THE PRINCIPLE OF LEGALITY, PRINCIPLE OF PUBLIC LAW

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Abstract: *The principle of legality represents one of the most important principles of the state of law, which significantly contributes to defending the law order and the social balance. Established as a principle of the organization and functioning of the state public authorities at the Revolution of 1789 in France, the acknowledgement of the principle of legality in an act having a constitutional value marked the moment of foundation for the state based on law principles and represented a premise of creating a modern public administration. The principle is present at the level of each judiciary branch, which provides for its popularity due to its specificity. The paper aims at achieving a brief analysis of the role of the principle of legality in public law, presenting its importance in constitutional and administrative law.*

Keywords: principle, legality, state, law, public

1. Introduction

One of the most important principles of the rule of law, the principle of legality lies at the foundation of any judiciary edifice, without which the existence of the rule of law cannot be conceived. As it is appropriately outlined, "the rule of law in its broad sense, understood as a whole set of public authorities, no matter of their position, does not deserve the name of rule of law unless it provides by itself an example of abiding legality." [1]

Established as a principle of the organization and functioning of the state public authorities at the Revolution of 1789 in France, the acknowledgement of the principle of legality in an act having a constitutional value marked the moment of foundation for the state based on law principles and represented a premise of creating a modern public administration. [2] In the context of a more pronounced intervention of the judicial norm in regulating the details of social life, the principle of legality decisively contributes

to maintaining order and balance in the functioning of the social system.

Out of the multitude of implications that this principle has in the law as a whole, the most important ones are related to its implementation within public law.

2. The relationship of the principle of legality with other principles of law

The principle of legality falls among other constitutional principles which ensure the existence of the rule of law: the principle of the separation of powers in the state, the principle of the protection of the rights and liberties of man, the principle of equality in the rights and obligations of all citizens, the principle of political pluralism, the principle of free access to justice, the principle of the independence of justice.

The current relevance of the principle of legality in the Romanian law must be understood according to its significance in the community law, where alongside with other principles it represents an essential component of the European union of law. [3]

At the level of the community law, by promoting the necessity of a rational balance and of a conciliation between the advantages and the disadvantages of state intervention, through a correlation with the principle of proportionality and of subsidiarity the principle of legality acquires an increasing recognition in the inner law of European states and decisively contributes to making efficient the decision-making activity of public authorities. [4]

Thus, "the legality of a judicial norm is dependent on the condition that it corresponds, from the point of view of the means it supposes, with the legitimate aim pursued and does not go beyond the strictly necessary measures in achieving it. [5]"

3. The principle of legality in the constitutional law

In order to be applicable to a system of law in its integrality, the principle of legality also needed a corresponding constitutionalization. Contemporary constitutions understood and adequately turned to good account this imperative demand in their texts, through the express provision of this principle.

In Romania's Constitution, the principle of legality is provided by article 1 paragraph 5 and involves the obligativity of complying with the Constitution, with its supremacy and of the laws by all the individual citizens and legal entities, including the state authorities and institutions. [6]

The recognition of this principle has the advantage of being an express norm which has "certitude in a strict sense and predictability in an unquestionable way". [7]

The principle of legality represents the main means of obtaining and promoting social order and of maintaining relationships among members of the society based on judicial norms. [8]

This principle demands that all the subjects of law, individual citizens and legal entities, Romanian and foreign citizens, public authorities and private institutions or organizations should abide by the law and by all the other normative acts based on it,

applicable to all the social relationships they participate in, under the guarantee of the judicial sanctions that are to be applied in case the judicial norms are not abided by. [9]

In order to provide efficiency to this acknowledged principle, Romania's Constitution stipulates that no one is above the law (article 16 paragraph 2) and that the Parliament is the supreme representative body of the Romanian people and the unique law-making authority of the country (article 61 paragraph 1).

As for the decisions of the Government, according to article 108 paragraph 2 of the Constitution, these are issued only for the organization of the fulfillment of the laws and, thus, cannot exceed the requirements of the laws. In order to ensure the supremacy of the Constitution, in Romania the Constitutional Court is organized and functions, its responsibilities being provided both in the Constitution (article 142-147), and in Law no. 47/1992 regarding the organization and functioning of the Constitutional Court. [10]

4. The principle of legality in the administrative law

As a fundamental principle in the organization and functioning of public administration of any rule of law, the principle of legality supposes the necessity of a strict rapport of conformity of the administrative decision, in its judicial form, with the law. Thus, the law becomes "not only the limit of the executive activity, but also its condition, the administrative bodies being confined only to its execution".[11]

The need for the actions of public administration to be founded on law becomes mandatory, the system of public administration being the expression of law, as well as its instrument. [12]

Three essential requirements have been established in order to provide a suitable dimension to this principle:

- a) the legality represents the limit of administrative action;
- b) the legality is the foundation of administrative action;
- c) the legality obliges the public

administration to act only for effectively complying with the law. [13]

The capacity of the authorities of local public administration of having initiatives in the fields that are not assigned to other authorities is recognized by law, the assuming of responsibilities and tasks being granted to the authorities that are closest to the citizens and the assigned competences must be thorough and exclusive, so that no central or territorial authority can intervene, except for the cases provided by law. [14]

If the higher judicial force of the acts of public administration is unquestionable in a hierarchical system, in an administrative system in which the relationships are not based on subordination, as in the case of autonomous local public administration, the higher judicial force of several administrative acts requires only the conformity of the acts having a low value, not their annulment, modification or abolition. [15]

The principle of legality also fully shows its effects within the activities that are specific to national defense, which as a public service represents an important supporting point of the role of the contemporary state, "the evolution of administrative organization being connected to the evolution of the army; the idea itself of hierarchy derives from the idea of subordination specific to the military phenomenon." [16]

As a subsystem of public administration which in peace time carries out the normative acts that are specific to the military field, the military administration ensures the organization, maintenance, completion and conscription of the armed

forces, as well as the elaboration of the specific rules for the implementation of the law and of the normative acts in the army.

[17] Also by abiding by the principle of legality, in situations of crisis and of warfare, the military administration is the one which ensures the organization and the management of an occupied territory by means of the military authorities or ensures the carrying out of specific tasks in exceptional situations, such as the state of siege or that of warfare. [18]

The way in which the measures are applied and the activities specific to national defense are accomplished by the central and local public administration authorities is conditioned by the degree of efficiency in the organization and functioning of public administration, to which the principle of legality brings its contribution too. As a subsystem of public administration, the military administration must be prepared at all times, in peace time and in war, to provide the best answer to the internal or external challenges that the Romanian state may be confronted with. [19]

5. Conclusions

As an exigency of the modern state, the principle of legality has developed along with the current legislative systems as a warranty of their efficiency and has become a *sine qua non* prerequisite in the elaboration and contemporary law enforcement.

The mandatory character of complying with the constitution, its supremacy and the laws by all the individual citizens and legal entities, including the state authorities and institutions ensures the order and hierarchy of the legislative assembly, as a manifestation of will of the state.

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