

THE ETHICS AND LEGISLATION OF COMMUNICATION IN THE ROMANIAN PUBLIC ADMINISTRATION

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Abstract: The public administration communication is a type of mass communication which involves the dissemination of public information to citizens and the receiving of an efficient feedback in the form of an active participation in decision-making processes that concerns that community. Citizens not only have access to information concerning drafted legislation to be debated by central and local public administrative bodies, but they are also invited to participate to the administrative decisions, getting actively involved in the process. Our paper aims to analyze how the communication of public administration is regulated by Romanian law and which difficulties occur on putting into practice legal provisions. We argue that the distance between the letter of the law and its spirit must be covered by the ethic liability of participants in the communication between public servants and citizens.

Keywords: Transparency, communication, openness, public authorities, responsibility.

1. Introduction

The specific of issues which an efficient Public Administration have to deal with the creation of a communication model that must correspond to the values of the democratic state. The Romanian Constitution provides in Article 31, paragraph (1) that "A person's right of accessing any information of public interest cannot be restricted", and in paragraph (2), "Public authorities, according to their competence, are obliged to provide correct information to citizens in public affairs and matters of personal interest." By public interest one understands that interest involving the guarantee and the observance by public authorities and public institutions of the rights, freedoms and legitimate interests of citizens, recognized by the Constitution, national laws and international treaties to which Romania is part of, as well as fulfilling their duties, respecting the principles of efficiency, effectiveness and economy of spending resources. Information of public interest is any information related to, or resulting from the activities of a public authority or institution, regardless of its support (Law No. 477/2004). Thus, free and unrestricted access of an individual to any kind of public information is one of the fundamental principles of the relation between individuals and public authorities, in concordance with the Romanian Constitution and the international documents ratified by the Romanian Parliament.

The public administration communication is a type of mass communication which involves the dissemination of public information to the parties concerned, namely citizens, and getting an efficient feedback in the form of active participation in decisions that concern the community. As Corina Radulescu shows, "The communication is no longer reduced to the univocal transmission of information from the top of the public pyramid to its base" (Radulescu, C., 2009). Citizens not only have access to

information concerning draft legislation to be debated by central and local public administration institutions, but they are also invited to participate to the administrative decisions, getting actively involved in this process.

The ethical dimension of communication in public administration concerns the fundamental values which are reached by putting it into practice. We make reference here to the principle of the democratic state, that of transparency and the principle of citizens' participation to the governing process. These values are recognized to be vital for establishing and consolidating democracy in a society. This is the main reason why these principles and desiderates have been consecrated in Romania by law through a series of legislative acts. The most important laws of this kind are: the Law no.188 from December, 9, 1999, regarding the statute of civil servants, the Law no. 544 from October, 12, 2001, concerning the free access to the information of public interest, the Law no. 52 from January, 21, 2003, regarding the decisional transparency in public administration, and the Law no.7 from February, 8, 2004, regarding the Code of conduct for civil servants.

One of the central concepts employed in the legislation is that of transparency. Decisional transparency is an essential condition of democracy because it allows the control of citizens over the governance act. It is both a measure meant to prevent abuses and to reduce corruption, because through the unlimited access of citizens to the information of public interest the possibility of using the public resources for private purposes is limited. At the same time, the citizens' trust in laws and decisions is ensured, given the fact that these laws have been adopted by consulting the population. Transparency is not a unidirectional communication, from state authorities to citizens, but it also implies the answer of citizens regarding the legislative projects, influencing the decision making process so that it corresponds to the will of the people.

Our paper aims to examine how the communication in public administration is governed by the Romanian law and which difficulties occur on putting into practice these provisions. We argue that the distance between the letter of the law and its spirit must be covered by the participants' moral responsibility to this communication, public servants and citizens.

2. The decisional transparency

The Law no. 544/2001 concerning the free access to the information of public interest is the one which states and reinforces a fundamental principle of the relations between individuals and public authorities, namely the free and unrestricted access to any kind of public information. Whether it is public authorities or Government Business Enterprises that operate in Romania, they must provide to the citizens all the information related to or resulting from their activities, regardless of the medium, the form or the way of expressing information. The open access to information is made by default or upon request and public institutions are required to organize specialized departments of information and public relations or to appoint persons with responsibilities in this area as spokespersons.

Public institutions are obliged to communicate *ex officio* the following public information:

- a) normative documents regulating the organization and functioning of public authority or institution;
- b) organizational structure, responsibilities of departments, program operation, program audiences program of public authority or institution;
- c) name and surname of the management authority or public institution and of the officer in charge responsible for disseminating public information;
- d) contact details of the authority, respectively: name, address, phone number, fax, email and website address;
- e) financial resources, budget and balance;
- f) programs and strategies;
- g) the list including the documents of public interest;
- h) the list including the categories of documents produced and handled according to law;
- i) modalities of contesting the decision of the public authority or institution if the person considers that his or her right to access the public information was denied.

In the same way, any person may also request and obtain from public institutions and bodies general information and they are obliged to provide to citizens, on their request, general information in writing, verbally, or by e-mail within 10 days or at least 30 days from the registration of the request. Where information are requested verbally by the media, they will be communicated immediately or within 24 hours.

The Law no. 544/2001 establishes the exceptions from the obligation to inform, namely that information that is not of public interest:

- a) information from the domains of national defense, security and public order if it is labeled as classified information, according to the law;
- b) information about the personal data;
- c) information about the deliberations of the authorities as well of those related to economic and political interests of Romania if they are labeled as classified information, according to the law;
- d) information regarding commercial and financial activities if revealing this information undermines the principle of fair competition, according to the law;
- e) information on judicial proceedings if the publication is detrimental to a fair trial or to the legitimate interest of any of the parts involved in the process;
- f) information whose publication may prejudices youth protection measures.

At the same time, it is stated that information that favors or conceal violations of the law by an authority or a public institution cannot be included in the domain of classified information, being categorized as public information.

This law creates the framework for transparency of information in public institutions, contributing decisively to the reforming of public administration in Romania and creating the premises of a closer cooperation with civil society. The enactment make the distinction between the information published by default and those sent upon request, but does not mention to which category belongs the general information requested on demand.

Transparency is not only a concept which concerns the administration and public authorities as institutions, but also a rule of conduct, a principle which regulates the professional behavior of civil servants as employees. The statute of civil servants (Law no. 188 from December, 9, 1999) and public functionaries conduct code (Law no. 7 from February, 8, 2004) establish obligations in this respect. Openness and transparency are fundamental principles situated at the base of the public function. The activity of civil servants is public and may be subject to monitoring by the citizens. This administrative transparency is meant to win and maintain public trust concerning the integrity, impartiality and efficiency of the public authorities and civil servants.

3. Citizen Participation

The Law no. 52 from January, 21, 2003 regarding decisional transparency in public administration supplements the provisions of Law no. 544/2001 with minimal procedural rules applicable for ensuring the decisional transparency within the central and local authorities of public administration, chosen or named, as well as within other public institutions which use public financial resources. In addition, it is intended to stimulate the active participation of citizens in administrative decision making process and in the elaboration of normative acts. The law is based on the idea that by enhancing the transparency of public administration an increase of institutional responsibility in relation to the citizen as beneficiary of the administrative decision is also ensured.

The law is founded on the following principles:

- a) Informing the public in advance, by default, on matters of public interest prior of their adoption by the public authorities;
- b) Consultation of citizens and legally constituted associations at the initiative of the public authorities in the law-making process;
- c) The active participation of citizens in decision-making processes and in the process of drafting normative acts with the following rules:
 1. The meetings of the public authorities which are subject to this law are public, under the law;
 2. The debates will be recorded and made public;
 3. These meetings will be recorded, archived and made public, under the law.

As in the case of the previous law, the Law no. 52/2003 excludes information relating to national defense and security, public order, strategic interests, classified data, information which could affect the principle of fair competition and that concerning the personal data. The novelty of this law concerns the citizen participation in the elaboration of normative acts.

Thus, the authorities are required to publish an announcement about their intention to elaborate a normative act which should be posted on their own website, displayed at their headquarters and transmitted to the media. This announcement has to be made public at least 30 days before being submitted for review, approval and adoption by public authorities. The public institution has to establish a period of at least 10 days to receive written proposals, suggestions or opinions on draft normative act submitted for

public debate. For this purpose a person responsible for the relation with civil society is nominated. This person receives proposals, suggestions or opinions on draft legislation submitted for public debate. The draft of the normative act is finalized taking into account the proposals. The public authority may decide to organize public debates on the draft decision.

The authorities must organize public debates on draft legislation concerning matters of public interest. The persons who are interested may attend these public meetings if the following conditions required by the law are met.

First, the participation of the citizens at the public debates is limited by the capacity of the meeting room, the order of precedence giving priority to the legally established associations interested in the subject of that public debate. Then, the order of precedence cannot limit the media access to public meetings. The person who presides the meeting shall provide the citizens the opportunity to intervene and express their opinions on the agenda. It should be noted that the adoption of the administrative decisions is an exclusive prerogative of public authorities. The points of view expressed by the citizens in the public meetings have only the value of recommendation.

In order to have a synoptic view on how public authorities fulfill their duty with respect to transparency and citizen participation, the Law No. 52/2003 states that public authorities have the obligation to prepare a report on how the transparency is implemented in their public institutions. This report must be posted on the website of the public bodies and has to include the total number of the recommendations received, of the recommendations included in the normative acts and in the decisions taken, the number of public meetings which were organized, the total number of participants in these public meetings, the number of public debates with no public access and the reasons for restricting the citizens' access.

4. Problems and difficulties

Many authors (Gulyas, G., Radu, L., Balica, Haruta, C., 2009: 60) have shown that the transparency of the decision-making process is crucial for keeping corruption within acceptable limits. However, its implementation meets serious difficulties. On the one hand it involves additional time and costs, and on the other it determines communication problems, especially problems of understanding by citizens. Therefore it is important that the information, especially where it comes to technical aspects, legal terms, economic language, etc., should be explained in layman's terms. The complexity of information should not be a barrier covering illegal acts of corruption.

In 2007, Pro Democracy Association in collaboration with Transparency International Romania published a monitoring report on the application of the Law No. 52/2003 on the transparency of decision-making in public administration. The report emphasizes that four years after the issuance of the law, only 62% of monitored municipalities have prepared and published reports on decisional transparency for the previous year. Even where they have been published, these reports were incomplete, containing a large number of empty spaces filled with the phrase "lack of information". At the same time, the monitoring indicates that only a small number of public meetings

have been organized and included in the drafts of normative acts adopted so far. As the authors show: "this proves the lack of concern on the part of the authorities to make public these projects and to consult the community before making a decision."

Things have not changed in recent years. Taking, for example, the transparency report for the year 2011 published on the website of the Bucharest District 3 City Hall. It states that there were only 16 public meetings held throughout the year, attended by 29 citizens. The local authorities have not received any recommendation from citizens. No legally constituted organization has submitted any proposals for public debates and no citizen has requested information on draft normative acts.

What conclusions can be drawn from this? First, the fact that in Romania people have a low level of culture concerning institutional communication, transparency and participation. Public institutions apply the law formally, being guided by the principle: "We know and we decide what is better for you" instead of the principle: "We consult with you and take a decision together". The communication with the citizens is seen as one more nuisance and not as a method of making the decision more efficient and responsible. On the other hand, the citizens doubt that civic involvement at this level can trigger changes in their community. Citizens have the feeling that civic participation is limited to voting in elections. After this moment, it is the elected representatives' duty to find and implement solutions for community benefit. This is a classic example of a vicious circle: public bodies motivate the low involvement and participation of the citizens and the citizens motivate the inertia and the lack of openness of the administrative institutions. Breaking this deadlock can be achieved by creating and educating an authentic culture of communication, so that the existing laws are not applied only in their letter, but also in their spirit.

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