CONCEPTUAL FOUNDATIONS OF THE ORGANISATION AND FUNCTIONING OF THE ADMINISTRATION

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Abstract

The public administration is the activity which comprises the organization and the concrete execution of the law, with a mandatory and provisional statute, mainly realised by the bodies of the public administration, and, subsequently, by the other state bodies as well as the private entities of public interest.The public administration is realised by those state structures which form the executive branch, while the executive branch is realised through the bodies comprised within the system of the public administration. It represents the service provider for the citizens.The science of the administration has its own subject matter, that is the public administration, in its entire complexity, with the purpose of framing general principles and norms, necessary for its organic and functional reformation. The administration cannot be seen as a universal and permanent entity, its large variety of means cannot be explained just through the economic and demographic importance of the states; it is necessaryto take into consideration the structures, the customs, the political practices of each nation.

Keywords: *state structure, the system of the public administration, interdisciplinarity, administrative era, administrative phenomenon*.

1. THE SCIENCE OF THE ADMINISTRATION. GENESIS AND EVOLUTION

Following the line of diversity and specialisation of the field of research, one should consider the recent emergence, in the system of sciences, *of the science of the administration*, through the separation of the field of examination of the administrative phenomenon from the field of the science of law, and particularly, of the science of the administrative law.

The emergence of the science of the administration, the controversies concerning its nature, its place and the role it holds within the system of the sciences, the discussions proposed by the professionals in relation with the autonomy and the interdisciplinarity of this science, all originate in the particular importance of the administration and the "government phenomenon" for the society.

The administration became the characteristic element of the modern society and the key notion of the science of the administration. We see an increased discussion of an "administrative era" and, together with the scientific and technical revolution, of an administrative revolution which differentiates the modern societies from the traditional ones.

The public administration must answer major requirements through the scientific organisation and the continual improvement of its activity and structures, through the use of all resources allotted efficiently, with the purpose of achieving the best results with the minimal efforts.

But, as one is very familiar with, the continual improvement of the public administration cannot be realised only by establishing some problems of the current reality in the public administration, but, firstly, based on the scientific research of the public administration. This scientific research focuses on the in-depth knowledge of the public administration, and based on the acquired results, on the possibility of formulating proposals aimed at the organisation and the efficient functioning the public administration. Only with solid scientific grounds the public administration will be able to deal with the multiple and complex demands of the contemporary society, and, in this context, of its main component and beneficiary, the citizen.

Nevertheless, one should not forget the importance of the material sources of the public administration, it should not be diminished, especially when referring to the activity of

adopting new legal provisions, respectively when analysing the need of intervention of the authorities with a normative competence within an established rule of law. The formal sources represent the legal forms through which the governing will is expressed or externalised. The formal sources of the rule of law are the normative decisions adopted or issued by the competent public authorities, decisions which comprise the legal provisions, obligatory, mandatory rules of conduct (BREZIOANU, 2003).

At the beginning of the *21st century*, the science of the administration is largely considered a social science, whose subject matter is not related to a pre-existent matter, but a gathering of problems originating in real life. Max Weber[1] on the delimitation of the field of political science and its purpose says « *it is not the relationship between "things" that constitutes the principle of the delimitation of the different scientific fields, but the conceptual relationship between problems*». In this context, the subject matter of a science appears not to be a concrete subject, but one built "according with a theoretical problem permanently subjected to a systematic interrogation of the aspects of the reality matching the problem considered". As such, the emergence of this new science does not correspond to an "objective" necessity, but it arises from special research (sociological in the case of the administrative studies) which will launch a new perspective of the reality, in this way dealing with certain social conditions.

This social aspect is extracted from a set of representations which offers a certain significance to it, and consequently, we will firstly see the reception of concepts such as "*police*", "*administration*", "*bureaucracy*" and then the progressive theorisation of the administrative phenomenon.

As such, we can say that we face the concept of the administration from the moment when one names and designates the administrative phenomenon, separating it from other social aspects. A conclusion arises stating that the science of the administration, as any other social science, cannot be established but as a part of a set of particular problems posed by the social reality, that is according to a problem which allows the theoretical reconstruction of the subject matter. In our case, this is established when the administration becomes the subject of the science, and the autonomy is established in relation with other social sciences dealing with the administrative phenomenon.

Such an approach is stated in the European doctrine, especially in the French one, where the science of the administration, ***in the seventh decade of the 20th century***, was considered as having as subject matter a special category of phenomena whose analysis had to lead to knowing the problems posed by the administrative action and, especially, the matters of the efficient activity.

In Starosciak'**s**[2] view, the subject matter of this science is the activity of the state administrative bodies, seen from an organisational perspective, under the aspect of the possibility of discerning principles and provisions of the functioning of the state administration.

Concerning the public administration, this represents a complex phenomenon whose knowledge requires a multilateral approach, making the science of the administration to present an interdisciplinary character, in the view of the authors mentioned above. This character is caused by the critical use in the science of the administration of the data and knowledge presented by other scientific fields concerning the administrative phenomenon.

The science of the administration has as its own subject of research the public administration, in its entire complexity, with the purpose of establishing general principles and norms, necessary for its organic and functional reformation.

2. THE FOUNDATIONS OF THE ADMINISTRATIVE SYSTEMS- THE CONCEPTUAL FOUNDATIONS OF ORGANISATION AND FUNCTIONING

The administrative systems are organised according to certain constants; their research and the discovery of the laws governing the administration were permanents and essential aims for the science of the administration. For a long time, the research was focused on the discovery of the best possible rules of organisation.

Fayol[3]***, Taylor***[4] and the American theorists have illustrated this pragmatic and utilitarian tendency, based on efficiency and performance.

It is likewise established that the classical analysis of the bureaucratic organisation made by Max Weber assembled all the requirements of order and efficiency of an ideal pattern of administration because it was based on:

- a set of abstract norms, rules, techniques and procedures;
- a hierarchy of functions along with a strict and homogenous discipline;
- a permanent public function, specialised, qualified, paid and equipped with guarantees of promotion.

This normative perspective of the ideal public administration has been dropped once one saw flaws in terms of bureaucratic organisation which led to an unavoidable routine, inefficiency and lack of adjustment abilities. In this context, other organisational tendencies have emerged, directed to the opening of the administrative system towards the outside environment, the attenuation of the hierarchical relations, the emergence of decentralised power centres.

In relation to this evolution, an administrative system can be studied in relation to certain standard systems oscillating between homogeneity and heterogeneity, between hierarchy and participation, between unity and pluralism. At the same time, these terms represent the principles of organisation of the administrative systems.

According to the classical pattern, the public administrative system is a closed community, which finds in itself the vert principles of functioning; conversely, one can establish an open administration towards the environment whose organisation structure reflects the diversity of the social system. Practice has proven that the administrative system is necessarily permeable facing the environment, but at the same time it preserves its distinctiveness which guarantees its functioning. Homogeneity and heterogeneity represent the main terms between which the administrative systems oscillate.

The principles of the homogeneity focus on the necessity of the internal cohesion of the administrative apparatus at the expense of the lateral communications it maintains with the outside world, with the rest of the society. The cohesions inside the administrative apparatus present two types:

- cohesions among the administrative bodies
- cohesions among the agents (civil servants).

The administrative bodies present certain characteristics which isolate themselves from the rest of the social system. According to certain authors, Darbel[5] and Schnapper[6], the situation of the public administration, in relation with the private sector, is of a monopolistic nature. This situation favours the development of close relations which unite the administrative system of the state to the political system. According to Max Weber's statements, "*in an organised state, the physical violence is a state monopoly*"; from this statement arises the conclusion that the administration holds an exclusive control over the material means of constraint. The idea of the state monopoly is the foundation of the public service. Even if in economy the situation of the state is no longer a monopolistic one, the administration kept their benefits obtained in the course of time, with the purpose of defining their own monopoly.

The workers in the public administration are subjected more or less to a regime of the common law, through which they benefit from regalian rights, as well from duties unknown to private persons. The characteristic of this regime is given by the fact that in some countries the lawsuits concerning the administrative activities are dealt with by a special court and a particular administrative law. The administrative apparatus creates its own internal regulations, whose coherence and unity are assured through the existence of a set of norms.

As shown in the specialised literature, in the Romanian legal literature, like what happened in the entire Eastern Europe after the Second World War and up to 1989, the discussions concerning the notion of the state administration focused on the following main directions (NEDELCU, 2009):

a) The relation between the basic forms of the realisation of the state power and the categories of state bodies;

b) The qualification of the economic activity (tacitly of the structures which realise it in relation with the administrative activity);
c) The relation between the character of legal activity of the state administration and its character of political activity;
d) The subject matter of the administrative law, respectively of the science of the administration.

3. THE CONCEPT OF THE ADMINISTRATION IN THE NEW REGULATION STIPULATED IN THE GOVERNMENT EMERGENCY ORDINANCE NO. 57 FROM JULY 3, 2019, CONCERNING THE ADMINISTRATIVE CODE – GENERAL CONSIDERATIONS.

The Administration cannot be seen as a universal and permanent entity, its large variety of its means cannot be explained just through the economic or demographic importance of the state; it is necessary to take into consideration the structures, the customs and the political practices of each nation.

Therefore, through the enactment of the new Administrative Code, the Government at that time hardened, through concrete deeds, its pro-European stance, just as the other governments did from the fall of Communism to the present time. The enactment of this Code showed opportunities and prosperity for all the citizens of Romania. The enactment of the Administrative Code represents the legal event of the year 2019.

A complete definition of the public administration can be formulated as following: the public administration is the activity of organisation and concrete implementation of the law, with a mandatory and provisory statute, mainly realized by the bodies of the public administration, and, subsequently, by the other state bodies as well as the private entities of public interest.

Therefore, globally and concretely, the administration is an organised set, whose compounds are structured and interact between each other and form a system, realising the role of bodies of the system, each of them participating to the realisation of the executive function of the state, from their level of competence, based on and according to the law.

The public administration is realised by those state structures which form the executive branch, the executive function is carried out through the bodies comprised in the system of the public administration. It represents the service provider for the citizens.

From the definition assigned to the public administration one can conclude that it comprises the legal decisions and the material operations through which the laws are realised (implemented), let it be through the release of the normative decisions under the law, let it be through the organisation and the effective and direct provision of public services.

4. THE ORGANISATION OF THE PUBLIC ADMINISTRATION – CONCEPTUAL FOUNDATIONS AND SYSTEMIC ANALYSIS

The organisation of the administrative system from Romania includes taking into consideration, outside the organisational relations and other structural compounds, the following: the hierarchical level, the hierarchical significance, the division, the place, the position (BODALE, n.d.).

In the public administration in Romania the number of the hierarchical levels does not differ largely from one institution to another. That happens because, at the level of the central administration, for example, the ministries have enacted standard structures and, as a rule, they have the same number of hierarchical levels. Similarly at the level of the local administration the number of the hierarchical levels differs slightly from one institution to another (PROFIROIU, 2001).

A major role in the organisation of the public administration is played by the *hierarchical significance*, that is the number of people managed directly by an official in a managing position, elected or permanent. The size of the hierarchical significance is influenced by the number of the hierarchical levels to which it is in reverse ratio.

The manner in which various *divisions* contribute to the realisation of the general public interest determines their differentiation in

operational divisions and functional divisions. *The operational divisions* contribute to the effective realisation of a public service and/or the implementation of the law very necessary to achieve the system of objectives of the public management (MANDA, 2012).

The functional divisions contribute to the establishment of the proper actions derived from the knowledge of the concrete realities in the territorial administrative units. Inside these divisions the administrative decisions are enacted, at the same time, covering the specialised assistance necessary for all the divisions belonging to a public institution. In this category one includes, as a rule: ministries, agencies, departments, directorates and services.

If we were to refer to the contemporary principles of organisation of the public administration, we would underline the fact that the organisation of the public administration in Romania, according with the current Constitution, is based on the enactment of the fundamental principles prevalent in the present times, not only in Europe, but all over the world.

The organisation of the administration is based on several very important principles, major we can say, such as:

Administrative centralisation

The administrative centralisation places the management of all administrative matters in the hands of the central authority. It is characterised by the dependency of the local bodies on the central bodies which establish the decisions applicable on the job, it implies a strict subordination.

Seen as the natural relation of the central authority with the local authority, the administrative centralisation has a counterpart, that is the lack of relation, which is not possible.

In an environment in which this system of administrative organisation is applied, the territorial administrative units hold no legal powers and remain in a strict dependency on the central authority, with a restricted competence of executing its instructions. The characteristic of the centralised system is the hierarchical control, exerted over the activities of the lower bodies. Basically, the hierarchical control is characterised by the fact that:

- it gives the hierarchical superior the right to overrule, to repeal, to revoke and in some cases to change the decisions of the lower body;
- it can be exerted any time, either by default, or on demand ("the hierarchical recourse");
- it must not be overtly stipulated by the law, but it derives from the centralised organisation;
- it concerns the entire activity of the lower body – decisions, facts, material operations:
- it concerns not only the legality, but also the opportunity of the administrative decisions. As an example of centralisation, we have in Romania the subordination of certain central institutions under a ministry (as an example, the National Agency of Civil Servants operates under the supervision of the Ministry of the Public Administration).

Within the frame of the centralised system, the state does not recognise the existence of the local collectivities, it does not consider them to have a legal life and does not grant them legal force. It assumes through its own budget the resolution, on its behalf, of the general interests wherever they might manifest themselves, either on a national level, or on a local level. The centralised system is characterised mainly by a structure strongly levelled which concentrates the power of decision and initiative in the hands of the central authority (SĂRARU, 2020).

The authorities of the local administration, if they exist, just relay the problems faced on the job to the competent central authorities and, on the other hand, they relay the decision of these authorities to those being managed. In this way, a sole will derive from the central authorities is relayed to the extreme corners of the territory.

Conclusively, *the administrative centralisation*, as a state system of organisation, displays the following characteristics (VEDINAȘ, 2020):

- the state is the sole moral entity of public law, from a political and a territorial perspective;
- the public interest is singular, that of the centralised state;
- the organisation of the administration is based on a strict hierarchy, under a central supervision;
- the activity (the competence) of the local authorities is restricted;

- the state exerts a rigorous hierarchical control, being able to overrule, to repeal, to revoke or to suspend the decisions of the local authorities.

The administrative devolution

The devolution represents the intermediary measure in the process of decentralisation, seen as transfer of duties from the centre to the agents of the central authority managing various local bodies; it represents much less than the decentralisation and implies the recognition of a certain authority of decision-making, on behalf of the state agents distributed all over the national territory (the prefect, the external services of the ministries act in the interest of devolution) (TOFAN, 2020).

The administrative doctrine traditionally identifies two forms of decentralisation as following:

- the territorial decentralisation
- the technical decentralisation or through services.

The territorial decentralisation implies the existence of chosen authorities, at the level of the territorial administrative units, authorities which hold the general material competence.

The technical decentralisation or through services implies the existence of moral persons of public law who provide certain public services, separate from the bulk of the public services provided by the state authorities.

The administrative devolution is a variant of the centralisation, characterised by the fact that the local representatives of the central authority obtain certain right of decision-making on their own; in reality, it is the state which decides, but not from the level of the central authority, but directly in the territorial administrative units. The central bodies exert a continual hierarchical control over the territorial bodies. Romania sees the devolution of the external services of the ministries in the territory: Directorates, Inspectorates, Agencies and so on (ŞTEFAN, 2019).

The characteristics of the administrative centralisation are preserved, with the exception of the fact in the territory there are no longer simple executive agents of the central will, but administrative authorities proper holding their own competences. These structures are named and revoked by the centre, which supervises and holds them accountable. They serve the singular interest of the state, but for central matters of local interest (of reduced importance) they hold their own competences. The manner in which the competence sharing is realised between the centre and the devolved administrative authorities reflect the degree of the administrative devolution (MUNTEANU, 2010).

Nonetheless in all the situations the territorial structures have the duty of relaying to the centre the situation on site and to execute its orders.

Conclusively, this system of administrative organisation preserves a united administration, which avoids levelness, while the devolved authorities can adapt the measures and the orders relayed by the centre to the local particulars.

Therefore, we underline the fact that the administration devolution preserves the hierarchical power at the expense of the local autonomy.

The administrative decentralisation

The decentralisation does not represent the opposite of the centralisation, but its reduction, attenuation of the concentrated powers. Therefore, one of the issues concerning each nation is the necessary degree of the decentralisation, varying in terms of size of the territory, the size of the population, the existent economic and political conditions, traditions and so on.

The administrative decentralisation implies the existence of local public persons, designated by the territorial community, with their own duties, directly intervening in the management of the collective matters, involving the local autonomy.

The territorial decentralisation implies the right of a local community, included in a larger community, to manage itself through its own means. The decentralised bodies enjoy autonomy in managing local matters, but they are not independent. There is a state control exerted on them, called administrative trusteeship. Distinct from the hierarchical control, the administrative trusteeship is exerted only in the cases overtly provided by the law, only by the bodies shown

overtly by the law, and concerns only the legality of the administrative decisions, not their opportunity.

It implies the existence of common interests of the inhabitants within a geographical section, portion of the state territory (county, town, commune), distinct interests from the national interests, and which manifest themselves in various domains of activity.

The Romanian administrative trusteeship is jurisdictional, that is is restricted just to the right of the controlling body (the prefect) to appeal to the administrative court.

The technical decentralisation can include services when it is realised through the removal of a public service from the competence of the central bodies and its autonomous organisation, the attribution of proper bodies and a distinct patrimony from the authority from which it derives. Through the Framework Law of Decentralisation no. 339/2004 and the subsequent Administrative Code, there were introduced the fundamental principles and the general rules, as well as the institutional framework for the implementation of the process of administrative and fiscal decentralisation in Romania.

Beyond certain restrictions, the relations of the state with the local communities can lead not just to a decentralised organisation of the public administration, but just as well to the self-government and to the federalism.

The methodologies concerning the introduction, the maintenance and the exploitation of data bases by the authorities of the local public administrations are provided through administrative decisions of the managers of the ministries or the other specialised bodies of the central public administration which transferred their competences.

The regulation of the system of data bases is one the novelties brought by the Administrative Code, while there was no such provision in the old law. This appears in the context of the incontestable tightening of the legal provisions concerning the protections of the date of personal character once *the General Data Protection Regulation* was enacted.

Local autonomy

The local autonomy represents the recognised right of the territorial administrative units of fulfilling their own interests as they see them, with the observance of the legal provisions, but without the intervention of the central authority. The local autonomy represents the fundamental principle of the administrative-territorial organisation of a state.

The local autonomy represents a right, and the administrative decentralisation is a system implying it. It must not be understood, in the sense of a total freedom, as the removal of any state intervention whenever it proves to be necessary.

The principle of decentralisation in the organisation of the public administration *implies the local autonomy as well*, many times the two principles are considered together.

In the contemporary perspective, the local autonomy manifests itself with many aspects and on a number of levels. Therefore, under the aspect of the legal capacity, the local communities (regions, counties, towns, communes and so on) are matters of law separate from the state, having their own public interests, recognised as such by the legislators.

On an institutional level, they are represented by their own administrative authorities, elected through universal vote (local councils, county councils, mayors, presidents of the county councils) and they do not observe a relation of subordination with the central state apparatus. On the level of the decisional autonomy, the authorities of the local public administrative have general competences and make decisions in the interest of the communities they represent. The local autonomy cannot manifest itself properly unless it is recognised on the level of the financial, material and human resources they have. Therefore, the local communities have their own budgets, they have a patrimony which includes the goods belonging to the public and private domain of the county, of the municipality or of the commune and are serviced by civil servants selected according with their competence.

The content of the principle of the local autonomy can be find not only in the activity of

the Romanian local public administration, but as well in the relations between the communal, city and county authorities and also in the relations between these and the authorities of the devolved public administration.

Such a conclusion arises also from the content of art. 84 par. 3, the Administrative Code, which states that the local autonomy is only of an administrative and fiscal nature, being exerted on the bases and within the limits provided by the law, which leads to the fact that the local autonomy can be subjected to legal restrictions.

The authorities of the specialised central public administration are exclusively authorities of the state administration, while the authorities of the public administration within the territorial administrative units can be split between: public services of the devolved specialised authorities of the public administration in the territorial administrative units and the autonomous administrative authorities of the communes, towns and counties.

In this context, one must underline the provisions of art. 3 par. 3 from the Constitution, republished, still unchanged, concerning the territory, according to which "*the territory is organised, on an administrative level, in communes, towns and counties. Under the legal conditions, some towns are declared municipalities.*"

5. THE ORGANISATION AND FUNCTIONING OF THE PUBLIC ADMINISTRATION IN ROMANIA. SHORT PRESENTATION AND ANALYSIS.

Based on the new specialised legal provisions, the current administrative doctrine promoted a perspective according to which the evolution of the organisation of the administration has been influenced by the military and the geographical factors, firstly, to which, in the course of time, other factors added up, such as the economic, political, cultural, religious factors.

The traditional matter arising from every administrative organisation, including the Romanian one, is that it is important to know whether the tasks to be fulfilled will trusted to a singular state administration or these will be distributed among several bodies, each having their own authority, for each portion of the territory (BECET, 1992).

Therefore, on an organic level, the Romanian public administration is generally characterised by the lack of subordination of the local administration to the central administration, while the normative decisions and the laws establish various forms of indirect control over the local administration, and the doctrine traditionally refers to the administrative trusteeship. But on a material level, the decisions of the authorities of the local administration must observe the norms comprised in all the decisions derived from the authorities of the central administration as decisions with a higher legal force.

After the year 1989 the organisation of the Romanian public administration represented the subject matter in the administrative law and in the science of the administration, while the Western doctrine holds a different perspective in relation to traditions, the nature of the political regime, the view over the relation between the constitutional law and the administrative law, on one hand, and between the administrative law and the science of the administration, on the other hand (IORGOVAN, 2005).

The duties of the public administration are determined by its end results with the purpose of the realisation of the political values within the framework of the political system and can be defined as duties to the society with the purpose of fulfilling the general necessities and on the individual level of the members of the society.

Starting from the content and the activity of the public administration, one can underline two sets of tasks:

- tasks of leadership and organisation
- tasks of provisions

The tasks of leadership and organisation are called the traditional functions of the state aimed at regulating the activity of the members of the society with a provisory character, through which the execution of the law in organised in various domains of the social life.

These tasks have the purpose of establishing the conduct to be followed by various private

and legal persons within the society, allowing them or restricting them a certain social behaviour in some cases provided by the law. The public administration can administer penalties for failing to observe the provisions.

The provisory tasks are the functions of the public administration aimed at assigning the members of the society different services for the fulfilment of the material and the spiritual necessities. With the purpose of fulfilling these tasks a number of activities are provided such as: public sanitation and environment protection, telecommunition services, public transport, the distribution of the natural gas, of the electricity, the construction and leasing the residences, the medical assistance, the cultural and educational activities and so on (ŞTEFAN, 2018).

In order to fulfil them, it is necessary to use the following attributes and functions:

- the function of an intermediary executive mechanism;
- the function of preparing the political decisions and participating to their enactment;
- the function of organisation and ensuring the execution of the political decisions;
- the function of direct and concrete execution;
- the function of carrier of correspondence of the members of the society, relayed to the authorities enacting the political decisions.

The public administration deals with the needs of the society and works based on the organisational structures, processes, roles, relations, politics and programmes. This influences the durable economic prosperity, the social cohesions and the wellbeing of the people. The public administration, including the Romanian one, influences the social trust and determines the conditions of the creation of the public value, having the following characteristics (IORGOVAN, 2005):

a. ***The public administration is supervised.*** The public administration is subordinated to the law and provides activities based on two sets of tasks, the execution and the making of the administrative decisions.

b. ***The public administration is hierarchical and ordered.*** The administrative hierarchy derives from the military hierarchy and ensures the administrative discipline which allows the regulation of the command-and-control power (in terms of administration and law). The administrative control can be: from inside the administration, from outside the administration.

The legal control implies checking the legality of the decisions, through courts.

c. ***The public administration is paid, civil and egalitarian*** in the sense the people working in the system of the public administration are paid according to the law, serve the citizens and do not hold military ranks, supporting the equality among people, through the non-discriminatory enactment of the law.

d. ***The public administration is formalised, written and bureaucratic***. The public administration works on the bases of previously established procedures. There is an administrative traditionalism which implies routine in activity, under the conditions in which all the actions (documents, facts and decisions) are written down and registered.

e. ***The public administration has a character of continuity.*** The case here is of the existence of the temporary and permanent civil servants who largely hold their positions despite the changes at the administrative top. The explanation is based on the necessity of specialised knowledge which cannot be acquired during sudden changes and on the expertise of the civil servants which comes in time.

f. ***The public administration is structured vertically and in a horizontal manner.*** The public administration is structurally conceived with services and sets of services taking place, as an example, at a ministerial -departmental level, Directorates- Services- Offices, but also in a horizontal level under the form of relations of communication, cooperation and coordination between various bodies.

6. THE ORGANISATION OF THE ROMANIAN CENTRAL ADMINISTRATION. THE SYSTEM OF ORGANISATION AND FUNCTIONING.

Under the current constitutional regime, the central administration comprises the president, the government, the central specialised bodies

(ministries, other bodies subordinated to the government or to the ministries, autonomous administrive authorities) and central public institutions subordinated to the ministries or to the autonomous administrative authorities (including the autonomous and the national companies). Because, ordinarily, the institution of the head of state is distinctly in the specialised papers and implies detailed research, in this part of the study featuring the organisation of the Romanian central public administration in an European context we will come down just to the central public administration comprising the government, the ministerial and the departmental administration, the autonomous administrative authorities.

The system of the central organisation of the public administration comprises the President of Romania, on one hand, and the Government, headed by the Prime Minister, on the other hand (IORGOVAN, 2005).

The President of Romania has a number of duties with an administrative character, but also political duties, most of them conditioned either by the intervention of the Parliament, previous or subsequent, or by the proposal of the Government or of the Prime Minister, or by the proposal of the Superior Council of Magistracy and so on.

The Government is a collegial body which forms the executive power specific to any parliamentary regime – along with the head of state, the president or the monarch, according to the case. Within the executive branch, the balance can incline towards in favour of the unipersonal body – the head of state – or of the collegial one – the Government. But, regardless of the pre-eminence of one or the other of the two bodies, there are constant tasks to be assigned just to one of them, as there are tasks which cannot be exerted but in a joint manner. Therefore, the task of "mediating between the state powers" falls to the president or to the constitutional monarch, the leadership of the administrative activity falls to the government, while such tasks as the conclusion of the international treaties or the designation of minister's cane as the fruit of the collaboration (VRABIE & BĂLAN, 2004).

The role of exerting the general leadership of the public administration represents the command role of the government, according to which the decisions approved with the purpose of realising the political role must be carried out. We come to see a new constitutional view over the separation of the executive power from the administration and is underlined the correlation of the executive function of the state with its realisation through the entire public administration, either a state administration, or belonging to the administrative authorities of the local communities (VIDA, 1994).

The Constitution of Romania uses the notion of government in a restricted sense, that is it concerns just that part of the executive power comprising the totality of the ministers, headed by the Prime Minister, with the exclusion of the head of state.

The governmental stability, which influences not only the administrative action, but also the top brass of the hierarchy of the central administration as well, is conditioned by various factors, among which we can see the system of the political parties and the customs being enacted at the moment of forming the governments.

In a general view, the government fulfils the function of realising the politics of the nation, it is the promoter, the shaper and the executioner of the measures of economic recovering, the reduction of the inflation and the economic stability. It manages the public order, the national defense or the relations of the state it governs with the other states.

In Romania, the ministries form the second line of the system of the public administration, being the specialised central bodies, which lead and coordinate the public administration of various domains and fields of activity.

Their number is determined not only by the amount of the tasks of the public administration in one or another domain, but also by the conceptions and the political interests which manifest themselves at the level of the governing people. The ministries fulfil the tasks of leadership and organisation based on and under the conditions of the law. The Constitution of Romania, republished, contains a distinct section concerning the specialised central public administration, in the chapter meant for the public administration from title III (Public

Authorities). According with art. 116 from the republished Constitution, the ministries are organised only under the authority of the government, and other specialised bodies can be organised under the supervision of the government or of the ministries or as autonomous administrative authorities. According with art. 117 par. 1 from the republished Constitution, the ministries are established, are organised and operate according with the law. Such a constitutional provision brought into the doctrine the enumeration of various scenarios: either the enacted of an organic law, which will be the subject matter for all the ministries, or the enactment of a special law for each ministry. When it comes to a common law, it is also stated, it is understood that an Ordinance can be enacted instead of it.

The legal provisions lead to the conclusion that, in order to ensure the organisation and the operation of the ministries concerning the national defense and the public order, special laws are necessary. Ordinances can be implicitly enacted if the government receives the parliamentary approval for this purpose. For the test of the ministries, it suffices to enact government decisions. The law stipulates the competence of the government of approving, through decisions, "the roles, the functions, the attributes, the organisational structure and the number of positions within the ministries" in relation to the significance, the amount, the complexity and their specificity.

7. THE ORGANISATION OF THE ROMANIAN LOCAL PUBLIC ADMINISTRATION

Within the current Romanian constitutional framework, the territorial state administration, non-defined as such in a distinct section from chapter V, called the Public Administration from Tittle III meant for the Public Authorities in the republished Constitution, as it would have been properly defined, comprises the prefect and the devolved services under the supervision of the ministries or the specialised central bodies. The devolved services of the ministers are not regulated in a distinct article, but art. 120 from the republished Constitution stipulates, as basic principles applicable to the local public administration, the principles of decentralisation, the local autonomy and the devolution of the public services.

Concerning the term "the decentralisation of the public services", used in the initial version of the Constitution, as the doctrine rushed to stipulate just after its enactment, strictly scientifically, it comes to the devolution of the public services because one had in mind, firstly, the outside services of the ministries, that is the territorial branches of the ministries, keeping their supervision under the ministry, vertically, and on an horizontal level, under the prefect's supervision. Secondly, it may come to the establishment of public services at the level of the local communities.

The local public administration within the territorial administrative units is organised and operates based on the general principles of the public administration stipulated at Part I Title III and the general principles stipulated in the Law no. 199/1997 concerning the ratification of the European Charter of the local autonomy, enacted in Strasbourg in October 15, 1985, and of the following specific principles:

a) the principle of decentralisation;
b) the principle of the local autonomy:
c) the principle of turning to citizens in matters of particular local interest;
d) the principle of the electability of the authorities of the local public administration;
e) the principle of cooperation;
f) the principle of accountability;
g) the principle of the budgetary constraint.

The enactment of the articles stipulated at par. 1 cannot harm the character of the national, sovereign and independent, unitary and indivisible state of Romania as stipulated in art. 75 par. 1 and 2 from G. E. O. no. 57/2019.

The commune is the basic territorial administrative unit which comprises the rural population united by a shared community of interests and traditions, integrating one or more villages, according to the economic, socio-cultural, geographical and demographical conditions. The organisation of the commune provides the economic, socio-cultural and

household development of the rural localities. The communes can comprise several rural localities called villages, which hold no legal status. The village where the authorities of the communal public administration reside is the resident village of the commune, according with art. 98 par. 1, 2 and 3 from G. E. O. no. 57/2019.

The authorities of the public administration in communes, towns and municipalities are the local councils as deliberative authorities, and the mayors as executive authorities. The local councils and the mayors are elected through universal, equal, secrete and freely-expressed vote, under the provisions of the law for the election of the authorities of the local public administration. The local councils and the mayors act as authorities of the local public administration and solve public matters in communes, towns and municipalities as provided in art. 106 par. 1, 2 and 3 from G. E. O. no. 57/2019.

The local council comprises the local councillors elected according to the provisions established in the law for the election of the authorities of the local public administration. The number of members of each local council is established through the prefect's order, according to the number of inhabitants of the commune, of the town or of the municipality, in relation to the population counted, in relation to the place of residence, by the National Institute of Statistics on the day of January 1st of the year when the elections are held taking into account the provisions of articles 111, 112, Government Emergency Ordinance no. 57/2019.

The mayor and the deputy mayor

Communes, towns and municipalities each have a mayor and a deputy mayor, and the municipalities, county residences have each a mayor and two deputy mayors, elected under the provisions of the law. The positions of mayor and deputy mayor are positions of public service just as the article 148 par. 1 and 2 from G.E. O. no. 57/2019 provides.

The relations with the authorities of the local public administration

Between the prefects, on one hand, the local councils and mayors, as well as the county councils and the presidents of the county councils, on the other hand, do not support relations of subordination; their relations can have a collaborative nature, in accordance with the provisions of art. 261 G. E. O. no. 57/2019.

In conclusion, in the public administration, the public interest prevails over the private interest, starting from the idea that the rule of law sees the state interests as community interests, therefore prevalent over the interests of the private citizen.

The grounds of the pre-eminence of the public interest over the private interest consist in the fact that a state based on the rule of law places the general interest on top of the private interests, and, on the other hand, the fact that the mission of the state and of the authorities is to organise public services with the purpose of fulfilling the general public interest, making sure that they run continuously and regularly.

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Endnotes

1. Karl Emil Maximilian „Max" Weber (1864 – 1920) was a German sociologist, philosopher, law specialist, historian and political economist, whose ideas profoundly influenced the social theory and the social research. Weber is often quoted, along Émile Durkheim and Karl Marx, as one of the three founders of sociology.
2. Jerzy Zdzisław Starościak (1914 – 1974), Polish lawyer, specialist in the field of law and administrative procedures, former member of the Sejm of the People's Polish Republic
3. Henri Fayol (1841-1925), was a French mining engineer, mining executive, author and mining manager who developed a general theory of business management often called fayolism.
4. Frederick Winslow Taylor (1856-1915), just as Fayol, was one of the first theorists of the management with the expertise of enterprise management
5. Alain Darbel (1932 – 1975) was a French sociologist and former INSEE manager. He was mainly interested in the sociology of the administration.
6. Dominique Schnapper (n.1934) was born in a family of the Paris bourgeoisie. She is the daughter of Raymond and Suzanne Aron. Dominique Schnapper deals mainly with the historical sociology, as well the studies on minorities, unemploymen, labor and urban sociology, and from the 19902 with the concept of nation and citizenships.