



LEGAL AND NON-LEGAL RELATIONS BETWEEN CLERKS AND THE PUBLIC ADMINISTRATION LEADER IN ROMANIA

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Abstract

Through the organization and operation of public administration in Romania, based on the fundamental and legal principles, an environment is created which is adequate for the development of tighter relationships between the citizens and the local authorities they elect to timely meet the needs and interests of the members of the local community. The relations between direct reports are of equality from a legal point of view. Still, the authority of a person that was assigned a leading position cannot rely exclusively on legal prerogatives. It must be the result of an array of professional and behavioural values, etc, granting it the quality of specialist. Therefore, a leader must be endowed with the ability to analyze the capacity of the human factor, in order to fully achieve objectives set by the programs drafted from one stage to another..

Key words:

Public administration, public servant, legal relationships, personality of the head of the administration

JEL Classification

K12, K29

1. Introduction

The right determination and ongoing of relationships between the public administration authorities and citizens, being a condition and, in the same time, an expression of the rule of law democracy, is guaranteed based a complex of regulatory documents and legal institution specially meant for providing the actual, more and more full access of the citizens to the administrative process (Parlagi Anton, Iftimoaie Cristian, 2001, pg.112).⁴

The legal relationships of the personnel within the public administration are regulated in detail by the following applicable legislative instruments: Law 215/2001 (amended and republished), Organizational and operational, internal order regulation policies and labour legislation. These legislative instruments establish the rights and obligations that each employee has, depending on the position held in the administrative hierarchy. In the case of hierarchical legal relationships we find ourselves in the presence of subordination relationships that involve all the rights of the hierarchical leader and the limits within which they can be performed. Within these legally regulated relationships, the administrative personnel have certain rights and obligations, as follows:

In the rights area we can distinguish the category of rights that are common to all employees, if they have a labour relationship with the administrative body and labour-specific rights.

1. The rights that are common to all employees are usually stipulated by the labour legislation and mentioned in the labour agreement. Some of these include:

- the right to salary which is in accordance with the quantity and quality of the work;
- the right to rest;
- the right to social security;
- the right to participate in the management process, etc.

2. The position-specific rights are stipulated by the Public Servant Statute – Law 188/1999, (amended by Law no. 2/2013), the Regulations drafted in this respect, internal regulation policies and other special regulations.

Generally, the personnel holding leading positions has the right to guide coordinate and control the activity of those under their supervision, and sometimes the right to apply disciplinary sanctions in case of infringements. It is interesting and useful of all these rights to dwell on the subject of labour legislation (art. 39 paragraph 1 of Labour Code amended in 2013), which provides that the employee benefits of labour stability. In the law regarding the public servants statute it is stipulated that, regardless of whether they also have the quality of employees or not, they benefit of stability of their position.

The stability is the situation in which the public servant can be removed from the held position only based on a

disciplinary decision. The stable public servant can be transferred to another locality, but on a similar level position. Also, it is to be mentioned that civil servants can only be transferred only with their consent. In my opinion, stability is an intrinsic value for the public administration employee to be able to work efficiently under optimal conditions.

When such statements are made, one also considers the fact that working in the field of public administration, given its characteristics, is an extremely complex task that brings about numerous problems that need to be solved in due time, simultaneously with other problems deriving from the perspective programs prepared within the territorial units. Also, depending on the held hierarchical level, a large number of the employees working in the public administration perform coordination activities in the field, stimulating local initiative, in the sense of achieving a series of general interest global objectives at county level, cities and communes. All these, naturally imply a certain experience, a certain degree of assimilation of practical knowledge, characteristic to the problems implied by the application of certain legislative instruments, skills that can be achieved only under work stability conditions.

With respect to the obligations, one can distinguish between general obligations, that any employee has and position-specific obligations.

1. Common obligations for all employees are the same as the common rights known in the case of labour legislation, the collective labour agreement and the individual labour agreement. Such obligations include:

- prompt and accurate fulfilment of duties that fall under the employee's responsibility as per the labour agreement;
- comply with order and discipline regulations at the workplace;
- perform any activity as per their background and as required by the institution;
- observe all occupational safety regulations;
- ensure state and work-related classified information confidentiality, etc.

2. Position-specific obligations, just like the specific rights, are stipulated in the Public Servant Statute, the Operation and organizational regulation policies, Internal organizational regulation policies and other special regulations.

Generally, the administrative personnel is forced to comply with the dispositions given by the hierarchical supervisor. Moreover, this obligation derives from the principle of administrative hierarchy and there's no need for it to be mentioned expressly in any legislative instruments.

With respect to this obligation, if the public administration employee is forced to comply with an illegal order given by the superior, the specialty literature has reached the conclusion that the employee must comply with the order given by the competent hierarchical administrative servant. They can be held harmless only if they notified his hierarchical superior in writing about the document's illegality (in the future it is considered introducing a conscience clause).

In this context, one must know if the county, city, town or commune secretary is obliged or not to countersign a decision of the administrative body, which they consider to be illegal. Currently, the secretary, since they are no longer an employee subordinated directly to the collegial body, no longer have this obligation, but must acknowledge and understand the illegality of that decision.

In Law 188/1999 on the Public servants statute,(amended in 2013), it is stated that any public servant is forced to comply with the orders and instructions of the hierarchical superiors, except those cases when these are obviously illegal, or can harm the fundamental rights and liberties of an individual (Preda Mircea, 2006, p. 193).⁵ In such cases, the public servant has the obligation to inform, in writing, the management about the reason for their refusal to comply with the given order or task.

Only in the case of "inexistent documents" the subordinated public servant can refuse to comply, even without prior notice in writing.

For certain categories of public servants the law stipulates other specific obligations that aim at protecting the prestige of the institution; for instance, those elected for the management of local public administration who do not have only a legal, but also a moral obligation to have an appropriate behaviour at their workplace and in the society.

There are a number of other obligations that are unitarily regulated by the statute adopted by the Parliament of Romania. For example: the interdiction to participate as associate or to be a member of the Board of directors of any company.

2. Non-legal relationships among public servants. profile and personality of the leader

The relationships established between public administration authorities and citizens may be: cooperation - collaboration relationships, public service use relationships – so, administration service performance for citizens and authority relationships – or citizen subordination to the public administration body. Studying these types of relationships, one can observe the importance of a systematic connection between

citizens and administration (Iorgovan Antonie, 2005, p. 234)2.

From a legal point of view, relationships between subordinates are based on equality. However, outside the legal area, the administration sector pays an increasing attention to informal relationships among the public servants situated on the same administrative hierarchical level.

The hierarchical position of the public servant has priority on the list of factors that can be seen as organizational obstacle in the path of communication. The hierarchical position of the public servant and the execution of a management position (not necessarily hierarchically superior) are more or less inside what the psychologists call "the syndrome of power". The possibility to manage a group of people, regardless of its size, can sometimes lead to authoritarian tendencies, superior mentalities and behaviours with elements of roughness. Eventually, the control over these attitudes is ensured by the standard of culture of the subject, which provides them with the premises of a dialogue which is not shadowed by pride or desire to look superior.

In this sense, it is of no relevance to approach also the limit term, occurring sometimes in interpersonal communication, especially in dialogue. Not any discussion, replies exchange stand for an authentic dialogue meant for spiritual enrichment or for a problem solving. They are crossed lines that passing among others, without meeting and influencing each other, resembling to contradictory monologues. The explanation consists of the fact that people get into dialogue only when the partner has similar ideas with their own.

This is why the public servant must treat his subordinates so that they see them as being sensitive to their aspirations, ideas and suggestions; they must impose trust through their attitude and behaviour and they must respect the people that they are working with. Trust in employees is manifested by assigning various tasks to them, not by performing frequent and rigorous inspections (Bălan Emil, 2000, p.195)1.

The activity of the behaviour and even of the public administration body is the result of connected or concerted operations performed by all the members of the team. In order for this result to be as adequate as possible, there's a need for cooperation among all those making up the administrative compartment or body. And such collaboration is impossible unless the team shares excellent collaboration relationships. In case of conflicts among the members of the group, the consequences might influence the entire activity of the group.

This is the reason why there's a need for a conscious action aiming at the creation of a collaboration-based environment between the employees of the same administrative body.

In order to create such a collaboration environment among all the employees of the same administrative body, the authority and the personality of the leader are truly important.

It is widely accepted that a leader performs a guiding and harmonizing role regarding the individual activities. In order to accomplish such mission the leader is granted a certain authority. The authority is an individual or organization's attitude to influence or determine the others obey an ordered rule.

The authority of a person may be, firstly, the result of the legal prerogatives which have been granted to that person. The legal authority is obtained when the person has been assigned the position and it is lost when the administrative leader is replaced from the managing position. Legal prerogatives are granted by another person, and they are not related in any way to the internal structure of the person.

The authority of a person, who has been assigned a management position, cannot be based exclusively on legal prerogatives. The authority of the administrative leader shall also be based on an intrinsic and personal value. This shall be the result of an assembly of professional and behavioural values, etc., which will grant them the quality of specialist. With regards to this quality, there are at least two fundamental problems that arise:

- what field should an administrative leader specialize in?
- how can they stay up to date with respect to administration, given the current conditions and the dynamism of the legislation?

I believe that the answer to the first question depends on the hierarchical level that the leader holds. If a leader holds a lower level on the administrative hierarchy, they shall use the specialty knowledge of the team under their supervision. A head of department, for instance, shall be fully aware of the technical problems that their department is facing. In exchange, the higher level the leader holds a on the social hierarchy, the less they will use the specialty knowledge of some narrow fields and they will have to use their knowledge in the field of organization and management, decision theory, as well as administration theory.

There are two ways for a leader to keep their status of specialist.

First, perfect and self-perfect the capacity to remember the essentials, and the selection ability. The leader must not and cannot burry themselves under the pile of complex information, they must create a wide spectrum

of knowledge and a thinking capacity able to acknowledge relations among data significant for their managing position.

Second, the leader must develop the skill to teach the others how to think selectively.

Thus, public servant-subordinate relation, as the entire assembly of relationships among the employees of an organizational structure are strongly influenced by principles of the leader, the consistency and constancy in applying the moral requirements and norms in their entire activity. Therefore, the principles of the public servant impose truth, scientific criteria regarding the knowledge of people, their distribution and promotion considering development capacities and possibilities, an attitude that displays a lot of care and kindness towards the subordinates. It involves correct relationships between individuals, exigency and firmness, impartial behaviour, the concern for the entire activity to be based on legality (Manda C., Manda C. C., 200, p. 352).³

3. Conclusions

Under the current conditions, we are witnessing, more than ever, an extremely complex and unique informational process. This is the reason why, the leader must be able to harmonize the knowledge of various specialists and teach them how to catch and express the essential.

The specialist status of the leader goes far beyond the technical professionalism; it also requires an organizational feature. First of all this implies the capacity to rationally use human resources. It is true that between the consumption of material resources and the consumption of intelligence there's an inverse proportionality relation, the more intelligence is used, the less material resources are consumed and vice versa, the superficial thinking, or the bureaucratic limitation of thinking leading implacably to an oversized consumption of human and material resources.

Communication intends to influence or transform perceptions, attitudes, feelings, states of mind and the opinions of people and groups, to determine unity with respect to viewpoints and coherent action.

The formative aspect, widely accepted as identifiable with the education that the young individual receives within the educational system, has as fundamental objective its connection to the system of social values, in this context, communication aims at and performs the perpetuation of a system of values specific to the society, such as: honour, dignity, loyalty, courage, spirit of sacrifice, collegiality etc.

Taking into consideration that any behaviour and any type of communication needs thorough evaluation of the way to perform the dynamics of the informational

flow, because the capacity to receive and retain information is a variable, determined by the parameters of the personality of each individual but also by the concrete conditions in which the process takes place. Taking into consideration the first aspect of the matter, as per a series of specialty studies, the human being retains a certain quantity of information, which is strictly connected to the used communication channel.

That's why a leader must have the skills to analyze the capacity of the human factor, in order to efficiently reach the objectives stipulated by the programs prepared for each stage.

In order to achieve this, the leader must have solid psychology and social psychology knowledge, since those who are being organized and managed are actually people, having social and individual motivations, psychological and characterological features.

The skills required to work with people are not just an inborn quality, they are gained, through hard work and solid training in the field of human relations.

In this context, there's a need for improvement of educational programs (not only those for the training of specialists in the field of administration) as disciplines regarding the management of human resources, public relations and communication, social psychology, etc.

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