Administrative law science in Romania

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Abstract

This study investigates the emergence of the science of administrative law in Romania and analyzes some introductory notions in Romanian administrative law: definition of administrative law; the object of regulation of the Romanian administrative law; and the features of administrative law. Administrative law is the branch of law that encompasses the legal norms governing social relations regarding the organization, activity, control and liability of the public administration, based on and in the enforcement of the law. Administrative law implies an administrative legal regime for regulated social relations justified by the specific nature of the realization of the public interest, the administration of the assets subject to the public property and the provision under the continuity and permanence of public services.

Keywords: *science of administrative law, administrative legal regime, public administration, public interest.*

JEL Classification: K23

1. The emergence of the science of administrative law

Administrative law as a science has emerged in France since the beginning of the 19th century. The founders of the science of French administrative law are[2] Joseph Marie Gérando, Baron de Rathsamhausen (who published *Institutes du droit administratif français, ou Éléments du code administratif, réunis et mis en ordre*, 6 vol., 1829-1836), Louis-Marie de La Haye, Vicomte de Cormenin (he publishes in 1822 *Questions de droit administratif* and in 1840 publishes the book *Droit administratif*) and Louis-Antoine Macarel (he publishes in 1818 *Éléments de Jurisprudence administrative* and in 1828 the book *Tribunaux administratifs*, also between 1844-1846 publishes *Cours de droit administratif*, in 4 volumes).

Gradually, the study of administrative law science was extended to law schools in other countries.

A particular case opposed to the French model is the United Kingdom. In 1885, the work written by A.V. Dicey entitled "*Introduction to the Study of the Law of the Constitution*", in which the author denies the existence of an administrative law in England, appears in England, considering that public administration was subject to the common law and administrative litigations were resolved England by

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[2] See Gilles J. Guglielmi, *Vu par ses pères fondateurs, le droit administratif*, în *Le droit administratif en mutation*, PUF, 1993, p. 42.

common law courts and not by specialized courts of administrative litigation, as is the case in France[3]. The theory of denying the existence of an administrative law in the United Kingdom has dominated much of the 20th century.

From the second half of the twentieth century it will be seen in the United Kingdom: a) an extension of the sphere of public administration and at the same time, it recognizes the special powers enjoyed by the administration in order to achieve the public interests of the society; b) development of special administrative jurisdictions (currently there are over 2000 administrative jurisdictions, especially in the field of the social security and the labor law[4]). This has led to the establishment of administrative law theories together with constitutional law theories united in the "Constitutional and Administrative Law" discipline currently taught at law schools in the United Kingdom, a concept illustrated in numerous papers and university courses[5]. Therefore, in the last time there is an attenuation of the classical theory of non-existence of an administrative law in the United Kingdom supported by A. V. Dicey.

2. The emergence and evolution of the science of administrative law in Romania

In the Romanian Principalities, elements of administrative law were taught for the first time in a discipline entitled "Public Law" („Drept public") which also included elements of constitutional law at the Mihailean Academy in Iasi starting with the academic year 1858-1859 (a course taught by Simion Bărnuţiu).

Later, with the establishment of the University of Bucharest in 1864, Faculty of Law was established discipline "Public Law" which contained elements of constitutional law and administrative law.

In the United Principalities of Moldova and Wallachia, the first administrative law book entitled *"Romanian Administrative Law"* („*Drept administrativ român*") was written by Giorgie C. Alexandrescu-Urechea and appeared in Iasi in 1875.

A valuable scientific work titled *Curs de drept public român* (*Romanian Public Law Course*) in three volumes was published by Constantin G. Dissescu between 1890-1891. The first two volumes deal with the principles and institutions of constitutional law, and the third volume deals with the matter of administrative law. Through this work, Constantin G. Dissescu can be considered the creator of the constitutional law and administrative law branches in Romania.

During the period of the Kingdom of Romania, European personalities in the field of administrative law will be distinguished: Paul Negulescu (which wrote

[3] A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, Macmillan and Co., Londra, 1885, p. 180.

[4] See Ioan Alexandru, *Drept administrativ comparat*, Lumina Lex, Bucharest, 2000, p. 102.

[5] See O. H. Phillips, P. Jackson, *Constitutional and Administrative Law*, 6th ed., Sweet-Maxwell, Londra, 1978; A. W. Bradley, R. D. Ewing, *Constitutional and Administrative Law*, 12th ed., Londra, 1998.

in 1904 the book *„Tratat de drept administrativ”* - "*Treatise of Administrative Law*" in two volumes, reprinted four times until 1934), Anibal Teodorescu (his reference book is *„Tratat de drept administrativ”* - *"Treatise of Administrative Law"* in 2 volumes: vol. 1 - 1929, vol. 2 - 1935) and Constantin Rarincescu (founder of Romanian school in administrative litigations matters. His reference book is „*Contenciosul administrativ român*" - *"Romanian administrative contentious"* published in 1936).

During the communist period (1948-1989), we note the reference works of the authors: Romulus Ionescu („*Curs de drept administrativ al R.P.R. - ”Administrative Law Course of R.P.R."*, Didactic and Pedagogical Publishing House, Bucharest, 1960), Mircea Anghene („*Elemente de drept administrativ*" - *"Administrative Law Elements"*, Scientific Publishing House, Bucharest, 1958), Ilie Iovănăş („*Drept administrativ şi elemente ale ştiinţei administraţiei*" - *"Administrative Law and Elements of Administration Science"*, Didactic and Pedagogical Publishing House, Bucharest, 1977).

After 1989, have been highlighted as international researchers and law school creators: Antonie Iorgovan (his fundamental work is *Tratatul de drept administrativ - Treatise of Administrative Law*, the last edition - fourth edition - was published in two volumes at the C.H. Beck Publishing House in 2005) and Ioan Alexandru (author of a unique work in the contemporary Romanian administrative doctrine entitled „*Tratat de administraţie publică*" - *"Treatise of Public Administration"*, Universul Juridic Publishing House, Bucharest, 2008).

3. Introductory notions of Romanian administrative law

3.1 Definition of administrative law

Administrative law is the branch of law that encompasses the legal norms governing social relations regarding the organization, activity, control and liability of the public administration, based on and in the enforcement of the law[6].

Public administration due to its complexity is currently governed by legal norms belonging to several branches of law[7]. Thus, some patrimonial relations within the public administration are governed by civil law, financial relations are subject to regulation of the rules of financial law, labor and wage relations are regulated by labor law, etc.

3.2 The object of regulation of the Romanian administrative law

The rules of administrative law regulate:

- the organization and functioning of public administration authorities;

[6] See Rodica Narcisa Petrescu, *Drept administrativ*, Hamangiu, Bucharest, 2009, p. 27.
[7] See Alexandru Negoiță, *Drept administrativ*, Sylvi, Bucharest, 1996, p. 34; Rodica Narcisa Petrescu, *op. cit.*, 2009, p. 28.

- the relations between the public administration authorities, on the one hand, and between them and the natural and legal persons, on the other;
- the rights and obligations of civil servants regulated mainly by the Civil Servants' Statute;
- the legal regime of public property;
- the liability of public administration authorities;
- the contraventional liability of natural and legal persons;
- the exercising of administrative control;
- the administrative contentious consisting of all disputes of an administrative nature, arising in relations between the administration and other persons, which are given to the jurisdiction of the courts;
- the principles and procedure according to which the activity of public administration authorities takes place.

3.3 The features of administrative law

Romanian law is part of the Roman-German legal system, a dualist system based on the classical division as a public law - private law.

Administrative law is a branch of public law. As early as antiquity, the Roman jurist Ulpianus stated that "public law is the one that concerns the organization of the Roman State; private law concerns particular interests" (*„Publicum jus est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem pertinet"* – Ulpianus, D., 1.1.2).

Administrative law will present the general features of public law as well as its own features.

The main features of public law are[8]:

• traditionally, the rules of public law protect the public interest, which justifies the special protection granted;

• one of the subjects of the public law relationship (the social relationship governed by the rules of public law) is a public authority;

• the parts of the legal relationship of public law are in a position of juridical inequality, the state (public authorities) having an superordinated position and the other part a subordination position;

• the legal norms constituting the public right are in principle imperative rules, from which it can not be derogated by the will of the parties – „*Jus publicum privatorum pactis mutari non potest"* – D., 2.14.38 ("Public law can not be modified by conventions between individuals");

[8] See Mircea Djuvara, *Teoria generală a dreptului. Drept raţional, izvoare şi drept pozitiv*, All Beck, Bucharest, 1999, pp. 68-78; Giorgio del Vecchio, *Lecţii de filozofie juridică*, Europa Nova, Bucharest, 1994, pp. 215-217; Henri Lévy-Bruhl, *Sociologie du droit*, Presses Universitaires de France, Paris, 1964, p. 7,8; Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *Teoria generală a dreptului*, 2nd ed., C.H. Beck, Bucharest, 2008, pp. 253-257; Nicolae Popa, *Teoria generală a dreptului*, 5th ed., C.H. Beck, Bucharest, 2014, p. 71-75; Ion Corbeanu, Maria Corbeanu, *Teoria generală a dreptului*, Lumina Lex, Bucharest, 2008, pp. 188-191.

- the rules of public law are defended by the public authorities *ex officio*.

Administrative law embraces all these features of public law. Additionally, the administrative law has specific features, which derive from its object of activity.

Administrative law implies an administrative legal regime for regulated social relations justified by the specific nature of the realization of the *public interest*, the administration of the *assets subject to the public property* and the provision under the continuity and permanence of *public services*.

The administrative legal regime is a set of rules specific to the public administration activities established by norms of administrative law in order to achieve the public interest, distinct from those regulating the relation between the individuals. Thus, for example, the adoption of unilateral administrative acts is done in accordance with specific previous, concomitant and forward-looking procedures. Also, the bilateral legal acts (administrative contracts) are subject to a legal regime that differs from the legal regime applicable to private law contracts. The administrative contracts are signed, usually, after a prior procedure by which the public authority selects its private partner (public tender), part of the contract clauses are regulatory clauses unilaterally set by the public administration, the administration has the possibility to unilaterally terminate the contract when the public interest demands it, etc.

In administrative law, **public interest has priority over private interest**. Unlike the private individuals who pursue their personal interests by signing different legal acts from a position of juridical equality, the administrative authorities, when acting as agents of general interests of society, will be able to impose unilaterally their will from a position of juridical inequality, regulating social conduct, establishing rules for the organization and functioning of public services and affecting the assets of public utilities.

Administrative law sets the limits on how the public administration can act by virtue of public power prerogatives (the principle of legality). The **public power** can be defined as a right derived from the law that the public authorities have to impose with legally binding decisions on other legal subjects (natural and legal persons). In a democratic state, the public power is always exercised within the limits of law. The public administration authorities carry out their activity **on the basis of law and in accordance with the law**, aiming at the organization of the execution and the concrete execution of the law. Applying the principle of legality implies that the activity of any public authority is carried out in accordance with the provisions of the normative acts and administrative acts of the superior hierarchical authorities, as well as taking into account its own regulations adopted in accordance with the normative and administrative regulations with higher juridical force.

Administrative law sets the conditions under which it is undertaken the legal liability of the public administration. In a state governed by law, the public authorities and civil servants liable for damaging the rights and legitimate interests of natural and legal persons. In Romania people injured by administrative acts have the right to address petitions to public authorities under the terms of art. 51 of the Constitution and Government Ordinance no. 27/2002 *regarding the regulation of the*

activity of solving petitions, the right to address at the Advocate of the People (Ombudsman), as well as the right to address, under the conditions of Law no. 554/2004 *of the administrative litigations*, at the administrative contentious instance.

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