

# ATTEMPTS TO CODIFY THE RULES OF PRIVATE AND PUBLIC PROPERTY OF THE STATE AND OF THE TERRITORIAL-ADMINISTRATIVE UNITS

IONEL BOSTAN

”AL. I. CUZA” UNIVERSITY OF IASI, CAROL BVD. 22, ROMANIA  
ionel\_bostan@yahoo.com

## **Abstract:**

*In the field of public administration, the adoption of a Code is, certainly, likely to allow the use of a uniform terminology for the same legal realities, institutions, legal principles and concepts, thereby reducing the risk of their differential and contradictory interpreting. The coding of the legislation related to this vast problematic became extremely necessary, the actions of reform and modernization requiring since some time ago a systematization of the rules by means of an Administrative Code (AC) and of a Code of administrative procedures (CAP). The process of codification of normative documents governing the procedural aspects of public administration has developed more in the last three years, in this respect being also implemented an important european-funded project.*

**Key words:** *Administrative Code, Administrative procedures code, public domain/ patrimony, state property regime*

**JEL classification:** *G21*

## **1. Introduction**

Unfolded during the last few years, especially after Romania retrieved the statute of European Union member state, the public administration reform pursued a few key objectives. In a synthetic expression they relate to the provision of quality public services, focusing on people’s needs, through simplification, efficiency, and reduction of operating costs of public institutions.

In the period 2009-2012 [1], the budgetary system operation costs were reduced by 2.7 percentage points, from 15.1 % of the GDP, to 12,4 % of the GDP. Over a hundred government agencies have been discontinued, halved or restructured, and by imposing legal rules for the personnel in central and local public authorities, the budgetary system has been reduced by approx. 200 thousand people in the last three years.

Certainly, a less expensive budgetary system which is correctly sized contributes significantly to lessen macroeconomic imbalances and to reduce the excessive bureaucracy. Further, in this respect, an important direction of action remains the increase of quality and access to public services, by developing a system for monitoring the performance indicators in the sector of the public utility community services.

However, equally important is „the significant reduction of the number of laws in order to ensure stability, unity, legislative uniqueness, the facilitation of the identification, interpretation, of the quick and correct implementation of normative documents, the ensuring of accessibility to legal information, as well as the conservation of tradition elements specific to the Romanian system of law” [2]. In the same context, should be recalled that, the Lisbon European Council asked that the European Commission, the Council of Ministers and its Member States, each of them, in accordance with sharing of powers, „to develop up to 2001 a strategy for the coordination of the simplification of the regulatory framework, of the increase of public administration performance, both at the level of the member states and at the Community level” [3].

## **2. The institutional materialisation of the intention of elaboration/adoption of the Administrative Code and of the Administrative Procedures Code. Fields-regulatory object**

The Romanian public administration, on the background of a multitude of normative acts, as well as of the successive changes made to them, was faced with a lack of consistency and clarity of the incident legislation in its area of activity.

Romanian government's intention to codify the legal framework in the field of public administration, by means of an Administrative Code (CA) and of an Administrative Procedures Code (APC), has been pronounced upon even since 2001, the responsibility of developing the Codes belonging to the Ministry of Administration and Internal Affairs (MAI).

It has to be mentioned that AC [3] specifies the types of administrative acts in relation to the issuing authority, in the context of establishing the rules of organizing and functioning of central and local public administration authorities, and APC will be in charge of the procedure of common law in all the administrative acts, be they regulatory, or individual, outlining with a compulsory title the definition, the features, but most of all, the aspects related to the entry into force, to the production of legal effects and they fall into abeyance.

### **Quadrant 1. Preparations regardin the elaboration/adoption of CA and PCA**

- ◆ *The process of codification of the normative documents governing procedural aspects of public administration has developed more during 2008, the actions being evidenced by drawing up a draft of a special normative act [4].*
- ◆ *With a view to ensuring a uniform and easy implementation by the public authorities of the legislative solutions intended to remedy the disturbances of the legislative framework, has been developed the Guide for applying the legislative solutions promoted by CA and have been held training sessions intended for central and local public authorities [5].*
- ◆ *Also, has been developed the White Charter for systematizing the legislation of public administration, which, in addition to principles and guidelines proposed for ensuring the sustainability of the coding process, in order to harmonize them with the CA provisions, has also included proposals for amendments and additions to normative documents that have not been subject to coding.*
- ◆ *The implementation of these proposals is monitored by the Central Unit for Public Administration Reform (UCRAP) of the MAI, which continuously updates the studies and analysis developed in the context of the codification of public administration legislation.*

*Source: UCRAP (2011)*

The five areas that are covered by the regulation of the CA project are: (1) central public administration, (2) local public administration, (3) staff of public administration, (4) public and private property of the state and of the territorial-administrative units and (5) public services.

## **3. Existing dysfunctionalities and proposed solutions in the area of public and private property of the state and of the territorial-administrative units**

As regards the shape of regulations, the dysfunctionalities identified in the previous years on the normative documents in the public administration [2,6] concern some parallelisms, contradictions and incompatibilities between the various normative acts incident in the field of property, caused by the abundance of normative acts, the greater part comprising only punctual references to this field, as well as and the existence of a legislation of retrocessions, which provides exceptions from the overall regulatory framework.

A malfunction in the public and private property of the state and of the territorial-administrative units is constituted by the absence of an appropriate inventory, on common basis, likely to ensure an accurate record of the public domain and of the private sector. As for this issue, local public administration authorities stressed the need of eliminating

the procedure of attestation by the Government of the local/county public domain which, at present, although it is not constituent of rights, hinders their work in particular with regard to procedures to contract European funds.

There is also a series of cross-sectional malfunctions, generated by the interdependence on the organization and operation, the role and functions of central and local public administration authorities.

In a brief description of the solutions and on variants proposed by the normative act which envisages bringing certain enhancements in the area of public and private property of the state and of the territorial-administrative units, we notice [7]:

- the creation of a legal framework of public and private property of the state and of the territorial-administrative units (definitions, titulars, public/ private area, ways to acquire, ways to exercise, cessation, defense in justice);
- a more detailed regulation of the procedures for the exercise of the public property right: putting into management, rental and free putting into service;
- the regulation of the procedure for the passing of an asset from the county public domain in the local public domain and vice-versa, by analogy with the procedure for the passing of an asset from the public domain of the state in the territorial-administrative units domain and vice-versa;
- the redefinition of the inventory procedure of the public domain of the county, village, town, city.

At the same time, is also taken into consideration the introduction of a binding solid justification of the transition of an asset from the public domain in the private area, under the penalty of the absolute invalidity of the administrative act in question. Then, by virtue of a certain legal symmetry, is to establish a legal regime of leasing assets from the private domain similar to that of leasing assets in the public domain.

In particular, the part of the CA project dedicated to public and private property of the state and of the territorial-administrative units, has been prepared on the basis of the general framework laid down by Law No 213/1998 on public property and its legal regime [8], proposed to be fully codified.

Here are covered rules and regulations on: titulars, the subject matter of the public property and private property right of the state or of the territorial-administrative units, the characters of public property assets, the ways of acquire the public property and private property assets of the state and of the territorial-administrative units. Also, we find provisions relating to the procedures for the exercise of public property right of the state or of the territorial-administrative units, the procedures for the exercise of private property right of the state or of the territorial-administrative units, the defense of the public property right of the state or of the territorial-administrative units, the cessation of their public and private right.

#### **Quadrant 2. Definitions**

- ◆ *The definition of the public domain has been supplemented to irrevocably address the controversies relating to the ratio of public property and public domain, thus giving a legal recognition of the majority opinion of the doctrine, according to which between the two concepts there is an absolute identity.*
- ◆ *The concept of patrimony has been defined by adapting the wordings of the incident legislation in force (Law no. 94/1992 on the organization and functioning of the Court of Auditors [10] and GO no.119/1999 on the internal/ management control and the preventive financial contro [11]) determinig that the patrimony is composed of the rights and obligations relating to public and private domain, as well as of the other rights and obligations with a parimonial character).*

*Source: UCRAP (2011)*

Among the procedures for the termination of the right of ownership is detailed the legal framework applicable to the sale of assets in the private area, choosing the solution that

is currently regulated by Law no. 215/2001 of the local public administration [9] and their corresponding extension to the assets in the private property of the state [3].

The final chapter is made up here by taking over the full provisions of the Law no. 132/1997 on the requisition of assets and services delivery in public interest. Even if in particular cases the requisition can also generate the transfer of ownership right, it was considered that the specificity of this legal institution, defined as the temporary leasing of goods, as well as its exceptional nature justify its inclusion in a separate chapter.

#### **4. Conclusions**

The legislative coding is a complex process of remedying the malfunctions in legislation. The CA project systematizes, rationalizes and reunites elements from about 160 laws in the public administration, to form an unitary legislative basis which will also produce beneficial effects on the long term as regards the activity of authorities and public institutions.

Subscribing to the principle of good governance, bringing clarity, consistency, simplicity, predictability and stability to the legislative framework in the field of public administration in Romania, the future normative act will regulate five major areas, between which the one which deals with the public and private property of the state and of the territorial-administrative units.

Since the entry into force of CA we can say that we have an appropriate legal regime of properties of this type, the provisions in question being of a surprising clarity when speaking of definitions, titulars, public/private area, means to acquire, ways to exercise, cessation or defense in justice.

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