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PUBLIC ADMINISTRATION REGULATIONS CODIFICATION IN THE EUROPEAN UNION

Abstract

Today, supranational legal systems affect national law, thus showing a trend of globalization, not denying the influence and interdependence of domestic laws, while the State, as a signatory of international conventions, has certain obligations to fulfil, including the adoption of national legal rules.

In this context, the phenomenon of law globalization is shown by the doctrine, and that translates the aspiration into a common law.

From this perspective, we propose to address the issue of public administration encoding rules.

We will try to analyze the encoding of these rules both at European and national level, whereas the integration of European states into the European structures represents an undeniable reality.

Keywords

codification – public administration – regulation – European Union – simplification

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PRELIMINARIES

A new legal system is developing at a European level, characteristic of the European area. The evolution of the system was so necessary and spectacular that today we find it among the great systems of law: the Germanic system, the common-law system. Thus, we can say that law typology has actually been enriched with the European law system[1].

Therefore, a favourable first argument for the codification is legal security, which is one of the fundamental principles of the European legal order, assuming that any recipient of a legal act may know without ambiguity what rights or obligations are conferred or imposed by this act. In other words, any regulation must be as precise and clear as possible. It should be noted that this principle of European law depends on both the editorial quality of legislation and on the accessibility of these documents in the context of the changes that often appear[2].

S. Peruzzetto believes that this aspiration is clearly apparent from the EU codification principles, such as transparency, order and legal certainty[3]. Firstly, the European Union law encoding concerns only secondary legislation. It must comply with the procedural requirements for the adoption of codes. There are opinions that the directives which are developed in some areas are true encodings[4]. The term is certainly incorrect especially when these directives relate to a specific field and the lack of scale and systematization could not give them the attributes of a real code. In addition, when the directives are to be transposed into the domestic order, their form will vary, and that does not correspond to the idea of a real codification.

Another reason for codification is maintaining the EU law clarity in a permanent manner. In this sense, the action to achieve this should

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1 A. Fuerea, *Manualul Uniunii Europene* [*The European Union Manual*], Bucharest: Universul Juridic Publishing House 2004, p. 5.

2 M. Petite, A. Caieros, L. Cimaglia, *L'accessibilité du droit, la méthode communautaire*, L'actualité juridique Droit administratif 2004, p. 1863.

3 S. Peruzzetto, *La codification du droit communautaire,* Paris: Dalloz, Thèmes et commentaires 1996, p. 150.

4 M. Mattera, *Vers un Code européen des marchés publics*, Revue du droit de l'Union européenne (RDUE) 2000, p. 531.

become a permanent task. The doctrine stated that this requirement is essential for the construction of the EU, as citizenship and democracy strengthen the law by law.

Today, we find that both at the European and the national level, the legislation is very rich in regulations on issues that concern the definition and functioning of institutions and public administration, the definition and organization and functioning of public services, issuing administrative acts by public authorities, mechanisms for resolving complaints to the authorities by citizens, and government transparency mechanisms to civil society. Thus, we can identify the following problems:

- the lack of systematic regulations governing public administration activities,
- the lack of consistent terminology,
- the lack of legislative coherence generated by many existing normative acts in the field,
- the lack of clarity in normative acts, and the limitation of accessibility generated by successive amendments[5].

I. THE EUROPEAN POLITICAL AND ADMINISTRATIVE AREA

The EU political and administrative area set up by the EU treaties is based on the "institutional triangle" represented by the Council of Ministers, the European Parliament, and the European Commission, considered to be the decision-making pillars of the Union[6].

In this regard the general principles were identified which applied in the lawmaking process.

Thus, according to the principle of subsidiarity, in areas not within the exclusive competence of the Union, it is allowed for the Union to become active only when the aims envisaged can not be achieved satisfactorily at national level by Member States.

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5 M. Ruffert (ed.), *The Transformation of Administrative Law in Europe*, Munich: Sellier European Law Publishers 2007, p. 99.

6 I. Moroianu Zlătescu, R.C. Demetrescu, *Drept instituţional comunitar şi drepturile omului* [*EU Institutional Law and Human Rights*], Bucharest: Institutul Român pentru Drepturile Omului 2005, p. 120.

The principle of proportionality requires that EU measures must be adequate to their objectives and need to be appropriate to the reality. In other words, the principle requires that the means used are proportionate to the aim pursued.

The proportionality principle applies only after a review of the issue of subsidiarity in the sense that it determines the competency applicability.

The two principles were developed by the European Union Court of Justice from the vague provisions of the Treaty on European Union and were repeated in the Treaty of Amsterdam and in the Treaty of Lisbon, by establishing the conditions for their application.

The principle of legal certainty requires that the legislation is safe and its application foreseeable. Also, any European act that produces legal effects has to be clear, precise and has to inform the person concerned so that he can know with certainty what his rights and obligations are[7].

The principle of legal certainty is a fundamental principle, according to which the law enforcement in specific circumstances should be predictable in the sense that the public authorities have to ensure that the law is easily determined by those to whom it is addressed, and that they are assured of its existence, as well as the way it will be applied and interpreted.

Analyzing the concept of European public administration we found that it is susceptible to two meanings: a material one and a formal one.

The material approach involves analyzing the organizing activity of the practical implementation and enforcement of EU legislation (primary and secondary legislation). In material terms, European public administration represents the rules (principles) within that express its discretionary power.

The formal approach is based on the analysis of the system of institutions and European administrative structures that accomplish this activity.

We consider also the component elements of the European Administrative Space both in the primary legislation and in the secondary

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7 M. Voicu, *Introducere în dreptul european* [*Introduction to EU Law*], Bucharest: Universul Juridic Publishing House 2007, p. 54.

to be an important element of the European political and administrative area.

Thus, we have paid particular attention to good practice in order to obtain legislation systematisation and we realize that both at EU level and at each Member State level concepts and practices for organizing their own regulatory systems, were developed, but no matter how they were conceived, they allow the existence of common principles.

We have also established that the most effective way to respect the regulatory quality is by the codification of legal rules.

II. THE EUROPEAN EXPERIENCE IN THE FIELD OF CODIFICATION OF LEGAL RULES

As regards EU law, the European Commission tries to impose, but the codification remains a burning desire.

Although the simplification of legislation in the European Union began more that 15 years ago, actions have begun to be carried out in a coordinated manner only in recent years. Administrative simplification by establishing a general law which codifies administrative law is not perceived by the public as solving immediate problems facing public administration. However, its impact could be seen as particularly significant, especially as administrative codification is a way to solve the legal simplification required by the citizens, but determines the development of a legal system that has a positive impact on economic development, especially in the European Union.

The rule of law is considered an important component of good governance, the rule of law commonly understood as a system in which public authorities make decisions based on legal regulations respecting the rights and freedoms, all such decisions being subject to judicial control. Also, legal certainty is a major component of the modern understanding of law and emphasizes the direct link between the rule of law and predictability in public administration activities[8].

8 Ruffert (ed.), supra note 5, p. 100.

III. THE SYSTEMATIZATION THROUGH CODIFICATION OF PUBLIC ADMINISTRATION REGULATIONS AT EU LEVEL

At the European level there are already initiatives regarding the codification of legal rules (for example the European Commission's initiative to update and simplify the EU *acquis*), so it is normal for this approach to be promoted internally, within the national legal systems. In this context, we mention the Commission's Communication of 8 October 2010 to the European Parliament, the European Economic and Social Committee, and the Committee of the Regions entitled "Smart Regulation in the European Union" which mentions the measures taken by the Commission to ensure the quality of regulations throughout a political cycle. A smart regulation can help achieve the ambitious goals of sustainable growth defined in the Europe 2020 Strategy. However, smart regulation is a shared responsibility, its success depends on all institutions involved in the formulation and implementation of EU policies, which have their own role.

Also, the clarity of legislation, another essential aspect of the modern administration cannot be ensured only by the editorial quality of the normative acts, but also involves their accessibility, despite the changes that are brought. On the other hand, the principle of legality – a true constitutional postulate – requires systematic, clear and coherent rules, that govern the operations of public administration, so that the normative system is to be understood by all citizens and, therefore, to be easily controlled. The law recipients must be able to know unequivocally what their rights and obligations are, and the law must be predictable. The difficulty of this legal approach cannot be denied, owing to its overwhelming scale. In this context, the practical limitations of the codification process are given by the fact that absolutely all the laws or regulations of a particular domain can not be codified.

However, the codification represents an indispensable aspect of improving direct knowledge of administrative texts and is therefore

a "technical necessity" for the users of administrative law[9].

In terms of legislative reform, the codification has great importance. It provides the authors of reform projects with a clear and orderly base of the texts in force ("the constant law"), thus creating further reform and simplification of legal acts. Moreover, the codification may be used as an opportunity to improve regulation in a certain field.

It is considered that the better regulation programme has led to changes in the way the Commission proposes to develop policies and regulations, and now the consultations and the impact assessments are essential components of the elaboration policy process. These have had the effect of increasing transparency and accountability, and have promoted the development of evidence-based policy. This system is considered to be good practice in the EU, by supporting decision making in the EU institutions. The Commission has simplified much of the existing legislation and has made significant progress in reducing administrative burdens[10].

However, in this context, we identify the partial overlapping of systematic law techniques to EU level.

At EU level, several systematisation techniques are called "codification" and they have become ambiguous.

Thus, there may be doubts about the relevance of codification at EU level due to methodological hesitations and poor results. Also, the addition of other techniques that are similar to codification can contribute to the confusion. It results, in particular, from the lack of rigour in the use of the term "codification", sometimes mistakenly equated with a compilation or qualified as consolidation. Therefore, only by analyzing these techniques will it be possible to identify the genuine codifications at EU level and also other law systematization techniques that complete it.

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9 E. Chiti, C. Franchini, *L'integrazione amministrativa europea* [*European Administrative Integration*],Bologna: il Mulino 2003, p. 65.

10 J. Ziller, *Administrative simplification through a general law on administrative procedures for the protection of citizens' rights and economic development: the key issue of legal certainty and predictability in administrative performance*, paper presented at the seminar "Administrative simplification", Ankara, 8-9.05.2008.

Multilingualism – an obstacle to the public administrative regulation codification at EU level?

Given the identity value for each language version, the constant law codification might lead to the thought that it might be simply carried out independently in each language, limited to following instructions contained in the modifying documents. However, experience shows that the codification would not be achieved with this approach, and linguistic structure must be taken into account at every stage of the process.

For each codified act to be adopted in all official languages is appropriate to ensure the existence of all basic acts and modifying acts, including the amendments in each of the official languages. This list of documents called family must be identical for every language version. This does not always happen, a situation that often comes about as a result of the new accessions that involve the formalizing of new languages or the special nature of the amendment of legislative acts[11].

IV. The codification of public administration regulations in Romania, as a European Union Member State

To present the development of the codifications process of the public administration regulations in Romania, we have to identify the main recent developments, emphasizing the importance of the new Administrative Code project. The purpose of this project is to respond to the need to eliminate those laws which contradict or overlap and to improve the existing rules, by systematizing and streamlining the legal framework in the field of public administration[12]. We have also identified the importance and objectives of the codification of public administration regulations in Romania, and the codification impact at EU level on our state.

By developing and implementing an Administrative Code, Romania is pioneering: although the European Union encourages this approach,

11 Ruffert (ed.), supra note 5, p. 78.

12 V. Vedinaș, *Drept administrativ* [*Administrative Law*], Bucharest: Universul Juridic Publishing House 2012, p. 68.

no other Member State has such a code. All institutions and central public administration authorities, local and autonomous, are directly affected by the Administrative Code and its effects will be reflected on all citizens[13].

The Administrative Code will cover five major areas of public administration: central government, local public administration, personnel administration, public and private ownership of state and administrative units, and public services.

The first part of the project is devoted to general provisions and includes a number of definitions and principles applicable to public administration.

It identifies and includes terms like "government", "administrative action", "public authority", "public good", "public domain", "private sector", "interest", and "public".

The second part of the Administrative Code, dedicated to central government, includes some legislative solutions, analyzed and discussed in the Working Group and in the project's target group, aiming to eliminate disturbances caused either by the poor drafting of existing legal texts or by inconsistent application of them. We detail below some of them.

Regarding autonomous administrative authorities, their heterogeneity did not allow a comprehensive coding therefore regulation was limited to specifying rules covering the establishment of new authorities of this kind. Thus, according to constitutional provisions, the establishment and termination of autonomous administrative authorities is an organic law. In principle, autonomous administrative authorities should exist only in areas where, owing to the requirement of independence from the executive, it is impossible to organize the Central Authority in Government. Also, it avoids duplication of functions with the Government, ministries or the President. Autonomous administrative

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13 D. Focşăneanu, C. Şuța, M. Popescu, *Proiectul Codului administrativ al României în contextul demersurilor Uniunii Europene pentru o mai bună reglementare. Consolidare, codificare, reformulare a legislației la nivelul Uniunii Europene* [*Project for a Romanian Administrative Code in the Context of EU Action for Better Regulation. Consolidation, Codification, Recasting the Legislation at EU Level*], Revista de Drept Public [Public Law Review] 2011, no. 4, p. 74.

authorities are subject only to parliamentary control, mainly through specialized committees[14].

The project unites several rules applicable to local government, eliminating duplication and contradictions and proposing improvements to the existing legal texts form[15].

Also, the fifth part, dedicated to public and private property and state administrative units, was developed based on the general framework established by Law no. 213/1998 on public property and its legal status, proposed to be fully codified. Thus, it is necessary to establish the relationship with the Civil Code governing matters regarding public property which entered into force on 1 October 2011.

The codification of public administration regulations represents a solution to legislative inflation and has to be taken into account by all political actors and public authorities with responsibilities in this area. At the same time, it allows the simplification of the legal system, to protect the rule of law and to ensure good governance.

In other words, we can say that there is a great legislative instability, which violates the principle of legal certainty and the authority conferred by law. Therefore, excessive regulation can lead to devaluation of the law. One of the main purposes of codification is to overcome complexity and divergence caused by several special laws and regulations that sometimes contradict each other and often create confusion.

V. THE CODIFICATION OF PUBLIC ADMINISTRATION REGULATIONS IN EUROPEAN COUNTRIES

In Portugal, the government has initiated a comprehensive programme to simplify the regulations, with particular emphasis on the accessibility of legal norms, without referring, however, in a systematic framework, to an actual encoding of normative texts. In this context, the main objective

14 E. Roman, *Semnificația codificării normelor de procedură administrativă din perspectiva integrării în Uniunea Europeana* [*The Signification of Administrative Procedure Codification from the Perspective of EU Integration),* Revista de Drept Public [Public Law Review] 2005, no. 3, p. 100.

15 Focșăneanu, Șuța, Popescu, supra note 13, p. 75.

of the Portuguese government is to ensure a coherent regulatory framework, easy to understand and to apply, thus making efficient the activity in central and local administration.

In order to simplify and improve the legislation, the Portuguese government launched the SIMPLEGIS programme, coordinated at government level by the Council of Ministers Legal Centre. The programme aims to repeal laws that no longer apply, and to legislate in a simpler and clearer manner[16].

In the United Kingdom, given the political-administrative organization, there were no encoding initiatives in the sphere of central government regulations, opting for other reforms. Instead, through the Law on local government[17] enacted in 2000, a reform of local government was carried out in England and Wales.

The UK public function is distinguished by the existence of a practice that involves differential regulation of distinct aspects of the system of human resources available to the public administration and by the management of these resources through the Public Function Code and Public Function Management Code.

In Germany, given the fact that the organization of the Lands is not standardized, benefiting, under the Federal Constitution, administrative autonomy and even its own constitution, it is practically impossible to take into account the idea of encoding the legislative systematization initiatives manifesting themselves individually in each Land. However, measures to encode administrative procedure have been implemented at federal and Land level.

For the Czech Republic, we believe that the regulatory attempt of the ministries and other state bodies in a single piece of legislation is a limited form of codification of central government, even if this law, over time has undergone a number of changes.

In the Czech Republic there are no systematisation trends of relevant regulations in a single document, opting instead for separate regulations for each level, namely: the Law of municipalities, the Law of regions,

16 The Administrative Procedure Code adopted by Decree Law 1991-442 includes the majority of local government regulations.

17 Local Government Act.

the Law on the capital Prague, and the Law on municipalities with authorized municipal offices and the municipalities with delegated extended powers.

However, we have to mention that in the Czech Republic the rules on proceedings before administrative courts are encoded – the Administrative Justice Code[18], and the existence of the Administrative Procedure Code[19].

In Spain, the phenomenon of normative dispersion, traditional to Spanish public law, has intensified in the past years, with the creation of the Autonomous Communities and the emergence of administrative authorities, designated as independent[20]. The doctrine held that there are three normative levels – that of the State, that created by different Autonomous Communities, and that of independent administrative authorities – that suffer for various reasons from a chronic lack of codification[21].

So, in this context, the need was felt for a consistent and coherent systematization of the rules of procedure of the administrative jurisdiction system in order to reach the goals of the rule of law principle. Although, an acceptable level of codification was achieved in Spain during recent years, what was done was just a fragmented codification. However, this situation has deteriorated progressively under the effect of triple influences: legislative inflation, changes in the normative content of the law, and the increase of de-codification.

CONCLUSIONS

We can conclude that the codification activity is a remedy for failures caused by regulations incident in the public administration field, an issue that should be a concern for all political actors and public authorities with responsibilities in this area. At the same time, it allows

18 Law 2002-150.

19 Law 2004-500.

20 J. Barnes, *La transformacion del Procedimiento Administrativo* [*The Transformation of the Administrative Procedure*], Sevilla: Editorial Derecho global-Global Law Press 2008.

21 J.A. Santamaria Pastor, *Codification et decentralisation en Espagne* [*Codification and Decentralisation in Spain*], Paris: AJDA, 2008, pp. 1867-1870.

the simplification of the legal system and thereby the protection of the state of law by ensuring good governance.

The study also enabled us to identify some confusion, duplication, or overlapping rules generated by insufficiently clear, stable, and predictable regulations and in this context we have made proposals to correct these situations.

Primarily, in Romania, the regulation through the Administrative Code Project, of the five areas identified as relevant for the delimitation of the main competences of the active administration should lead to the establishment of certain links between them, which in turn requires correlated effort, by eliminating inconsistencies, and the duplication in each domain. Thus, we made proposals to correlate the future administrative code regulations with the existing regulations. Also, these regulations have to be completed with the Code of Administrative Procedure regulations.

Secondly, we have to take into account a codification proposal at EU level, by identifying a domain of present interest that requires a regulation systematisation that will generate beneficial effects at EU level and also at EU Member State level. It is the European Union's environmental policy. In favour of the Environment regulations codification at EU level, we can mention at least two fundamental arguments, both of a quantitative and a qualitative nature: on the one hand, the explosive development of normative texts in the field, far beyond the traditional material abundance, requiring, for development, order, rationality, and efficiency, and on the other hand, the natural systematic and globalized predisposition of the domain[22].

22 P. Lascoumes, G. Martin, *Des droits épars au Code de l'environnement,* Droit et société 1995, no. 30/31, p. 53.