liability – whose mechanisms become enforceable when the public officer starts to violate his/her obligations.

b). The elaboration and implementation of projects, according to the following directions:

- the proposal of legislative projects by the local administrative administration, in collaboration with non-governmental organizations and associative organizations, such as associations, foundations, local organisms, associations of producers, associative institutions representing the activity branch taken into account by the proposed project;

- through these collaborations, the local administrative administration has in view the harmonization of the European legislation with the national and local framework, taking into account the fact that European directives only define European directions and development policies; the Member States are free to decide the manner in which they will be implemented;

- the initiation and implementation of actions that aim at informing citizens in what concerns new legal norms that can have an impact on their life and, in a positive perspective, checking if the citizens understand this information and use it for the specific purpose described by the legislator (example – promotion campaigns, initiated by the Ministry of Agriculture and Rural Development, in order to explain the advantages of associative organizational structures in the agricultural field).

2. METHODOLOGY

In the elaboration of this study, we have resorted to rules and arguments related to the logical interpretation of the normative framework that was described in the working norm. We have also used the method of contextual interpretation of the legislation, currently promoted by the Constitutional Court of Romania.

In addition, we have also implemented the case-study method, as the author of the study has participated in the campaign initiated by the Departmental Chamber of Agriculture in Iaşi – "*The association – the road to success in developing agriculture''**([C9]:* http://www.cajiasi.ro*, visited on the 21st of November 2014, at 12.00)* - event that took place on the 18th of November 2014..

3.RESULTS

As an example of good practices, we will refer to the Campaign initiated by the Departmental Chamber of Agriculture in Iaşi - "*The association – the road to success in developing agriculture''*, which is part of the series of actions that aim at informing citizens in what concerns the new legal norms that can have an impact on their life and, in a positive perspective, checking if citizens understand this information and use it in the specific purpose described by the legislator. This is,

in fact, the objective of the study herein, stated from the very beginning.

We should mention the fact that this campaign is not unique in the activity of the Departmental Chamber for Agriculture in Iaşi, whose functioning is established by the legal framework included in the provisions of the Government Decision no.1609/2009 concerning the creation of departmental chambers for agriculture, through the reorganization of departmental offices and consulting centers from the agricultural field, which are under the authority of the Ministry of Agriculture and Rural Development, as it is part of a governmental policy promoted by MADR, functioning at the local administrative level.

For example, after the campaign from the 18th of November 2014, there was a promotion campaign for the *de minimis* aid of 5000 euro, granted to agricultural producers in order to purchase milk tanks for the storage of milk at constant temperatures. These tanks were necessary because, according to the evolution of the legal framework at the European and national level, producers are forbidden to sell small quantities of milk in market places ***([C10**]: See the Decision of the Government no. 859/2013 related to the granting of the de minimis aid for the purchase of milk cooling tanks (republished in the Official Journal no. 100 from the 10th of February), as well as the Regulations no. 1.535/2007 of the European Commission from the 20th of December 2007 concerning the implementation of the articles 87 and 88 from the EC Treaty related to the de minimis aids in the field of agricultural production*).

Bearing in mind the abovementioned example of good practices, we appreciate as pertinent the proposal according to which, through the Groups of Local Action, legally organized as associations, it is possible to implement regional development projects based on the concept of developing local products, trades, traditions and services - in what concerns the validity of the association forms, they should meet the provisions of the **Emergency Ordinance no. 26/2000** concerning associations and foundations ***([C11]:** Completed with the Law no. 22/2014, published in the Official Journal no. 188/17.03.2014).*

The concept of local product or service must be developed, according to the standardization promoted at the European level; nevertheless, it must be adapted to the local environment, through the establishment of certain social and economic relations between the producer of goods and services who uses only local resources and the local decision-making factor from the commune, town, city, which has the main role in the elaboration of a strategy to attract European and national funds that help regional development through various financing directions.

The implementation strategies that we take into account are classified according to the following directions, which were also described in the objectives of the study:

- the proposal of legislative projects by the local administrative system, in collaboration with non-governmental associations and associative organizations, such as associations, foundations, groups of local action, organizations of producers, associative organizations representing the activity branch taken into account by the proposed project;
- through these collaborations, the objective had in view by the local administrative system is the harmonization of the European legislation with the national environment, taking into account the fact that European directives only define European directions and development policies; the Member States are free to decide the manner in which they will be implemented;

At present, according to the author of the study, the only way in which the local autonomy functions is represented by the projects of Government decisions, usually elaborated by the administrative team of the Departmental councils, at the request of the mayors of small administrative and territorial units. When analyzing the concept of local autonomy, we must take into account the fact that the local administrative system will always know better the local problems, compared to the Local Administration. Also, we should know that small administrative and territorial units do not benefit from specialized staff, as the necessary public funds are lacking; nevertheless, they are able to identify various solutions needed at the local level, which can be implemented only through Government Decisions, because the public funds are insufficient or because of the hegemony of the central public administration in what concerns certain activity branches, fields of social interest, etc.

The strategy that we suggest in order to increase the responsibility level of local public administrations is the obligation imposed to the administrative and territorial units to launch public debate topics needed for the regional development, in which the civil society should also participate. These debates should be followed by proposals of law projects or of revisions of the existing laws, through the identification of the issues caused by their implementation.

A strategy related to regional development is the clarification of the problems concerning the property right, generated by the issue of a large number of property titles containing wrong information (in what concerns cadastral indicators, the name of the holder, according to his/her identity card). This rectification competence is possible at present due to the modification of the **Law no. 18/1991**, through the provisions of art. 9, index 2 from the Law no. 219 from 2002 ***([C12]:** This fact*

has generated the introduction of art. 59, index 1 of the Law 18 from 1991, amended and republished, which has determined the re-transfer of the competence concerning the rectification of the property titles from the Courts to the Local Committees responsible for the agricultural real estate:
"(1) The correction of material errors registered in the property titles, which are the result of writing mistakes, will be carried out by the Land Registry Office.
(2) The correction of the property titles can be carried out by the Land Registry Office, according to the decision of the departmental committee.
(3) The procedure of correction of material errors and of rectification of the property titles will be authorized through an order with normative character issued by the General Manager of the National Agency for Cadastre and Land Registration."); it has led to the introduction of the art. 59, index 1 from the Law 18 from 1991, amended and republished, which has transferred this competence to the Communal Committee of Agricultural Real Estate**.**

At present, the administrative procedure concerning the rectification of the property titles is unprofitable, as the local decision-making factors wait for the introduction of methodological norms.

In case of Iaşi county, the Departmental Committee of Agricultural Real Estate has noticed these issues and has adopted the Decision of the Departmental Committee in Iaşi no. 285 from the 19th of September 2014, through which it has established that the Local Committee of Agricultural Real Estate has the capacity to conclude the file related to the modification of the property title; thus, it has clarified the provisions in art. 59, index 1 from the Law no. 18/1991 which, without including a contextual interpretation of the mechanism related to the agricultural real estate law, led to the conclusion that the only institution that had the capacity to correct the property title would have been the Agency for Cadastre and Land Registration in Iaşi.

Nevertheless, we consider that it is necessary to promote a decision of the government similar with the Decision of the Government 890/2005, which was a methodological norm, because we need to establish who is the holder of the property title, in relation with the property (s)he owns; also, we need a national cadastral plan that registers the situation on site, according to the abovementioned aspects and to the destination classes mentioned on the titles (as they do not correspond to reality; many categories of vine, orchard, forest are mentioned only on paper and do not exist in reality).

4.CONCLUSIONS

To conclude, the author of the study considers that the problems of the local and central administration may be solved only through effective communication from the local to the central level and vice versa. At the local level, problems must be solved for the good of citizens, through the transparency of the decision-making process and through the stability of public officers who must have at their disposal all necessary resources (salary rights, funds needed for professional training), but who must also be protected from the political factors that may manipulate in a direct or indirect manner the administrative process **([C13]**: *For example, there were frequent situations when the Local Council had on its agenda the approval, through a decision of the Local Council, of the dismissal of a local counselor, according to one of the situations stipulated in art. 9, sub-paragraph 2, letter f (final conviction pronounced by a Court in case of a sanction involving the deprivation of liberty) or in art. 9, sub-paragraph 2, letter h, index 1 (the loss of the quality of member of the political party or of the organization of national minorities on the list of which (s)he was elected), with reference to art. 9, sub-paragraph 3 from the Law no. 393 /2004 and when it has voted against the abovementioned legal provisions).*

Acknowlegments

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resourses Development 2007-2013.

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