

Aspects Regarding The Transposition Of Some Regulations In The Field Of Human Rights And Eu Law In The Romanian Administrative Code¹

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Abstract

The study aims to highlight how the Administrative Code, as a new and main normative instrument for regulating public administration and its personnel, takes over and transposes constitutionally established rights, freedoms and duties, as well as through a series of international and regional instruments on human rights to which Romania is a part or through community (European) acts. They are presented systematically, by reference to the legal norms and to the applicable references, but also from the perspective of some hypotheses or the comparative approach.

Keywords: *public law, administrative law, principles, procedural approach, rule of rights.*

1. Preliminaries

The legal norms enacted by the state for the regulation of social relations, the organization and functioning of its institutions, as well as their relationship with citizens must be reported both in terms of content and impact on a number of international regulations to which Romania is a part. This is to provide guarantees regarding respect for human rights as well as provisions of European law.

In this sense, the special law on the matter, the one on legislative technique, shows that the draft normative acts must establish necessary, sufficient and possible rules that will lead to the greatest possible legislative stability and efficiency. The solutions they contain must be thoroughly substantiated, taking into account the social interest, the legislative policy of the Romanian state and the requirements of correlation with all internal regulations and harmonization of national legislation with Community law and international treaties to which

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Romania is a part, as well as with the jurisprudence of the European Court of Human Rights.

From this point of view, we have gone through the recently adopted Administrative Code, in order to highlight a series of the above mentioned elements. We have considered some international and regional instruments and mechanisms on human rights and European values as they are known in institutional practice and in the literature.

The rules of administrative law are thus intertwined with those of constitutional law, international law, human rights and European law. "The study of the administrative system is in full expansion, incorporating new methods and experiences, new approaches, even new concepts and practices" says an law an administrative sciences author. [1]

We also take into consideration that "The attentive study of international, regional and national instruments on fundamental human rights and freedoms highlights the interaction between human as a person and citizen and institutions, as well as the long series of struggles for their assertion" as is shown in the specific literature [2], and also" Human rights science is a constantly evolving science, but also under the pressure of a political burden that cannot be ignored". [3]

2. About Administrative Code

The Administrative Code [4] is the normative act that regulates the organization and functioning of the public administration and integrates, by repeal, 16 normative acts, laws, ordinances and decisions of the Government. It entered into force on the day of its publication in the Official Gazette, on July 5, 2019, being adopted by the Government, by Emergency Ordinance no. 57/2019, not by law by the Parliament. It was declared constitutional by the Constitutional Court, following the appeal formulated by the People's Advocate (Ombudsman/Ombudsperson).

It is a source of law, the seat of the matter and contains legal grounds for all administrative acts issued or adopted by central and local public administration authorities.

3. Main contextual references

3.1 Regarding fundamental human rights and freedoms - an obligation reflected in the oath

Regarding civil servants, the oath reflects the phrase "fundamental human rights and freedoms". It is worded as follows: "I swear to respect the Constitution, fundamental human rights and freedoms, to apply correctly and impartially the laws of the country, to conscientiously fulfill my duties in the

public office in which I was appointed, to maintain professional secrecy and to respect the norms of professional and civic conduct. May God help me! ". The concluding religious formula will respect the freedom of religious beliefs, the oath can be taken even without the religious formula [Art.529 C.adm.].²

Local elected officials (mayors and deputy mayors, presidents and vice presidents of county councils, local councilors and county councilors) have the obligation to take the oath but in its content, unlike civil servants there are no references to respect for fundamental human rights and freedoms. Thus, the formula enshrined in the Administrative Code in their case is the following: "I swear to respect the Constitution and the laws of the country and to do, in good faith, everything in my power and skill for the good of the commune / city / municipality / county. May God help me!" The concluding religious formula will respect the freedom of religious beliefs, the oath being able to be taken even without the religious formula [Art.117 C.adm.].

We also note, as an exception, that, according to the Administrative Code, the contractual staff (employed under an individual employment contract) in the public administration do not take the oath. Among the dignitaries, the secretaries of state and the undersecretaries of state also do not take the oath.

3.2 Regarding the protection of the language of national minorities

In this respect, we note the specific provisions contained in *Recommendation no. 1201 of the Parliamentary Assembly of the Council of Europe*³ [5], in the *Framework*

² We find the same phrase in the content of the oath taken by the President of Romania, Prime Minister and Ministers, even if the text is worded differently: "I swear to give all my strength and skill for the spiritual and material prosperity of the Romanian people, the laws of the country, to defend democracy, the fundamental rights and freedoms of the citizens, the sovereignty, independence, unity and territorial integrity of Romania. May God help me! ". [Art.82 and art.104 - Constitution]. At the same time, we notice that the deputies and senators have the same phrase inserted in their oath: "I swear allegiance to my country Romania; I swear to respect the Constitution and the laws of the country; I swear to defend democracy, the fundamental rights and freedoms of the citizens, the sovereignty, independence, unity and territorial integrity of Romania; I swear to fulfill with honor and fidelity the mandate entrusted to me by the people; God help me. " The oath of allegiance can be taken without the religious formula, which is replaced by the formula: "I swear by honor and conscience" and this prefaces the oath. [Art.3 - Law no.96 / 2006 on the status of deputies and senators].

³ Article 7 "In the regions in which substantial numbers of a national minority are settled, the persons belonging to a national minority shall have the right to use their mother tongue in their contacts with the administrative authorities and in proceedings before the courts and legal authorities. In the regions in which substantial numbers of a national minority are settled, the persons belonging to that minority shall have the right to display in their language local names, signs, inscriptions and other similar information visible to the public. This does not deprive the authorities of their right to display the above-mentioned information in the official language or languages of the state".

*Convention for the Protection of National Minorities*⁴ [6], ratified by Law no. 33/1995, as well as in the *Charter of Fundamental Rights of the European Union*.⁵ [7]

The Administrative Code devotes a number of 8 articles to this aspect, as follows: "Use of the language of national minorities - In administrative-territorial units / subdivisions where citizens belonging to a national minority have a share of over 20% of the population, established at the last census , the local public administration authorities, the public institutions subordinated to them, as well as the decentralized public services ensure the use, in their relations with them, of the language of the respective national minority, in accordance with the Constitution, this Code and the international treaties to which Romania is part. The local public administration authorities provided in par. (1), by decision, may decide to ensure the use of the language of national minorities in the administrative-territorial units in which the citizens belonging to the national minorities do not reach the weight provided in par. (1) "[art.94 C.adm.]; "In communes, cities or municipalities where citizens belonging to a national minority have a share of over 20% of the population, established in the last census, the draft agenda is made public and in the language of the national minority." [art.135, para.5 C.adm.]; "The proceedings of the meetings are conducted in Romanian. In local councils where local councilors belonging to a national minority represent at least 20% of the total number, the language of the respective national minority may also be used at the meetings of the local council. In these cases, the translation into Romanian is ensured by the mayor's charge. In all cases, the documents of the local council meetings shall be drawn up and made public in Romanian. " [art.138, para.3 C.adm.]; "In the relations between citizens and local public administration authorities, the Romanian language is used. In the administrative-territorial units where the citizens belonging to a national minority have a share of over 20% of the population, established at the last census, in their relations with the local public administration authorities, with the specialized apparatus and their subordinate bodies, they may address, orally or in writing, and in the language of the

⁴ Article 10 "The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. - 5 - 2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. 3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter".

⁵ Article 41(4) Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

respective national minority and receive the answer both in Romanian and in the language of the respective national minority. For the purpose of exercising the right provided in par. (2), the public authorities and the entities provided in art. 94 have the obligation to make available to citizens belonging to a national minority forms and administrative texts of current use in bilingual format, respectively in Romanian and in the language of the national minority. The list of forms and types of administrative texts of current use, which are used according to par. (3) shall be established by Government decision, at the proposal of the Department for Interethnic Relations elaborated in collaboration with the Institute for the Study of National Minority Issues, with the approval of the ministries with attributions in the field of public administration, public finance and internal affairs.

Under the conditions provided in par. (2), in the positions that have attributions regarding public relations are also included persons who know the language of the respective national minority. The local public administration authorities ensure the inscription of the name of the localities and public institutions under their authority, as well as the display of the announcements of public interest both in Romanian and in the language of the respective national minority, under the conditions provided in par. (2). The official documents must be drafted in Romanian, under the sanction of nullity." [art.195 C.adm]; "In the administrative-territorial units where the citizens belonging to a national minority have a share of over 20% of the population, established at the last census, the normative decisions are made public both in Romanian and in the language of the respective minority. " [art.198, para.3 C.adm]; "In the administrative-territorial units in which the citizens belonging to a national minority have a share of over 20% of the population, established at the last census, the individual decisions are communicated, upon request, also in the language of the respective minority." [art.199, para.3 C.adm]; "The Prefect - verifies the application of the legal norms governing the use of the language of the national minority in the relations between the local public administration authorities and the deconcentrated public services, on the one hand, and the citizens belonging to the national minorities, on the other hand, in the administrative-territorial units which they have a share of over 20%, according to the latest census. " [art.253, letter f) C.adm]; "In the case of administrative-territorial units in which the citizens belonging to a national minority have a share of over 20% of the number of inhabitants in the respective administrative-territorial unit, the " Official local monitor " is published, in compliance with the provisions of art. 1, both in Romanian and in the language of the persons belonging to the national minority in question.

The provisions of par. 1. (3) shall apply accordingly in respect of the published version in the language of persons belonging to the national minority " [Annex no.1, art.2, para.4 C.adm].

3.3 Regarding non-discrimination

The Charter of Fundamental Rights of the European Union provides in art. 21, para. 1, entitled "Non-discrimination" the following: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited". Non-discrimination is seen as a fundamental value of the legal order of the European Union.

The Administrative Code includes provisions in this regard in several chapters regulating the general principles applicable to public administration, public office, public services or public property administration.

Thus, regarding the first issue, it is stated that "Beneficiaries of the activity of public administration authorities and institutions have the right to be treated equally, in a non-discriminatory manner, correlated with the obligation of public administration authorities and institutions to treat all beneficiaries equally, without discrimination on the criteria provided by law. [art.7 C.adm]. Then with regard to the civil service, it regulates a right to equal treatment, "The principle of equal treatment of all civil servants is based on the service relations between public authorities and institutions and civil servants. Any discrimination against a civil servant, defined in accordance with the provisions of the specific legislation on the prevention and sanctioning of all forms of discrimination, shall be prohibited. " [art.413, C.adm.]

With regard to conduct in relations with citizens, it is stated that "Civil servants have an obligation to ensure equal treatment of citizens before public authorities and institutions, a principle according to which civil servants have a duty to prevent and combat any form of discrimination in fulfilling professional duties. [art.447, para.6 C.adm]. Also in the service relations, "Senior civil servants and senior civil servants have the obligation to ensure equal opportunities and treatment regarding the career development of subordinate staff, under the conditions of specific legislation applicable to each category of staff. In this respect, they have the obligation to exclude any form of discrimination and harassment, of any nature and in any situation, with regard to subordinate staff. [art.449, para.5, letter f) C.adm.]

On the same issue of non-discrimination we also note the fact that following a Decision of the Constitutional Court⁶, the Labor Code was amended to allow the retirement of female employees of the same age as male employees (currently 62/65 years), and the Administrative Code shows, subject to interpretation in regarding the civil servants and the regulated contractual personnel, that its

⁶ Decision of the Romanian Constitutional Court no.387/2018, published in the Official Gazette no. 642/2018.

provisions are completed with the provisions of the labor legislation [art. 367 C.adm.].

Regarding non-discrimination in the field of public services, we note that "The principle of equal treatment in the provision of public services is the elimination of any discrimination of beneficiaries of public services based, as appropriate, on criteria of ethnic or racial origin, religion, age, gender, sexual orientation, disability , as well as ensuring the application of identical rules, requirements and criteria for all public service authorities and bodies, including in the public service delegation process ". [art.580, para.3 C.adm].

With regard to the administration of public property, in matters relating to concessions and leases of public property, the principles of equal treatment and non-discrimination are introduced among the applicable principles, as follows: "equal treatment - the application, in a non-discriminatory manner, by the public authority, of the criteria for awarding the public property concession contract; non-discrimination - the application by the public authority of the same rules, regardless of the nationality of the participants in the procedure for awarding the public property concession contract, according to the conditions provided in the agreements and conventions to which Romania is a part; [art.311, letters b) and d) C.adm.].

3.4 Regarding the "Europeanization" of public administration. Obligations and convergence issues

The Administrative Code establishes some obligations of a general or specific nature in charge of some public authorities, as follows: The Government ensures the integration of Romania in the European and international structures [art.25, letter i) C.adm.], The Local Council ensures the accomplishment of the works and takes the necessary measures to implement and comply with the provisions of the commitments assumed by Romania as a member state of the European Union in the field of environmental protection and water management for services provided to citizens [art.129, para. 4 letter g) C.adm.], Mayor ensures the accomplishment of the works and takes the necessary measures to comply with the provisions of the commitments assumed in the process of European integration in the field of environmental protection and water management for services provided to citizens [art.155, para. 5 letter h), the Prefect supports, upon request, the actions carried out to decentralized public services, respectively by local public administration authorities in the field European affairs [art.258, letter b) C.adm].

Regarding the recruitment of the category of senior civil servants, the Administrative Code establishes that " A citizen of a Member State of the European Union may be appointed as member of the competition commission for senior civil servants" [art. 395, para. 5, letter a) C.adm.].

Another article of the mentioned normative act is also dedicated to the observance of the European Union legislation on public services, which stipulates that: “Establishing the component activities, the mission, the award procedure, the compensation, as the case may be, as well as the provision of public services in accordance with the standards and requirements established by the relevant legislation of the European Union applicable in the Member States” [art.583 C.adm.].

3.5 Regarding good administration

The Charter of Fundamental Rights of the European Union provides in art. 41 entitled “The right to good administration” that “Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. This right includes: the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the obligation of the administration to give reasons for its decisions. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language”.

Most of these aspects have been transposed into the Administrative Code, and the administration through its staff will give them effect and effectiveness in its current activity.

We also note an additional obligation that the Administrative Code provides for the Government, namely that “In carrying out its functions, the Government fulfills the following main duties: ensures mandatory standards at the level of central and local public administration to ensure good administration; [art.25, letter p) C.adm.]. Such standards are still to be expected, as there is no systematization of them and no dedicated Government document in carrying out its above-mentioned attribution.

3.6 Regarding the local self-government and cooperation

The European Charter of Local Self-Government [8], “document with programmatic value, Treaty no. 122, the name under which the Charter is also known” [9], is mentioned as a reference document in the activity of local public administrations, as follows: “The local public administration of the administrative-territorial units is organized and operates on the basis of the general principles of public administration provided in Part I, Title III and of the

general principles provided in Law no. 199/1997 for the ratification of the European Charter of Local Self-Government, adopted in Strasbourg on October 15, 1985 "[art.75 C.adm].

The Administrative Code also stipulates that: "The administrative-territorial units adjacent to the border areas may conclude between them cross-border cooperation agreements with similar structures from neighboring states, in accordance with the law. The initiative of the administrative-territorial units to cooperate and associate with administrative-territorial units from abroad, as well as to join an international association of administrative-territorial units will be communicated, through the mayors, respectively the presidents of the county councils, to the ministry with attributions in the field of foreign affairs and the ministry with attributions in the field of public administration. Draft cooperation agreements which administrative-territorial units intend to conclude with administrative-territorial units in other countries must be submitted for approval to the Ministry of Foreign Affairs and the Ministry of Public Administration before submitting them for adoption. to the deliberative authorities. Through the cross-border cooperation agreements, bodies can be created on the Romanian territory that have, according to the domestic law, legal personality. These bodies do not have, for the purposes of this Code, administrative-territorial powers. The Romanian public administration authorities can conclude twinning / cooperation agreements with the local public administration authorities from other states, preferably with the local public administration authorities from the states where there are Romanian communities, joint cultural, sports, youth and educational programs, internships training and other actions that contribute to the development of friendships, including their financing. [art.89, par.9, 10, 12 and 14 C.adm.].

3.7 Regarding the role of the mayor and civil servants in ensuring the fundamental rights and freedoms of citizens

The Administrative Code provides some obligations in this regard, as follows: "The mayor ensures respect for the fundamental rights and freedoms of citizens, the provisions of the Constitution, as well as the implementation of laws, decrees of the President of Romania, government ordinances and decisions, council decisions local. The mayor orders the necessary measures and provides support for the application of normative orders and instructions of ministers, other heads of central public administration authorities, the prefect, the provisions of the county council president, as well as county council decisions, in accordance with the law" [art.154, para.1 C.adm.].

Also "Civil servants have the obligation to promote the rule of law through their acts and deeds, to respect the Constitution and the laws of the country, the rule of law, the fundamental rights and freedoms of citizens in relation to public

administration, and to act for the implementation of legal provisions in accordance with their duties, with the application of the rules of conduct resulting from the duties provided by law. Civil servants must comply with the legal provisions regarding the restriction of the exercise of certain rights, due to the nature of the public positions held" [art.430 C.adm.]. Among the attributions of civil servants who hold according to specific procedures and the quality of ethics advisor, the following obligation is regulated: "organizes information sessions for civil servants on ethical norms, changes in the normative framework in the field of ethics and integrity for public authorities and institutions for the observance of citizens' rights in relation to the public administration or to the respective public authority or institution" [art.454, letter d) C.adm].

3.8 Regarding some special provisions relating to competition for public office

An important novelty brought by the Administrative Code in this field concerns the content of the subjects and the bibliography. Thus, "The competition for holding a public position is based on the principles of competition, transparency, competence, as well as the principle of equal access to public positions for each citizen who meets the legal conditions. Within the contest provided in par. (1), the subjects and the afferent bibliography must also contain themes regarding the respect of human dignity, the protection of fundamental human rights and freedoms, the prevention and combating of incitement to hatred and discrimination" [art.467, para.1 and 2 C.adm.].

3.9 Regarding the free movement of contract workers in public administration

The Treaty on the Functioning of the European Union (TFEU) [10] enshrines the provisions of art. 45 to freedom of movement for workers, but clarifying that this article does not apply to employment in the public administration. It is therefore up to the Member States to allow the permissibility and flexibility of employment in these positions, and case law has already been created for the Court of Justice of the European Union.

Thus, the TFEU states that "Freedom of movement for workers shall be secured within the Union. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: to accept offers of employment actually made; to move freely within the territory of Member States for this purpose; to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; to remain in the territory of a

Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission. The provisions of this Article shall not apply to employment in the public service”.

In this regard, the Administrative Code offers the possibility for European citizens to be employed in the Romanian public administration in terms of contractual positions. Therefore, “The individual employment contract is concluded between the person who meets the conditions to be employed in a contractual position and the public authority or institution, through its legal representative, under the conditions provided by Law no. 53/2003, republished, with subsequent amendments and completions, in compliance with the following specific requirements: the person to have Romanian citizenship, citizenship of other member states of the European Union or of the states belonging to the European Economic Area and domicile in Romania” [art.541, para.1, letter a) C.adm.].

Moreover, the possibility is extended to foreign, non-EU citizens as follows: “By exception from the condition provided in par. (1) letter a) foreign nationals may also be employed, in compliance with the regime established for them by specific legislation and labor legislation” [art.541, para.2 C.adm.].

3.10 Regarding the free movement of workers - statutory guarantees for civil servants

In this respect, the Administrative Code allows the suspension of the employment relationship, maintaining the public office held within the public authority or institution in the country, when the civil servant "is appointed to carry out activities in diplomatic missions of Romania or in bodies or institutions of the European Union or in other bodies or institutions of international public law, as a representative of the public authority or institution or of the Romanian state, for the respective period” [art.513, para. 1, letter c) C.adm.] And at the same time for “carrying out an activity within international bodies or institutions for a determined period, in other situations than those provided in art. 513 para.1 letter c)” [art.514, para.1, letter j) C.adm.]. Also regarding the recognition of labour seniority in the European Union or in other specific states, the Administrative Code provides that “It constitutes seniority in the specialty and seniority acquired under an individual employment contract, employment relationship or as a liberal profession in the Member States of the European Union, as well as in other states with which Romania has concluded agreements for the mutual recognition of these rights, demonstrated with appropriate documents by the person who carried out an activity in a specialized position corresponding to his profession or specialization ”[art.424 , para.3 C.adm.].

3.11 Regarding the access of persons with disabilities to public office

The UN Convention on the Rights of Persons with Disabilities [11] states in article 27 entitled “Employment and Employment” that “States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia: *Employ persons with disabilities in the public sector*” (letter g).

From this perspective, the Administrative Code stipulates that “Public authorities and institutions have the obligation to identify and ensure the adaptation of the workplace for civil servants with disabilities and to provide them with the tools to ensure accessibility, in order to properly exercise their duties on public positions occupied by them” [art.422, para. 2 C.adm.]. At the same time, “Persons with disabilities have the right to participate in competitions organized for holding public positions for which they meet the general and specific conditions established. The organizing authorities and public institutions have the obligation to ensure the unrestricted access of persons with disabilities to the competition for holding a public office, in compliance with the legislation in force ”[art. 472 C.adm.]. Moreover, regarding the role and attributions of the joint commissions, they are consulted “in identifying the instruments for ensuring accessibility, as well as the measures of reasonable adaptation at work for persons with disabilities holding public positions” [art.489 para.1, letter e) C.adm.].

3.12 Regarding the right of European citizens to vote and to be elected in the local public administration authorities

The Treaty on the Functioning of the European Union (TFEU) provides in article 20 that “Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: [...] the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State” , and in art.22 that “ Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State”.

We also mention the provisions of the *Charter of Fundamental Rights of the European Union*, according to which “Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.”, as shown in Article 40 thereof. Another incidental provision is *Directive 94/80 / EC on the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals*. [12]

In this context, the Administrative Code regulates the eligible positions, respectively mayor, president of the county council, local councilor and county councilor. These positions are chosen under the conditions of the special electoral law [13] and as we observe they include both deliberative and executive eligible positions, under this second aspect Romania having a permissive legislation in relation to other member states of the European Union, which only allow the election own citizens and nationals in eligible executive positions. Romania admits the candidacy for the positions of mayor and president of the county council and European citizens, without holding Romanian citizenship, domicile in the respective administrative-territorial unit (being replaced by residence) and without the legal obligation to know the Romanian language. According to the Constitution, in the conditions of Romania's accession to the European Union, the citizens of the Union who meet the requirements of the organic law have the right to elect/vote and be elected in the local public administration authorities, this right being developed as shown by the provisions of the Administrative Code. the norm of referring it to the special electoral law in the matter.⁷

3.13. Regarding the processing of personal data and their free movement

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) [14] applies to the Romanian public administration developed by an internal law [15] implementing its measures, there are also in the Administrative Code references from this perspective to a number of sectoral areas in the field of civil service, public property or advertising acts of local public administration authorities.

Thus, regarding the preparation of the professional file of civil servants, it is provided that “Persons who have access to data contained in the national records

⁷ See art.5 of law no.115 / 2015 - “Citizens of the European Union who have their domicile or residence in Romania have the right to choose and to be elected under the same conditions as Romanian citizens, fulfilling the provisions of this law. The European Union has the right to be elected as a local councilor and county councilor, mayor or chairman of the county council. For the purposes of this law, the citizens of the European Union mean the citizens of the Member States of the European Union, other than Romania”.

of civil servants, as well as the professional file of civil servants have the obligation to maintain the confidentiality of personal data , in accordance with the law" [art.410, para. 5 C.adm.]. Institutional provisions regarding the management of the civil service also stipulate that "The use and processing of personal data by the National Agency of Civil Servants and public authorities and institutions is in compliance with the provisions of the law on protection of persons regarding the processing of personal data and free circulation of this data. Persons who have access to the data contained in the records of budgetary staff paid from public funds have the obligation to maintain the confidentiality of personal data, in accordance with the law" [art.411, para.9 C.adm.] And" In application of the provisions of this Code regarding the conduct of civil servants, any activity involving the processing of personal data is carried out in compliance with the provisions of the legislation for the protection of persons regarding the processing of personal data and the free movement of such data" [art.451, para. 6 C.adm.].

Regarding the publicity of the acts of the local public administration authorities, through the Local Official Monitors it is stipulated that "The publication of any administrative act is done in editable" pdf "format to keep the layout and appearance of the document intact, so that it looks exactly as it was made and can be printed correctly by anyone and from anywhere, without including the holographic signatures of persons, ensuring compliance with regulations on personal data protection "[Annex no. 1, art. 5, para. 2 C.adm].

In the procedure for leasing/renting public property, with regard to data protection, it states that "Without prejudice to the other provisions of this section, the contracting authority has the obligation to ensure the protection of information communicated to it by natural or legal persons whereby, objectively, the disclosure of the information in question would be prejudicial to the legitimate interests of those persons, including trade secrets and intellectual property" [art.337 C.adm.].

4. Conclusions

"Today, in the new conditions of European society, where Europe is heading more and more toward unity and cohesion, the governance of nations being asked to be more synchronized and harmonized [...] relying firmly their relations on the respect of the dignity and the major principles governing human rights today" says an author [16], framing a conclusive picture of those mentioned.

The above provisions regulated by Romanian Administrative Code, apply and produce legal effects directly, or through secondary and tertiary legislation, as well as according to the principles settled in the Constitution [17] and international documents. Public administration has the task to implement and

defend the values enshrined through them, as a guarantee, on the one hand, of the right to good administration, and on the other hand of the subjective rights of those administered, but also of the its personnel.

The development or introduction of regulatory issues less practiced so far, goes from the stage of desirable concern, and with the entry into force of the Administrative Code is a legal obligation, an approach to knowledge and deepening their specific areas, subject to the quality of the act of administration.

References

[1] Cărăușan, M.V. (2012). Structuri, mecanisme și instituții administrative în Uniunea Europeană / Structures, mechanisms and administrative establishment in the European Union. Editura Tritonic București / Publisher Tritonic Bucharest, p.51.

[2] Bârsan, C. (2005), Convenția europeană a drepturilor omului. Comentarii pe articole. / European Convention on Human Rights. Comments on articles. Editura All Beck, București/ Publisher All Beck, p.3-19, apud Zlătescu, I.M. (2008). Drepturile omului – un sistem în evoluție / Human rights - an evolving system. Editura IRDO/ Publisher IRDO, p.26.

[3] Zlătescu, I.M. (2008). Drepturile omului – un sistem în evoluție / Human rights - an evolving system. Editura IRDO București/ Publisher IRDO Bucharest, p.31.

[4] Government Emergency Ordinance no. 57/2019 regarding Administrative Code, published in the Official Gazette no. 555/2019.

[5] Recommendation no. 1201 of the Parliamentary Assembly of the Council of Europe, adopted on 1 february 1993.

[6] Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and entered into force on 1 February 1998.

[7] Charter of Fundamental Rights of the European Union, published in JOUE Official Journal C 326 /02 - 2012.

[8] European Charter of Local Self-Government, adopted in Strasbourg on 15 October 1985 and came into force on 1 September 1988.

[9] Iancu, D.C. (2010). Uniunea Europeană și Administrația Publică / European Union and public administration. Editura Polirom Iași / Publisher Polirom Iași, p.29.

[10] The Treaty on the Functioning of the European Union (TFEU), published in JOUE Official Journal C 326 /01 - 2012.

[11] The UN Convention on the Rights of Persons with Disabilities, adopted in New York by the General Assembly of the United Nations on December 13, 2006, opened for signature on March 30, 2007 and signed by Romania on

September 26, 2007 - ratified by Law no. 221/2010, published in the Official Gazette no. 792/2010.

[12] Directive 94/80 / EC on the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, published in JOUE Official Journal L 368 - 1994.

[13] Law no. 115/2015 for the election of local public administration authorities, for the amendment of the Local Public Administration Law no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 on the Statute of local elected officials, published in the Official Gazette no. 349/2015.

[14] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation), published in JOUE Official Journal L119/1 - 2016

[15] Law no.190/2018 implementing measures for Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing them of Directive 95/46 / EC (General Data Protection Regulation), published in the Official Gazette no. 651/2018

[16] Cocoşatu, M. (2012). Governance in Europe. Editura Pro Universitaria Bucharest / Publisher Pro Universitaria Bucharest, p.12.

[17] Romanian Constitution, published in the Official Gazette no.767/2003.