

## **ADMINISTRATIVE POLICE – FUNDAMENTAL FORM OF PUBLIC ADMINISTRATION ACTIVITY**

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### **ABSTRACT:**

*THERE ARE DIFFERENT THEORIES THAT SERVE SEVERAL ANSWERS WHEN WE ASK OURSELVES WHAT DOES THE PUBLIC ADMINISTRATION ACTIVITY REALLY MEAN OR WHICH ARE ITS FORMS OF MANIFESTATION.*

*THIS PAPER APPROACHES ONE OF THE MAJOR FORMS OF THE PUBLIC ADMINISTRATION ACTIVITY: THE ADMINISTRATIVE POLICE. PUBLIC ADMINISTRATION CANNOT FUNCTION WITHOUT THIS ACTIVITY BECAUSE THE ADMINISTRATIVE POLICE, BY USING ITS AUTHORITIES, IS THE ONE THAT SETS THE RULES BY WHICH THE CITIZENS INTERACT, USING DIFFERENT MECHANISMS SUCH AS: REGULARIZING, AUTHORIZATION, COERCION ETC.*

*THE PURPOSE OF THIS STUDY IS TO PRESENT THE ORGANIZATION OF THE ADMINISTRATIVE POLICE AUTHORITIES IN ROMANIA AND HIGHLIGHT THEIR ATTRIBUTIONS.*

*BY USING METHODS SUCH AS CASE STUDY AND DIRECT OBSERVATION, I WAS ABLE TO SHOW THE SPECIFIC FEATURES AND PROBLEMS OF ROMANIAN ADMINISTRATIVE POLICE.*

*BY THE INSTRUMENTALITY OF RESEARCH, I FOUND THE EXISTENCE OF ADMINISTRATIVE POLICE AT ALL THE LEVELS OF PUBLIC ADMINISTRATION.*

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**KEY WORDS:** PUBLIC ADMINISTRATION, ADMINISTRATIVE ACTIVITY, ADMINISTRATIVE POLICE, PUBLIC ORDER, AUTHORITIES

### **1. THE MAIN SCHOOLS OF THOUGHT IN THE STUDY OF PUBLIC ADMINISTRATION**

Over time, there have been founded several forms of public administration activity, the views are quite different in terms of number and terminology.

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Romanian interwar doctrine analyses two major categories of public administration acts: authority acts and administration acts. Subsequently, there have been searched other groups to substantiate the forms of public administration activity. For example, Professor Romulus Ionescu believed there are six types of activity: administrative act, unilateral legal act that does not achieve state power, the contractual act, administrative operations, administrative technique operation and directly productive operation. Professor Ilie Iovănuș operates with two categories: forms producing legal effects (acts of administrative law, civil acts of state administration, government, material legal facts) and forms without proper legal effects (material and technical operations, purely political acts of administrative bodies)<sup>2</sup>.

As for the contemporary Western law, opinions are also divided. By German authors, all that an administrative authority does is administration, while French doctrine considers that the "administrative action" takes into account administrative police and public service and the "administrative regime" refers to administrative acts and administrative contracts<sup>3</sup>.

In special literature<sup>4</sup>, there are common opinions which say that the central place within public administration activity forms is occupied by the administrative act and other forms are performed either for the preparation and drafting of administrative acts or for their execution.

Further, I will turn to the theory that public administration activity is implemented by *means* and *forms*.

With regard to *means*, public administration has the legal acts of public authorities, which are classified in administrative acts and administrative contracts<sup>5</sup>.

The administrative act is a legal document unilaterally issued or adopted by an administrative authority in a public power regime, by which the law is organized or actually applied<sup>6</sup>. It creates, modifies or extinguishes legal relations<sup>7</sup>.

Contractual acts will be grouped into two categories<sup>8</sup>:

- Legal acts under the rules of public law: administrative contracts;

<sup>2</sup> Agata Mihaela Popescu, Drept administrativ: partea generală: manual de studiu individual (București: Pro Universitaria, 2012), 49.

<sup>3</sup> Popescu, Drept administrativ: partea generală: manual de studiu, 50.

<sup>4</sup> Popescu, Drept administrativ: partea generală: manual de studiu, 50.

<sup>5</sup> Tudor Drăganu, Actele de drept administrativ (București: Științifică, 1959), 37.

<sup>6</sup> Ioan Alexandru, Mihaela Cărăușan și Sorin Bucur, Drept administrativ, (București: Universul Juridic, 2009), 305.

<sup>7</sup> Emil Bălan, Instituții administrative, (București: C. H. Beck, 2008), 151.

<sup>8</sup> Bălan, Instituții administrative, 159.

- Legal acts under the common law: civil, commercial, employment contracts etc.

Thus, aside with the administrative act, the *administrative contract* is the second mean of action available to public administration and it is defined as a bilateral or multilateral agreement between an administrative authority and one or more natural or legal persons seeking to satisfy a general interest. Its object is represented by the realization of public tasks that may relate to the delivery of a public service, the achievement of public works, highlighting a public or private property good of the state or of the administrative-territorial units, making procurement<sup>9</sup>.

Public administration means - administrative act and administrative contract - are translated in *two forms: public service* and *administrative police*.

*Public service* is an activity or set of activities of general and/or individual interest provided by a public institution or organizations that are part of an administrative ensemble in order to meet public needs<sup>10</sup>.

*Administrative police* represents all public administration activities with the purpose to enact general rules and individual measures that impose order required by life in society to the free action of individuals<sup>11</sup>.

The notion of administrative police differs from the public service one in the following ways:

- In terms of their purpose, the public order pursued by the administrative police has a more limited content than the public interest that public service has in view;
- The processes used are also different, because administrative police prescribes, while public service provides benefits;
- Their effects are opposite as administrative police measures are limiting public freedoms, while public services are tasked with facilitating the exercise of citizens' rights.

Regarding the distinction between administrative police and administrative act, I will make the following observations:

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<sup>9</sup> Ioan Alexandru, Mihaela Cărăușan și Sorin Bucur, *Drept administrativ*, (București: Universul Juridic, 2009), 345; Erast Diti Tarangul, *Tratat de drept administrativ român*, (Cernăuți: Tipografia Glasul Bucovinei, 1944), 477.

<sup>10</sup> Lucica Matei, *Servicii publice*, (București: Economică, 2004), 43.

<sup>11</sup> Jean Rivero, *Droit administratif*, (Paris: Dalloz, 1973), 398; Georges Vedel, *Droit administratif*, (Paris: P. U. F., 1968), pp. 663-667; Mihai T. Oroveanu, „Poliția administrativă,” *Revista Studii de drept românesc: serie nouă*, an 6 (39), nr. 1, 1994, 29.

- Public authorities in charge of administrative police, have also regulatory competence, i.e. to issue or adopt administrative acts;
- Often, administrative police measures are expressed through administrative acts;
- Administrative police is a form of public administration activity, while administrative act is a mean used by administrative police.

Reporting the administrative police notion to the administrative contract one, I believe that these two exclude one another; the measures used by the administrative police are always unilateral.

Thus, administrative police measures can never take the form of a contract, so that administrative police powers cannot be delegated to private persons.

## 2. THE NOTION OF ADMINISTRATIVE POLICE

Providing general interest of legal organized human communities requires not only the provision of certain benefits to the administered ones in the form of public services but also taking those steps necessary to maintain public order which is a necessary condition for conducting normal life in any society<sup>12</sup>.

The general interest requires free initiatives of individuals to not prejudice the order, necessary condition of social life. Therefore, public administration has the task to ensure the necessary rules to assure the order, and for this to happen it can exercise the administrative coercion through administrative police<sup>13</sup>.

Etymologically speaking, the term "police" comes from the Greek "polis" (city) and "Politeia" (the governance of cities)<sup>14</sup>.

André de Laubadère defines administrative police notion as a form of public administration action which consists of regulating individuals' activity to ensure public order<sup>15</sup>, noting that it is preventive<sup>16</sup>.

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<sup>12</sup> Emil Bălan, *Instituții administrative*, (București: C. H. Beck, 2008), 133.

<sup>13</sup> Mihai T. Oroveanu, *Tratat de drept administrativ*, (București: Universitatea Creștină „Dimitrie Cantemir”, Facultatea de Științe Juridice și Administrative, 1994), 273.

<sup>14</sup> Iulian Cucu, *Poliția administrativă*, (București: Tipo-Litografia și Turnătoria de Litere Dor P. Cucu, 1898), p. 15.

<sup>15</sup> Laubadère, Venezia and Gaudemet, *Traite de droit administratif*, 789.

<sup>16</sup> Laubadère, Venezia and Gaudemet, *Traite de droit administratif*, 790.

Didier Truchet<sup>17</sup> believes that administrative police is a preventive activity which protects citizens' liberties, public order and ensures security, activity that is governed by a legal system of administrative law.

In another opinion, the administrative police represent all public authorities that establish general and individual rules within which individuals can perform actions without thereby prejudice social order<sup>18</sup>.

This definition reveals two sides<sup>19</sup>:

- *Material*, which means a form of activity; in which case it is the activity of issuing rules that guide human behavior in all social order, up to using coercive measures;
- *Organic or formal*, concerning those organizational forms, structures contributing to issuing standards and rules of conduct (Government, prefects, mayors, etc.), being identified with persons or employees which exercise it.

Administrative police is defined as all powers conferred by or under law to administrative authorities which allows them to impose limits to the rights and freedoms of individuals to ensure public order<sup>20</sup>.

In essence, it is a preventive police, which is exercised by: administrative authorities' regulation, prior authorization, coercion to prevent or terminate a disorder.

Looking from the perspective of systemic analysis, the exercise of administrative police through the three processes mentioned above corresponds to the mode of social regulation by law<sup>21</sup>, in its general sense. Mastering the social system by law is obtained through a triple-regulatory mechanism: pre-regulation (administrative authorities' regulations), co-regulation (prior authorization) and post-regulation (coercion to prevent or terminate a disorder).

### 3. ADMINISTRATIVE POLICE CLASSIFICATION

In public administration system we find structures with general administrative police powers at the top of the administrative pyramid and increasingly specialized down to its

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<sup>17</sup> Didier Truchet, *Droit administratif*, (Paris: P. U. F., 2008), 297-298.

<sup>18</sup> Ion Corbeanu, *Drept administrativ: curs universitar*, (București: Lumina Lex, 2010), 133.

<sup>19</sup> Georges Vedel, Pierre Delvolve, *Droit administratif*, (Paris: P. U. F., 1990), 659; Ion Corbeanu, *Drept administrativ: curs universitar*, (București: Lumina Lex, 2010), 134.

<sup>20</sup> Maurice-André Flamme, *Droit administratif*, (Bruxelles: Bruylant, 1989), 1103.

<sup>21</sup> Ani Matei, *Analiza sistemelor administrației publice*, (București: Economică, 2003), 146-147.

base<sup>22</sup>. We can classify administrative police into: *general administrative police* and *special administrative police*.

### 3.1. General administrative police

*General administrative police* aims to prevent all acts or facts that may affect public order.

Didier Truchet considers that it may act through its authorities, against what may threaten us all, without text to be provided for that intervention. Its scope is as wide and varied as human behavior<sup>23</sup>.

Thus, the public authority - individual or collective, whether appointed or elected - located in a particular territory is responsible for ensuring local administration, respecting the rights and freedoms of citizens, public order and therefore has a set of competences and means of actions, which constitutes the *general police*<sup>24</sup>.

In Romania, general administrative police may be exercised by the state, county, city or commune<sup>25</sup>, acting as public law subjects.

We find general administrative police tasks at the following authorities in Romania:

#### Government

According to Law no. 90/2001 on the organization and functioning of the Romanian Government and ministries<sup>26</sup> art. 11, in carrying out its functions, the Government complies with the following main tasks:

- a) Exercises the general management of public administration;
- b) Defends the rule of law, public order and safety of citizens and citizens' rights and freedoms, as provided by law;

#### Ministry of Internal Affairs

Government Emergency Ordinance no. 30/2007<sup>27</sup>, provides in Art. 1 para. (2) that the Ministry of Internal Affairs shall exercise, under the Constitution and laws of the country, its tasks on:

<sup>22</sup> Emil Bălan, *Instituții administrative*, (București: C. H. Beck, 2008), 133.

<sup>23</sup> Truchet, *Droit administratif*, 299.

<sup>24</sup> Ioan Alexandru, Mihaela Cărăușan și Sorin Bucur, *Drept administrativ*, (București: Universul Juridic, 2009), 438.

<sup>25</sup> According to Law no. 215/2001 on local public administration republished in the Official Gazette no. 123/20 Feb. 2007 art. 20 para. (1) "Communes, towns, municipalities and counties are administrative units ..." and art. 21 para. (1) "administrative-territorial units are legal persons under public law with full legal capacity and heritage."

<sup>26</sup> Official Gazette no. 164/2 Apr. 2001.

- a) Defending rights and fundamental freedoms, public and private property; Accomplishing the Governance Program and public administration reform and public order strategies and monitors on behalf of the Government, the development and implementation of institutional reform programs by ministries and other central public administration authorities;
- b) Ensuring public order;
- c) Security of persons, objectives, goods and values.

 Prefect

Law no. 340/2004 regarding the prefect and the prefect institution<sup>28</sup> referred in art. 19 para. (1) that as a Government representative, the prefect fulfills the following main tasks:

- a) Ensures, at county or Bucharest level, application and enforcement of the Constitution, laws, ordinances and resolutions of the Government, other legal acts and public order;
- b) Acts to maintain the climate of social peace and a permanent communication with all institutional and social levels, paying constant attention to prevent social tensions;
- c) Has appropriate measures to prevent crime and protect the rights and safety of citizens by law enforcement authorities.

 Mayor and City Council

According to Law no. 215/2001 on local public administration<sup>29</sup> art. 61 para. (2) "The Mayor provides the compliance with rights and freedoms of citizens, the Constitution and the implementation of laws, decrees of the President of Romania, the judgments and orders of the Government, local council decisions, disposes necessary measures and provides support for applying normative orders and instructions of ministers, leaders of other central public administration authorities, prefects and county council decisions under the law."

Same law stipulates in art. 36 (6) letter a) that in carrying on the management services provided to citizens, local council provides, according to its powers under the law, a framework for providing local public services regarding public order, emergency

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<sup>27</sup> Official Gazette no. 309/9 May 2007.

<sup>28</sup> Official Gazette no. 225/24 Mar. 2008.

<sup>29</sup> Official Gazette no. 123/20 Feb. 2007.

protection and environmental restoration, preservation, restoration and enhancement of historical and architectural monuments, parks, public gardens and nature reserves etc.

### **3.2. Special administrative police**

Special administrative police acts in clearly defined areas and its object is either a certain category of persons or a branch of activity.

Special administrative police rules are highly technical, very professionalized and also have a limit and likeness of situations faced by each category of such policies<sup>30</sup>.

Special administrative police is characterized by several specific elements<sup>31</sup>:

- It is established by a particular law;
- It has a specific objective;
- It is entrusted to a special authority;
- It confers more determined and diverse powers than the ones of general administrative police.

For example, we meet administrative police of buildings or veterinary, environmental, road traffic, border administrative police, etc.

With the entry into force of Law no. 155/2010 of local police<sup>32</sup>, at the local collectivities level was set up the local police in order to exercise the duties regarding the protection of the rights and freedoms of individuals, private and public property, prevention and detection of crime, in the areas of public order and peace and goods surveillance, traffic on public roads, construction discipline and street display, environmental protection, commercial activity, persons accounting and other fields determined by law.

Local police is organized and runs, through a deliberative authority decision of local public administration, as a functional department within the specialized apparatus of the mayor/general mayor or as public institution of local interest with legal personality.

Usually, the delimitation between general and special administrative police is hard to do, because we encounter public authorities having both the general and specific responsibilities.

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<sup>30</sup> Ion Corbeanu, *Drept administrativ: curs universitar*, (București: Lumina Lex, 2010), 135-136.

<sup>31</sup> Truchet, *Droit administratif*, 303.

<sup>32</sup> Official Gazette no. 488/15 July 2010.



## CONCLUSION

Through this article, I intend to contribute to the design and development of a unitary conception on one of the main forms of public administration activity, the administrative police.

Over time, as we have seen in previous chapters there were founded several forms of public administration activity, the views being quite different in terms of number and their terminology.

Thus, this research aimed to analyze the theories identified in the literature and provide arguments to support the view of administrative police as a fundamental form of public administration.

Also, since this term is limited because most definitions evoke that the administrative police's main objective is to maintain public order through various means, I tried to emphasize that, with the evolution of society and public needs, its content expanded, including also the insurance of citizens' rights and freedoms.

The existence of opinion that the administrative police are actually an administrative service and not a separate activity led me to realize their delimitation by highlighting the features that determine their different content.

Although in the Romanian legislation does not appear the notion of administrative police, we can identify its manifestation in everyday activities of national public administration, i.e. the general provisions contained in Law no. 90/2001 on the organization and functioning of the Romanian Government and ministries<sup>33</sup>, Government Emergency Ordinance nr.30/2007 on the organization and functioning of the Ministry of Interior and Administrative Reform<sup>34</sup>, Law no. 340/2004 regarding the prefect and the prefect institution<sup>35</sup>, Law no. 215/2001 on Local Public Administration<sup>36</sup>, Law no. 155/2010 on local police<sup>37</sup> etc.

I believe administrative police theme is an important issue because the Romanian public order system has known in the past 20 years, important changes, circumscribed in the process of transition to a democratic society where the rule of law, citizen rights and freedoms are guaranteed. Moreover, international processes, such as financial and political

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<sup>33</sup> Official Gazette no. 164/2 Apr. 2001.

<sup>34</sup> Official Gazette no. 309/9 May 2007.

<sup>35</sup> Official Gazette no. 225/24 Mar. 2008.

<sup>36</sup> Official Gazette no. 123/20 Feb. 2007.

<sup>37</sup> Official Gazette no. 488/15 July 2010.

institutionalization of the European Union and globalization have favored the movement of human, financial flows, trade and information, leading, besides the huge benefits, to the emergence and development of many conventional and asymmetric threats at national and international legal order and stability and universal human rights.

## REFERENCES

1. **Alexandru, Ioan; Cărauşan, Mihaela; Bucur, Sorin;** *Drept administrativ*, Bucureşti: Universul Juridic, 2009;
2. **Bălan, Emil;** *Instituţii administrative*, Bucureşti: C. H. Beck, 2008;
3. **Corbeanu, Ion;** *Drept administrativ: curs universitar*, Bucureşti: Lumina Lex, 2010;
4. **Cucu, Iulian;** *Poliţia administrativă*, Bucureşti: Tipo-Litografia şi Turnătoria de Litere Dor P. Cucu, 1898;
5. **Drăganu, Tudor;** *Actele de drept administrativ*, Bucureşti: Ştiinţifică, 1959;
6. **Flamme, Maurice-André;** *Droit administratif*, Bruxelles: Bruylant, 1989;
7. **Laubadère, André de; Venezia, Jean Claude; Gaudemet, Yves;** *Traite de droit administratif*, Paris: L. G. D. J., 1999;
8. **Matei, Ani;** *Analiza sistemelor administraţiei publice*, Bucureşti: Economică, 2003;
9. **Matei, Lucica;** *Servicii publice*, Bucureşti: Economică, 2004;
10. **Oroveanu, Mihai T;** „*Poliţia administrativă*”, *Revista Studii de drept românesc*: serie nouă, an 6 (39), nr. 1, 1994, p. 29;
11. **Oroveanu, Mihai T;** *Tratat de drept administrativ*, Bucureşti: Universitatea Creştină „Dimitrie Cantemir”, Facultatea de Ştiinţe Juridice şi Administrative, 1994;
12. **Popescu, Agata Mihaela;** *Drept administrativ: partea generală: manual de studiu individual*, Bucureşti: Pro Universitaria, 2012;
13. **Rivero, Jean;** *Droit administratif*, Paris: Dalloz, 1973;
14. **Tarangul, Erast Diti;** *Tratat de drept administrativ român*, Cernăuţi: Tipografia Glasul Bucovinei, 1944;
15. **Truchet, Didier;** *Droit administratif*, Paris: P. U. F., 2008;
16. **Vedel, Georges;** *Droit administratif*, Paris: P. U. F., 1968;
17. **Vedel, Georges; Delvolve, Pierre;** *Droit administratif*, Paris: P. U. F., 1990.