RESEARCH ARTICLE:

The concept of integrity, ethics, injunctions and incompatibilities in the period of time between the two wars

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ABSTRACT

"Liability is not just what you did, but what you did not do as well".
LaoTzu - Ancient philosopher

The administration science was developed in Romania both in close connection with and in parallel with the administrative law. Public Professor Constantin C. Dissescu was the first Romanian author to mention the subject of administration science and its separation of the administrative law science.

The research article deals with important topics of administrative science as integrity, ethics, injunctions and incompatibilities presenting a clear perspective of the organization and developments in Romania during the interbelic period.

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KEYWORDS: *integrity, ethics, injunctions, incompatibilities*

1.Introduction

The administration science establishes the rationalization principles in the administrative state; it has a dynamic character, is in a constant evolution and looking for new solutions for the future, it also has a broad character, exploring different fields of the social activity, while the administrative law represents only a part of the administration science[1].

In the period of time between the First World War and the Second World War one can speak of a Romanian School of Administration Science, which was led by Professor Paul Negulescu, who in the 1906 Administrative Law Treaty[2] made the first considerations regarding the science of administration, underlining the fact that it deals with the organization of the various administrative authorities, with their role, responsibilities and functioning, with their hierarchy architecture, while the administrative law represents the entirety of rules that "govern the mutual rights and duties of the administration and the administrations"[3].

2.Interbelic Period and Integrity

An important issue regarding the Romanian law system in the period of time between the two wars was the unification of the legislative system. Each and every province that was part of Romania had a diferrent organization and its own law system, a problem that persisted until the historic act of December 1, 1918. The process of the legislative unification was a long-lasting one, especially in some areas, due to some objective reasons, but also due to the fact that neither the rulers of Romania hurried except for the parts where they had some special interests and because of the frequent changes in the government memberships, a situation that did not help at all in this matter.

The competent authorities in the provinces united with Romania carried out the activities for the administrative organization, activities that were carried out within the limits of the December 13th 1918 Decree, regarding the organization of Transylvania and other lands inhabited by Romanians.

Integrity is a concept that emphasizes on consistent actions in accordance with certain values, methods and measurement elements, as well as following certain principles and expectations that can be verified by results. In the ethics field, integrity is defined as honesty and fairness and can be assessed by the accuracy of one's actions. Therefore, integrity is the opposite of some flaws, such as inconsistency, hypocrisy or falseness. Integrity expresses virtues, feelings as well as the application of strong beliefs, without any discrepancies between the affirmations and the example of personal experience.

The origin of the word "integrity" derives from the Latin adjective "integer" (whole, complete), and in this context refers to the totality of the qualities of an individual, expressed by honesty and consistency of character.

When someone hints at another person's lack of integrity, that person is entrusted as a judge who feels that he possesses those qualities that "integrity" implies, and as such, his or her own judgment is an act in accordance with his own beliefs and with the values he claims to possess and practice at that time. In order to properly assess the integrity of a person, a system or an organization, a system of values and principles is required, with a simple but correct expression at the same time.

[1]Dinesscu, C. G. 1981. *Romanian Public Law Course, Volume III, Administrative Law*, Bucharest, Romania, p. 822.
[2]Negulescu, P. 1906. *Treaty of Administrative Law, vol. I*, Bucharest, Romania.
[3]*Idem*, p. 36.

The lack of a system of values and principles can deviate from abstract statements which, very easily, can be misinterpreted by anyone. The system of values and principles generated by human minds is validated only over time and has an adjustment and review process determined by the results. This assertion does not in itself invalidate the need for a system of principles and values, because the lack of such an arrangement invariably promotes inconsistency and confusion.

In addition to the legal (controlling) and the philosophical (incentive) approaches to the organizational integrity in the public sector, there is a third vision combining the peculiarities of the first two, with elements from the public administration and the private sector, as well as a know-how derived from empirical research on integrity in organizations. It provides recommendations to the managers and the decision-makers regarding the management of public sector organizations so that their members can act with integrity.

Integrity (or ethics) of the civil servants has been studied from several angles. The legal approach seems to be very popular. It focuses on laws and regulations (especially through specific statutes) that determine the legal behavior and enforcement mechanisms (through disciplinary or criminal proceedings) in order to enforce them. This approach has the tendency to emphasize on bad behaviours and a certain type of instrument (legal instruments). The ethical-philosophical approach is also very common, usually based on political philosophy or ethical theories. It creates fundamental questions about the role of the civil servants in a democracy and highlights ethical guidelines.

The concepts of ethics, integrity, prohibitions or incompatibilities have been a concern of the Romanian lawmakers, as demonstrated by their inclusion in the fundamental laws of Romania (the Constitution) and in the primary legislation (Codes, statutes, laws), or, as the case may be, in the secondary legislation as well (regulations).

The Great Union established in 1918 determined both objectively and subjectively a development and a new impetus in order to consolidate the Romanian unitary national state.

Thus, it was decided to adopt a new Constitution, one that would provide a new foundation for the Romanian nation.

3.Romanian 1923 Constitution

The new organization and administration of the Kingdom of Romania was made in accordance with the 1923 Constitution, based on the principle of the separation of powers in the state as well as a series of fundamental rights and freedoms with a citizenship character.

The separation of powers in the state was made by dividing them into three main categories as follows: the legislative power, the executive power and the judiciary power.

Legislative power was regulated in the first part of the Constitution, which was entrusted to the National and King's Representation. He had the right to sanction the laws and the right to convene and close the sessions of Parliament.

The second part of the Constitution contained the regulations on executive power, which was exercised by the king and ministers. Only ministers were accountable to the legislative authorities. At the same time, the duties performed by the king as well as the royal institution were stipulated.

The judiciary system was regulated in the final part and had as a main obligation to exercise the control over the constitutionality of the laws and over the administrative acts. A jury was established for criminal matters as well as for political

and press offenses. It was forbidden to set up extraordinary courts.

According to the separation of powers in the state theory, the functions that the state acquires in order to secure its sovereignty, the legislative function, the executive function and the judicial function could only be achieved by exercising them through independent powers, represented in the political and legal level by specialized bodies.

In order to achieve these functions of the state, public services were set up, which, in turn, were endowed with public functions, with attributions, competences and responsibilities specific to the tasks they performed in order to oblige with the general interests of the society[4].

According to the provisions of the 1923 Romanian Constitution[5], incapacities, temporary or definitive detentions and incompatibilities for certain categories of civil servants and dignitaries were regulated, as well as the way of establishing them by special laws, as follows:

-the members of the legislative assemblies representing the nation could not be members at the same time of one and the other assembly;

-deputies and senators, appointed by the executive power in a paid function in which they received a salary, were losing their mandate as representatives of the nation. This provision did not apply to ministers and sub-secretaries of state;

-the electoral law stipulated incompatibilities for the members of the assemblies representing the nation.

Through the 1938[6] Constitution provisions were stippulated incapacities, temporary or definitive limitations and incompatibilities for certain categories of civil servants and dignitaries, as well as the way of their establishment through special laws, as follows:

-the members of the legislative assemblies could not defend their private interests against the state, could not be members in the shareholders boards of companies that concluded contracts with the state, counties or communes;

-incapacities, temporary or definitive limitations and incompatibilities, were established through the electoral law;

-the members of the Royal Family could not be ministers;

-the ministers and sub-secretaries of state who were not members of the assemblies could take part in the law debate but could not exercise any vote;

-the Law of the Ministerial Responsibility governed cases of liabilities and penalties applicable to ministers;

-the ministers of justice who were removed from office could not practice as a lawyer for one year subsequent of the termination of office;

-outgoing ministers could not, for three years subsequent of the termination of office, take part in the boards of directors of the companies with which they entered into contracts.

There was the concept of integrity before the First World War, one example being the Election Law of July 2/14, 1864[7], stating that the mandate of a deputy was incompatible with holding an office as a minister, member of the Court of Cassation, a prosecutor near the courts and tribunals, with the functions of directors and section heads at various ministries and prefectures, with prefect and sub-prefect positions, with the functions of chief and police commissioner, as well as by active military servicemen. The President and members of the tribunals could not be elected deputies in their district of jurisdiction. The deputy who received a

[4]Prisăcaru, V., 2004. Public servants, Bucharest, All Beck Publishing house.
[5]The 1923 Romanian Constitution, published in the Romanian Official Monitor no. 282 on 29th of March 1923.
[6]The 1938 Constitution, published in the Romanian Official Monitor no. 48 issued on 27 February 1938.
[7]The 2/14 Electoral Law iulie 1864, published in the Romanian Official Monitor no. 145 issued on 3/15 July 1864.

paid public position, or an proposal for such a position, was deemed to have resigned and would have to be re-elected before he could practice his mandate.

By the electoral law for the Assembly of Deputies and the Senate of March 27, 1926[8], the incapacities, deficiencies and incompatibilities were regulated for both voters and those who could be elected as follows:

-were incapable of being voters or elected those under interdiction or judicial control, as well as those declared bankrupt or unreturned;

-were unworthy of being elected or elected:

•those convicted of crimes;

•those convicted of various offenses, including those convicted of illicit speculation or election offenses;

•those convicted of acts of betrayal and espionage against the Romanian state or the Romanian nation;

•those condemned for having evaded military recruitments ordered by the Romanian state authorities or for refusing to perform the oath of military faith;

•those convicted that lost their political rights for a period of time stipulated in the sentence;

•those convicted by military courts.

At the same time, the active military bodies could not be voters, nor could they be elected. The Courts made "pictures" of cases of inabilities and undignities for the voters in their constituencies, communicated in time to the city halls and to the courts of law, in order to consider them when drawing up the electoral lists and in judging appeals.

All those who were remunerated in any kind by the state, the county, public services or public utilities whose budgets were voted by the Assembly of Deputies could only be elected unless they resigned within 5 days after the electoral body Assembly for which he was to run had been summoned. This provision also applied to those who were remunerated for their services in private institutions, but for whose appointment was required a royal decree. The resignation given to this purpose was considered as received and the resigner could not regain his position again only after complying with the stipulations of the Law regarding the organization of the public officials statute and other special laws of organization.

The Mayors of the cities could run for such a position and if elected, they were supposed to opt for either the mayor position or for the Parliament position, according to the requirements of the administrative unification.

Members that could be elected as deputies or senators:

-Ministers, state sub-secretaries and teachers, aggregates and University lecturers;

-secondary teachers, tutors, teachers, priests of myrrh, protopopies who did not have the function of county chieftain, full-time doctors, lawyers, engineers and titled architects, all of them if they were not holding any public office;

-the directors of the secondary, special and primary schools of any category, and if they were elected, they were supposed to opt either for the position of director or for the deputy mandate.

The members of one or the other assemblies that exerted an remunerated position, apart from the minister and the sub-secretary of state, cease to be a deputy or senator.

Deputies and senators during their mandate, either personally or as a trustee, could not conclude with the state, counties, communes and private institutions any contract of works or supplies, under the penalty of the nullity of the contract.

[8]The electoral Law for the Deputy and Senate Assembly from 27th March 1926, published in the Romanian Official Monitor no. 71 issued on 27th March 1926.

The Electoral Law for the Assembly of Deputies and the Senate of 9 May 1939[9] completed the provisions of the 1926 Law as follows:

- university professors and university graduates could be elected deputies or senators as if they have been in that position for at least 10 years;

-Ministers or sub-secretaries of state who also held other public positions incompatible with the mandate of a senator or a deputy, when they ceased to be members of the government, were obliged to opt between the parliamentary position or for the other position in question;

-Deputies and senators could not defend their private interests against the state and could not interfere directly through any kind of action or intervention to ministries or other authorities;

-the provisions of the first two paragraphs did not apply to the lawful or the appointed senators.

The incompatibilities for senators were extended by the provisions of the Senate Regulation of June 20th, 1939[10], in the sense that at the beginning of each parliamentary term, the Disciplinary, Incompatiblities and Immunity Committee will examine, according to the elected senators, the situation of each regarding the incompatibilities provided by the Constitution and the electoral law, and such a report was subjected to the Senate vote.

If the senator had stopped the cause of incompatibility, after the committee's initiative, this would have been mentioned in the minutes of the hearing, thus the case was no longer foreseen in the report to presented to the Senate.

For any cases of incompatibility that occurred during a parliamentary term, the same rules were applied, with elected senators being obliged to declare immediately through the Senate Office such a situation.

Ministerial liability was governed by the Law of May 2, 1879[11], which stipulated that all provisions of the ordinary criminal laws, relating to the crimes committed both by civil servants in the exercise of their functions and by private persons, will also apply to ministers.

In addition to these situations, there would be applied a sentence to imprisonment under the Penal Code and a ban, starting from three years to the maximum of his life in holding any public office, for the Minister:

-who signed or countersigned decrees or made decisions that violated an express text of the Constitution;

-who, by violence or fraud, hinders or has attempted to prevent the free and sincere exercise of citizens' electoral rights, even if in such cases the subsequent approval of the legislators had been obtained.

He was punished with the ban, from three years to the maximum of his life to hold a public office, the minister:

-signing or countersigning decrees or making decisions that violate an express text of an existing law;

-who, in bad faith and to the detriment of the country's interests, misrepresented the national representation of the state's affairs.

On July 31, 1929, the Law for the reorganization of the High Court of Accounts[12] was adopted, which contained provisions regarding the occupation of the functions, incompatibilities, appointments, advances, orders and discipline for the staff of the institution.

Members of the Court of Auditors and the Public Ministry could not be relatives

[9]The Electoral Law for the Deputies and Senators Assembly on 9th May 1939, published in the Romanian Official Monitor no. 106 bis issued on 9th May 1939.

[10]The 20th June 1939 Senate's Regulation 20 iunie 1939[10], published in the Romanian Official Monitor no. 4 issued on 18th July 1939.

[11]The 2nd of May 1879 Law regarding the Ministerial Liability.

[12]The July 31st 1929 Law for the reorganization of the High Court of Accounts, published in the Romanian Official Monitor no. 167 issued on 31st July 1929.

or affiliated with each other up to the fourth degree.

They also could not be interested either directly or indirectly or as a trustee in any affair that was subjected to the Court's control, nor could they take part in the investigation of any such affair in which a relative or a cobbler to the fourth spouse inclusive would have an interest.

The functions of prime-chairman, chairman, councilor, general prosecutor, district prosecutor, counselor-controller, chief referendum, referendum and referendum-trainee were incompatible with:

-the legislative mandate and public functions of any kind, occupied by election or by appointment;

- free professions;

- the capacity of director, delegate-manager, board member or censor in private companies or any institution under the control of the Court.

4.Civil Servants' Statute of 1923

The regulations for civil servants are contained in the Civil Servants' Statute of 1923[13]. According to this statute, a civil servant who committed an act by exceeding the limits of his mandate or the scope of his or her legal duties, or by abuse of power thus creating a damage for a private person, then the State, the county or the legally responsible community could call on the public official, the author of the act in order make him financially liable.

An official in whose account an ungrounded or inaccurate complaint was made had the right to seek damages.

The civil servants' incompatibilities were:

-holding simultaneously two positions. They made exception to those who were allowed to cumulate by the law of cumulation;

-inability to participate in commercial trades;

-could not own proffessional companies;

-they could not lease any lands;

-could not be in the service of other administrations or private institutions without the authorization of the Head of the Authority, based only on assent of the Commission for nominations and proposals;

- could not do private business if they are related to the public office they occupy.

Civil servants could not participate in the management, administration or control of a financial, industrial or commercial corporation except with the authorization of the head of the authority, based on the assent of the commissions for proposals for appointments and advancments or any similar boards, and only if there was no connection to the service he / she was part of.

In cases where absolute bans were stipulated by laws of organization, for certain categories of positions, they were maintained. Those who deviated from these stipulations were sent before the disciplinary commission or similar councils.

Apart from the exceptions mentioned in the electoral law, no public official could be elected deputy or senator.

Civil servants with two or more positions were entitled to rent allowances and other accessories only for a single position. For the other positions they received only the basic salary without accessories.

Civil servants punished with redundacy could not be appointed sooner than two years after the release date and were given the lowest rank of the position they were assigned to, and the ones that were punished with dismissal could never hold a public office again.

[13]the Civil Servants' Statute of 1923[13], published in the Romanian Official Monitor no. 60 issued on 19th June 1923.

If the interest of the service or of the inquiries was demanded, the accused civil servant could be suspended before the disciplinary commission's conclusion was pronounced, provided that within 30 days from the suspension to be sent in front of the commission, who was obliged to rule the case in no more than two months. This suspension did not entail loss of salary or seniority.

Suspension from service was mandatory when a civil action was opened based on the a training judge's order for one of the following offences: false, theft, deception, attacks against good morals, bribery, embezzlement of public money, perceiving unlawful charges, sealing, seizing, concealing or destruction of documents in the archive or in public deposits and instigation to strike.

When the civil servant was acquitted, the case was brought before the Disciplinary Board, which would decide whether the civil servant could or could not be taken back to service, and after a final conviction, the provisional suspension would become a lawfull dismissal from office.

Resigning civil servants could be appointed back into their positions or on an equivalent one in the same administration, with a prior assent of the commission for nominations and referrals, unless a period of time of five years had elapsed since they left office.

5.1937 Romanian Military Code of Justice

For the military justice staff, the provisions on incompatibilities and oaths were those set forth in the March 20, 1937 Romanian Military Code of Justice[14].

The incompatibilities and oath provisions were those applicable to court councils, except for age conditions, for the inferior position judges.

No one could be part of a military court under any title if he was not a Romanian citizen and if he was not at least 25 years old. The registrar's aid had to be at least 23 years old.

Relatives or kin to uncle and nephew included could not be part of the same military court as judges, nor could they serve as military training judges, military prosecutors or clerks.

No one could take part as a judge, nor could he serve as military training judge in a case before the military court:

-if he / she is a relative or kin with the offender, directly or collateral, up to the 4th degree, or if he married the sister of one of these persons or if his wife, parents, or children were directly or indirectly interested in the trial;

-if he filed a complaint, or had given an order to investigate or pursue, or had been deposed as a witness in question, or had served as an expert or arbitrator;

-if, within 5 years of activity, he was part of a defendant's trial, he or she, his wife, his parents, or his children;

-if he previously participated in the same case, as a member of a military court, as a military training judge, as a military prosecutor, or as a defense counsel;

-whether he was or is a guardian, curator or counselor of the defendant;

-if he gave advice or expressed his opinion on the case being judged. It is not the case for those who are bound to fulfill a simple hierarchical form, by transmitting the documents.

On taking up office, the President and the judges will take the oath in a public hearing. The same oath shall be taken by the Chief Prosecutor, the prosecutors, military training judges and the clerks with their help, once for all, at their appointment.

[14]The March 20th 1937 Romanian Military Code of Justice, published in the Romanian Official Monitor in force starting with the 20th May 1937.

Judges in the courts, who were temporarily replaced for temporary absences, resumed their duties by right, returning without taking another oath.

Experts, interpreters or translators were nominated as much as possible between active or retired military personnel or experts accredited to military or civilian criminal courts. The incompatibilities stipulated for judges were also applicable to them.

4.Conclusions

Aspects related to integrity, ethics and imcopatibilities were identified in Romanian legislation and presented in the study starting even from 1864, naming here as one example the Election Law of July 2/14.

As presented in the article, the concepts of ethics, integrity, prohibitions or incompatibilities have been a concern of the Romanian lawmakers, as demonstrated by their inclusion in the fundamental laws of Romania (the Constitution) and in the primary legislation (Codes, statutes, laws), or, as the case may be, in the secondary legislation as well (regulations).

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