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Autonomous Administrative Authorities - a Means to Achieve Administrative Justice in the Rule of Law

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Abstract:
The evolution of contemporary society and the paradigm shift regarding the centre of the rule of law from philosophical reason to scientific reason was the context that required the establishment of institutions meant to contribute to the achievement of justice and the defence of justice by maintaining the trust of individuals in the rule of law, limiting the interference of the political power and the pressure of different interest groups, but also by taking measures to restore social balance if it has been shaken by the action of various actors in social life. In this context, autonomous administrative authorities are a legal achievement of the rule of law in answer to the increasing social complexity within states and the inability of traditional structures to keep pace with new realities outlining a high degree of technicalness.
The role of the autonomous administrative authorities is to contribute to the very protection of their creator by avoiding the rule of law philosophy from falling into abeyance, by pursuing the protection of fundamental rights and freedoms and liberating individuals from the gripe and oppression of various forces, be it private or public.

Keywords: *autonomous administrative authorities; rule of law; justice; administrative justice; fundamental rights and freedoms*

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Introduction

In contemporary society, which is in a continuous quest for self, concepts such as law, justice, justice, and rule of law are increasingly being discussed.

If we relate to the genesis of mankind, we can say that the idea of righteousness arose when Adam and Eve disregarded divine order, respectively, "God's Law" (Galera et al. 2010: 16) and were excluded from Heaven, this the approach being in agreement with Aristotle's philosophical vision which considers that justice must be divided according to the merits of each, and the rules by which this division is to be achieved must be fair and not changed during the game.

Here are some natural questions: what does it mean to be right and how do we distinguish between right and wrong? When and where do we know we are in the state of justice? How is justice done and, especially, who is responsible for establishing and reaffirming the state of justice? Which is the link between the three concepts - justice, justice and the rule of law - and how is the state of harmony between them?

The definition of each of the three concepts is difficult, it carries a multitude of meanings and visions, but when brought together it provides an overall approach, as, as concluded by Professor Antonie Iorgovan (2001: 3), "each concept involves the identification of dominant notes of its content, which makes them logically ordered according to the genre of proximity, the specific difference thus delimiting in the plane of abstract thinking not only the boundaries of the phenomenon, the process that it evokes, but the very essence of it."

Rawls (2009: 3) considers that justice is the basic virtue of a society, as is the truth for a system of thought, for as a theory – whatever other qualities it has – will have to be rejected or at least revised if is not true, so the laws and institutions of a society – no matter how many qualities they have – will have to be abandoned or at least changed if they are not right.

The notion of justice used by philosophers is transferred to law under the concept of justice. Justice implies the rigorous observance of each person's rights and the granting of his right to everyone (*jus suum cuique tribuere*). Justice represents the general state of society that is achieved by ensuring for each individual and for all together the satisfaction of legitimate rights and interests, being one of the most important means of guaranteeing the respect, protection and promotion of human rights. Administrative justice comes to protect the rights and interests of citizens in their relationship with the public administration (Cilibiu, 2012: 63).

Apparently abstract, these concepts make sense when another state-of-law construction appears in the equation, although this concept is still quite ambiguous given its use over time to mask bleak reality.

The phrase rule of law results from the association of concepts such as state and law. Between state and law there is a relationship of complementarity, even a symbiosis we could say; the state-of-law construction mirrors „the interdependence between the two social phenomena, each of which has opposite tendencies: the state - power and obedience, law - ordering and braking" (Wikipedia, 2015).

The rule of law is a state which, in its relations with its subjects and in order to guarantee its individual status, itself endures a rule of law, because it enforces them by rules, some determining the rights reserved to citizens, others establishing in advance the

ways and means that can be used to achieve state goals (Malberg, 1922: 488). However, the relations that the state maintains with the law are complex and difficult to explain because, on the one hand, the state is the one who creates the right and, on the other hand, it should be itself subject to this so that its actions do not become arbitrary (Dănişor, 2007: 149).

We firmly agree with the opinion expressed by philosopher jurist Kelsen, who considers that law and the state cannot be conceived independently of each other. On the one hand, the right cannot exist outside the state, for only the latter can confer on certain rules the character of legality and compulsion whose application and observance can be imposed by coercive methods. On the other hand, the right (the legal norms) limits the state, imposing a certain type of action on state agents. It is therefore clear that the state ca not exist outside the law (Kelsen, 1928: 22).

By paraphrasing two famous professors (Dogaru & Dănişor, 1997: 7), the rule of law strongly supports the protection of fundamental rights and freedoms and claims to free individuals from the oppression and oppression of various forces, whether private or public, which must be considered an ally in the fight against abuse and not to be seen as a danger; although, not least, the issue of the fight against abuses by certain state organs seems a paradox.

The philosophical principle of the human rights and freedoms of the human being means not only that the human being, in its individuality, is born bearing it, but also the fact that, since the human being exists, its rights and freedoms exist. The rights and freedoms inherent in human nature are impregnable by the state, on the one hand, and on the other hand, they are inalienable by the holder. This means that the state is limited precisely to what is naturally in law, to the human individual, the subject of a system of law being the expression of the law system, which also has its basis in the human condition, on the same coordinates of „omni et soli" (Dogaru & Dănişor, 1997: 7).

Starting from the idea expressed by the professors Ion Dogaru and Dan Claudiu Dănişor (1997: 7), the evolution of the human society and the paradigm shift of the center of the rule of law from the philosophical reason to the scientific reason, respectively from the Parliament to the Executive was the context that helped to "suffocate" individuality, leading to the need for institutions to contribute to maintaining the trust of individuals in the rule of law but, above all, having the ability to limit the interference of political power and the pressure of different interest groups. In this sphere are also the autonomous administrative authorities. Although the emergence of these administrative authorities, after all, although independent, could be seen as part of the inflationary phenomenon of the administrative authorities, they play a significant role in protecting the fundamental values of the rule of law.

Preliminary Aspects on Administrative Justice

An Attempt at Clarifying the Phrase "Administrative Justice"

Administrative justice is a concept that is closely related to the idea of justice as a whole, of which we consider it to be part.

As far as we are concerned, we believe that the emergence of administrative justice is based on the development of the state's administrative apparatus and the need to regulate the relationship between the administration and the administrated, as well as the relations born between the administrations, but which have been assigned to the management of the administrative apparatus state.

Justice is the foundation of administrative justice, so the legitimacy of the latter derives from the former. We cannot deal with administrative justice without first a brief review of justice.

„Justice is one of the most important moral and political concepts that comes from the Latin word *jus* which means right or law" (Pomerleau, 2013).

Justice is a complex concept that has been subject to a number of approaches over the years. Plato considers justice to be a virtue that dictates the rational order in which everyone knows their role and does not disturb the rest of others. In Aristotle's view, justice is given by legality and fairness, which implies fair distribution and eradication of what is unfair. „Hobbes sees justice as an artificial virtue, necessary for civil society, a function of voluntary agreements of the social contract. In Kant's view, justice is a virtue that determines respect for the freedom and dignity of others without interfering with their voluntary actions as long as they do not violate the rights of others; John Stuart Mill, British philosopher of the Victorian age, said that justice is a generic name for the most important social relationships that promote the promotion and protection of human freedom" (Pomerleau, 2013).

Justice is the point of convergence of the social construct, the governing principle of regulating life in common; the principle of justice is a rational principle, being alongside the truth, beautiful, well, useful one of the essential characteristics of the human spirit (Dănişor et al, 2008: 66).

Analyzing these views, we believe that justice is a complex phenomenon that springs from the inner feelings of the individual, as for D.C. Dănişor, I. Dogaru and Gh. Dănişor, justice is above all the moralization of the individual, that is, the process by which he is made right, because a balance of justice cannot be conceived in the absence of human balance.

Justice is intended to organize the general framework that combines the law with the morale in which the individual, when acting to satisfy the legitimate rights and interests, is aware of the purpose of the action so that what is good for himself does not degenerate in harm for the other individuals.

The notion of justice, in the most profound sense, only reinforces the construction of the rule of law because, through its purpose, justice seeks to create harmony between state authorities and individuals, on the one hand, and on the other, between individuals as part of society.

Justice must be understood as a complex construct with a double role: a modelling character that educates and instils the appetite for justice, ethics and morality by creating an inner balance state that is reflected in their social relations, but also a punisher of inequities through the fact that it pursues righteousness, so that everyone receives what they deserve.

Administrative justice is a modern construction, a means of protection of the rights and freedoms of individuals in the relationship with the state administration, as well as a limitation and control of the acts of the public administration.

Administrative justice should not be limited or confused with administrative jurisdiction. In order to avoid abuses and errors that can be generated by those who carry out administrative justice, administrative law has nothing but to exert control over the acts and actions of administrative authorities or civil servants in relation to individuals. Administrative justice is distinguished from administrative jurisdiction and the fact that the former is carried out through administrative authorities, whereas administrative jurisdiction falls to the judges, judges who cannot rule on a dispute only after a request

emanating from a person who considers that a right or a legitimate interest has been prejudiced, while an administrative authority may be sued or may be notified. Another key element that supports the distinction between the two is that, following judicial review, the judge decides by a judgment which no longer allows him to return to the case from the time the judgment is handed down, in contrast to acts emanates from administrative authorities, acts that can sometimes be revoked.

We conclude that administrative justice must be understood to mean, on the one hand, all the institutions which provide the necessary levers for the protection of fundamental rights and freedoms within the State under conditions of impartiality and transparency and, on the other hand, the control exercised by these institutions for limiting abuses.

The Mission of Administrative Justice within the Rule of Law

The mission of administrative justice is to ensure the respect and protection of the rights and freedoms of the administered by attempting to eradicate any abuses of power that may arise in the administrative process and create a state of social balance.

Administrative justice, through its mission, is the bridge between the administration and the administrated, in that each must receive what it deserves.

The mechanisms for achieving the administrative justice mission vary according to the powers that the legislator has given to the competent authorities to support those administrated.

In order to accomplish their mission, the administrative authorities in charge with the administration of administrative justice must demonstrate impartiality, independence, transparency and the conduct of all their activities in accordance with the legal rules.

The Paradigm of Autonomous Administrative Authorities in the Rule of Law

Autonomous Administrative Authorities – a Legal Creation of the Rule of Law

The history of the evolution of the rule of law has shown that by changing the philosophical paradigm, the legal inflation generated by raising the interests of the different groups at the normative level, as well as the appearance in the landscape of the political life of the clowns[‡] were strong reasons for which "human rights protection has also taken other forms than parliamentary control over the Executive, control becoming largely an illusion" (Dănişor et al, 1997: 17).

In this context, the rule of law required the creation of legal mechanisms that offer "guarantees of impartiality, professionalism and efficiency of state action" (Conseil d'État, 2001: 275), the desideratum to be achieved and the creation of autonomous administrative authorities.

Teitgen-Colly believes that autonomous administrative authorities are a new way in which public powers respond to problems arising in certain sectors of activity as a result of the growing complexity of social life (Teitgen-Colly, 1988: 24, 27). A similar view is expressed by Guédon, in whose view the creation of autonomous administrative authorities is a response both to the emergence of new problems and to the existence of problems that have become more acute; the birth of this type of authority was a sign that

[‡] We use the term "clown" to characterize politicians who were elected in public positions through manipulation, taking advantage of people's weaknesses, trying to channel public power to their own interest or to the interest of the groups they are a part of.

traditional state structures could no longer respond to the evolution and complexity of the social problems faced by the state (Guédon, 1991: 16).

Jean-Jacques Daigre argues that the birth of this type of authority was based on the observation that the rule of law was no longer able to regulate a certain number of activities because of their too technical nature (Daigre, 2002: 8). Taking this view further, we believe that the responsibility for the technicalization of the activities carried out within it is precisely the rule of law in terms of excessive legislation, which not only led to the complication of social life, but it was the cause that put individuals in the impossibility of knowing the legal norms, leading to a state of general delirium.

Autonomous administrative authorities appear as a "device" that could be interpreted as the source of the relationship between the rule of law and individuals.

The rationality of autonomous administrative authorities is twofold: on the one hand, they are a creation of the rule of law and, on the other, they are meant to ensure the very existence of their creator by protecting the rights and freedoms of individuals and by abating the abuses and violations of norms legal.

In this context, we agree with all those who believe that the autonomous administrative authorities are a creation that contributes to the strengthening of the rule of law, by "protecting the freedoms of the administered ones and limiting the power of the administration" (Diarra, 2000: 4).

Autonomous Administrative Authorities – a Source of Protection of Fundamental Rights and Freedoms?

The reason behind the thinking of the autonomous administrative authorities was the building of a modern structure with the ability and the strength to contribute to striking a fair balance between the legitimate requirements of public order or the general interest on the one hand, on the other, the exercise of the rights and freedoms of individuals by preventing errors and abuses that can occur through the interpretation and application of the legal norms at the discretion and unilateral interest of the various interest groups, as well as the limitation of the political power that has often tended to overrides the general interest, the particular interest.

This view is shared by the French Council of State, which, in the 2001 report, reiterated the idea that Autonomous Administrations are illustrated as a mechanism designed to "provide public opinion with a reinforced guarantee of the impartiality of state actions", which clearly demonstrates that these authorities do not wish to be a spontaneous legal construction that supports forms without substance, for if justice becomes diluted it completely loses its meaning.

In view of these issues, a legitimate question arises: How can this kind of authorities cope with political pressure and succeed in being a real force fighting for respect for the rights and freedoms of the governed?

In order to efficiently endow the actions of the autonomous administrative authorities, the legislator understood that they should grant them autonomy in relation to the three powers of the state – legislative, executive and judicial - by providing them with a series of institutional and legal safeguards to ensure their independence, otherwise we would have found ourselves in the situation of a legal museum behind which the political power would have divided individuals into privileged and exploited.

Autonomous Authorities do not constitute a conglomerate of experts to issue judgments of value and to find out anything that is endowed with a viable decision-making power, investigative power, advisory power, power of referral and opinion, power the regulation of the state bodies and even the sanction. The members of the autonomous

administrative authorities have many essential guarantees of their independence, which are subject to express legal provisions and aim, in principle: irremovability, irrevocability, incompatibilities (Gîrleşteanu, 2001: 45).

All these levers made available to the autonomous administrative authorities give them the ability to effectively contribute to the removal of bottlenecks and "misuse" [§] in law enforcement and thus lead to the presumption that they are capable of effectively contributing to the protection of the rights and freedoms of individuals within the rule of law.

The Contribution of Autonomous Administrative Authorities to the Achievement of Administrative Justice and the Protection of the Rule of Law

Autonomous administrative authorities are a legal creation arising from the need to limit the political show and avoid the desolation of the philosophy of the rule of law. This type of authorities has a major role to play in the achievement of administrative justice by defending the general interest in the interventions and pressures of the various interest groups that, for the realization of their own goals, go over the rights and freedoms of individuals, for the latter lack of defense, to the strangers who conduct the application of legal norms" (Leisner, 1974: 69 apud apud Dogaru & Dănişor, 1997: 20).

In a democratic society, autonomous administrative authorities are a mechanism preoccupied with achieving a social equilibrium by protecting the supremacy of legal norms in the relationship between administration and those administrated.

In practice, autonomous administrative authorities contribute to the achievement of administrative justice and the protection of the rule of law through the manner of carrying out the tasks that have been drawn to them through the normative acts that establish them.

In order to better understand the contribution of the autonomous administrative authorities to the achievement of administrative justice and the protection of the fundamental values of the rule of law, we have chosen to resort to a short radiography of the activity carried out by the most known autonomous administrative authorities within the Romanian state, starting from the information made public in the annual activity reports of several institutions belonging to that category.

The institution specifically charged with the protection of the rights and freedoms of natural persons in their relations with public authorities is the People's Advocate.

In order to fulfil its essential role as a human rights defender, the People's Advocate has at his disposal the most varied legal means: from solving the complaints of violations of certain rights of individuals through surveys, visits, recommendations, special reports, to fulfilling the role of a national mechanism for the prevention of torture in places of detention, involvement in the control of the constitutionality of laws and ordinances, the formulation of points of view on draft laws concerning the rights and freedoms of individuals, going to the High Court of Cassation and Justice appeals in the interest of the law, with a view to ensuring a unitary judicial practice throughout the country, as well as the administrative courts, when, following the checks carried out, considers that the act of illegality or the excess power of the administering authority can only be eliminated through justice (People's Advocate, 20016: 1).

For example, in 2016, the People's Advocate, as noted in the Annual Activity Report, has carried out a series of actions aimed at contributing to the achievement of

[§] Here, by "misuse" we understand the betrayal of general interest by deviating from the faithful implementation of legal guidelines, concretised in illicit acts or deeds of political power.

administrative justice: received 13,699 petitions claiming violations of the rights of individuals, who were given explanations of the issues raised, receiving specialist support for problem solving; conducted 194 inquiries on the prevention of torture in places of detention; in 200 cases concerning the violation of the rights or freedoms of natural persons, it was notified of its own motion; issued 44 recommendations to the public administration authorities when it took note of the unlawfulness of the administrative acts; at the request of the Constitutional Court, issued 1,493 points of view regarding the constitutionality or unconstitutionality of legal provisions that might contain contradictions with the fundamental act; raised 5 exceptions of unconstitutionality regarding the provisions contained in Emergency Ordinances issued by the Government, but also regarding amendments to the Tax Code; filed two actions in administrative litigation for the annulment of administrative acts issued by local authorities; filed 3 appeals in the interest of law to ensure that the law is interpreted and applied uniformly by all courts.

In its work, the Court of Accounts found in the financial activity of public institutions violations of the principles of legality, regularity, economy, efficiency and effectiveness of training, administering and using the financial resources of the state and the public sector. The cause of these deviations has been generated by non-compliance with financial legislation, with insufficient concern from public entities to ensure the accuracy of data in financial statements and for sound financial management governed by sound economic and financial management. In 2016, for example, the Court of Auditors made 158 referrals to the criminal prosecution bodies for facts for which it was estimated that there were indications of a criminal nature, mainly referring to crimes of corruption and assimilated to corruption, crimes in service, crimes for the infringement of public finance, public procurement, financial, tax and accounting laws, as well as the infringement of commitments (investment commitments) of buyers in the privatisation process (Court of Auditors, 2016: 10).

In its activity, the National Audiovisual Council has applied a series of sanctions following the observance of the provisions of the broadcasting legislation regarding: the protection of human dignity and the right to its own image, as well as fundamental freedoms and human rights, child protection, electoral campaign for local elections; electoral campaign for parliamentary elections, right to access audiovisual programs for people with hearing deficiencies, non-compliance with sponsorship rules, publicity and teleshopping in audiovisual, ensuring accurate information and pluralism (National Audiovisual Council, 2016: 10).

The National Authority for Integrity, another autonomous administrative authority, found in the activity carried out a series of irregularities related to conflicts of interest, cases of incompatibility, unjustified differences between the acquired wealth and the realized incomes, the committing of criminal deeds (false declarations, assimilated offenses corruption cases) (National Integrity Authority, 2016: 10). At the same time, this autonomous administrative authority applied during its activity a series of fines for failing to submit the declarations of assets and interests within the time limits stipulated by the law or the non-application of the disciplinary sanctions as a result of the final remaining of the evaluation report (the National Integrity Authority , 2016: 10).

The National Council for Combating Discrimination is another autonomous administrative authority that advocates respect for fundamental rights and freedoms, investigating and finding cases of discrimination, has imposed a series of sanctions for

restricting access to public services, non-respect for human dignity, and discrimination based on disability , nationality, ethnicity, social category or race.

Autonomous administrative authorities are legal constructions which through the way of doing business try to contribute to the accomplishment of the administrative justice and implicitly to the protection of the values protected by the rule of law. By this we consider that they have an active role in the realization of administrative justice.

In this context, we can say that the autonomous administrative authorities are one of the modern mechanisms for achieving the foundations of the rule of law and can be considered an innovation and a response given by the democratic state to the new social order. Their emergence is justified by the need to promote a modern manner of governance under conditions of transparency, consultation and negotiation.

If, from an organizational point of view, this type of authorities are included in the administrative apparatus, although they are not subject to the influence of the Government and have autonomy in the social activity, they appear as a "genuine justice" promoting and defending the rights and freedoms of those administered and eliminating abuses in the activities of state authorities.

However, their work must not be absolutized because their members, by the nature of the human side, are susceptible to subjective visions, but the guarantees of impartiality and independence are meant to contribute to psychological independence in the sense that they are not held accountable to bosses for the application of one or other of the legal norms. However, in order not to create a fourth state power that would tend to become a superpower, the legislator gave the administration the opportunity to challenge the acts of the autonomous administrative authorities within the administrative jurisdiction.

Conclusions

Contemporary realities have changed and led to a restructuring of the rule of law approach. In order to avoid the emptying of content and the failure of the rule of law, it was necessary to rethink its configuration and to find levers that would contribute to the protection of its values. The state of justice, justice, respect for the right of everyone and the attempt to strike a balance are not achieved and are not guaranteed to be respected only by simply affirming and including them in the content of binding legal norms. More needs to be done: the observance of the content of these norms should be pursued, as well as taking measures to restore the social balance if it was endangered by the actions of the various actors of social life. Autonomous administrative authorities can be considered as a legal creation of the rule of law that is intended to respond to increasing social complexity within states and the inability of traditional structures to keep up with the new, highly technicized realities.

Through their work, the autonomous administrative authorities seek to contribute to the protection of the rule of law by pursuing the protection of fundamental rights and freedoms and liberating individuals from the oppression of various forces, whether private or public.

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