

RESEARCH ARTICLE:

Reasonable formalism as a dimension of administrative discipline

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ABSTRACT

The research article entitled “*Reasonable formalism as a dimension of administrative discipline*” is analysing important topics of administrative sciences that develops the understanding of the nature and content of administrative discipline.

KEYWORDS: *bureaucracy, public administration, administrative discipline, administrative procedure.*

1. Introduction

Franz Kafka and the administrative absurdity. The pejorative meaning of bureaucratic formalism

Artworks are the confessions of authors who translate consciousness, experiences, traumas, fantasies, beliefs into a creative will. Through his teaching function, the artistic work conveys testimonies about epochs or phenomena, allowing the knowledge of reality through the author's vision.

The absurd, grotesque, the incoherence of an aggressive administrative order seem to be the artistic "obsession" for the German-speaking author Czech Franz Kafka (1883-1924). From the exegesis and reviews of the novel "The Trial", it is noted that it is a critique of the Hasburgic state apparatus that intervenes arbitrarily in the individual's life, leaving no room for defence¹.

The arbitrary rules, the absurd and incoherent mechanisms of hostile bureaucratic power, brutally intrusive in the intimate life of the individual that they try to intimidate and even depersonalize, make up the Kafkian universe, desolate and dramatic by the imposture of a dehumanizing administration.

Besides, in common language, the term of administration or of public administration is often confused with bureaucracy, being attributed negative connotations, a pejorative meaning, a phenomenon that deviates from normal life².

This abnormality of the interpretation of bureaucracy is due to features perceived by common sense as negative, counterproductive. Administrative procedures are the first to be accused of all misconduct attributable to public administration. It starts from situations that

are likely to displease the citizen: slow, dilatory administration, resilience to change, waste of resources. German sociologist Max Weber is the author of original contributions to the bureaucratic phenomenon and the one who combats the pejorative sense. According to him, the characteristics of bureaucracy are: an office hierarchy and a channelling of communication between different hierarchical levels; clearly defined spheres of authority governed by general rules established by regulations; the administrative separation of official activities from private affairs, etc.

According to Max Weber bureaucratic officials are hierarchically appointed; enjoy a lifetime job and a high status; have a vocation and duty of loyalty to their career and office. In modern theory bureaucracy is represented as a body of administrative officials, as well as the procedures and tasks involved in a particular system of administration, in a formal organization.

Can there be a social life without bureaucracy and, implicitly, without those formalities that the existence of bureaucracy implies? Rationally it does not seem possible to lead a large mass of people dispersed in the country without a bureaucratic system. The social need for stability and continuity therefore requires a negative answer to the above question.

2. Features devoted to public administration in the juridical-administrative doctrine

To understand the nature and content of public administration, administrative science studies identify and associate a number of characteristics.

The hierarchical and orderly character, the specialization, the permanence, the structural division, the role of intermediary body between the political power and the society appear

¹Enescu, R. 1968. *Franz Kafka*, Bucharest, Romania:

Editura pentru Literatura Universală, p. 56.

²Bălan, E. 2005. *Procedura administrativă*, Bucharest, Romania: Ed. Universitară, pp. 17-20.

among the most often evoked features of the administrative complex researchers.

The formalism of public administration requires it to act after certain routines or procedures developed and perfected over time. Formalist character has increased over time in the process of consolidating modern administration. The imposition of procedural dialogue tools through which information is organized according to an algorithm developed for processing and storing them requires appropriate rules. Both the administration actions regarding citizens and the inter-institutional administration take place under the procedural formalism.

The rigors of the formalism of administration can be diverted from the objective of good administration when officials exercise excessive power, when natural responsibility for the defective act is illusory, when forms of organizational aggression are manifested. The multiplication of authorization situations by the administration to carry out useful activities for citizens must be accompanied by guarantees of operative assessments and approvals in order not to cause significant losses and not create a sense of social dissatisfaction.

In his research on bureaucracy, Max Weber speaks of the depersonalization that must manifest itself in the functioning of administration, in the sense that its missions must be fulfilled by the rules and regulations governing its activity. The transmission of orders and the gathering of information takes place in a hierarchical way, the intervention of each participant being carried out within strict limits reserved for him by the formal arrangements underlying the functioning of the bureaucratic institutions³. This would provide a high degree of efficiency,

accuracy, and great predictability of the results.

Also, in fulfilling its tasks, public administration must demonstrate political neutrality and fairness and impartiality towards citizens.

3. Administrative discipline - a component of the normative legal order

Any society can only function on the basis of the norms and values that characterize it, and which form the basis of the cohesion of its groups and institutions.

The social order includes all the rules, regulations, obligations, interdictions and social practices transposed into a corpus articulated by rules, customs, moral and cultural practices, able to regulate the actions of the social actors.

A significance with ideological connotations of the notion of social order refers to the nature of the political organization and the political regime of a society and implies the unconditional compliance of individuals with the orderly demands of the political system.

The social order implies, among other things, the existence of a certain body of values and fundamental social norms that make up a tough nucleus from a historical perspective, remaining unchanged or relatively unchanged for many generations and social groups.

Considering society as a dynamic entity, the specialized doctrine considers that there is no lasting and immutable social order, permanent and unchangeable, thus achieving the idea of equilibrium between perennial and temporal elements.

The social order also refers to the existence of restrictions and constraints on the rights and freedoms of individuals in a society in order to prevent acts of disorder and even violence that may arise at a given time.

At the same time, social order is the necessary conduct to ensure the functioning

³Weber, M. 1973. *Essays in Sociology*, Oxford, UK: Oxford University Press, p. 211.

of society, although it is difficult to imagine that all individuals will accept the unconditional observance of the imposed rules of conduct in the absence of coercive mechanisms. Consequently, in any society, social order is doubled by a legal order, made up of a hierarchical system of norms, rules and prescriptions developed by the legal and legitimate authority. Representing the synthesis or nucleus of social order, legal order is a coercive order of public rules addressed to individuals to regulate their behaviour and provide the framework for social cooperation.

Therefore, the right, which includes prescriptions and normative obligations, is the fundamental support of the legal order of any society, with the aim of protecting the most important values and social relationships by imposing, allowing or prohibiting certain actions or behaviours.

Component of social life, public administration is subject - in turn - to the rigors of the legal order. Everyday life would not be possible in the absence of systems of norms that allow cohabitation and without the existence of authorities to ensure compliance with these rules. Controlling compliance with social cohabitation rules is just one of the characteristics of the administration, from the perspective of its function of organizing and ordering social life.

Ultimately, although it is not the public administration that elaborates the primary rules of cohabitation, it is the one that enlivens them and maintains them in a functional state, observing the compliance to the rigor of a genuine administrative discipline imposed by legal norms. Thus, one can speak of the existence of an administrative order, having as instruments the substantive regulations and procedural administrative rules.

4. Administrative procedure under a reasonable formality

By analysing the traits and characters of the public administration established in

the classical doctrine, one can notice the existence of the idea that the activity of the public administration is based on a series of automatisms, on the use of an instrument made up of legally regulated forms and formalities.

Procedural formalities have the role of conferring on the material content provided by that legal transaction a certain formality which is capable of enhancing its opposability to third parties.

The legislator, when establishing the administrative procedure rule, aims to establish a correct framework for the achievement of the rights and obligations of the administrations, putting the legal basis for a reasonable formalism to strengthen this framework.

The need for rigor and precision is an imperative for removing doubts, its assurance through the law to be achieved under conditions that allow the attenuation of normative rigidity.

Building a modern and effective public administration, stable and responsible, open and transparent is an essential objective for any European country.

In modern and post-modern society, such a goal cannot be achieved only with the help of appropriate institutions, structures, but also by the existence of regiments, procedures that allow adequate, equitable treatment for those administered.

The procedural rules applicable to governmental inquiries are mainly legal rules established by law and regulating the main procedural requirements. Procedural forms are constituted by formalities, as elements of detail, some essential, other accessories, which form together the form of the act or of another manifestation of will.

When form becomes an end in itself and is not the expression of content, we are faced with the phenomenon of formalism, as an exaggeration of form to the detriment of law.

If, in ancient times, the process of law enforcement is characterized by a rigid formalism, being the expression of a life dominated by sacramental or magical-religious formulas, modern law is characterized by a leanness and moulding of forms, with the occurrence of a reasonable formalism.

Contemporary right generally resolves rigid formalism but does not give up form, procedural forms being mandatory for both administration and administrators.

What is the necessity for the forms of the administrative procedure?

First of all, it is about the effectiveness of the administrative approach. Situations with which a public official or institution faces daily can be overwhelming in volume, and the existence of standard procedures is likely to increase performance.

Secondly, administrative procedures are necessary for the fair and impartial treatment of the beneficiaries of the administration, who may know and foresee the steps to be taken in various situations of confrontation with public administration.

Last but not least, public administration needs to be subject to political or civil society control, judiciary or self-control exercised through various specific mechanisms. This would be very difficult if each public institution or each official would work according to their own rules and procedures.

4. Conclusions

The need for order, administrative discipline can lead, through inappropriate implementation to bureaucracy manifestations, to deviating from the standards of good administration.

Exaggerated administrative discipline versus bureaucracy dilemma can be overcome by normative promotion of a reasonable formalism, which implies the building of rational and transparent procedural rules imposed by legal instruments.

Reasonable formalism has the role of strengthening the operational framework of executive action, the legislator pursuing a legitimate goal when setting administrative rules of procedure. It aims at setting the operational framework correctly to achieve the rights and obligations of the administrations, ensuring rigor, accuracy, removal of doubts.

Bureaucratic art must ensure that normative rigidity is mitigated by solutions that harmonize the general interest in preserving the fundamental rights and freedoms of citizens.

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