THE APPLICATION OF THE LEGALITY PRINCIPLE IN THE ADMINISTRATIVE ACTIVITY IN THE EUROPEAN UNION COUNTRIES

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Abstract:

The state must be govern by the law. The state must established with precision the limits of it's competences likeness the law, as respect the citizens liberties, it mustn't action more than come under it's legal competence.

An essential characteristic of the state govern by the law is the principle of the legality of the administration activity, which, with the organizational division of the power of state in three component elements, has like scope the guaranty of the citizen liberty to direct intervention of the state.

The develop of the equality principles of the peior persons and of those of the legal safety, as the protection of the individual rights by the independent courts, play a major role in the completion of the state obedience to the law's sovereignty.

This develop led to a quasi-total obedience of the administration to the law, which at it's turn, it's submit to the constitutional law. There is an agreement between the European states – despite of theirs different historical development – regarding with which constitute the basic principles of the safeguard of the peior person's liberty, and regarding the fundamental rules for the democratic exercise of the power of the state.

Regarding the various organisms of the European Union, these are empowered to action only in the specific designated spheres, which are establish in the formal stipulations and precise defined. Much more than that, they had at their disposal an complete system of the rights protection, in which The European Justice Court represent the central element. Therefore, there is an unity of the views of the member states up there that the concept of the state govern by the law in the most general terms was accomplish, in the sense that any exercise of the executive power must discretionary and limited by the law.

Key-words: public administration, administrative law, compared law, state of right, legality principle, administrative deed.

JEL Classification: N40, Y20

INTRODUCTION

Approaching by a systematic vision, the specific nature of the activity of the public administration it's unfold through the agency of many institutional forms which constitute an institutional gearing, which organization principles vary in accordance with the problems pose, by the external pressure and by own preoccupations, but which suppose the integration in the social, politic and economic medium existing too with multiple differentiations in time and space [1].

Therefore, in a generalization acceptation, the administrative system of an state or of an union states, can be define like an coherent assembly of structures, institutions and interdependent settlements, through it's materialize the activity of public administration, like an real process.

CHAPTER I THE EUROPEAN ADMINISTRATIVE COMPARATIVE LAW

The comparative law studies was undertake until now especially in the private law domain, in the largest acceptation. This fact is the most remarkable when some remind themselves that the historical routs of the comparative law are "stuck" in the public law and that the assignation toward "the younger" states had an incontestable role for the first and exercise and go on to exercise even today an considerable influence on the those behind.

The motive of this unidirectional orientation of the comparative law toward the problems of the civil law it can constitute first of all the fact that the practical need of call it in help it's concentrate above all in the private law domain. The commercials and personals relationships

which outrun the national borders are in the traditional ways more appropriate and more develop between the individuals citizens than between national administrations or between the citizens of an state and the administration from another state [2].

In the administrative law case particularly should also add that this is an new domain of the law, which it's develop in the European states only during the 19-th century, when it's arrive at "state of law" notion. Since then, the obligations and the authority of the administration across citizens it's continuous develop; in deed, in such measure, that the relationships between citizens and administration had quantitative equalize the volume of the legal relationships between citizens themselves. On background of an influence in a continuous growing of the westerly civilization and of an moral, economic and even legal standard, in the different states by the mutual exchange of goods and ideas, it's hard to imagine that the administrative law remain much longer "untouched" by the comparative law.

The state of law represent the public power govern by the own laws inclusive by the international settlements and agreements hereupon that state are apart.

The democratic state of law is govern by the laws that it's identify through the will of the nation representatives choice by free will, characterize by the separation of the power in state, the political pluralism, by a largest scale of rights, freedoms and inviolabilities recognize to the own citizens, inclusive the real guaranty of those on the substance of an rigorously examination of those observance in a violation case, including from the authorities part destined to defend them.

In a state of law the authorities activate only in the limit of legal competences attribute, any action – deed or juridical fact or lawlessly – accomplish without legal frame is invalid, illicit and, in consequence, if it's violate rights or legitimate personals or public
interests, involve the juridical responsibility, under different forms, on the side of the guilty ones [3].

CHAPTER II THE LEGALITY PRINCIPLE IN THE ADMINISTRATIVE ACTIVITY. THE APPLICATION OF THE PRINCIPLE IN SOME COUNTRIES OF THE EUROPEAN UNION

An essential characteristic of the state of law is the action of the legality principle conforming which all the law subjects, physical or juridical persons, citizens or strangers, private person or officials, authorities or non-government organizations must to observe the law in their relationships, inclusive all the others juridical deeds and measures found by the law applicable the social records in which it's found.

Of course, in any democratic state, the legality is not only a simple duty, fundamental or constitutional law, but also a fundamental principle of law which it's find again at the base of all settlements operation, of all norms which has to be observe, that deed accrue, equal way everybody. The necessity of the observe of law in a democratic state is also an objective requirement and also an subjective one [4].

Under objective aspect the necessity of the observe of the law it's appear like a general requirement or collective one from the moment of the law promote the general interest, everybody common or the majority of the population.

Under subjective aspect the necessity or the observe of the law it's manifest at individual level, through the acknowledgement of the own interests, well-known in the settlement which interested the person in the acceptation of the benefit of the protection which dispose in that way when the laws or interests are violated.

That why any violation of the law must seen not only like a simple deviation from the general interest, but also like a harm, resort, and also of the personal interest reverberating in common interest.

The legality has certain fundamental requirements which consist in:

- The hierarchy of the normative deeds, headed by the Constitution having supreme juridical force, and going on with the law having a upper force all the other settlements and

finishing up with the last individual deed of achieving of the law, base on the law and applied of an induced subject;

- The unity and the oneness of the law, visa it equable application on all the country territory and in the same way absolutely equal to all those founded in the same juridical situation, meaning the unitary juridical treatment, indiscriminate;
- The legality and the opportunity suppose an application of the law, differential in the permitted frame by it, varying with the place, time, person or the situation which is visa, meaning the actuality of the measure taken which correspond better with the concrete conditions offer in the process of the individualization of the law application, therefore any measure disposed by the authorities to be as legal and as adequate [5];
- The observance of the citizens rights and freedoms, of the established and guarantee inviolabilities, therefore any violation of them, including from the authorities side, to be approbate through efficient juridical resources, which come under exertion of the applicant of the law, the free access to justice, the steady procedurals and processual guaranties, in viewing of the re-establishment of the violated legality;
- The order of the state or of the duty which impose the application alongside the law, especially to the civil servants of the administration, of all the settlements and hierarchic orders with legal character [6], the receptivity toward the addressed applications, the settled on time and in the adequate way of these, in the conditions of the transparency, with minimum of the formalities, eliminating the bureaucratize and the unavailing procedures.

In the public administration case the principle of the legality proceed entirely as on the juridical activities of that as of those destitute of such effects.

In this acceptation it's remark the fact that:

- ✓ The public authorities are found, organized and function in the ground of law, either in direct way, immediate, either indirectly way;
- ✓ The duty of this organs it's establish all in the ground of law which it's circumscribe the sphere of ability in which act;
- ✓ The deeds and, in generally, the ready measures are anticipate all by the law.

The edification of state of democratic law are mean both the real equality of the fellows ahead the law, but also the legal protection of their rights, like a juridical guaranty measure offer by the jurisdictions invest with the duty of the solve of the violation of this rights, inclusive the specialize judicial instance.

By the state of arbitrator type, above the conflicts with mediator role, for the beginning of the modern democracy, at the state and, especially, at his administration amenable to the Constitution supremacy and the superiority of the law, but also the compulsoriness of the execution of the judicial resolution which it's determine to reestablish the legality and the defection rights, it's unwind a progressive evolution unanimous accepted by the European states beyond the national historical personal and natural evolutions [7].

France

In this country the system of the administrative law powerful centralized through the competence of the governmental authorities and the unitary character of state is marked by the legality principle, the executive having to act according to the law or the right, respective the Constitution, the treaties, the regulations.

Of course, thanks to semipresidential character of the form of government, the central normative competences, and implicit, the action of the legality principle it's manifest and, respective, it's exercise in different way.

Indeed, the Parliament according to the Constitution, has a limited legislative power (art, 34) and rigorously delimit against the executive, this rearward having a large sphere of the normative duties, as the chief of state through the decrees, and the executive through the regulations and even legislative competences through the agency of governmental ordinances [8].

Though, the discretionary powers which dispose the executive are implicit restricted by the fundamental principles of right emerge on Constitution and the international treaties, - and the common law right has no important role in this sense, - the treaties which had an anterior role against the national legislation (art. 50).

Lastly, the administration must to respect the community law of the European Union, with direct effects and superior against the internal law.

The assurance of the legality of the administration papers it's accomplish procedural through the recourse for the excess of power within the demand, the reclamations, the intimations it's can based on the formal or procedural deficiencies, other violations of the law, the discretionary power abuse and even absence of the competence.

Under institutionally aspect, the guaranty of the legality in the administration, it's jurisdictional assured through the administrative courts, headed by the State Council, which had, long ways time, a decisive role in the limitation of the executive powers in this reports with the citizen and in the his subordination against the Constitution and the laws.

Italy

The legality principle is unanimous accepted like a basic rule which govern the administration functions, although the interpretations are numerous in this acceptation starting from the constitutional text (art. 97) concordant which "the public institutions are organized accordingly through the deeds emit by Parliament to assure the fairly performance and the fairness of the administration.

First of all, this principle impose to the executive of the district and the province the duty to comply both the law and the general principles of law.

Secondly, though, the administration may to turn from the foresights which visa the liberty and the property of the citizen, but only than has through the law, such possibility express devote, like, for example, the cases of necessity, the emergency cases or the siege cases [9].

Greece

The Constitution characterize the state like being constitutional, reason for that even the administration is lead by the same principle of legality which mean the subordination both to the law and to the ordinances of the executive.

Much more, the chief of state himself, the President, which is also the chief of the executive, dispose only by the authority conferred by the Constitution and the laws.

Still, the activity of the Greek administration is govern not only by the express principles of the laws, but by those generals unwritten of the law, arising tacit through the settlements or detached from those.

The procedure of tackle of the administrative decisions is inspired on the French legislation, for the power excess cases consisting on law breaking, the absence of the competence, the vises of form or procedurals, the authority abuses.

Portugal

The Constitution from 1974 has dedicate through the legality principle behind the radical political evolution post dictatorial, using the phrase as "the democratic legality" created as an compromise between the concepts of "the socialist legality" specific to socialist Eastern Europe, in that epoch, and that on "constitutional state" utilized in Western Europe.

Further, the recension from 1982 of the fundamental law introduce the collocation of "the democratic constitutional state".

Of course, the hole public administration in front with the government it's subordinate to the written law, but unlike the legislation and the juridical system of others European states, the executive has an proper legislative competence, different from those of Parliament, exercised through the settlements by primary nature and not derived by law [10].

Though the administrative intervention on the domains of the fundamentals rights or which could affect those rights, ask, yet, the legitimation through a parliamentary deed.

Spain

The Constitution from 1978 establish the government form specific to the parliamentary monarchy within of the constitutional social-democratic state like a political regime.

In the definition of this government form the public authorities are submissive to the Constitution and to the general juridical system.

The definitive elements of the constitutional state consist in the legality principles, in the legal rules hierarchy, of the public character of the juridical rules, the unretroactivity of the sanctions, the legal or juridical certainty, the responsibility and the veto on the arbitrary action of the public authorities (art. 9 from Constitution).

Although the government exercise, as a rule, the executive base function, though has the power too to emit the settlements, the attributes which must to exercise them according to the Constitution and the laws (art. 97).

The restriction brings from the executive to the citizen's rights and the freedoms had, though, the need of an written law.

Luxembourg and Belgium

The Grand Duke exercise, according to the Constitution(art. 33), the executive power consisting in the emit of the deeds of the application of the laws, respectively, of the decrees and the ordinances, which in no way, can not be used to the correction (or the change) of the laws or for the prevention of them execution.

The general principles of the laws constrain the administration to the execution of the law in which sense, are devoted to the principle of the hearing, those of the equal treatment in the matter of the public tax or of the access to the benefits.

The principles of the French administration influence in the strong way the Luxembourg legislation, from the viewpoint of the errors and the abuses from the executive activity.

In Belgium the public administration is highly placed to the law in the sense that it must ensure the application of this having the power according by the law.

But, the legality principle cause that the executive actions to be legal and, in the extent that they are in accordance with the decisions of the superior authorities, under juridical hierarchy of the rule of law cause by their juridical forces in terms of the effects produced.

Although the Constitution not establish an juridical regime regarding the control of the constitutional laws, the judiciary organisms not having the power to decide in this sense and the deed emit by the Parliament not have an penalty in case of unconstitutional, though the Courts, under the fundamentals laws (art. 107), are obliged to reject the settlements of the provinces and the municipalities against the law.

Much more, any interested person can ask the Council of the State the revocation of the administrative decisions defective the law [11].

On the other hand, the legality principle presume the rule that not even an administrative authority can not adopt the previsions contrary to the proper generals settlements, couldn't derogate through the individuals deeds from the proper norms.

Germany

The Constitution (art. 20/3) oblige the executive to exercise his attributions according to the fundamental law and to the other laws, but under the conditions of the compliance of the fundamentals rights.

From here the constitutional of the legality principle of the executive activity in terms of the state primate and the request of the law's compliance like an deed emit by the Parliament in the respectively domain of the administrative action.

The primate of the law, like a deed emit by the Parliament, ensure the superiority of this initial source on other secondary source and derivative from the regulatory, from the ordinances type, from other administrative deeds, those from behind must being in according with the firsts.

The particularly problems, regarding the administrative settlements, in case it's based on the law, doesn't arise in the executive practice.

Though, it's put the problem in what domains reserved to the legislative are that exclusively competence and in what measure the unreserved parliament domains can accrue to the normative competence of the executive.

The solution choose by the German Constitution (art. 80/1), differ from this of the French legislative, is particularly restrictive in sense that the executive ordinances must rely only to the statuary authority clear defined, the administration couldn't act through the own settlements in the absence of an normative parliamentary deed which authorize it in this sense [12].

In case of the publics services administration it's set similarly the problem of the legal base of those benefits in relation to citizens rights exercise or beneficiary of those services, especially in case of arbitrary decision of rejection of this, in the sense of determination to the degree of particularization of the parliament settlement to the administrative normative or individual application.

The Federal Constitutional Court appreciated, in this sense, that the need of primary legislation and the nature of the legislative deed are imposed by the importance of the problem in case for the citizens, in which sense as the fundamentals rights are more threatening or as the measures which follow to be emit are yield to cause bigger effects on them as more precise and more restrictive must to be the authorize of the deeds emit by the parliament.

About the constraints impose to the administration regarding it's legal measures these are imposed by the generals principles of the law and the matter of the rights and the fundamentals liberties which limited explicit and implicit, the liberty of the executive action (art. 1/3 from the Constitution) both in scope of the public law as in that of the private law.

An administrative deed for to be wholly legal must to fulfill the next conditions:

- The issue of the deed must to be realize by the executive competent authority;
- The deed must be emit in according to the legal procedure established;
- The deed must be emit in the form asked by the law;
- The deed must to correspond through it's content to the legal stipulation (not having no defect of substance);

If one of these requests is not fulfill the administrative deed is illegal thanks to the improper application of the legal rules existing (the Decision no. 13,28(31) of the Constitutional Federal Court) [13].

CONCLUSIONS

The public law it's characterize through a multitude of a specific features, which cannot be meet in the same measure or in the same combination in other domains of the law.

The settlement scope of the public law it's extend both on the structure and on the tasks of the power of state and on the relationship between the state as o owner and the individual citizens.

Through the nature of the things, the immense domains of the public law are determined more less through a substantial inherent legality than through the political desire of change from the forces which holds temporary the power.

The generals principles of the compared law govern the methodology of the comparisons from inside of the public law. It will be wrong to consider that exist a comparative method specific to the public law but one or two specific features must be taken in consider, when ever the public law is the subject of the comparative investigation.

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