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THE SOURCES OF ADMINISTRATIVE LAW

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ABSTRACT:
If we remember that the administration is the activity of concrete execution of the law, we will say that the administrative action is limited to a rule of law, a competence that gives it the right to act, within the limits determined by its very content. Therefore, the source of law is precisely the legal basis of this administrative action. At the same time, the examination of the sources of administrative law must correspond to the purpose of public administration, which complies with the rules of law and which must respect the principle of legality.

KEYWORDS: *administrative, constitution, organic, law.*

INTRODUCTION

In a simple definition, by sources of law, we understand the forms of expression of legal norms, which are determined by the way they are enacted or sanctioned by the state. By sources of administrative law, we mean the legal forms that the norms of administrative law take. At the same time, by source of law, we must also understand the framework or limit within or up to which the administrative action can be carried out. The general theory of law divides the sources of law into two categories: sources of law in the material sense and sources of law in the formal sense.

The material sources of law, also called real sources, represent the socio-economic realities that determine the intervention of the legislator in the sense of the required legal regulation. Formal sources represent the legal forms of expressing the will of the rulers.

Sources of administrative law represent the forms in which the norms of administrative law are expressed that give rise to, modify or extinguish relations of administrative law.[1]

In relation to the public authority from which they come and implicitly from their legal force, the written sources of administrative law are:

- the Constitution,
- laws (constitutional, organic or ordinary),
- decree-laws adopted until May 1990,
- Government ordinances (simple or emergency),
- Government decisions,
- acts of the ministerial and extra-ministerial administration, regardless of their name (orders, instructions, specifications, circulars),

[1] Viorescu Răzvan, *Drept administrativ şi administraţie publică,* Editura Universităţii "Ştefan cel Mare" din Suceava, Suceava, 2006, p. 10

- the acts of the autonomous central administrative authorities (B.N.R., C.S.A.T), named differently (circulars, clarifications, decisions, etc.),
- orders of the prefects,
- the decisions of the county councils,
- decisions of local councils,
- the dispositions of the president of the county council,
- the dispositions of the mayors.

1. Written sources of administrative law in the Romanian legislative system

The Constitution is the most important source of administrative law due to the character of the fundamental law of the state. Sources of administrative law are constitutional norms that have a dual legal nature, constitutional law and, in the alternative, administrative law. Exceptions are the constitutional norms that refer to the organization and functioning of the public administration authorities, those that concern the fundamental rights and duties of the citizens whose realization belongs to the public administration.

The Constitution also contains fundamental provisions regarding the organization and functioning of the main categories of state bodies, the action of these bodies, therefore implicitly the administrative action. With regard to administrative action, the constitutional norms impose a reservation, namely, the fact of censoring the administrative norms for non-compliance with the provisions of the Constitution. In this sense, the Romanian Constitution of 1991, in art. 146, regarding the attributions of the Constitutional Court, in par. d., specifies that this body "decides on the exceptions, of unconstitutionality regarding the laws and ordinances, raised before the courts or commercial arbitration; the exception of unconstitutionality may also be raised directly by the People's Advocate".

In connection with this aspect, some clarifications are required: the judge of the administrative contentious court cannot censor the constitutionality of the law. He is not competent to censor laws, but to judge administrative acts. Indirectly, however, he can censor the law by pronouncing the sentence on the legality of an administrative act, elaborated by ignoring a constitutional rule. The censorship of the administrative act represents, implicitly, the censorship of the law on which it is based and, consequently, the unconstitutionality of such a law can be denounced.[2]

Constitutional laws (ie laws revising the Constitution) are a source of administrative law if they regulate social relations in the sphere of this branch of law.

Organic laws - their field of regulation is expressly provided in the Constitution and are sources of administrative law if they regulate relations of administrative law (eg: Law no. 188/1999 - Statute of civil servants).

They have distinct features, depending on their content (on the application of constitutional provisions), as well as the quorum and the majority of votes required for their adoption. Representing an extension of the constitutional norms, the organic laws are elaborated only in fields expressly provided by the legislator (Constitution and that of the ordinary laws). Based on these provisions, a series of organic laws were elaborated regarding: the organization and functioning of the Government, the administrative contentious; local public administration; organization and conduct of the referendum, etc. They are sources of administrative law and are adopted by the meeting of the vote of the absolute majority in each Chamber or by the absolute majority in the joint sitting of both Chambers (if the mediation procedure did not have access).

[2] Dana Apostol Tofan, *Drept administrativ, vol. I,* Editura C.H. Beck, Bucureşti, 2018, p. 20

Ordinary laws - can be adopted in any field specific to the legislative activity, except for the fields of organic laws; it is also necessary for sources of administrative law to regulate social relations that are the object of public administration.

Government Ordinances - simple or emergency, whose specific regime is regulated in art.115 of the Constitution, are normative acts with the legal force of law.

In order to implement its program, the Government may request Parliament to pass a law authorizing it to take within a limited period of time certain measures which are normally reserved for the organic law. Thus, the Constitution, in the texts of art. 108, paragraph 3. and art. 115 paragraph 1, makes express reference to the legislative delegation of the Government, whose acts are called "Ordinances". In principle, the ordinances are not subject to the approval of the Parliament, since, according to art.115, par. 2., this is required only if required by the law of authorization. The ordinances intervene for the purpose of detailing, specifying some provisions contained in a law, through subsidiary norms, technical instructions, methodologies, etc. The ordinances subject to the approval of the Parliament - until the fulfillment of the empowerment term - have an executive character of administrative law, the non-observance of the term entailing the cessation of their effects. Only in exceptional, emergency situations, the investment law of the Government with a certain legislative competence can be a special empowering law. In such cases, the Government may adopt emergency ordinances which enter into force only after they have been submitted for debate to Parliament, which shall approve or reject them by law. By ordinance, the norms established by the Government have the force of law, within the limits and conditions established by the enabling law, this being in fact the significance of the legislative delegation.

Government decisions, acts of the ministerial and extra-ministerial administration, of the autonomous central administration authorities, of the central public administration authorities and of the prefects - are sources of administrative law only if they have a normative character.[3]

Regarding the decrees of the President, they can constitute, in the opinion of most authors, sources of administrative law, if they have a normative character and regulate the social relations in the sphere of public administration. Thus, it is about the decrees issued in the exercise of constitutional attributions declaring the general or total mobilization of the armed forces, the decrees on measures taken to repel armed aggressions against the country, as well as the decrees by which the President of Romania establishes according to law, the state of siege or throughout the country and in some territorial administrative units.

In the current Romanian law system there are still in force normative acts adopted prior to the events of December 1989. Thus, are the laws adopted by MAN, (former legislative authority), the decrees of the State Council (former body of state power with permanent activity) having force equal to the law, presidential decrees, decisions of the Council of Ministers (former Government).

In the period after December 1989 and until the entry into force of the Constitution of 1991, decrees-laws, decrees, laws, Government decisions, etc. were adopted. As for the decree-law, it is a legal act with legal force equal to that of the law; it is adopted by the executive, but in areas reserved for the legislator (hybrid).

International treaties and conventions - may be sources of administrative law if they meet certain conditions:

- be of direct, direct application,
- have been ratified in accordance with the constitutional provisions,
- to include regulations of social relations that focus on the object of administrative law.

[3] Antonie Iorgovan, *Tratat de drept administrativ, vol. I,* Editura „Nemira“, Bucureşti, 1996, p. 144

In accordance with the provisions of the Constitution, the Romanian state undertakes to fulfill exactly and in good faith the obligations incumbent on it from the treaties to which it is a party; the treaties ratified by the Parliament, according to the law, are part of the domestic law. Ratification of a treaty can take place only if it does not contain provisions contrary to the Constitution, a situation regulated by art.11. paragraph 3: "If a treaty to which Romania is to become a party contains provisions contrary to the Constitution, its ratification may take place only after the revision of the Constitution." Moreover, Article 20 of the Constitution recognizes the priority of international law over domestic law in matters of fundamental human rights, except in cases where domestic regulations are more favorable than international ones.

In the matter of international sources of administrative law, in view of Romania's accession to the EU, it should be noted the introduction of a new title in the Romanian Constitution of 1991, which became Title VI, on the occasion of the revision, entitled "Euro-Atlantic Integration". In this way the constitutional foundations of the integration process are established. From current regulations in Community law - regulations - are directly applicable in the Member States of the Union, and directives - without being directly applicable, oblige national authorities to adopt provisions to implement them.

2. Unwritten sources of administrative law in the Romanian legislative system

The custom can be seen as a source of law in certain circumstances; thus, in Romania, by establishing the local autonomy, certain longer administrative practices imposed by specific conditions of a certain geographical area may appear (ex: officiating marriages on Sundays, without having the legal obligation in this respect).

Principles are important sources of this branch of law. These principles have crystallized over time and without being expressly provided for in any normative act (example: the principle of revocation of normative acts).

Principles applicable in the absence of the legal basis:

- the principle of legality;
- the principle of freedom of decision;
- the principle of equality and non-discrimination;
- the principle of legal certainty;
- the principle of protection of legitimate expectations;
- the principle of proportionality.

CONCLUSIONS

Jurisprudence is a source of administrative law in the states belonging to the Anglo-Saxon system of common law. Contemporary Western doctrine considers that the jurisprudence of the administrative and constitutional contentious courts represents new sources of administrative law. In France, for example, the development of administrative law is based mainly on the jurisprudence of the Council of State - supreme administrative court, with powers and approval of draft administrative acts. Doctrine - is not a source of administrative law, but it influences the evolution of legislation and jurisprudence.

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