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LEGAL RELATION. SPECIAL POINT OF VIEW ON THE CITIZEN'S SUBORDINATION RELATION WITH PUBLIC AUTHORITIES

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Abstract

The scope of this study is to highlight the features of certain particular types of legal relations derived from the administrative law, namely subordination relations. The study starts from the general idea of legal relation, by analyzing its importance in building legal relations given that there would be no legal order and legal reality without legal relations. Further on, the study brings into discussion the administrative law relations, representing a category of the legal relations. Of all the types of administrative law relations, we specifically focused on the subordination relation and not just any subordination relation, but the one between public authorities and citizens. In relation to current realities that each of us experience, we consider that this subtype of administrative law relation deserves to be analyzed separately. In this way, the relation between public authorities and citizens acquires particular values, starting from the subordination of the citizen to the authority, but without the citizen being deprived of means of defense in case the authority violates his/her rights, legitimate interests or fundamental freedoms.

Key words: *legal relation; administrative law relation; subordination; public authority; citizen;*

INTRODUCTION

Since ancient times, societies were developed based on the legal relations in which their members were involved, the fact that "legal relations are first of all social relations, which people enter in order to satisfy their various needs, relations of cooperation and coexistence" *(N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.C. Spătaru-Negură, 2017, p. 215)* being undeniable. That is precisely why the General Theory of Law assigns a fundamental function to legal relations.

Depending on the two main branches of law, public law and private law, the legal relations were divided according to the two dimensions of the law, which are significantly different.

Furthermore, nowadays legal experts are also paying attention to the European *(see A. Fuerea, 2016, p. 228 and the following; R.M. Popescu, 2014, p. 328-334; L.C. Spătaru-Negură 2016, p. 84 and the following)* and international legal order, including European and international legal relations, no longer being able to afford the luxury of a strictly local approach.

1. LEGAL RELATION FROM THE PERSPECTIVE OF THE GENERAL THEORY OF LAW

Law is social, by interfering in the daily interaction of people in society, with the purpose of disciplining their conduct, the law guaranteeing order, social stability, legal security *(see N. Popa, 2020, p. 235).*

Legal relations are understood as social relations that have fallen under the scope of the legal norms (regulated by the legal norms). By studying legal relations from the perspective of the general theory of law, we note that legal relations are, "first of all, social relations which people enter in order to satisfy their various needs, relations of cooperation and coexistence" *(see N. Popa, 2020, p. 235).*

Legal relation is defined in the doctrine as "the social connection, regulated by the legal norm, by containing a system of mutual interaction between determined participants, a connection likely to be defined through state coercion" *(N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.C. Spătaru-Negură, 2017, p. 216).*

According to the doctrine of the general theory of law *(N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.C. Spătaru-Negură, 2017, p. 215)*, in order to be in the presence of a legal relation, the following premises need to be fulfilled: legal norms, subjects of law and legal facts. The first premises are general, abstract, while the third premise is special, specific.

Furthermore, the premise of the legal norms is the very essential premise of the emergence of the legal relation, *sine qua non* premise without which we would not be in the presence of a legal relation. However, we consider that there are legal norms that are also accomplished outside legal relations – this is the case of prohibitive legal norms which defend and influence social relations by ordering abstentions from committing acts that endanger social order. In such cases, legal relation appears as a consequence of the non-compliance with the legal norm, which was not the intention of the legislator. What the legislator wants is the compliance with the conduct prescribed by the law, namely the refraining from any prohibited action. Precisely from this point of view, in what concerns administrative law and criminal law, we speak of legal relations of conflict and legal relations of compliance.

At the same time, we point out that the theory of law highlights the fact that there may be determined situations where legal relations may appear even in the absence of an express legal norm – when analogy (*analogia juris*) is used *(N.*

Popa, 2020, p. 237), more precisely when a judge resolves a case based on the principles of law and not on a specific legal rule.

From the point of view of the theory of law, in the analysis of the concept of legal relation, we distinguish between substantive approach – law accomplishment form and technical legal approach – construction of theoretical thinking.

Therefore, the proximate gender (the legal relation is a social relation) and specific difference (a social relation regulated by a legal norm, capable of being defended by the state, through coercion) results from the definition of the legal relation mentioned above.

The legal relation is thus the cornerstone of law due to the fact social relations will be built on it, by being distinguished as a social legal relation, a superstructure relation, a volitional relation, a relation of values and a historical category *(N. Popa, 2020, p. 238-243).*

2. ADMINISTRATIVE LAW RELATIONS

The result of the actions of the norms of administrative law in social relations is the result of the administrative law relations, which therefore emerge as a distinct category of legal relations.

The issue of the administrative law relations must be viewed with the utmost particularity, precisely from the perspective of the branch of law to which administrative law belongs, respectively public law.

According to professor Antonie Iorgovan, the administrative law relations are the social relations that have been regulated, directly or indirectly, i.e. by means of the intervention of certain legal facts, by the norms of administrative law *(A. Iorgovan, 2005, p.150).*

The administrative law doctrine has constantly classified administrative law relations into subordination relation and collaboration relations *(D. Apostol Tofan, 2020, p. 63),* those of subordination representing the rule and those of collaboration being the exception. Furthermore, we can also find coordination relations and public guardianship relations in the field of the administrative law relations.

The subordination and collaboration relation are especially noticeable, this is why we will be focused on them hereafter.

As in case of any legal relation, the administrative law relation consists of the following: subject, content and object *(E. E. Stefan, 2019, p. 56).*

Without going into a detailed analysis of these elements, they will be taken over from the features of the two types of relations, as these features will be detailed hereafter, precisely to emphasize the particularities that lead to the individualization of the administrative law relations by referring to all social relations regulated by different branches of law.

Both categories of relations carry the following general features that distinguish them from other legal relations *(A. Iorgovan, 2005, p.153):*

 one of the subjects is necessarily a holder of public authority; as a rule, it is a public administration body, but it can also be a non-state body vested with public power prerogatives, such as a private university that will provide one of the most important public services, the education. This feature seeks to separate administrative law relations from private law relations, a very important aspect due to the fact, as we have already shown, we find ourselves into a relation of power, which is fundamentally different from private relation;

 they are relations of power, which appear in the field of the social relations regulated by the administrative law norms. This feature separates administrative law relations from the other public law relations. This is also extremely important due to the fact that administrative law is not the only branch of public law, constitutional law or public international law can be found alongside it, but these branches of law target social relations that occur between other parties, compared to the classical relation between authority and citizen specific to the administrative law.

By identifying the common features of administrative law relations, scientific strictness goes further, towards identifying the specific features of each type of relation.

Therefore, the specific features of subordination relations are the following *(A. Iorgovan, 1994, p. 143 and 144):*

a) relations of subordination of one subject to the other; more precisely, the subject bearing a public authority has a superordinate position.

b) their emergence and fulfillment are determined either by the will of the legislator or by the unilateral will of the superior subject,

c) their fulfillment represents a legal obligation of the superior body.

Specific features of collaboration relations are individualized as follows *(A. Iorgovan, 1994, p.144):*

a) they are relations in which the subject bearing the public authority collaborates from an equal position with the other subject of the administrative relation (which may or may not be the bearer of the public authority);

b) their emergence and actual fulfillment is determined by the will of both subjects;

c) the conditions for the manifestation of both subjects' will are expressly provided by the law.

3. SUBORDINATION OF THE CITIZEN TO PUBLIC AUTHORITIES. THE SUBORDINATION RELATION GENERATING LEGAL EFFECTS AND THE OTHER SIDE OF THE COIN

Given the two types of relations, as we have mentioned them previously, this study will deal in particular with the relation of subordination of the citizen to

public authorities. Notwithstanding, subordination relations do not emerge only between the authority and the administered subject, but can also occur between different authorities that are obviously not on an equal footing *(i.e. the Ministry of Health – superordinate subject, County Department of Public Health – subordinate subject)*. These relations are specific to the administrative system which assumes that subordination is the essence.

Subordination relations usually arise between a public administration authority and another law subject that can be the citizen, in most of the cases. The subjects have an unequal position in these relations. The public administration authority is the active, superordinate subject, the other participant being the passive, subordinate subject *(for example, the relation between the police and an offender, in case of committing an offence).*

By virtue of its superordinate position, public administration authority can, by its simple unilateral will, establish the conduct of the passive subject in the respective relation, such conduct being incumbent on the latter. This specificity is explained by the fact that public administration body participates in these legal relations as bearer of state power, therefore as a public authority.

Mainly, public administration authorities demonstrate their will by administrative acts. These administrative acts issued within the relations with the citizens shall be individualized primarily by the fact that they are unilateral acts. A report of subordination will be primarily effected by individual administrative act addressed to the citizen by which a certain prescription is enforced on him, his/her rights and obligations being established, the execution of which being held until the act comes into force, is revoked or cancelled. First of all, the citizen will have to execute the administrative act issued by the public authority, which enjoys the ex officio execution rule. The consequence of this particularity is that, in case of violation by the passive subject of the obligations incumbent on it within the respective legal relation, the public administration authority can resort to forced execution, ex officio, by using state coercion, in order to oblige the person in question to fulfill the obligations incumbent on him within the respective legal relation.

Although subordinate, passive subject does not fully lack of rights. If the public administration body trespasses on the prerogatives granted by the law, thus violating the rights of passive subject, it can resort to the competent body, according to the law, in order to oblige public administration body within the respective relation to comply with the law. Therefore, according to art. 52 of the Constitution, any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his/her petition within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage.

Starting from this point, the whole theory of the contentious administrative will be developed, which will allow us to analyze concepts based on which the citizen is no longer powerless, but benefits from a set of legal norms by virtue of which he will be able to defend himself against the abuses arising from subordination relations.

The institution of the contentious administrative includes the set of legal norms that regulate the settlement of disputes in which at least one of the parties is a public authority, disputes the object of which is the violation of a right or legitimate interest of a person, by means of an administrative act or by the failure to settle a petition within the legal deadline *(C. S. Sararu, 2022, p. 26).*

In the light of the above, it appears obvious that one of the plaintiffs in contentious administrative is the citizen, provided that his/her rights and legitimate interests are damaged by unilateral administrative acts or by the failure to settle a petition within the legal deadline.

We are thus witnessing a tipping of scales, meaning that the public authority will have a superordinate position within the initial legal relation. Once the alleged violation of a right or legitimate interest is committed, the citizen shall be entitled to resort to the legal procedures provided by the Constitution and Law no. 554 of 2004 on the contentious administrative. According to these provisions, public authority shall become the defendant of the dispute, by moving into a defensing position, by trying to demonstrate through procedural documents at its disposal that it has not violated the law and has complied in full with the principle of legality governing its activity.

CONCLUSIONS

Despite the fact of being one of the most important legal relations, the relation of subordination of the citizen to public authorities is not the only administrative law report which gives rise to discussions and analyses. However, of all the types of administrative law relations, it is the only one that each of us faces, as citizens. And not infrequently, the citizen becomes a plaintiff in contentious administrative because of the illegal way in which the authority manifested within the respective legal relation.

This is precisely why this study presented both sides of this subtype of subordination relation, in an attempt to open to the citizen the perspective of his/her protection against the abuses that public authorities can commit.

Last but not least, we wanted to point out that the subordination relation of the citizen to public authorities is the connection between the non-contentious administration (where the relation occur between the authority and the citizen, the citizen being in a subordinate position) and the contentious administration (where the citizen sues the authority), ensuring that an independent power (the judiciary power) decides whether the authority has acted illegally and sanctions it if necessary.

All these aspects represent dimensions of democracy, of the rule of law and are meant to ensure an effective legal system where the Constitution, the letter of the law, the protection of fundamental rights and freedoms work effectively.

BIBLIOGRAPHY

Augustin Fuerea, *Manualul Uniunii Europene, 6th Edition*, revised and supplemented, Universul Juridic Publishing House, Bucharest, 2016.

Antonie Iorgovan, *Tratat de drept administrativ, Vol. I, 4th Edition*, All Beck Publishing House, Bucharest, 2005.

Antonie Iorgovan, *Drept administrativ. Tratat elementar, vol. I*, Atlas Lex Publishing House, Bucharest, 1994.

Nicolae Popa, *Teoria generală a dreptului,* 6th Edition, C.H. Beck Publishing House, Bucharest, 2020.

Roxana-Mariana Popescu, *General aspects on the implementation of the EU legal order, under public international law,* CKS eBook, the Publishing House of "Nicolae Titulescu" University, Bucharest, 2014.

Nicolae Popa (coordinator), Elena Anghel, Cornelia Ene-Dinu, Laura-Cristiana Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar, 3rd Edition*, C.H. Beck Publishing House, Bucharest, 2017.

Catalin Silviu Sararu, *Tratat de contencios administrativ*, Universul Juridic Publishing House, Bucharest, 2022.

Spătaru-Negură Laura-Cristiana, *Dreptul Uniunii Europene – o nouă tipologie juridică*, Hamangiu Publishing House, Bucharest, 2016.

Elena Emilia Stefan, *Drept administrativ, Part I, 3rd Edition*, revised, supplemented and amended, Universul Juridic Publishing House, Bucharest, 2019.

Dana Apostol Tofan, *Drept administrativ*, Volume I, 5th Edition, C.H. Beck Publishing House, Bucharest, 2020.

The Constitution of Romania, revised and republished.

Law no. 554 of 2004 on the contentious administrative.