

# The Administrative Code – validated by the Constitutional Court of Romania

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## ABSTRACT

The adoption of the Administrative Code of Romania represented a crucial point in the development of the Romanian law, in general, and of the administrative law in special. The process was far from being easy, neither on the aspect of the elaboration, nor afterwards, the Constitutional Court of Romania being notified twice to rule on the constitutionality of this normative act, which was, at first, promoted as a law, subsequently, after the law being declared unconstitutional, as an Emergency Ordinance, also challenged before the Constitutional Court by the People's Advocate (Romanian Ombudsman) and the Constitutional Court, wisely this time, declared it constitutional.

This study aims at presented this tortuous and “strenuous” endeavour, as we allowed ourselves to qualify it in a previous article, and also the significance, in essence, the Administrative Code bears for the Romanian public administration and for the Romanian State, as a whole.

**KEYWORDS:** *Administrative Code, constitutionality, decision, Constitutional Court, public administration, administrative law*

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## 1. Introduction

The codification of the administrative law has been a matter of concern for scholars, for the legislator, and, after 1990, it was transformed into an objective undertaken also by the political parties. The governments which held, periodically, the means for governing and administering, constantly included in their governance program the adoption of **both Administrative Code and the Code of Administrative Procedure**. Such a project have remained for long solely at declarative level, being known that political promises, in general, including the documents in which they are enshrined, for many times are written and expressed in order to be breached, or having the representation that such a breach would take place.

In this context, we specify that it is for the first time when the government's programme acquires legal force, being the provided the compulsoriness of its provisions. We have in mind Art. 16 paragraph (1) of the Administrative Code,

approved by the Emergency Ordinance no. 57/2019<sup>1)</sup>, which states that “*The Government is organized and functions according to the constitutional provisions, based on the Government’s programme accepted by the Parliament*”.

Also, Art. 15 states that “*For the accomplishment of the Government’s programme, the Government exercises the following functions: ...*”.

In what concerns the possibility of codification of the administrative law, some authors were **pessimists**, considering it unattainable, or hardly attainable, because of the fact that public administration is a process of continuous transformation, as the social needs it has to fulfil, this excluding the possibility to comprise it in the norms of a code, some other authors, the **optimists**, among which we count ourselves, have strongly supported the necessity and the reality of the legislative approach, getting involved in its progress<sup>2)</sup>. From this perspective it should be understood our participation at all the working groups, the one that elaborated the content of the current Administrative Code included, which was adopted, at first, by a law of the Parliament, which was declared unconstitutional by the **Decision no. 681/2019**<sup>3)</sup>.

In this situation, the project was not abandoned, the Government in office at that time setting the objective to continue working on it and to transform it into a normative act, which happened by the adoption of the Emergency Ordinance no. 57/2019, which was challenged before the Constitutional Court, this time by the People’s Advocate, which invoked the unconstitutionality exception before the Court, being known that People’s Advocate is the only legal subject that can bring up such an exception directly before Constitutional Court, according to Art. 146 letter d) of the Constitution of Romania, revised and republished<sup>4)</sup>.

By the **Decision no. 60/12 February 2020**, unwritten and unpublished by the time of elaborating the present study, the Constitutional Court **rejected**, with majority of votes, as ungrounded, the exception raised by the People’s Advocate.

Personally, I have embraced this solution and I have militated in its favour, both as a scholar<sup>5)</sup>, and as a practitioner of the law, and we express also in this framework the satisfaction for this success. It is true that by its content, the Administrative Code isn’t perfect. But we ask ourselves, rhetorically, of course, which law is a perfect one? The Administrative Code is a perfectible normative act, but it is a certain advantage the fact that, nowadays, the whole legislation on public administration is settled in

<sup>1)</sup> Published in the Official Journal of Romania no. 555/5 July 2019.

<sup>2)</sup> On this implication, see Vedinaş, V., 2019, *The Administrative Code of Romania – a “strenuous”, loved, blasphemed but a necessary normative act, preface to the book Administrative Code of Romania*, Bucharest, Romania: Universul Juridic Publishing House, pp. 5-6.

<sup>3)</sup> Published in the Official Journal of Romania no. 190/11 March 2019.

<sup>4)</sup> The Constitution of Romania was published in the Official Journal of Romania no. 233/21 November 1991. It was revised by the Law no. 429/2003, published in the Official Journal of Romania no. 758/29 October 2013 and republished in the Official Journal no. 767/31 October 2003.

<sup>5)</sup> See also the following studies: Vedinaş, V., 2018, *The Administrative Code, a dream closer and closer to becoming reality*, in R.D.P. no. 1/2018, pp. 16-18; Vedinaş, V., 2018, *The Administrative Code, a hope came true*, in R.D.P. no. 2/2018, pp. 16-19; Vedinaş, V., *Codification of the administrative law, between science, conscience and responsibility*, in Supplement to R.D.P. for the year 2018, pp. 20-25.

an unitary normative act, which may, in time become subject of inherent corrections, completions, modifications.

Another aspect that we have been permanently discussing and we don't get tired of doing so, is the fact that by the means of Administrative Code there are filled certain normative voids that produced nefarious consequences, not only in legislative or doctrinary context, but also at the level of the practice. We had the possibility to confront this negative effects from the perspective of some public dignities we exercised for the Romanian State, and we refer especially to the one of member of the Romanian Court of Accounts for a 9 year mandate, when we could see *proprii sensibus*, the consequences of the inexistence of some regulations concerning the private domain of the state and of the territorial-administrative unit, the inventory of the goods or the means for valuing such goods. It is true that we are somehow unique in the European Union, in the sense that, in the states where this branch of law was codified, it was mainly codified the administrative procedure and not the material law. We think that this aspect should not minimize the importance of the endeavour and of the regulation in itself. To open new horizons is not blameworthy, but, on the contrary, it represents a merit.

## 2. Short presentation of the Administrative Code of Romania

The structure of the Administrative Code comprises 10 parts, 638 articles and 6 annexes, as it follows: 1<sup>st</sup> Part – General provisions; 2<sup>nd</sup> Part – Central Public Administration; 3<sup>rd</sup> Part – Local Public Administration; 4<sup>th</sup> Part – The Prefect, the Prefect's Institutions and Deconcentrated Public Services, 5<sup>th</sup> Part – Specific Rules on the public and private Property of the State or of the territorial-administrative Units; 6<sup>th</sup> Part – The Statute of Civil Servants, provisions applicable to the contractual personnel from the public administration and the record of the personnel paid from public funds; 7<sup>th</sup> Part – Administrative Liability; 8<sup>th</sup> Part – Public Services; 9<sup>th</sup> Part – Final and Transitory Provisions; 10<sup>th</sup> Part – modifications and completions brought to other normative acts. We specify that by the Administrative Code there are also modified and completed a 6 laws, and a number of 16 normative acts is repealed, as it follows: 8 laws, 2 emergency ordinances and 4 simple ordinances, one decision of the Government and a decree of the ex-Great National Assembly<sup>6)</sup>.

We appreciate that the **merits** presented and brought by the Administrative Code can be structured as follows:

In the *first place*, we consider that by reuniting, in the same normative act, of the regulations applicable to public administration *“there are eliminated the parallelisms, contradictions, amassed norms where not only the practitioner but also the scholar risked to get lost or they effectively got lost”*<sup>7)</sup>.

<sup>6)</sup> This is the name of the Romanian unicameral Parliament during the totalitarian regime.

<sup>7)</sup> Vedinaș, V., *The Administrative Code of Romania – a “strenuous”, loved, blasphemed but a necessary normative act*, art. cit., p. 12.

In the *second place*, as we already showed, the Administrative Code comes to fill some legislative voids that we cannot afford anymore, both from normative and practical perspective, and we would exemplify with the incoherencies from the matter of regulating public property and, especially, the private property of the State and of the territorial-administrative units. If, in what concerns the public property things were somehow “covered” under the aspect of regulation, by the Civil Code<sup>8)</sup>, they were precarious under the aspect of the private domain of the State and of the territorial-administrative units. That is why, we were happy to see that this insufficiency was filled, even if legislative solutions are not perfect and practitioners and theoreticians of the law confront them, or, if case, they highlight them, discuss them, criticize them more or less vehemently and, the most important, they come with corrective solutions.

In the *third place*, the Administrative Code comes with innovative solutions, which produce, as the late professor Antonie Iorgovan used to say, real *changes of paradigm*, since they revolutionize institutions of the administrative law and this branch of law as a whole. We exemplify that, by means of the Administrative Code, there is regulated the juridical situation of the contractual personnel of the public administration, together with the statute of civil servants. This means, as we previously took the liberty to affirm<sup>9)</sup>, that there are recognized some particularities that this category of personnel presents in relation to other employees, respectively the employees from the public sector. These peculiarities come from the fact that the activity undertaken by the personnel from public administration, irrespectively the fact that they are civil servants or employees, has the same scope, **servicing the general interest**. And **the principle of fulfilling the public interest**, which has priority before the individual one or of the group interest, associated to the priority of the national interest before the local one, represents, according to Art. 10 of the Administrative Code, one of the general principles of the public administration.

In line with the above-mentioned aspects, we also enshrine the 8<sup>th</sup> Part, consecrated to the regulation of civil service. Paradoxically, although it represents a traditional institution of the administrative law, the traditional way in which public administration materializes its activity, did not exist until the Administrative Code, a regulation to create a normative ground for this specific institution.

### 3. Conclusions

The Administrative Code of Romania is far from being a perfect and complete law. But it is the first unitary regulation of the great institutions and juridical categories of this branch of law. We are confident that many of its imperfections are going to be “corrected” with the procedure of approval, by means of law, of the Emergency Ordinance no. 57/2019 by which the Code was adopted. The doctrine and the

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<sup>8)</sup> The Civil Code was adopted by Law no. 287/2009, published in the Official Journal of Romania no. 409/10 July 2011 and entered into force on the 1<sup>st</sup> of October 2011.

<sup>9)</sup> Vedinaş, V.; Bitea, C., 2019, Mutations brought by the Administrative Code in the field of regulating public administration personnel, in R.D.P. no. 3/2019, p. 30.

jurisprudence, comprised the jurisprudence of the Constitutional Court, will also have a say in this matter. We express the hope that they will express in a constructive way, that aims at improving the content of the act, an objective that satisfies both interests of the public administration and the citizens.

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