

The Code of the Administrative Procedures according to the Principle of the Power Separation and Balancing in the Central and Local Government Bodies in Albania

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Abstract

Different authors at different times have given an unequal definition to the term of public administration compared to what it is used today. The author Georges Vestel has defined the public administration as “the set of activities aimed at maintaining the public peace and meeting other needs of the general interest. This definition corresponds to the etymology of the term administration - “administration” which means “to serve”¹. But Jean-Jacques Rousseau in his work, Social Charter, defined the public administration under the government term. He stated that: “I call a government or a supreme administration the legitimate exercise of the executive power.

Some authors use “administrative” and “executive” terms in an alternate way, with the same meaning.² Other authors make a clear distinction between terms. They define the state administration as “an activity which is carried out for the concrete fulfilment of the functions of the state and the duties of the organs of the state administration”. So these authors distinguish the state administration from the executive activity which the executive bodies perform.

The paper aims to suggest a set of strategies and improvements by starting from a theoretical background of the definition of power balance and separation in public administration and governing bodies and its evolutionary definition over time, and by reflecting those findings as a set of suggestions, by considering the actual Albanian Code of Administrative procedures, strategies and practices.

Keywords: public administration; state administration; reform; executive.

The meaning of the public administration term

According to them, its study forms the science object of the state administration, while the executive activity is regulated by the norms of the administrative law.³

¹ Oliver Gohin, *Institutions Administratives*; 4e edition Paris; L.G.D.J; the year 2002, page 15

² Dobjani.E, *Administrative Law 1*, Perlat Voshtina,Tirana,2007, page 16

³ Dobjani.E, *Administrative Law 1*, Perlat Voshtina,Tirana,2007, page 17

The term “public administration” is a relatively new term in our country. This term was not used earlier than 1998 with the adoption of the Constitution. Since then the Administrative Procedure Code (hereinafter the APC) adopted in 1999 has referred to this concept which essentially implies the exercise of the state will for the benefit of the public interest.⁴ This concept existed even prior to the adoption of the Constitution, even before 1991, but it was familiar with the state administration term referring only to a certain set of institutions, which in fact belonged to the executive. There has often been a clash between the local and central government bodies, a clash for which the Constitutional Court has given its decision on the basis of the principle of decentralization.⁵ *“Allocation of competencies is nothing else, in its essence, but a distribution of competencies. Competence is a right that is legally given to a body or an authority to decide on certain issues.”* So the organs are dependent on one-another in their work, and no one can act on its own.

In this sense, the public administration shows concrete care for the interests of the public. The APC, the basic law defining the procedures and rules pertaining to the organization and mainly the functioning of the public administration, in its two articles provides that the public administration bodies are a set of bodies and that it is not the administrative activity which the bodies of the public administration exercise.⁶ So this code provides two important aspects of the emergence of the public administration.

In the formal or organizational or subjective sense the public administration is the entirety of that particular system of bodies which our laws regard as bodies of the public administration and charge them with the exercise of power in the form of the executive-ordering activity. In this sense, we do refer to the administrative apparatus with all its connections starting from the central government, with all its organs, to the local one with its organs, but even the bodies that do not belong to the state power in the literal sense of the word, as well as the public entities which are bodies that are always created by law, non-statutory ones but serve the public interests.⁷

In the second sense, the public administration is the activity itself that the administrative apparatus develops through which the law is applied, either through the issuance of secondary norms or through the organization of the performance of the public services or, as the case may be, the direct performance of these services.⁸

⁴ Law No. 8485, dated 12.5.1999, “Administrative Procedure Code of the Republic of Albania”

⁵ Article 13 of the Constitution

⁶ Article 2 and 3 of the APC sets out these two aspects of the public administration

⁷ Anastasi.A, Çani.E, “Basic knowledge of the constitutional and administrative law”, Marin Barleti, Tirana, 2008, page 106-107.

⁸ Article 2 and 3 of the APC defines these two aspects of the public administration

Anastasi.A, Çani.E, “Basic knowledge of the constitutional and administrative law”, Marin Barleti, Tirana, 2008, page 107-108

The difference between the term “public administration” and the term “state administration”

For the public and state administration notions there is no general definition which is valid in any concrete system. The involvement of the public and state administration differs from country to country depending on the state history, constitutional provisions, legal regulations, administrative traditions, development, etc. The understanding and the differences between the notions of the public administration and the state administration are not provided in the Constitution of the Popular Republic of Albania or in the specific laws. The constitution in force adopted in 1998 has not determined who the state or public administration bodies are, but in some articles it is spoken about them; for example: Articles 60 and 63. Paragraph 2 of Article 107 refers to “Public Administration”, stipulating that: “The employees in the public administration are appointed by competition ...” Paragraph 2 of Article 107 refers to the public employees. Whereas Law No. 8485 dated 12.05.1999 “Administrative Procedures Code of the Popular Republic of Albania” in its Article 3 has determined who the bodies of public administration are. Still, the notion of *public administration* is a broader notion and includes the notion of *state administration* (the civil service) as the central nucleus of the public administration. Two concepts for defining the state service are defined: the broad concept and the limited concept of the state service.

Under the broad concept, all or a large number of public employees are involved in state the service structures because it is considered that every public employee is part of the executive machinery of the state. From this it follows that they have the status of the state employees and that the legal and sub-legal regulations regulating the state service are valid for them.

According to the limited concept that is encountered in Germany, Austria, Luxembourg, Denmark, and recently in Italy as well as in the transition countries from Eastern and Central Europe, the state administration core includes the public administration, which includes employees who perform work directly related to the performance of the state functions, respectively have delegated powers and legal competence to exercise public authority, propose policies or regulatory instruments or provide advice to them, execute or enforce laws , decide on the rights and interests of the citizens and legal people.⁹

The principles of the administrative law and the European administrative space

Although the terms and the concepts of the administrative law vary from one country to another, it is possible to agree on a common definition of administrative law such as that set of principles and rules applicable to the management and the organization

⁹ http://www.ads.gov.mk/EBStorage/Files/poglavje17_AL.pdf

of the public administration and the relations between the administration and the citizens. The principles of the administrative law, defining the standards and inspiring the citizens' behaviour, normally appear to be dispersed and vary from the Constitution to various laws of Parliament and special delegated forms of legislation as well as the cases of laws in courts dealing with the litigation of the issues regarding the public administration. Other states have established general codifications of the administrative procedures, which merge and strive to systematize many of these principles¹⁰. These administrative principles are not just ideas based on goodwill; they are embedded in administrative institutions and procedures at all levels. Actors in the public sphere are legally obliged to agree with these legal principles to be guarded by the independent control bodies, the justice systems, and the legal strengthening, the parliamentary inspection and by providing opportunities to question and re-address Individuals and legal people. In the area of the European Community law, the European Court has established a big number of principles of the administrative law referring to the general legal principles of the common administrative law for all the member states, in a continuous process. Particularly important are the principles in the Jurisprudence of the European Court of the Human Rights, which should be applied by all the member states that have to apply them in themselves:

The principle of administration through law, the principle of proportionality, legal certainty, protection of the legal possibilities, non-discrimination, the right to speak in cases of the administrative decision-making procedures, preliminary release, equal conditions for the access of the individuals to the administrative courts, non-contact liability of the public administration.¹¹

Conceptual developments in the definition of the structural reform in Albania

The two most popular models on which most of the modern European public administration systems are based are the French one (Napoleon's model) and the Prussian one (Veberist model) of the late XVIII century and the beginning of the XIX century. These two systems have a variety of changes and common elements. Today, we talk about a "European administrative space", referring to this notion not as a multiplier of the administrative systems of the member states but as a set of common standards and principles applicable in all European administrative systems. In the context of the European Union integration, this model, though not unitary, is presented as the most striking example of Albania's case. During a meeting in London in May 1998, the ministers of the community countries defined the areas of the intervention for the modernization of the public administration:

- Better regulation (through better laws and norms)

¹⁰ States like Bulgaria, Denmark, AUSTRIA etc.

¹¹ See: The European Charter of Local Autonomy, ratified by the Republic of Albania and the link: http://www.pad.gov.al/botime/botime4_5.html

- Improvement of the public service standards for the citizens
- Full use of the electronic systems
- The introduction of the competition system in the provision of the services
- Qualification of the public officials

This initiative has a strategic value. It puts the administrations of different countries in front of each-others and it favours the individualization of practical solutions to lay the foundations of the future European administration. This initiative serves us to establish a public administration based on some standards that we have to achieve today or tomorrow. The two main axes of the modernization process based on these principles seem to be:

The role of “public power” and its “relationships” with the community.

The role of “Public Power” implies: -The transition from one state performing service to another state that regulates and guarantees the provision of the services. -Introduction of the logic of the economic management against the logic of bureaucratization of its structures, aiming to satisfy the social demand. Remodelling the role of public power is accomplished through the five areas mentioned above.¹²

- Process evaluation, strategies applied and actions

The Albanian public administration, although at first glance it has reduced its functions compared to those of a centralized state, has taken on new functions in recent years¹³. This has been seen in reforming the market economy and also in the wake of the global tendency for the growth of the state functions. Many years ago when the public health in one of our neighbouring countries was part of the public order sector and was covered by the Interior Ministry, no one could imagine the struggle of stars, space flight, plastic operations, organ transplants or cloning. Today these phenomena have become a reality and as such they should be regulated. New control and guarantee structures have been created, while the old dream of a simple and elastic administration seems to be more and more removed. New institutions are being set up as the old ones are forgotten to be blended, says an Italian author. The first step towards the structural reform was the revision of the functions of the Council of Ministers and the main line ministries in the action field of which important reforms were prepared; respectively the reform of decentralization, the reform in the justice system, the reform in the management of the public expenditure, customs and fiscal system. One step forward in this direction is the creation of the position of the General Secretary in the ministries and other civil service institutions. He has a duty to start drafting the necessary proposals for reviewing the functions and the mission of the

¹² See the link: http://www.pad.gov.al/botime/botime5_6.html

¹³ Article 16 of the APC. The administration should be structured in such a way as to create facilities for all the people.

institution. Also, this step was accompanied by the drafting of a type draft structure which was sent for opinion, to all the line ministries. The purpose of this structure is certainly not to “dress the same garment” of all the ministries. This structure provides the promotion and the sensitization of performing a ministerial mission analysis, their functions, the services to the public, the calculation of the cost of these services and the cost of each product or activity they perform to bring out the necessity of the continuation of their exercise, or the study of the possibility of their concession.¹⁴

- Major steps and actions toward a power separation and balancing in public administration in Albania

The achievement of the state of art in power separation and balancing for the organization and operability of local and central bodies, must go further than being a “utopist main goal” which defines a ultimate state that no one hopes or strives to achieve. Instead, it must be considered as a set of attributes in mindset and practices to be followed by each of these units, in order to give themselves the shape and content of modern public bodies which operate in the respect of law, in the interest of citizens and in conformity of their mission on a progressist prospective. Core strategies and sensitive interventions such as:

- Redefining the role and the mission of each institution.
- Separation of the policy-making structures from the implementing ones, which provide services.
- Facilitating the structures of the institutions with fewer and more professional staff in accordance with their mission.
- Separation of the tasks and the clarification of the role of each its institution and unit.
- Strengthening the policy-making and law-making capacities, starting with the predictive skills, to the calculation of the impact of the implementation of a policy.
- Strengthening of the internal and institutional co-ordination to enable the state institutions to make global policies in more than one field.
- Introducing the concept of economy into any public administration activity by defining the ways of measuring the cost of the outcome/product produced by each unit.
- Privatization of the manufacturing activities.
- Concession of the public services that are best performed in terms of the market economy.

¹⁴ See the link: http://www.pad.gov.al/botime/botime5_7.html

- Encouraging the state-private competition, but also the state-state competition, through policies.
- Managing the budget expenditures for the implementation of the government policies by the priority areas.
- Monitoring the Policy Implementation and the Law Enforcement¹⁵
- Increasing the role of constitutionalism.

may produce significant and effective tools in the hands of lawmakers, public operators and professionals involved.

Conclusions

Public administration is an important sector of any society and its efficiency and accountability helps to improve the situation and the functionality of social life. To achieve a constructive level of the public administration it requires precise coordination of work, including the state and private spectrum. All aim at an uncorrupted, professional and efficient state administration that will also enable the boost of the country's economic prosperity. The large success in the area of public administration reform only depends on the public employees and their readiness to make fundamental changes in the way they work. In this regard, the state should strengthen and modernize the public service; carry put a system of employment which moreover will reflect the merits of the service.

Thus, as a conclusion public administration can be defined as the activity of the concrete organization of the law, which is mainly carried out by the public administration bodies but also by other state organs, as well as by other public interest entities; therefore not only by the executive bodies, (Government) and local authority as defined by the state administration in the juridical sciences of Albania before 1990. This modern definition of public administration does not exclude the principle of the separation of the powers in law enforcement, executive and judiciary ones, as the Article 7 of our Constitution provides.

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