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Is it Necessary a Higher Administrative Board in Romania?

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Abstract: The idea of establishing a forum of thought and advice for policies and their implementation norms in the field of public administration, a body without jurisdictional role, comes out from the necessity of organizing a professional and balanced support of such decisions. Obviously we are placed in front of a body of the executive power, which imposes to be constituted as an autonomous administrative authority. The competency of such a body would be placed in the field of initializing/advising of projects of normative juridical acts that concern the organization, the administrative rapports and civil service, the non-contentious administrative procedure at the state's level and at the local level. Is it necessary such a body in the Romanian political and administrative system? And which similar bodies do we find in other countries? The present study is researching for an answer.

Keywords: advisory bodies; decision-making process; public administration

1 Introduction

The dynamic of the Romanian post-communist society supposes walking on an anfractuous way, marked by the necessity of attaining some strategic objectives, but also by the rapid adaptation to the eventual accidents on the way. Such an evolution, unpredictable in many times, in a reasonable time limit, can generate the instability of the law as an instrument of the public action, harming both the persons and society but also the credibility of the political class.

Of course, this instability may also have objective causes, derived from the complexity and the unexpected of the transition period, combined with the necessity of harmonizing the Romanian legislation with the European one. In the same time, this situation can demonstrate an insufficient professional and scientific elaboration of solutions, an insufficient evaluation of their impact, as well as a certain precipitation and superficiality in finding the adequate measures. The principle of the juridical security, which constitutes a fundament of the state of law, requires that the juridical norms are clear, intelligible, not submitted to too frequent changes, and especially not unpredictable. The juridical solutions must remain relatively stable, the jurisprudence of the European union Court of Justice and of the European Court of Human Rights formulating and consecrating the principle of the legitimate confidence.

This principle tends to limit the possibility for frequent modification of the juridical norms, in the context of the agreements assumed by the competent authorities, protecting the confidence of the addressees of those decisions in the stability of the regulated situations. It is obvious that the factors that generate the proliferation and the complexity of the juridical norms are not entirely controllable. The exigencies of the juridical security impose finding the appropriate remedies in order not to put into danger the stability and cohesion of the society.

It is entirely valid the recommendation made in 1991 by the French Council of State „*legiferons moins, legiferont mieux*”. (Conseil d'Etat, Rapport public annuel 1991, *De la securite juridique*, La documentation francaise). The context enounced above imposes the adoption of some solutions that

allow a better fundament of the decisions of power with profound social, economical and political consequences. Sometimes, the consultation of a “clear mind” by the one vested with the direct exercise of the political power can place the decisional factor in front of unconsidered openings, raised from the independent experts’ professionalism and balanced detachment. The idea of establishing a body for the evaluation, monitoring and advise for the juridical norms and policies of implementation in the field of public administration, without having a jurisdictional role, is grounded on the necessity of ensuring a scientific and professional support for those decisions.

The competence of such consultative body for the Government and the Parliament would place itself in the field of evaluation and advise for the policies initiatives and for the normative acts that concern the organization and the content of the rapports from the sphere of public administration, of the civil service, of the non-contentious administrative procedure, of the public administration system from the level of the State and local collectivities. Researching such a theme requires an interdisciplinary analysis, where to the juridical perspective attaches in the same extent the politological, managerial and administrative approach. The scientific knowledge, grounded on investigation methods and techniques validated by diverse branches of science ensures a multidisciplinary evaluation of the object submitted to the research. In the same time, restraining the object submitted to the research to the field of the preparation of the strategic decision in the fundamental matters of the public administration allows the focalization of the instruments of the research and ensures intensity for the scientific research, avoiding the spread of energies on a large and difficult to control area. Through documentary research and comparative analysis we propose to identify the nature, the role and functions which should have a body called to uphold the process of founded elaboration, on scientific grounds for the decisions concerning the management and the organization of the public administration.

2 Consultative bodies that take part in the process of elaborating public decisions – comparative analysis

Traditionally, the role of official advisor of the Government or the Parliament in the process of elaborating the normative acts comes to the State Council, component of the political and state structure. The State Councils watch over the conformity of the texts that are presented tot hem for advising with the superior legal norms of constitutional and international levels. There are also States which, through their Constitution, constructed other bodies to watch strictly on the conformity of the normative acts to the superior norms, or with the principles of law, and to ensure in this manner the coherence of the legal system. This is also the case of Romania, which, by the norms of the article 79 of the Constitution stated the establishment of the Legislative Council as a specialized consultative body for the Parliament, which advises the projects of normative acts in order to systemize, unify and coordinate the entire legislation. In the same time, the Legislative Council was vested with the official evidence of the Romanian legislation.

In *France*, the State Council is an institution that has the right to assist the Government in the elaboration of the project of laws, ordinances and some decrees. The consultative function ensured by the State Council also involves the elaboration of general studies that are placed at the Government disposal. Apart from the cases of mandatory notice, the State Council may be required by the Government to advise any project of normative acts. The State Council can also be consulted on *the difficulties appeared in administrative matter*. This general formulation allows the ministries to apply to the State Council in questions concerning the interpretation of some dispositions of the administrative acts in force. By its own initiative, the State Council can draw the attention of public powers on the legislative or administrative reforms, which it considers in concordance with the general interest. In this respect, the state Council can effectuate studies at the prime minister’s request and has an important role to play in the process of legislative codification.

In *Italy*, the State Council created by the French model is both an organ of juridical and administrative consultancy and a court of administrative contentious. Referring to the consultative function of the State Council, the advise of this institution is facultative for the project of laws and mandatory for regulations

and for the unification of laws and regulations. There are also situations in which the opinion of the State Council is obligatory for the Government, having the nature of a conform advise. It is about the adoption of juridical norms concerning the execution of the competencies of the executive power, as well as the organization and functioning of the public services.

In *Sweden*, before the Government drafts a law project, the respective matter makes the object of an examination of some authorities and interested associations to whom it is offered the occasion to make observation on the text. Than, the law projects are analyzed by the Cabinet and than put forward to advise to the Legislation Council. This Council must ensure that the projects having important implications for the citizens or for the general welfare don't enter into conflict to the existing legislation. At European level there can be found as advisory bodies established by the provisions of the European treaties the Committee of the Regions and the Economic and Social Committee. The Committee of the Regions is consulted by the European Parliament, Council or Commission in the cases provided by the treaty or in any other case, especially in the ones concerning the trans-frontier cooperation, if one of those institutions consider it appropriate. The nature of its advise is a consultative one, as long as its absence does not hinder the future actions of the institution that requested it. The consultation is obligatory for sectors as: social and economic cohesion, education and youth, public health, trans-European networks, social affairs, professional training. (Bărbulescu, 2008)

The Committee of the Regions also can, when there are involved specific regional interest, issue an advise on this matter, and being able to issue such opinions *ex officio* when it considers it necessary.

The Economic and Social Committee is, in its turn, consulted by the European Parliament, Council or Commission in the cases provided by the treaties. In all the other cases it can be consulted by those institutions, if they consider it appropriate. It can also issue an advice by its own initiative, in questions concerning its sphere of preoccupation, especially concerning the internal market, education, protection of consumers, environment, social field. (Scăunaș, 2008) Coming back to our country, we are going to notice the insertion in the text of the Constitution, on the occasion of its revision from 2003, in the 4th Title – Economy and public finance, of a body named the economic and Social Council (Article 141).

The Economic and Social Council is an autonomous body, with advisory role, which, upon the request of the Government or by its own initiative draws reports in economic and social matters. The Economic and Social Council issues consultative advices on the projects of laws, ordinances and decisions form the fields of competence established by its organic law of establishment, organization and functioning. (Constantinescu, M. & all, 2004)

3 The Administrative Superior Council – Nature, Role and Functions

In our opinion, public administration and its components, both in their material and formal aspects, represent a fundamental field of the society and the strategic decision that concerns it holds a priority importance for State and Society.

The body we propose to fulfil the advisory role for the Government and the Parliament in the process of scientific elaboration of the policies and normative acts concerning the fundamental questions of the public administration is the Superior Administrative Council. The establishment of such a body could make the object of some constitutional norms or of an organic law.

Component of the state political structure, the Superior Administrative Council should be an autonomous body, with a consultative role, which, upon the request of the Parliament or Government, or by its own initiative, draws reports in questions concerning public administration. the Superior Administrative Council also issues consultative advices on the projects of laws, ordinances or other normative acts in the field of public administration.

As an independent authority, the Superior Administrative Council helps the activity of the Government and Parliament in the framework of the process of elaboration and implementation of the public

policies, in order to ensure their quality as well as of the regulating norms, in order to provide the juridical stability of the social rapports.

Of the duties that should be conferred on the Superior Administrative Council, we mention:

- analyzes and elaborates opinions and recommendations with respect to the strategies in the field of public administration, including on the measures for the simplification of the bureaucratic procedures;
- elaborates annual public reports, as well as studies on topics of great interest for the field of public administration;
- formulates reform proposals, in the attention of the Government, including normative recommendations;
- answers the requests addressed by the prime minister or the Government, regarding the interpretation of certain constitutional or legal norms in the field of public administration;
- ensures the conformity control of the texts presented for approval with the constitutional or international order norms. Manifests vigilance and exigency with respect to the quality of the legal norms in the field;
- analyzes and elaborates opinions and recommendations with respect to the drafts of codes or laws which may have an impact on public administration;
- evaluates the Government's performances in the management of public administration, in relation to the strategic objectives recorded in the governance plan and with the principles and rules established by law, as well as upon the conclusion of one government's mandate, in the form of public reports;
- offers information in its competence sphere, following the written request of the President of Romania, of the Presidents of the Chambers of Parliament or of the Presidents of the Permanent Commissions of the Senate and of the Chamber of Deputies.

In order to fulfill its prerogatives, by means of its organizing and functioning norms, the SAC must be conferred the possibility to request information, documents, relevant data in any format or at any detail level, from the entities it manages or which are responsible for their processing, entities which have the obligation to submit the information within 15 days from receiving the request.

4 Final considerations

The proposal launched by this paper starts from two fundamental considerations: the strategic importance of the field of public administration for any state, as political-juridical institution, and the need of scientific, professional grounding of the state's decision in this field.

A construction of the nature of the Superior Administrative Council does not appear as new in the Romanian politico-statal landscape, in which we can notice the presence of a similar organism: The Fiscal Council, established according to the Law regarding fiscal liability, no. 69/2010.

In the absence of a State Council, the presence in the Romanian politico-statal landscape of the Superior Administrative Council could contribute to the consolidation of the stability of the policies and norms in the field of public administration, to the provision of judicial security, as fundament of the state of law.

The new organism would not substitute the Legislative Council, the one called to fulfill the function of approving the drafts of normative acts in any field of activity and which seems overwhelmed by their volume, playing a passive role in the mechanism of guiding the legislative work for normality.

As independent authority, the Superior Administrative Council has the role of actively supporting the Government and the Parliament in the process of elaborating, building strategies and public policies regarding public administration, as well as of adopting clear, coherent, predictable legal norms in the matter.

The organizing and functioning of public administration, public service, public function, the administrative codification, could be essential concerns for the research and solution formulating by the new organism with a consultative, not at all jurisdictional role.

Its autonomous character, which should also be reflected in the modality of assigning its members, the basis of which should be professionalism and not political loyalty, would allow it to perform other activities, as well, connected, for instance, by the top exercise of the public function.

We refer to the possibility of the SAC to make recommendations regarding the specialty training, the recruitment and evaluation modalities for the personnel who occupies such functions.

Organized and constituted with good faith and with the acknowledgment of the need to ground the public decision on scientific bases in a priority field of society, the Superior Administrative Council may play an essential role in the consolidation of the state of law in our country.

5 References

Bărbulescu, I. (2008). *Procesul decizional în Uniunea Europeană/Decision-making Process in the European Union*. Bucharest: Polirom.

Scăunaș, S. (2008). *Uniunea Europeană – Construcție, reformă, instituții, drept/ European Union - construction, reform institutions, Law*. Bucharest: C.H. Beck.

Constantinescu, M. & all. (2004). *Constituția României revizuită. Comentarii și explicații/ Revised Constitution of Romania. Comments and explanations*. Bucharest: All Beck.

*** Conseil d'Etat, Rapport public annuel 1991, *De la securite juridique*, La documentation francaise/ Council of State, 1991 Annual Public Report, legal security, French Documentation.