Section «Law Science»

Good Administration and National Ombudsman in Romania

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One of the nowadays realities is the fact that citizens from many European countries loose their trust in the local or central public authorities. Is no doubt that the amplitude, the dynamics and the causes of this phenomenon vary from one country to another, depending upon specific situations. Thus it can be noticed a phenomenon through which public opinion opposes more and more to the acceptance of rigid local governance practices, that are often associated to the systems of power.

Without doubt, there exist many ways to approach these different phenomena, but the first step in order to give back to the citizens the trust in the institutions that represent them, must be the return to an unimpeachable behaviour from a moral point of view from the representatives and the elected officials. The adoption of clear norms, transparent procedures and efficient sanctions is the only way to eradicate that behaviour which is condemned by the public, being considered unacceptable for moral reasons.

A modern state cannot be conceived without a well-articulated system of the administrative institutions and without a good management of the public services, all built up around the general interest#.

The principle of the good administration is one of the principles introduced by the European Code of the Good Administrative Behaviour and present in the European Union's Charter of Fundamental Rights (article 41). According to Article 41 of the Charter, the right to a good administration of the E.U. institutions and bodies represents a fundamental right.

A good administration represents a correct administration of public activities, in a moral way, respecting the law principles and the real justice. At the same time, a good administration signifies the exercise of the attributions specific to his function by the civil servant with respect to the citizen.

The power of public administration finds its legitimacy in law, that recognizes its discretionary character, proper for the public interests that administration must fulfil. That is why we can notice that for the contemporary society it imposes the achievement of a new equilibrium between administration's dominance and the democratic principles.

Thus, according to the Charter of fundamental rights, the right to a good administration has the following content:

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union.

2. This right includes:

the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principle common to the laws of the Member States.

4. Every person may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

It is necessary that the principle of a good administration finds its consecration in the administrative law and the procedures for its implementation.

Thus, in the field of administrative law, we could distinguish between a substantial right and a procedural one, although the boundaries between the two categories of norms are not always marked precisely. Among the many roles held by administrative procedures, we consider that two of them have a major significance: one of them is to assist administrative institutions in accomplishing the tasks that fall under their competence. The second role is to make sure that the persons affected by the institution's decisions and actions are fairly treated.

Many times it was asserted that the governmental apparatus is instituted in order to protect the governors rights upon the governed ones, and not inverse# and that for the limitation of the limitation of the governors' power there were imposed the constitutionalism, the state of law, the control of the laws' constitutionality and local autonomy. All these were constituted for the observance of the citizens' rights. The Ombudsman institution corresponds exactly to this idea, its main attribution being the protection of the citizens' rights confronted to public administration.

People's Advocate is the name under which the Ombudsman institution is known in our country. In the nowadays acceptation, the word Ombudsman and the so-called institution signifies the idea of ensuring an independent control on the administration, effectuated, mainly, through the examination of the petitions of the citizens who have their rights infringed. People's Advocate is a mandatory of the Parliament, with full authority, charged by the Parliament with controlling the Executive in problems referring exclusively to public administration, without being able to replace or to directly modify their actions. In contrast with the three classical public powers – legislative, executive and judicial power – People's Advocate doesn't have decisional power. Its real power is based on his moral authority, which is a fundamental characteristic of the institution.#

Another important fact is that People's Advocate is note an organ that substitutes the others, but, together with other public authorities, he supports the observance of citizens' rights and freedoms, thus being a protector of everyone. In all legal systems the Ombudsman institution exists in parallel with other means of control at the state level, as the hierarchical recourse, administrative tribunals, ordinary courts, etc. In the exercise of his attributions, People's Advocate is independent from any other public authority. The independence of the People's Advocate must not be understood in a rigid manner. For the exercise of his attributions, he must collaborate with the others public authorities.

Another characteristic of the institution consists in the fact that, unlike judicial courts, he has no legal mandate to take executive decisions. His influence on administration is based on his authority, and his authority derives from law.

People's Advocate activity is determined by two fundamental principles: he is an extra-judiciary organ and he does not substitute public authorities. As a consequence, what remains for him are the means of plea , of convincing the parts – on the one hand the citizen and on

the other hand the State's organs. The success of his plea doesn't consist in the force of the means used, but in the capacity for making known, between the two parts – administration and citizens – the notions concerning human rights and the importance of their observance.

The essential mission of the People's Advocate is represented by the control of the observance of the citizens' rights and freedoms by public administration, being an efficient mean for limiting the excess of power coming from public authorities.#

Only in last years we was able to understand the real contain of this important new right - the third generation. In this paradigm, the Romanian Ombudsman was able to exercise a real role in the administrative construction of state.

Because of this in 2012 his situation become a bit complicate - the war between parliament and state president was finally solved by the Constitutional Court, but the Ombudsman was dismissed by the parliament, because he was considered as a partisan of state president.

In this situation, the difference between image and practice become obvious for everyone - it offered a bad image of country and of our politicians. The normal moral was violated and citizens didn't reacted to protect this important institution of effective democracy.

Finally, we hope that political interest will be stopped by themselves, otherwise the reaction of justice and citizens will be critical - is not normal and is not legal to have a civil war between institutions. However, the national Ombudsman will be forced to chose one direction of his efforts: to accept its role for citizens and to be more active, or to be frightened by the politicians and to keep silence.

References

1. Balan, E. 2008, Institutii administrative / Administrative institutions, C.H. Beck, Bucharest
2. Apostol, D. 2011 Drept administrativ / Administrative law, CH Beck, Bucharest
3. Petrescu, R. N. 2009, Drept administrativ / Administrative law, Hamangiu, Bucharest
4. Ionescu, C. 2008 Drept constiutional / Constitutional law, CH Beck, Bucharest
5. Deaconu, S. 2010 Drept constitutional / Constitutional law, CH Beck, Bucharest
6. Caiden, G 1983 The International Handbook of the Ombudsman, Greenwood Press, London
7. http://www.avp.ro