

Considerations on the sources of Romanian administrative law. The need to codify the rules of Romanian administrative law

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Abstract

This article analyzes the formal sources of Romanian administrative law: Constitution and constitutional laws, organic laws and ordinary laws, simple ordinances and emergency ordinances adopted by the Government, administrative acts of a normative nature, customary law, jurisprudence, legal doctrine, the position of the international treaties and the legal order of the European Union within the sources of the Romanian administrative law. At the end of the article we analyzed the need to codify the rules of administrative law in Romania. The codification of the rules governing the action of the public administration presents an indisputable advantage for the citizen who will find in a single normative act all the rights and obligations that come within the content of the administrative law legal relation.

Keywords: *sources of law, Romanian administrative law, administrative acts of a normative nature, codify the rules of administrative law.*

JEL Classification: K10, K23.

1. The notion of a source of law

The notion of the source of law² has two meanings:

a) *source of law in a material sense* – represents the material conditions of the society at a certain time (the law-making factors) that were the basis of the legislator's will to regulate a certain social domain.

b) *source of law in a formal sense* - represents the form of exteriorization of the manifestation of the will of the legislator and of the public authorities which implement the law.

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² On the sources of Romanian law see Nicolae Popa, *Teoria generală a dreptului*, 5th ed., C.H. Beck, Bucharest, 2014, p. 156-172; Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *Teoria generală a dreptului*, 2nd ed., C.H. Beck, Bucharest, 2008, p. 119-196; Ion Corbeanu, Maria Corbeanu, *Teoria generală a dreptului*, Lumina Lex, Bucharest, 2008, p. 169-184; Mircea Djuvara, *Teoria generală a dreptului. Drept rațional, izvoare și drept pozitiv*, All Beck, Bucharest, 1999, p. 306-342.

2. The formal sources of administrative law

2.1. Constitution and constitutional laws

The **Constitution** is the fundamental law of the state and has supreme legal force. All other normative acts must comply with the provisions of the Constitution.

The Romanian Constitution in force was adopted by the Constituent Assembly on 21 November 1991 and was approved by the national referendum held on 8 December 1991 (when it came into force).

According to art. 73 (2) of the Constitution, the **Constitutional laws** shall be pertaining to the revision of the Constitution. The limits of the review are provided by art. 152 of the Constitution. Thus, the provisions of the Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity, independence of justice, political pluralism and official language shall not be subject to revision. Likewise, no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof. The Constitution shall not be revised during a state of siege or emergency, or in wartime.

Both the Constitution and constitutional laws must be approved by a national referendum to enter into force.

The 1991 Constitution was subject to a review process by Law no. 429/2003³, the changes occurred aiming at:

- Enhanced constitutional guarantees of fundamental rights and freedoms (new rights have been introduced such as economic freedom, access to culture, the right to a healthy environment);

- the fulfillment of the constitutional conditions for Romania's accession to the European Union and for accession to the North Atlantic Treaty (a new title was introduced named "Euro-Atlantic integration" and and have been consecrated the

³ The Law on Constitutional Review was adopted by the Parliament on 18 September 2003 and was approved by the referendum on 18 and 19 October 2003. Following the Revision Act, the Romanian Constitution was republished in the Official Gazette no. 767 of 31 October 2003, giving the texts a new numbering. The revised Constitution of Romania is structured in 8 titles: Title I - General Principles (includes rules on the unitary structure of the state, republican form of government, sovereignty, inalienability of territory, citizenship, official language, etc.), Title II - Rights, Freedoms and the fundamental duties (structured in four chapters: Common Provisions – contains the constitutional principles applicable in this area, Fundamental Rights and Freedoms, Fundamental Duties, People's Advocate), Title III - Public Authorities (structured in six chapters: Parliament, President of Romania, Parliament's relations with the Government, Public Administration, the Judicial Authority), Title IV - Economy and Public Finances (includes rules on economy, property, financial system, national public budget, taxes and fees, Court of Accounts), Title V - Constitutional Court (it regulates the organization and attributions of this institution which is the guarantor of the supremacy of the Constitution), Title VI - Euro-Atlantic Integration (regulates the way of joining the constituent treaties of the European Union and the North Atlantic Treaty, the priority of the Community regulations against the contrary in the domestic laws); Title VII - Revision of the Constitution (initiative, procedure and limits of the revision), Title VIII - Final and Transitional Provisions (contains rules on the entry into force of the Constitution and resolving the temporal conflict of laws).

principles of EU integration, such as the right of Romanian citizens to elect and to be elected to the European Parliament);

- to solve some malfunctions found in the decision-making process of the public authorities (differentiation of the powers of the two Chambers of Parliament, extension of the presidential mandate to 5 years, restriction of the parliamentary immunity, express mention of the principle of the separation of powers in the state, the entry into force of the laws at 3 days from the date of publication, etc.).

Are sources of the administrative law: the constitutional provisions regarding certain prerogatives of the President of Romania (Chapter II of Title III), the structure and attributions of the Government (Chapter III of Title III), Parliament's relations with the Government (Chapter IV of Title III) and those relating to public administration (Chapter V of Title III). The Constitution also contains the basic regulations on the conditions under which it is possible to carry out the expropriation of private property (Article 44 (3)), the regulation of the right of petition (Article 51), the right of a person aggrieved by a public authority (Article 52) and the right of public property (Article 136).

2.2. Organic laws and ordinary laws

Laws are normative acts adopted by the Parliament with primary and original regulatory powers through which the social relations are regulated.

The Parliament is the supreme representative body of the Romanian people and *the sole legislative authority of the country* according to the provisions of art. 61 (1) of the Constitution. A consequence of this regulation is that all other legal acts must be subordinate to the law. Parliament can adopt laws in any area of social reality.

Organic laws are adopted in areas of particular importance for citizens' rights and freedoms, provided by art. 73 par. (3) of the Constitution (the electoral system, the organization of the Government and of the Supreme Council of National Defence, the statute of public servants, the contentious business falling within the competence of administrative courts, the organization and functioning of the Public Ministry and the Court of Audit, the general legal regime of the property, the organization of local public administration, territory, as well as the general rules on local autonomy, etc.), as well as other articles of the Constitution [eg. art. 40 par. (3) of the Constitution states that "Judges of the Constitutional Court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law, shall not join political parties"].

Organic laws are adopted, according to the provisions of art. 76 (1) of the Constitution, with the vote of the majority of the members of each Chamber of Parliament (*absolute majority*).

Organic laws are a source of administrative law only to the extent that they contain rules of administrative law that regulate administrative relations. Examples of organic laws that are sources of administrative law: Law no. 213/1998 *regarding*

*the public property*⁴; Law no. 215/2001 *of the local public administration*⁵; Law no. 188/1999 *on the Statute of public servants*⁶, Law no. 554/2004 *of administrative contentious*⁷; Law no. 90/2001 *on the organization and functioning of the Romanian Government and Ministries*⁸.

Ordinary laws are adopted in all other areas that do not fall under organic law.

Ordinary laws are adopted, according to the provisions of art. 76 (2) of the Constitution, with the majority vote of the members present in each Chamber of the Parliament (*simple majority*), provided that the legal quorum required for holding the sittings consists of the majority of the members of each Chamber (Article 67 of the Constitution).

Ordinary laws are a source of administrative law only to the extent that they contain rules of administrative law. Examples of ordinary laws that are sources of administrative law: Law no. 52/2003 *on decisional transparency in public administration*⁹, Law no. 315/2004 *on regional development in Romania*¹⁰.

2.3. Simple Ordinances and Emergency Ordinances adopted by the Government

Government Ordinances (simple) are issued under a special enabling law adopted by Parliament, within the limits and under the conditions set forth therein. **Government Ordinances have the same legal force as Ordinary Laws**, from which it follows that the Government can not issue simple ordinances in areas reserved for organic and constitutional laws.

Emergency Ordinances are adopted by the Government in extraordinary situations whose regulation can not be postponed. They can be issued both in the field of ordinary and organic laws¹¹. Emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly (Article 115(6) of the Constitution).

⁴ Published in the Official Gazette, Part I no. 448 of November 24, 1998, as amended.

⁵ Republished in the Official Gazette, Part I no. 123 of February 20, 2007, as amended.

⁶ Republished in the Official Gazette, Part I no. 365 of May 29, 2007, as amended.

⁷ Published in the Official Gazette, Part I no. 1154 of 07 December 2004, as subsequently amended.

⁸ Published in the Official Gazette, Part I no. 164 of April 2, 2001, as amended.

⁹ Republished in the Official Gazette, Part I no. 749 of 3 December 2013.

¹⁰ Published in the Official Gazette, Part I no. 577 of 29 June 2004, as amended.

¹¹ The Constitutional Court has ruled by several decisions that through an emergency ordinance the Government can also regulate in the field of organic law - see Decision no. 83/1998 (published in the Official Gazette No. 211 of 19 May 1998), Decision no. 134/1998 (published in the Official Gazette No. 88 of 25 February 1998).

Are the sources of administrative law: Government Ordinance no. 27/2002 regarding the regulation of the activity of solving the petitions¹²; Government Emergency Ordinance no. 27/2003 regarding the tacit approval procedure¹³.

2.4. Administrative acts of a normative nature

The administrative acts are issued or adopted for the organization of the execution and the concrete execution of the primary regulations contained in the laws and ordinances.

Are administrative acts:

- the decrees issued by the President of Romania,
- government decisions, instructions and orders of the ministers, acts of the specialized administrative authorities subordinated to the Government (such as the normative acts of the National Authority for Consumer Protection) or to the ministries (such as the normative acts of the National Agency for Tax Administration subordinated to the Ministry of Public Finance),
- the administrative acts of the autonomous administrative authorities at the central level (such as the administrative acts of a normative nature of the National Audiovisual Council, of the National Bank of Romania, etc.) and their structures in the territory (eg the administrative acts of the territorial offices of the People's Advocate Institution) ,
- administrative acts issued by the prefect (orders) and the deconcentrated public services of the ministries and other central public administration bodies,
- the acts of the local public administration authorities (decisions of the County Council, the provisions of the President of the County Council, the decisions of the Local Council, the provisions of the mayor).

Under certain conditions, administrative acts may also emanate from legal persons under private law which, according to the law, have acquired public utility status or are authorized to provide a public service under a public power regime.

Public authorities may issue or adopt both administrative acts of a normative nature and individual administrative acts. *The administrative normative acts* are **sources of the law**, since they contain legal norms, that is, mandatory, general and impersonal rules of conduct, which take into account a generality of social relations and address an indeterminate number of persons. In contrast, *the individual administrative acts* **are not the source of the law** because they contain rules of conduct for a particular person or for a particular group of natural or legal persons (examples – building permits, contravention sanctions, a Government decision to appoint a person to a particular function) and therefore lack the characters of impersonality and generality.

Administrative acts of a normative nature are always sources of administrative law, regardless of the matter they regulate, because the administrative

¹² Published in the Official Gazette, Part I no. 84 of February 1, 2002, approved with amendments by Law no. 233/2002.

¹³ Published in the Official Gazette, Part I no. 291 of April 25, 2003, approved with amendments by Law no. 486/2003, as amended.

act is always an act of public power through which the execution of laws is organized, thus taking the very essence of administrative law. Depending on the regulations they contain, the administrative acts of a normative nature may also be sources for other branches of law. Thus, for example Government Decision no. 500/2011 *on the general register of employees*¹⁴ is by its nature a normative administrative act, being a source of administrative law. But the regulations in this decision deal with labor relations and therefore also constitute a source for labor law.

2.5. Customary law

The custom (usage) is a general practice, relatively long, repeated in relations between subjects of law, accepted by them as mandatory rule.

For a custom to become juridical (and therefore a source of law), the doctrine has formulated two **conditions**¹⁵:

a) an *objective (material) condition*, consisting of an old and indisputable practice (*longa diuturna inveterata consuetudo*);

b) a *subjective (psychological) condition*, according to which the rule (practice) is mandatory (it is necessary to recognize in the legal system by means of referral rules - *opinio juris sive necessitatis*), which can be claimed under legal sanction.

A third condition has gradually been added: *the precise character* - the content of the custom (the rule of prescribed conduct) can be determined, predictable.

The role of custom as a source of administrative law is very limited because the administrative law, usually, regulates by imperative rules, the conducts that must be applied uniformly throughout the country.

In the doctrine, it is pointed out that, depending on the evolution of the local autonomy, some administrative practices imposed by the geographical conditions, by the dispersion of the inhabitants, by their occupation, by the religious holidays and customs¹⁶, etc. may occur. Thus, for example, it is customary that in many mayoralities the mayor and local officials also work on Sundays when people come to the fair, the church, etc.

2.6. Jurisprudence

Jurisprudence represents the totality of court decisions. In the Romanian-German law system (which includes Romanian law), the court decisions enjoy only the *relative authority of res judicata*, being binding only in the case in which they were pronounced. Therefore, in this system of law **the court decisions are not the**

¹⁴ Published in the Official Gazette, Part I no. 372 of May 27, 2011, as amended.

¹⁵ See Nicolae Popa, *op.cit.*, 2014, p. 156-160; Ion Corbeanu, Maria Corbeanu, *op. cit.*, 2008, p. 169-184; Mircea Djuvara, *op. cit.*, 1999, p. 313-314.

¹⁶ See Antonie Iorgovan, *Tratat de drept administrativ*, vol. I, C.H. Beck, Bucharest, 2005, p. 139; Rodica Narcisa Petrescu, *Drept administrativ*, Hamangiu, Bucharest, 2009, p. 33; Verginia Vedinaş, *Drept administrativ*, the 9th edition revised and updated, Universul Juridic, Bucharest, 2015, p. 50, 51.

source of the law, because judicial precedents do not have a generally binding legal value, and the judge is not required to pronounce the same solutions in other cases.

Exceptions are:

- *the decisions of the High Court of Cassation and Justice in case of appeal in the interest of the law* (Articles 514-518 of the Code of Civil Procedure) promoted by the Prosecutor General, the leading college of the High Court of Cassation and Justice, the leading colleges of the courts of appeal or by the People's Advocate when it is found that in a court practice some regulation is applied differently. The decisions of the High Court of Cassation and Justice in this case have the role of achieving the unitary application of the law throughout the country, being mandatory for the lower courts;

- *the decisions of the High Court of Cassation and Justice in the case of a preliminary ruling in order to solve certain legal issues*. According to art. 519 of the Code of Civil Procedure if, in the course of the trial, a panel of judges of the High Court of Cassation and Justice, of the court of appeal or of the tribunal, invested in final settlement of the case, finding that a matter of law, whose explanation depends outcome of the substantive settlement of this case, is new and the High Court of Cassation and Justice has not pronounced and is not the subject of an appeal in the interest of the law currently being solved, it will be able to ask the High Court of Cassation and Justice to issue a ruling on to resolve the matter of law with which he has been heard. According to art. 521 (3) of the Code of Civil Procedure the solution to the questions of law is mandatory for the court that requested the solution from the date of the decision, and for the other courts, from the date of publication of the decision in the Official Gazette of Romania, Part I.

- *the decisions of the Constitutional Court* are generally binding as of the date of their publication in the Official Gazette and have power only for the future (Article 147 (4) of the Constitution). Decisions that rule on exceptions of unconstitutionality are binding *erga omnes* (for all), not only for the parties to the dispute. According to art. 147 (1) of the Constitution the provisions of the laws and ordinances in force, as well as those of the regulations, which are found to be unconstitutional, shall cease their legal effects within 45 days of the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, cannot bring into line the unconstitutional provisions with the provisions of the Constitution. For this limited length of time the provisions found to be unconstitutional shall be suspended *de jure*.

- *court decisions by which the normative administrative acts are canceled*. The final and irrevocable court decisions, which totally or partially canceled an administrative act of a normative nature, are generally binding and have power only for the future according to art. 23 of Law no. 554/2004 *of administrative contentious*. They shall be published obligatory, upon motivation, at the request of the courts, in the Official Gazette of Romania, Part I, or, as the case may be, in the official monitors of the counties or of the municipality of Bucharest, being exempt from the publishing fees.

2.7. Legal doctrine

The legal doctrine is legal literature (articles, monographs, courses, treaties)¹⁷. In the Roman-German law system as well as in the Anglo-Saxon law, the opinions expressed by authors in doctrine do not have a binding legal force and therefore *do not constitute a source of law*¹⁸.

However, both the legislator and the judge to base their views on the creation or application of legal norms study the legal doctrine.

An important role today has the doctrine of comparative law¹⁹. The globalization and intensification of the movement of persons, goods, services and capital implies the harmonization of administrative practices by studying comparative law and creating of institutions that correspond to needs in continuous diversification.

2.8. The position of the international treaties and the legal order of the European Union within the sources of the Romanian administrative law

2.8.1. International Treaties

The international treaty is a bilateral or multilateral legal act that creates, changes or removes rights and obligations between subjects of international law (states, international organizations)²⁰. The international legal framework governing international treaties between States is given by *the Vienna Convention of 1969 on the Law of Treaties*. The conclusion of treaties between international organizations or between them and states is governed by *the Vienna Convention of 1986*.

The treaties ratified by Parliament, according to the law, are part of national law (article 11 (2) of the Constitution). Examples: Law no. 129/1997 *for ratification of the Treaty on good neighborly relations and cooperation between Romania and Ukraine, signed at Constanta on 2 June 1997*²¹; Law no. 74/1992 *for ratification of*

¹⁷ Mircea Duțu states that "in a widely accepted view, the doctrine designates opinions, theories or theses on law (the first meaning conferred), or the set of opinions expressed on it (the second meaning) or, by extension, the works themselves and their authors (the third meaning). Conceived in this manner, it is defined, in opposition to jurisprudence, as the specific social field formed by professionals specialized in the production and transmission of legal *savoir*, commissioned to know and make known the law " – see Mircea Duțu, *Fațetele teoretice ale fenomenului juridic. Dreptul ca doctrină, știință și jurisprudență*, „Dreptul” no. 4/2014, p. 161.

¹⁸ Henri Lévy-Bruhl, *Sociologie du droit*, Presses Universitaires de France, Paris, 1964, p. 77.

¹⁹ For a history of the comparative law doctrine see Victor Dan Zlătescu, Irina Moroianu Zlătescu, *Pagini din istoria dreptului comparat*, „Dreptul” no. 3/1990, p. 41-51. For a study of comparative administrative law in Romania see Ioan Alexandru, *Drept administrativ comparat*, Lumina Lex, Bucharest, 2000.

²⁰ See Florian Coman, *Drept internațional public*, vol. II, Sylvi, Bucharest, 1999, p. 22-39.

²¹ Published in the Official Gazette, Part I no. 157 of July 16, 1997.

*the Treaty of friendship, cooperation and good neighborliness between Romania and the Republic of Bulgaria*²².

If a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution (article 11 (3) of the Constitution).

Where any inconsistencies exist between the covenants and *treaties on the fundamental human rights* Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions (article 20(2) of Constitution).

For an international treaty to be a source of administrative law, it must meet the following conditions²³: a) to be of direct application; b) to be ratified according to the provisions of the Constitution; c) to include the regulation of social relations that are subject to the administrative law.

Often, on the basis of a treaty concluded between two states, which contains rules of principle in all areas of interest for them, agreements are then concluded that develop cooperation in a limited field²⁴. Thus, the cross-border cooperation between Romania and Ukraine is governed by the *Treaty on good neighborly relations and cooperation* between the two states, signed in Constanta on 2 June 1997, ratified by Romania by Law no. 129/1997. Based on the Good Neighborhood Treaty, cooperation agreements have been concluded in various areas with impact on cross-border cooperation, including in the field of administrative law, such as the Agreement between the Government of Romania and the Government of Ukraine on cooperation in the field of border water management signed in Galati on 30 September 1997, ratified by Romania by Law no. 16/1999²⁵.

2.8.2. *The legal order of the European Union*

➤ **Romania and the European Union**

Romania was the first country in Central and Eastern Europe that had official relations with the European Community, through an understanding, from January 1974, which included Romania in the Community Generalized System of Preferences, followed by a series of agreements with the European Economic Community (EEC) for trade facilitation. In 1980, Romania proceeded to a *de facto* recognition of the European Economic Community by signing bilateral agreements, including the Agreement on establishment of the Romania – CEE Joint Commission and the Agreement on Industrial Products.

²² Published in the Official Gazette, Part I no. 174 of 23 July 1992.

²³ See Antonie Iorgovan, *op. cit.*, vol. I, 2005, p. 135; Rodica Narcisa Petrescu, *op. cit.*, 2009, p. 31.

²⁴ See Cătălin-Silviu Săraru, *Considérations sur les accords de coopération transfrontalières entre les unités administratives-territoriales limitrophes des zones frontalières de la Roumanie et les structures similaires dans les pays voisins*, „Curentul Juridic” no. 2 (45)/2011, p. 89.

²⁵ Published in the Official Gazette no. 13 of 19 January 1999.

On 1 February 1993, the *European Agreement establishing an Association between Romania, on the one hand, and the European Communities and their Member States, of the other part*, is concluded in Brussels.

In October 1999, the European Commission recommended starting accession negotiations with Romania. Following the decision of the European Council in Helsinki in December 1999, **the accession negotiations with Romania began on 15 February 2000.**

Romania has concluded its accession negotiations at the EU Winter Summit in Brussels on 17 December 2004. The Accession Treaty was signed on 25 April 2005 in Luxembourg. **On 1 January 2007 Romania becomes a member of the European Union**, along with Bulgaria.

➤ **The *Acquis* of the European Union**

The legal rules of the European Union form an organized and structured ensemble with its own sources, endowed with organs and procedures capable of issuing these rules, integrating them, as well as establishing and sanctioning, where appropriate, violations. The legal order of the Union is within the framework of the *European Union acquis* concept.

The concept of the *acquis of the European Union* (originally the *acquis communautaire*) introduced by the Treaty of Maastricht on the European Union (Articles 2, 3 and 43) consists of: the content, principles and political objectives of the original Treaties of the European Communities (The Single European Act, the Treaty of Maastricht, the Treaty of Amsterdam, etc.); the legislation adopted by the EU institutions to implement the Treaties (regulations, directives, decisions, opinions and recommendations); case law of the Court of Justice of the European Union; declarations and resolutions adopted within the European Union; common activities, common positions, signed conventions, resolutions, declarations and other acts adopted in the framework of the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA) cooperation; the international agreements to which the EU is a party, as well as those concluded between the EU Member States in relation to its activities²⁶.

➤ **Characteristics of European Union law**

European Union law is characterized by:

- Immediate application of EU law. The Union's rules of law automatically acquire a status of positive law in the internal legal order of the Member States.
- Direct applicability of European Union law. Union law rules are likely to create, by themselves, rights and obligations for private individuals.

²⁶ For a definition of the term of the *acquis communautaire* in Romanian legislation see Article 1 of the Government Decision no. 1367/2000 *on the establishment and functioning of the working group for studying the conformity of the provisions and principles of the Romanian Constitution with the *acquis communautaire* in view of the accession of Romania to the European Union* (published in the Official Gazette No. 30 of 17 January 2001).

- Priority of European Union law. Union rules have priority over any national rule. In Romania, this is enshrined in Article 148 (2) of the Revised Constitution: “as a result of accession, the provisions of the Treaties of the European Union and other binding Community rules take precedence over the contrary provisions of domestic laws, with compliance with the provisions of the Act of Accession”.

3. The need to codify the rules of administrative law

Law no. 24/2000 regarding the legislative technical norms for the drafting of the normative acts stipulates in art. 18 that “for the purpose of systematization and concentration of legislation, the regulations in a particular field or in a particular branch of law, subordinated to common principles, can be reunited in a unitary structure in the form of codes”.

In some countries, the rules of administrative procedure have been systematized in codes. This was done by Austria (1925), Belgium (1979), Denmark (1985), Germany (1976), Hungary (1957), The Netherlands (1994), Poland (1960), Portugal (1991), Albania (1999) and Spain (1958).

In France, we do not find an administrative procedure code, but the matter of administrative law is encoded in several codes, including: *Code des communes*, *Code du domaine de l'Etat*, *Code de l'expropriation pour cause d'utilité publique*, *Code général des collectivités territoriales*, *Code général de la propriété des personnes publiques*, *Code de justice administrative*²⁷.

Recently, at the level of the European Union, the Research Network on the EU Administrative Law (ReNEUAL²⁸) has developed the draft of the 'ReNEUAL' *Code of Administrative Procedure for the European Union*²⁹. The draft was presented to the plenary of the European Parliament and formed the basis of the European Parliament's resolution of 15 January 2013 calling on the European Commission to submit a proposal for an act on the EU's administrative procedure [2012/2024 (INL)].

In Romania, the legal rules that form the branch of administrative law, unlike other branches of law that are codified³⁰, are contained in disparate normative acts and not in a unitary code that ensures unity and cohesion, based on common principles, the unity of the regulatory method, accuracy and clarity of the rules.

The codification of the rules governing the action of the public administration presents an indisputable advantage for the citizen who will find in a single normative act all the rights and obligations that come within the content of the administrative law legal relation.

²⁷ These codes can be consulted on www.legifrance.gouv.fr (consulted on 1.10.2017).

²⁸ For the documents developed by the ReNEUAL, see www.reneual.eu (consulted on 1.10.2017).

²⁹ See Herwig C.H Hofmann, Jens Peter Schneider, Jacques Ziller, Dacian C. Dragos, *Codul ReNEUAL de procedura administrativa a Uniunii Europene*, Universul Juridic, Bucharest, 2016.

³⁰ Thus, the civil law rules are systematized in the Civil Code, the norms of the civil procedural law in the Civil Procedure Code, the norms of criminal law in the Criminal Code, the norms of the criminal procedural law in the Criminal Procedure Code, the labor law norms in the Labor Code.

Administrative codification must ensure in a unitary conception: the rational organization of the entire public administration apparatus in order to increase its efficiency; the precise determination of the rights and obligations of civil servants, of their responsibility for deeds of service; citizens' knowledge of their rights and obligations as subjects of legal relations with the public administration³¹.

The doctrine also highlights the difficulties of codifying administrative law³²:

- the diversity and heterogeneity of the subject matter of the regulation of administrative law

- the large number of public authorities competent to issue administrative rules

- the multitude of normative texts regulating the activity of public administration

- the specificity of public administration, the main object of regulating administrative law, in constant change, transformation, in order to be able to cope with the new challenges of social reality.

After 1990 the preoccupations for the administrative codification determined the elaboration in 2000-2003 by the specialists in the field of public administration within the Regional Center for Continuous Training for the Local Public Administration of Sibiu, in collaboration with the Academy of Civil Servants of Germany, of two draft codes: the *Administrative Code*³³ governing substantive issues and the *Code of Administrative Procedure*³⁴ containing contentious and non-contentious proceedings. These projects were later analyzed at the „Paul Negulescu” Institute of Administrative Sciences³⁵ and then within working groups set up by the Government³⁶ during the course of time. In 2008, the Government approved *the*

³¹ Iulian M. Nedelcu, *Considerații privind necesitatea adoptării unui Cod de procedură administrativă cu trimiteri la instituții juridice civile*, „Revista de Științe Juridice” no. 2/2006, p. 116; Mircea Anghene, *Necesitatea codificării normelor de procedură administrativă*, „Revista Română de Drept” no. 11/1973, p. 62 et seq.; Liliana Vișan, *Necesitatea codificării normelor de procedură administrativă*, „Revista de Drept Public” no. 2/2005, p. 71.

³² See Verginia Vedinaș, *op. cit.*, 2015, p. 79.

³³ See the Regional Training Center for Local Public Administration Sibiu, *Codul administrativ al României – proiect*, Global Media, Sibiu, 2002.

³⁴ *Romania's Administrative Procedure Code*, draft published in the Public Law Journal no. 4/2004.

³⁵ The Institute of Administrative Sciences "Paul Negulescu", re-established in Sibiu in 1995, is the continuation of the Institute of Administrative Sciences founded in 1925 at the initiative of Professor Paul Negulescu. It has the status of a public utility association and is the Romanian national section of the International Institute of Administrative Sciences (IISA Brussels). By Law no. 246/2007 (published in the Official Gazette, Part I No. 485 of July 19, 2007, with subsequent amendments) was established the Institute of Public Law and Administrative Sciences of Romania, continuation of the Institute of Administrative Sciences "Paul Negulescu".

³⁶ See the Special Team for the Completion of the Draft of the Administrative Procedure Code of Romania constituted by the Order of the Minister of Internal Affairs and Administrative Reform no. 289/2007; The working group for development of the draft Administrative Code established by the Order of the Minister of Administration and Internal Affairs no. 84/2010; The working group for finalizing the draft of the Administrative Code and development of the draft Administrative Procedure Code established by the Order of the Minister of Regional Development and Public Administration no. 2394/2013.

Preliminary Theses of the Administrative Procedure Code Draft by Government Decision no. 1360/2008³⁷ and recently approved the *Preliminary Theses of the Administrative Code Draft* by the Government Decision no. 196/2016³⁸. Unfortunately, we find that these codes have not been adopted until now, although they are required by theoreticians and practitioners of administrative law.

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³⁷ Published in the Official Gazette, Part I no. 734 of October 30, 2008.

³⁸ Published in the Official Gazette, Part I no. 237 of 31 March 2016.