

THE CIVIL SERVICE AT ROMANIA'S CENTENNIAL

Irina Alexe, PhD*

MOTTO:

„O idee capitală pe care o aduc aceste organisme [Institutul de științe administrative, cu organul său de publicitate Revista drept public, care și-a câștigat ușor o reputație mondială, și cu anexa sa Școala superioară de documentare și de științe administrative] [n.a.] în viața Statului nostru este că numai printr`o temeinică pregătire profesională a funcționarilor publici se poate aduce o îndreptare ad-ției noastre. Democrația, având menirea să asigure cea mai mare fericire pentru cel mai mare număr, își sprijină întreaga ei existență pe această masă de funcționari, prin bunăvoința, înțelegerea și priceperea cărora poate să-și înfăptuiască postulatele ei.”

Paul Negulescu, Romul Boilă, George Alexianu,
Cuvânt de lămurire la Codul administrativ adnotat,
Institutul de Arte Grafice „VREMEA”,
București, 1930, p.X.

Abstract

In any modern state, an essential role in its functioning is played by the public servants, both in defining, but especially in applying public policies, as well as in exercising the public authority. In this study, the author will analyze the distinction between the notions of civil service, public authority and public office, the evolution of the notions of civil service and public servant, in close connection to the evolution of the Romanian state in its 100 years of existence and, will equally observe the European influence in this matter. The necessity of the existence of the civil service and

* Research associate, "Acad. Andrei Rădulescu" Legal Research Institute of Romanian Academy; principal areas of interest: Administrative Law, Constitutional Law and European Law; irina_alex@yahoo.com. The paper was prepared for the National conference titled "100 years of law". organized in Târgu-Mureș on the 21st of October 2018. The project "100 years in 10 days" was dedicated to the Centennial of the Great Union and was financed by the Ministry of Culture and National Identity, through the cultural project no.5245/10.10.2018. The informations comprised in this text were updated on the 25th of October 2018, which is the last time when the websites were consulted.

the necessity of a strongly qualified personnel should also be emphasized, context which lead to the first regulation of the statute of the Romanian public servants and the subsequent evolutions, the recent amendments of the applicable legislation in this field provided in the Law of the Administrative Code of Romania, as well as the development tendencies of the civil service.

Key-words: *civil service; public authority; public dignity; public servant; European public servant; civil servant's statute; the Administrative Code of Romania; subsequent developments in this field.*

I. Short introduction

A myriad of celebrations took and will take place in 2018, in order to commemorate the Centennial of the Great Union. In this context, organizing conferences, publishing articles and issuing publications in the law field are representing subsequent pursuits under the same major objective. We are convinced that in law, similarly to history, it is of utmost importance to know the past, in order to understand the present and to further analyse the future tendencies of the diverse concepts or institutions, as well as the subsequent development necessities, closely linked to the evolution of the state.

It is widely known that, nowadays, the Romanian state is not in the same borders which were established in the aftermath of the historical events of 1918, and that Romanian territories and citizens, which in the interwar period were an integral part of the Greater Romania, are today parties of neighbouring states. The analysis presented hereafter should not refer to these aspects.

The present study, concerning the civil service at Romania's Centennial, will be structured in seven parties, which are to be simultaneously regarded from an historical and transformational perspective of the Romanian state. The underlying reasoning of this approach was that multiple events, some joyful, some really tragic, intervened not only in the evolution of the state, but also influenced the statute of the Romanian civil servants.

This studying was conceived by studying the primary sources, this is to say the texts of the normative acts, as well as the subsequent statements of reasons, but also, in some cases, by observing the parliamentary debates which took place during the adoption of the law, while we also used the relevant doctrine of the interwar period, widely benefiting from the pertinent commentaries of the illustrious public law professors from the four renowned universities of the Greater Romania, Bucharest (Paul Negulescu), Chernivtsi (George Alexianu), Cluj (Romul Boilă) and Iași (Constantin Stere), equally analysing and quoting inclusively the recent doctrine in the matter.

Starting with a short introduction and following with the emphasis of the specific aspects of the prestatutory period, which lead, by 1923, to the appearance of the first statute of the civil servants, the study deliberately highlights the statutory period, analysing as well, in a concise manner, the communist period which had a 50-years span, ranging from the end of 1949 to 1989, during which the public servant was considered a "working-class hero", subsequently marking the main moments and reasonings which lead, in 1999, to the appearance of the first post-revolutionary law which regulated the statute of the Romanian civil servants. A generous amount of space was granted not only to the multiple amendments and supplementations added to the substance-matter of the 1999 law, still in force in the present day, but also to the trends of the main legal institutions included in the statute. Hence, are analysed the *distinction* between the notions of civil service, public authority and public office, the evolution of the notions of civil service and public servant, in close connection to the evolution of the Romanian state in its 100 years of existence and the European influence in this matter. Also, necessity of the existence of the civil service and the necessity of a strongly qualified personnel should also be emphasized, and, particularly the necessity, in the present context, of highly-qualified personnel, the recent amendments of the applicable legislation in this field provided in the Law of the Administrative Code of Romania, as well as the development tendencies of the civil service. The study will conclude with a few considerations through which the development trends of the Romanian civil service are to be marked.

II. The pre-statutory period

In his Constitutional Law course, meant to determine the students to better understand the notions, the young Professor George Alexianu makes a connection between the Administrative Law and the Constitutional Law, showing the hardship of this demarche because „given that the Romanians had a written Constitution only a few decades ago, the old law is getting scattered in traditions, in customs, in treaties and charters. Notwithstanding, we can observe four periods:

1. *From the ancient times up to the foundation of the Romanian Principalities* (1290 for Muntenia, 1320 for Moldova)
2. *The second period. The consolidation of the Romanian principalities.*
3. *The third period – From the Kings up to this day.*¹

During the analysis of the civil service in the pre-statutory period, we aim solely at the latter of the aforementioned periods, in order to facilitate the understanding of the centennial presented in this study.

¹ For further details please refer to George Alexianu, *Dreptul constituțional*, Editura Librăriei Socec & Co., Bucharest, 1926, p.61 ff.

In accordance with the provisions of art. 132 (5) of the Romanian Constitution of 1866, a special law "on the admissibility² and advancement conditions in the field of public administration"³. However, this was not realised without undue delay, but only a few decades later, after the moment when in the Greater Romania a new Constitution was adopted, in 1923.

According to the doctrine from that period, "during this time, the public servants were led by the organic laws – when they existed – or left to the mercy of the political fluctuations. Among the public servants which had – to some extent – a legal framework providing warrants against administrative abuses we can consider the magistrates, the secondary education teachers, members of the academia, schoolmasters, the advisers of the Court of Accounts, the medical doctors, the technical corps, the public servants of the Ministry of Instruction and Cults, the Ministry of State Property, of the Postal services, Telegraphs and Telephones, etc."⁴

We hereby present *ad litteram* this explanation in order to underline the differences between the different personnel categories considered, in that period, as being part of the public servant category and those which are regulated nowadays by the Statute. We deem such a comparison as necessary, in order to show that not all of the features of the public servants from the pre-statutory period, and, as it is to be observed in the following section, from the statutory period, are still available today. According to the law⁵, the Statute is not applicable to the magistrates, nor to teachers or schoolmasters, nor to the medical doctors or to the contractual staff or other staff categories which are not exercising public power prerogatives. Also, the statute is not applied to the advisers of the Court of Accounts, neither to the elected or appointed public dignities or to the staff of the cabinet of a dignitary.

With all the differences, the mission of the public servants remained, for its most, the same through the years.

² English translation unavailable. In order to facilitate the comprehension, we hereby present the original: „asupra condițiilor de admisibilitate și de înaintare în funcțiunile administrațiunii publice”

³ The 1866 Constitution of Romania was published in the Official Journal of Romania no.142/1.06.1866 and is available at http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=37755

⁴ For an analysis of the field, please refer to George Alexianu, *Statutul funcționarilor publici*, Editura Cultura Națională, București, 1926, p.6 ff.

⁵ In this sense, please refer to the articles 1-6 of the Law no.188/1999 on the Statute of civil servants, amended and supplemented. The Law no.188/1999 was published in the Official Journal of Romania no.600/8.12.1999, subsequently amended and supplemented, republished two times and furtherly amended and supplemented inclusively at the second republication. According to the Law of the Administrative Code of Romania, the Law no. 188/1999 is to be abrogated at its entry into force and is available at the address, http://www.cdep.ro/pls/proiecte/docs/2018/pr369_18_1.pdf

III. The statutory period

After the Union of the Romanian principalities, the Constitution of 1866 became obsolete, despite the fact that it was amended and supplemented three times, in 1879, in 1884 and 1917, and once again in the course of 1918. In order to consecrate the events which took place, but also in order to try to establish applicable norms on the entire territory of the new state, desideratum which will be accomplished solely more than 20 years later, and to create the foundation for the modern regulations in the field of the Public Law which followed in the years of the interwar period, the text of the first Constitution of the Greater Romania⁶ was adopted in Mars 1923.

The Constitution of 1923, qualified as one of the most modern, regulated, in accordance with the provisions of its art. 8, the right of the Romanian people of being equals before the law, without any discrimination of origin, social or ethnical criteria, language or religion, as well as on the duty to contribute to the public deeds. Also, it consecrated the right of the citizens to have access to the civil service and to public dignities, civilian or military, and it established the Constitutional basis for issuing special laws through which "the Statute of the civil servants shall be determined". The same constitutional text was introducing, under the form of a prohibition, the possibility to admit in exceptional circumstances, provided for by the law, foreigners in the public service.

The text of art. 8 established the legal basis for adopting a Statute of civil servants, while other constitutional provisions established the boundaries or guidelines for the regulation of such a Statute, such as, for example, the one provided for in the text of art. 26 (4) c), concerning the ruling, by ordinary courts, in accordance with the common law, on the press offenses aiming at "calumny, slander, defamation imputed to private persons or civil servants of any nature, touched in their private life or in their sincerity", in the text of the art. 31, concerning the fact that "no prior authorisation is necessary in order to exert proceeding against public servants for the actions resulted from their administration on injured party, without touching the special rules settled with regard to the ministers", in the text of art. 99, concerning the several liability of the ministers which issued illegal acts or acts which contravened to the Constitution, which caused prejudice to the injured party, with the civil servants which countersigned the respective acts, with the exception of the servant which "called the attention of the ministry, in written", or the text of art. 107, which regulated the administrative appeal and the remedy under the form of civil remedies which could be placed, by the instance, under the responsibility of the civil servants.

⁶ The 1923 Constitution of Romania was published in the Official Journal of Romania no.282/29.03.1923 and is available at http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=1517

III.1. 1923 – Statute of civil servants

Under these constitutional conditions and boundaries, was adopted, in 1923, the first law which regulated the Statute of civil servants⁷, whilst the Decree⁸ containing the implementing act was adopted later in the same year. Both of the normative acts took force and were applicable since the 1st of January 1924, thus establishing the legislative framework for regulating the Romanian civil service.

Structured in two parts, the first part is composed by the provisions applicable to all the civil servants, with seven subsequent chapters, while the second one makes reference to special provisions, with other seven subsequent chapters. The Statute, together with its implementing act, try, and succeeded, for a relatively short period of time, to draw a new legal situation, modern and progressive, for the civil servants, and a part of the principles provided for in the 1923 law have been subsequently taken over in the post-1989 legislation concerning to civil servants.

Starting with a chapter on the conditions of eligibility of a civil servant⁹ as well as to the staff categories of the administration to which the Statute is applicable (political and elective functions, archbishops and bishops, servants of the Law-making bodies which bear a statute of their own, foreign specialist to which a public function was temporary granted by contract, as well as temporary staff), the first part of the regulation establishes the general admissibility conditions in the civil service, stability in the civil service, closely linked to the irremovability of some of the categories of civil servants expressly provided for by the law, their duties and responsibilities, the applicable incompatibilities, their salaries, their indemnities, their pensions and vacations, as well as the right of the civil servants to establish associations for cultural or economic purposes or for serving to their professional interests, subsequently providing the rules for their establishment, functioning and dissolution.

The second part of the Statute establishes for the very first chapter the subject-matter to which the respective norms are applicable¹⁰. We thus observe that there

⁷ The Law on the Statute of civil servants, adopted by the Senate in its session of 30 May 1923 and by the ş Chamber of Deputies in its session of 8 June 1923 was promulgated by Ferdinand I of Romania on the 15th of June 1923 and published in the Official Journal.

⁸ Decree no. 5.506 of 23 November 1923 for the approval of the Implementing regulation of the Law on the Statute of civil servants.

⁹ According to art. 1 of the Law, „Are civil servants the Romanian citizens, without gender discrimination, which are fulfilling a permanent public service (civilian and ecclesiastical) at the State level, county level or communal level or in the institutions whose budget is subjected to the approval of the Parliament, to the Government, or to the County or Communal Councils. In this quality, they will enjoy the rights and will be subjected to the specific obligations presented in the Statute.

¹⁰ According to the art. 33 of the Law „The following provisions are applicable to all the public servants, with the exception of magistrates, the members of the diplomatic and consular staff, didactics, ecclesiastical, and of the member of all the technical and specialized staff, to which are applicable the provisions of the organic laws, as well as the servants of the Legislator Bodies, whose organisation is established by the interior regulation of every legislator body, which constitutes their Statute.”

is a myriad of staff categories which, prior to the 1923 law, keep their own statutes, despite being eligible to enter under the force of the statute. These aspects notwithstanding, we appreciate the attempt to standardize the norms and to introduce objective criteria for the filling and exercise of public dignities.

Hence, the classification of the public administration is made in the second part of the statute. The regulation of the classification of the public functions is closely linked to this classification, or, as the case, establishes the legal basis for this classification to be subsequently realised, through subsequent acts, providing conditions that it should be “adopting the names and making the equivalence, as much as possible, with those established for the central administrations”¹¹.

The admissibility conditions in these public offices are also provided, supplementary to those regulated in the first part of the statute, and the rules concerning the nominations and submissions are detailed, as well as the mechanisms for ensuring that these are based on professional, meritocratic criteria, after having passed through several mandatory steps and after having promoted competitions dedicated to this goal. Also, there are established exceptions from these rules, stating the “the lawful authority may deviate from the norm when the proper functioning and the interest of the service requires it, but only with the assent of the commission for nominations and submissions.”¹². We therefore observe that the exceptions are accompanied by minimum warrants, as well.

A distinct chapter is dedicated to the interinstitutional transfers and secondments and another one to the disciplinary regime, establishing not only the disciplinary measures¹³, similar to those regulated nowadays in the statute, but also the procedure in case of disciplinary responsibility, as well as in case of disciplinary suspension, respectively the required procedure in the case in which a proceeding incurs the criminal liability of a civil servant. In another chapter, the sixth, are established the rules for gathering disciplinary committees at the level of central and local administrations, establishing that their members, as well as the substitutes, are to be named through a Royal Decree, with a three-year mandate.

From the ample regulations included in the last chapter of the second part of the statute, entitled “Various and transitory provisions”, resides the attention of the lawmaker for ensuring the correct functioning of the administration and for preparing the application of the new norms. Hence, apart from establishing a 6-month from the promulgation of the law to its enforcement, on the 24th of January

¹¹ Please refer to art. 34 of the Statute.

¹² Please refer to art. 47 of the Statute.

¹³ In accordance with the provisions of art. 51 of the Statute, the Disciplinary penalties are: 1. Verbal reproof; 2. Reprimand with the loss of the salary for a maximum of 15 days; 3. Erasing off from the poster board; 4. Disciplinary transfer; 5. Exclusion from the service for a maximum of 6 months with the loss of the salary; 6. Dismissal; 7. Destitution. The time in which the civil servant is excluded or in dismissal does not count as professional experience.”

1924, establishing the time in which the authorities were supposed to adopt not only the implementation act but also the technical and organisational measures for an effective implementation. Also, several transitory situations were regulated, in order to give due time to allow the civil servants which failed to comply with the conditions of the new statute to fulfil the legal conditions, as, for example, the conditions regarding the legal age (21 years old) or the fulfilment of the obligations linked to the military service or the educational requirements. Transitional provisions have also been regulated for the state and authorities, which had the obligation to adapt their public services and their organisational schemes in accordance with the new regulations.

The scientific papers from this period¹⁴ showed not only the benefits of the first Statute of civil servants, but also the difficulties of its application, especially in the context of the transformations which took place in the Romanian state and with the consideration of the case-law in the matter, aspects which will not be furtherly reiterated. It is important to mention, nevertheless, that the Journal of the Council of Ministers of 11th of November 1928 established the Legislative Committee, whose President was Paul Negrescu (Public Law Professor at the University of Bucharest, member of the International Public Law Institute of Paris), and among its members Constantin Stere (Public Law Professor at the University of Iasi, member of the Chamber of Deputies), Romul Boilă (Public Law Professor at University of Cluj, Vice-President of the Senate), and George Alexianu (Public Law Professor at the University of Chernivtsi), committee which drafted the preliminary project of the Law on local administration and of the Law on the reorganization of the ministries, respecting inclusively the principles included in the first Statute of civil servants. In the speech presented by Iuliu Maniu¹⁵, the president of the Council of Ministers before the Chamber of Deputies on the occasion of the debate of the draft law on the organisation of the ministries, were underlined not only the efforts, but also to the obstacles in realising the ideal of national union, the connection of this new law with the existent legal framework, as well as the importance of such a regulation which could place the organisation of the state on a stronger base, to lead to the decentralisation of the public power and its subsequent evolution, including by the service of the civil servants.

Nevertheless, legislative amendments took place in a continuous manner, and aimed inclusively at the juridical situation of the civil servants. For example, in the

¹⁴ The first one to realise an in-depth analysis of the field, compared to the extensive regulation at that time in other European states, but also in emphasizing the relevant jurisprudence in the field, emphasizing the principle of stability, as well as the principle of the immovability of the civil servants, was realised in 1926 by the lawyer and professor George Alexianu. In this sens, please refer to George Alexianu, *Statutul funcționarilor publici*, op. cit.

¹⁵ In this sense, please refer to, *Discursul D-lui Iuliu Maniu, Președintele Consiliului de Miniștri, pronunțat în Adunarea Deputaților*, in Paul Negulescu, Romul Boilă, George Alexianu, *Codul administrativ adnotat*, Partea I, Institutul de Arte Grafice „VREMEA”, București, 1930, p. 145 - 159.

commentary made for the art. 88 of the 1923 Constitution, professor Alexianu appreciates the following elements: "Acknowledging to the ordinary legislator the right to suppress a function through a Public Administration law, it follows to acknowledge its right to amend the conditions for its fulfilment and, in this manner, to discard the servants which it deems useless, because they don't fulfil the new conditions. This should happen even when the lack of compliance with the conditions derives from a factual situation considered as legal under the old law, - because the right to a function of the public servant is made through the law and is maintained as long as the sanctions it, because the public function cannot be the object of economic rights, and, as such, cannot discuss, in this matter, about earned rights, but solely of an objective legal situation, created, maintained and suspended only through the willingness of the legislator"¹⁶.

Also, the new Constitution of Romania of 1938¹⁷, brought substantial amendments to the organisation of the Romanian state but, even if with regards to the Statue of Civil Servants, the article 27 takes, for its most, the provisions of the 1923 Constitution, after the application of the new regulation the Statute of Civil Servants of 1923 was abrogated in 1940, through the Code of Civil Servants (Carol II of Romania).

III.2. 1940 - The Code of Civil Servants

On the 8th of June 1940 was published the first Code of Public Servants¹⁸, which comprised, as well, provisions applicable to all the civil servants but also special provisions concerning the recruitment, the career evolution, the rights and obligations, the incompatibilities or the disciplinary regime, which shall not be furtherly emphasized, because the Code's application was not unitary nor coherent in time, in the context in which the Romanian state was crippled in 1940 by the well-known territorial ruptures, followed by a long period of war. Important amendments have been made to the Code, especially with regard to the public functions and the seniority, the applicability of the disciplinary measures in exceptional situations¹⁹, the Statute of the Prefects²⁰ or the disciplinary procedure²¹.

¹⁶ George Alexianu, *Curs de Drept Constituțional*, vol. III fascicola II and the last one, Editura Casei Școalelor, 1937, p. 366.

¹⁷ The 1938 Constitution of Romania was decreed on 20 February 1938, being subjected to a plebiscite on 24 February 1938. It was promulgated by the King Carol II of Romania through the Royal Decree no. 1045 of 27 February 1938 and published in the same day in the Official Journal of Romania no. 48. The text is available at http://www.cdep.ro/pls/legis/legis_pck.http_act_text?id=9206

¹⁸ The Code of civil servants (Carol II of Romania) was approved by the Decree-Law no. 1904 of 7 June 1940 and was published in the Official Journal of Romania no. 181/8 of June 1940.

¹⁹ For further details, please refer to the Law no. 45/1942 for the establishment of some obligations imposed to the public employees in exceptional situations, published in the Official Journal of Romania no. 15/19 of January 1942, subsequently amended and supplemented through the

It should be mentioned, nevertheless, that two weeks after the publication of the Code in the Official Journal of Romania, another law with a huge deal of impact was published and entered into force²², affecting, in our opinion, the essence of the Statute of Civil Servants, concerning the stability in the function and the political neutrality, in the lack of which we appreciate that it is impossible to provide a professional public service²³. Through the second article of this new normative act was established the fact that "it cannot be a civil servant one which is not member of the Party of the Nation. Those which will not request their subscription until the 1st of August 1940 at latest, as well as those which will not be accepted after having requested their subscription, are revoked *ex officio* at this date. This provision is not applicable to the active military personnel."

While understanding, yet not agreeing with the rationale leading to the introduction of such a norm in the Romanian legislation, we will not further detail the motivation. We need to underline, nevertheless, the existence, in that period, of a political regime which could be catalogued as being a dictatorship, as well as a massive involvement and the constraints brought by the political power not only to the statute, but also to the private life of public servants.

In the aftermath of the Second World War, the Code was abrogated, and the new political power established in Romania after the 6th of March 1945 adopted new normative acts concerning the civil servants.

III.3. 1946 - The Statute of Civil Servants

One of these new normative acts, adopted after the events of 23 August 1944, in the context of the reintroduction of the 1923 Constitution, is the Decree-Law no. 746/1946²⁴, which regulated the new Statute of Civil Servants, abrogating the 1940 Code.

Law no. 47/1944, published in the Official Journal of Romania no. 23/28 of January 1944, which regulated the jail penalty for the civil servants which absented from their posting without a prior notification.

²⁰ Please refer to, for example, art. III of the Law no. 573, published in the Official Journal of Romania no. 261/10 of November 1944, which established that the prefect position is not taken into account for the period provided for in the art. 200 of the Code of civil servants. Subsequently, art. 200 of the Code was amended and supplemented, through the law no. 824 and through the Law no. 558 of 1944.

²¹ Please refer to: Law of 22 September 1940, for the dissolution of the Royal Residencies and the reorganisation of the County Prefectures; Law no. 116/1945 on the amendment of art. 147 of the Code of civil servants, published in the Official Journal of Romania nr. 44/23 of February 1945, through which is introduced in the code a new disciplinary procedure.

²² It is the Decree-Law for the defence of the unique and totalitarian political order of the Romanian state, published in the Official Journal of Romania of 22 June 1940.

²³ On the political neutrality of civil servants, please refer to Irina Alexe, *Înalții funcționari publici*, Editura Universul Juridic, Bucharest, 2014, p. 226 ff.

²⁴ Decree-Law no. 746/1946 for the Statute of civil servants of 20 September 1946 was published in the Official Journal of Romania no. 220/22 September 1946.

This new Statute also comprised general provision aiming at its field of application, entering into function (conditions for the nomination, the pledge and the stability in the function), reintegration, personal files, rights and obligation aiming not solely to the career, remuneration and social insurances, some political rights and the right of the civil servants to gather in Unions. The new regulated as well the duties of the servants, as well as the special and transitory provisions.

An obvious regression is brought by this normative act with regard to the necessary studies in order to fill a public function, but we underline some positive aspects of the regulation, aiming at ensuring a legal situation of the civil servants which were previously dismissed for their religious or political convictions, respectively the statute is accompanied by two annexes, called tables, through which are established the alphabetical indicators of the nomination functions, which comprise the function, the minimal level of studies and training necessary to fulfil the post, and respectively the base-pay.

This normative act, likewise to the previous one, have not benefited from a long application period, entering into force at the date of the publication, whilst the norms concerning the salaries were applicable from the 1st of September 1946, given that it was abrogated in 1949, *de facto*, through the Decree no. 29/1949²⁵, and *de jure* through the Decree no. 418/1949²⁶, as an effect of the new political regime of the Romanian State, after the entering into force of the 1948 Constitution²⁷ and in the context of the adoption of the first Labour Code. Otherwise, the issuer of the act, in the text of its single article, mentions the context which imposes the abrogation of an impressive number of normative acts: "An important number of laws and decrees being abrogated through the successive transformation of the structure of the state and of our law, before the 13th of April 1948, and other were abolished in accordance with the art. 105 of the Constitution of the Romania's People Republic, a precise identification of all of the *de facto* abrogation is imposed".

²⁵ Decree no. 29/1949 for regulating the rights and duties of the administrative employees and of the management technical staff of the State owned institutions and state enterprises and any type of cooperatives, was published in the Official Journal of Romania no. 29/29 ianuarie 1949.

²⁶ Decree no. 418/1949 for declaring as abrogated of some laws and decrees, was published in the Official Journal of Romania no.712/16 of November 1949, and the point 189 of the Decree is mentioned "The law no. 746 of 22 September 1946 amended at: 12 March 1947 (Law no. 31); 30 May 1947 (Law no. 164); 22 August 1947 (Decision no. 22)".

²⁷ The Constitution of Romania's People Republic was published in the Official Journal of Romania no. 87bis/13 April 1948. The official text is available at http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?id=1574

IV. Communist Period: Civil Servant = Working Class Hero

Although the 1948 Constitution uses the civil servant notion in few of its articles (art.8, art.24, art.34 and art.95), respectively the notion of public office, in the text of art. 44 (11), the civil servants no longer benefited from a statute of their own, being, like the other working people, under the auspices of the regulations of the Labour Law. Hence, the Labour Code²⁸ of 1950 stipulates in the text of its art. 1 which are the regulated aspects, while the text of art. 2, expressly mentioning the civil servants, establishes the field of application, "on one hand, of the employees - workers and civil servants - and on the other hand to the state bodies and institutions, enterprises and economic organisations and those with a public character, as well as to the natural and legal persons working in the private sector, which use paid work". It needs, nevertheless, to be emphasized that, according to art. 129 of the Code, this is not applied to the military personnel. Also, in accordance with the provisions of art. 25, there is the possibility to regulate special statutes especially with regard to the disciplinary regime, but this possibility was not fructified for the public servants.

The 1952 Constitution²⁹ defines the Romanian state in its very preamble and in the text of its first article as a "state of the working class from cities and villages", in this sense, the public servants having the same statute as the working class, without any additional rights or warrants, which are called to contribute to the fulfilment of the ideals of the new state/political regime. We hereby underline the fact that the phrase "civil servant" is no longer used, only "state servant", respectively "servant".

The 1965 Constitution³⁰ takes the same wording with regard to the civil servants, consecrating their qualification as "working class". We stated in another study³¹ the fact that, according to the provisions of the art. 58-61, corroborated with the provisions of art. 22 included in the Labour Code of 1972³², was prefigured the apparition of some statutes which should have been approved by a law, which should have provided "the specific rules concerning employment relationships, rights and duties of the staff, criteria on the integration and promotion, discipline

²⁸ Law no.3/1950 on the Labour Code was published in the Official Journal of Romania no. 50/8 June 1950.

²⁹ The 1952 Constitution of Romanian Peoples's Republic was published in the Official Journal of Romania no. 1/27 of September 1952. The official text is available at http://www.cdep.ro/pls/legis/legis_pck.htm?act_text?id=1454

³⁰ The Constitution of the Socialist Republic of Romania of 1965 was republished in the Official Journal of Romania no. 65/29 of October 1986. The official text is available at http://www.cdep.ro/pls/legis/legis_pck.htm?act_text?id=37735

³¹ Please refer to Irina Alexe, *Înălții funcționari publici*, Editura Universul Juridic, București, 2014, p.18 -19.

³² Law no.10/1972 on the Labour Code was published in the Official Journal of Romania no. 140/1 December 1972.

in service and responsibilities, working hours and other specific rules in the respective field", but that these intentions were not subsequently materialised.

We hence consider that this period was marked by the intention of erasing the identity of civil servants and to standardize the categories of staff, indifferently of their professional preparation or of its role in a state. It is not surprising that the Romanian socialist/communist state chose to proceed in this manner with several of its elite professional categories, on which the Interwar state based its national belonging and continuity, or which contributed, in a decisive manner, at the realisation of the Greater Union and in the subsequent consolidation of the state. In this case, are of notoriety not only the public purges but also the physical purges, through the oppressive instruments of that period, though which a vast majority of the intellectuals, and implicitly of the civil servants was dismissed or demoted from the public offices previously withheld.

V. Post-communist period: towards a new statutory period

After 1989, when Romania chose to be a state based on justice and integrity, as a decision was made to integrate the European Union, Romania realized the necessary reforms in order to fulfil these major national goals and regulated, through some important laws, the rules regarding the civil servants. Whereas the specific doctrine largely debated these subjects, we will succinctly review some of the regulations which preceded the new Statute of civil servants, adopted in 1999.

In 1999, before the Constitution entered into force, the Government of Romania adopted a first normative act applicable in this field, a Government Decision³³ through which, in four articles, were regulated some measures for ensuring the social prestige of civil servants. Hence, were established, in a succinct manner, the persons which bear the quality of civil servant, the obligations and interdictions applicable to this category of people, as well as the disciplinary regime and its consequences.

The 1991 Constitution³⁴ establishes for the first time after the communist period the importance of the statute of public servants in the new Romanian state,

³³ Government Decision no. 661/1991 on some measures for ensuring the social prestige of civil servants was published in the Official Journal of Romania no. 205/8 of October 1991. Although obsolete after the publication of the 1991 Constitution and of the new regulations in the matter, the decision was expressly abrogated solely 13 years later, through Government Decision no. 233/2004 on the abrogation of some normative acts, published in the Official Journal of Romania no.191/04 of March 2004.

³⁴ The 1991 Constitution of Romania was published in the Official Journal of Romania no. 233/21 of November 1991 and republished, after the revision of 2003 in the Official Journal of Romania no.776/31 of October 2003. The official text is available at <http://www.cdep.ro/pls/dic/site.page?id=339>

by introducing the statute of the civil servants among the fields regulated by the organic law, in the text of art. 72 (3) i).

Only eight years later, in 1999, was adopted, through the assumption of the responsibility of the Government in front of the Parliament, the Statute of public servants³⁵ which, although amended and supplemented several times, is still applicable today.

The doctrine³⁶ showed since that very moment, and subsequently, through the years, which were the underlying reasoning, desire and the motivation through which the Romanian legislator chose to introduce in the legislation certain legal institutions which could confer to the civil servant a new statute adapted to the role drew by the state for it. In its Administrative Law course³⁷, by quoting a rich Administrative Law and Labour Law doctrines, professor Verginia Vedinaş analyses both general aspects, as well as historical and evolutionary particularities of the public office and of civil servants, being included in the category of the Senior Civil Servants³⁸. The analysis made by the distinguished professor aims at the aspects concerning the legal nature of the civil servant notion, in comparison to

³⁵ Law no.188/1999 on the Statute of civil servants was published in the Official Journal of Romania no.600/8 of December 1999, being subsequently modified and amended, republished two times and furtherly amended and supplemented several times. After this point, when we make reference to the Law no.188/1999, without other supplementary details, we make reference to the text of the Law no.188/1999 on the Statute of civil servants, republished (2), subsequently amended and supplemented, up to 25 October 2018.

³⁶ One of the most complete analysis in this field was realised by professor Verginia Vedinaş. For further details, please refer to Verginia Vedinaş, *Statutul funcționarului public*, Editura Nemira, Bucharest, 1998; Verginia Vedinaş, *Statutul Funcționarilor publici (Legea nr.188/1999) Comentarii, legislație, doctrină și jurisprudență*, Ediția a II-a, reviewed and amended, Editura Universul Juridic, Bucharest, 2016.

³⁷ Verginia Vedinaş, *Drept administrativ*, ediția a X-a, reviewed and amended, Editura Universul Juridic, Bucharest, 2017, p.271-321.

³⁸ We dedicated several papers to this category of public servants and of the permanent mutation to which it was subjected. In this sense, please refer to Irina Alexe, *Înalții funcționari publici*, op. cit. Irina Alexe, *Reforma reformei. Studiu de caz: Ordonanța de Urgență a Guvernului nr. 82 din 2013* in the volume *Reforma statului: instituții, proceduri, resurse ale administrației publice*, coord. Emil Bălan, Cristi Iftene, Marius Văcărelu, Ed. Wolters Kluwer, 2016, p. 121-133. Irina Alexe, *Categoria înalților funcționari publici. Tendințe actuale* in the volume *Administrația publică între misiuni și constrângeri bugetare: dimensiuni juridice și manageriale*, coord. Emil Bălan, Gabriela Varia, Cristi Iftene, Ed. Wolters Kluwer, 2014, p. 136-144. Irina Alexe, *Principiul neutralității politice în privința numirii înalților funcționari publici*, in the volume *Administrația și puterea politică. Tendințe și evoluții în spațiul public european*, coord. Emil Bălan, Cristi Iftene, Marius Văcărelu, Comunicare.ro, 2013, p.122-137. Irina Alexe, *Considerații referitoare la Decizia nr. 55/2014 a Curții Constituționale a României și la statutul juridic al unor înalți funcționari publici*, Curierul Judiciar, nr. 3/2014, p. 159-161. Irina Alexe, *Aspecte privind mobilitatea înalților funcționari publici reflectate de jurisprudența instanțelor din România*, Revista de drept public, no. 1/2012, p. 90-102. Irina Alexe, *Mobilitatea înalților funcționari publici - modalitate de modificare sau de încetare a raporturilor de serviciu?*, Revista de drept public, no. 4/2009, p. 43-51.

the concept of dignitary and contractual staff, the controversies of the doctrine on the legal status of the public servant, the constitutional basis of the concepts of public office and civil servant, their definitions, the classifications of the civil servants, the legal regime in the nomination of the public office, the rights and duties of the public servants, the responsibility, as well as their recruitment and their professional evolution, up to the termination of service.

The Law no, 199/1999 defines from the very text of its art. 1 the scope (regulates the general regime of the legal reports between the public servants and the state or the local public administration, called term of service), as well as the goal of the regulation which is to ensure, in accordance with the legal provisions, a stable, professional, transparent, efficient and impartial civil service in the interest of the citizens, as well as in the service of public authorities and institutions from the national and local public administration. Also, in the text of art. 2 are defined and explained the notions of civil service, civil servants and activities which imply the exercise of the prerogatives of public power, the public offices being provided for in the annex of the law. The text of art. 5 of the law establishes the categories of civil servants which are eligible to special statutes, which regulate, in addition to the general statute, rights, duties, incompatibilities and specific functions, as well as, in some situations, aspects regarding the career progression, while the next article stipulates which are the staff categories for which the statute of civil servants is not applicable, but, on a given case, the Labour legislation or their own statutes.

We consider that this statute is one of the most complex normative acts in this field, establishing rules for the access to the public office based on meritocracy, as well as a career progression made on the same criteria, in order to ensure a professional training at the highest standards, the establishment of modern regulation, control and sanctions mechanisms, with an insurance of the existent warrants in a state based on the rule of law, as well as the regulation of the rights, obligations and incompatibilities applicable to the civil servants. This was subsequently detailed by other acts, which are not making the subject of this study.

We consider necessary to mention the fact that, in the contemporary Romanian legislation, there are multiple normative acts regulating the special statutes of the diverse categories of civil servants³⁹, as well as other normative acts applicable to

³⁹ For example, the Law no.360/2002, on the statute of police workers, published in the Official Journal of Romania 440/24 of June 2002, subsequently supplemented and amended, the police worker is defined as a civil servant with a special statute. Also, as an example, we underline that special statutes have been adopted for the parliamentary civil servant, through the Law no.7/2006, republished in the Official Journal of Romania no.345/25 of May 2009, subsequently amended and supplemented, for the diplomatic and consular staff, through the Law no.269/2003, published in the Official Journal of Romania no.441/23 of June 2003, subsequently amended and supplemented, for customs staff, through the Government Emergency Ordinance no.10/2004, published in the Official Journal of Romania no.256/23 of March 2004, subsequently amended and supplemented, or for civil servants of the public servants of the National Administration of the Penitentiaries, through the Law no.293/2004, republished in the Official Journal of Romania no.264/10 of April 2014.

the staff categories of the central and local public administration which are not subjected to the statute of civil servants. We also mention the fact that, according to art. 117 of the Law no. 188/1999, which „is supplemented by the provisions of the Labour legislation, as well as with the common Civil, Administrative and Penal, as the case, to the extent to which they don't contravene to the specific legislation of the civil service”. After the apparition of the Statute, in 1999, the act was subjected to a significant number of amendments and supplementations, and other complementary normative acts were adopted, which are helpful to make a distinction between the notion of civil servant and the other notions which were previously mentioned.

Among these normative acts, the most discussed and disputed in the doctrine is the Labour Code⁴⁰, which regulates the employment relationships and established, in the text of its art. 2, the field of application for the diverse employees' categories.

Nevertheless, by comparing the texts of the Law no. 161/2003⁴¹, a clear distinction can be made between the public dignities in the central administration, respectively in the local administration, dignitaries, locally-elected dignitaries, civil servants, other persons which fulfil offices of public authority and employees. Being preoccupied by the evolution of the notion of civil servant in the internal law, and to the extent of its compatibility with the definition of the civil servant in the case-law of the Court of Justice of the European Union and of the European Court of Human Rights⁴², we will not furtherly develop these aspects in this study. We need to underline, nevertheless, that in the studies concerning the civil servants we do both use the extended notion of employee or worker, as it is defined *lato sensu* in the European Law or in the internal Labour law, which makes reference to the existence of an employment contract and of the existence of an employment relationship. We make reference to the *stricto sensu* acceptance of the civil servant notion, which is defined by the law and subjected to the administrative law, which is based on the administrative nomination in a public office, this case being, as previously showed, an employment relationship.

It is not without relevance to mention, nevertheless, that there are some regulations, for example those in the penal field, in which the civil servant notions in the sense of the Penal law is much vaster than the one provided for by the statute.

⁴⁰ Law no.53/2003 on the Labour code, republished in the Official Journal of Romania no.345/18 of May 2011, subsequently amended and supplemented.

⁴¹ Law no. 161/2003 on some measures for ensuring transparency in exercising public dignities and in the business environment, the prevention or sanction of corruption, was published in the Official Journal of Romania no.279/21 of April 2003, subsequently amended and supplemented.

⁴² For further details, please refer to Irina Alexe, *Noțiunile de funcție publică și funcționar public în jurisprudența Curții de justiție a Uniunii Europene. Legătura cu jurisprudența Curții Europene a Drepturilor Omului*, Pandectele Române no.2/2013, pp.66-74; also, please refer to Irina Alexe, *Înalții funcționari publici*, op. cit., p.38-48.

Even before Romania's accession to the European Union, it was widely known that the regulation of the field of the civil service was an exclusive competence of the Member State, but the Romanian state chose to give as a rationale for the adoption of the Statute, as well as for some of the successive amendments of the European Union, by the necessity to harmonise the internal and European Law. By analysing a recent study⁴³, we found that, more than ten years after Romania's accession to the European Union, few civil servants are making a clear distinction between the Staff regulations for European officials and the regime applicable to other servants of the Union, regulated by Regulations⁴⁴, being a legislative act of the European Union, respectively the internal Statute of civil servants, regulated through the national law⁴⁵.

Going back to the text of the Law no.188/1999 and the purpose of the adoption of such a Statute, this is to say to ensure the professionalisation and the stability of the administration, we found out that, although acclaimed as a modern and reforming law, the scope was not fulfilled. Despite the fact that the law contains not only the mechanisms, but also the warrants in order to fulfil the purpose of the law, most of the time the application of the respective norms was faulty.

Also, it should be mentioned that the law was subjected to multiple amendments and supplementations, sometimes several times a year, and that the political decision-makers which wanted to "solve" some personal issues with some people which were uncomfortable for their positions, were introducing, apart from the regulations established by the Statute, numerous exceptions which eventually lead, in our opinion, to a discreditation of the whole measure. Putting an emphasis on the category of the Senior Officials, perhaps the most affected categories by the myriad of legislative amendments, we dedicated relatively recently separate studies dedicated to the way in which the reform of the public office was realised, in Romania, ten years after the accession to the European Union⁴⁶, respectively to the new amendments recently proposed by the Law on the Administrative Code of Romania, which proposes an abrogation of the Statute of civil servants⁴⁷, so these aspects will not be furtherly detailed, waiting, at the time of the writing, for the

⁴³ Irina Alexe, *Aplicarea procedurii trimiterii preliminare în cauze privind funcționarii publici*, Pandectele Române no.3/2018, p. 45-56.

⁴⁴ Regulation No 31 (EEC), 11 (EAEC) of 1962 (OJ 45 of 14 June 1962), reformed through the Regulation (EC, Euratom) no. 723/2004 (OJ L124 of 27 April 2004) and through the Regulation (EU, Euratom) no.1023/2013 (OJ L287 of 29 October 2013) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union.

⁴⁵ Law no.188/1999 on the Statute of civil servants

⁴⁶ Irina Alexe, *Reforma funcției publice după 10 ani de la aderarea României la Uniunea Europeană. Cazul înalților funcționari publici*, Revista de drept public no.2/2017, p.12 - 22.

⁴⁷ Irina Alexe, *Modificări esențiale ale categoriei înalților funcționari publici, incluse în proiectul Codului administrativ*, Revista de drept public no.2/2018, p.116 - 128.

decision of the Constitutional Court of Romania which was seized with regard to the text of the law, and which postponed the required debate in order to rule on the matter⁴⁸.

VI. Short conclusions

There is no doubt to the fact that a modern state needs highly trained civil servants in order to sustain a professional administration in the service of the citizens. The Statute of civil servants followed, in the century which followed the Great Union, a complicated path, closely linked to the evolution of the Romanian state. Despite the fact that the civil servant notion had a different content across the time, the role and the fundamental missions of the civil service in the state remained, for their most, the same.

In the Administrative Law, similarly to other branches of the law, a strong trend of Europeanisation can be observed, which implies a Europeanisation of the public office⁴⁹. We did not manage to quantify the extent to which the European Law, through the specificities of its institutions, is applicable to the Romanian civil servants, but we are confident that these principles which lead to a better governance, to a more transparent decision-making and to a professionalisation not only of the civil servants, but also of the administration, to be also correctly applied in Romania.

It would be desirable for the civil service system to be realised, as provided for by the Statute, based on meritocratic criteria for professional advancement, but this failed to materialise in practice, because of the introduction of application of some exceptions of the aforementioned rules.

Also, a tendency for taking best practices from other states can be observed in the case of the civil servants and of a part of the administration, respectively of the European servants, but not all of these solutions can be applied every time to the specificities of the Romanian administrative system. Their application, at least in the case of the Senior Officials, proved to be a failure, which led to the restructuring of the category but also to a re-evaluation of the subsequent conditions for accessing a public office of the mechanism.

As mentioned in the previous section, the competent authorities of the Romanian state chose to include the norms concerning the Statute of civil servants

⁴⁸ For further details, please refer to point B of the press release of the Constitutional Court of Romania, released on the 25th of October, available at <https://www.ccr.ro/noutati/COMUNICAT-DE-PRES-338>

⁴⁹ For a relevant analysis of this field please refer to: René Seerden (ed.), *Comparative Administrative Law. Administrative Law of the European Union, Its Member States and the United States*, Fourth Edition, Editura Intersentia, 2018, p.417-438; Ioan Alexandru, *De la dreptul administrativ național la dreptul administrativ global*, Editura Academiei Române, 2017, p.188-216.

in the draft of the Administrative Code. Without trying to criticise the Administrative Code adopted by the Parliament, we would like to underline that, in our opinion, we do not consider that normative act in its entirety as a substantial progress for the regulation of the Statute of civil servants and we specifically do not appreciate the chosen solutions of the regulation. Maybe this is the correct solution in order to simplify and alleviate the legislation, but the way in which this transformation was realised raise several questions for which we wait for the ruling of the Constitution Court, hoping that at least some of the presented aspects will be clarified, and furtherly revised. We would like to specifically underline a particular aspect, linked to the fact that the normative act puts under the management of the same authority both the civil servants and other staff categories of the public administration.

Although very desired and maybe necessary, in our opinion, the Administrative Code is not a genuine act which could encompass and to integrate the notions and the institutions, but rather a legislative *codex*, a collection of laws regulating specific fields, frequently with contradictory or incomplete norms which have been brought together under the same title.

In order to have the desired effect, we consider that it would have been preferable for such a normative act to be elaborated only after the realisation of the most needed constitutional and administrative and territorial reorganisation.

We appreciate that, in celebrating the centennial since the 1st of December 1918, further work is needed for the modernisation of the state, in order to respond to its own development needs and to those of the European society, from which is taking part.