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Reforming the Normative Frarmework of Public Function: Comparative View of Romanian and French Legislation

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Abstract: *The present article offers a brief analysis of the main juridical elements that shape the necessary framework for the organisation and coordination of public function in two administrative systems, namely Romania and France, as well as the most recent normative changes, objectives and accomplishments of public function reform in the two states. Explored mainly through qualitative methods (evaluation of specialized legislation and literature and the comparative approach), the complex topic of public function, and its newest evolutions in the countries under study, offers an interesting and rich field of research.*
Similarities and differences between the two reform processes and approaches have been highlighted, together with the results attained.

Keywords: *normative framework; codification; reform; public function.*

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Introduction

Human resources in public administration play a fundamental role. Each person who occupies a public function and carries out activities specific to the field of their competences, within various administrative bodies and institutions, can contribute to the overall progress and evolution of their organization. This role is more and more acknowledged by public authorities, therefore the growing attention given to the transformation of public function, as a prominent dimension of any reform process that takes place in public administration.

The present article offers a brief analysis of the main juridical elements that shape the necessary framework for the organisation and coordination of public function in two administrative systems, namely Romania and France, as well as the most recent normative changes, objectives and accomplishments of public function reform in the two states. Explored mainly through qualitative methods (evaluation of specialized legislation and literature and the comparative approach), the complex topic of public function, and its newest evolutions in the countries under study, offers an interesting and rich field of research.

Public function reform has been carried out for more than a decade in various European public administrations. Their outcomes have to be considered within context, as they are dependent on the political, social, economic environment of that country, on the characteristic features of the normative system and on the historical tradition. Both Romania and France belong to the Continental European Napoleonic system, Romania being a member of the Central Eastern and South Eastern European group (Ongaro et al., 2018: 11-12; Kuhlamnn in Massey, 2019: 182; Schwab, Bouckaert and Kuhlmann, 2017: 19-21; Patrascu, 2019: 23). This system is often regarded as a highly centralized one that requires more flexibility in order to make room for progress and reform.

1. Organization and categories of public functions in Romania

In Romanian law, the regulatory framework of public function and public servants is contained primarily in the *Constitution of Romania* (2003), *Government Emergency Ordinance no. 57/2019 on the Administrative Code*, with subsequent amendments and completions, in the *Framework Law no. 153/2017* on the remuneration of staff paid from public funds and related legislation, represented by labour law, civil and criminal law provisions. Other important normative acts regarding the public function are:

- *Government Emergency Ordinance no. 38/2020* on the use of electronic documents at the level of public authorities and institutions;
- *Government Emergency Ordinance no. 124/2021* on establishing the institutional and financial framework for the management of European funds allocated to Romania through the *Recovery and Resilience Mechanism*, as well as for amending and supplementing the *Government Emergency Ordinance no. 155/2020* (regarding some measures for the elaboration of the National Recovery and Resilience Plan necessary for Romania to access reimbursable and non-reimbursable external funds within the Recovery and Resilience Mechanism);
- *Law no. 69/2019* on the establishment of the National Council for the development of human resources in public administration;
- *Law no. 81/2018* on the regulation of telework activity, with subsequent amendments and completions;
- *Law no. 190/2018* on implementing measures for the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016 on the protection of persons with regard to the processing of personal data and on the free movement of such data;
- *Government Decision no. 525/2016*, with subsequent amendments, regarding the *Strategy on the development of the public function 2016-2020*;
- *National Education Law no. 1/2011*, with subsequent amendments and completions;
- *Law no. 554/2004* of the administrative contentious, with the subsequent modifications and completions;
- *Law no. 53/2003 on the Labor Code*, republished, with subsequent amendments and completions;
- *Law no. 161/2003* on certain measures to ensure transparency in the exercise of public dignity, public office and in the business environment, the prevention and sanctioning of corruption, as subsequently amended and supplemented;
- *Law no. 52/2003* regarding the decisional transparency in the public administration, republished;
- *Law no. 78/2000* for the prevention, discovery and sanctioning of acts of corruption, with subsequent amendments and completions.

The *Administrative Code* established detailed provisions on the public function and the public servants in *Part VI*, entitled *Statute of public servants, provisions applicable to contract staff in public administration and records of staff paid*

from public funds. Article 365, paragraph 2 states that: „The provisions contained in this Part shall apply to: a) public authorities and institutions, as well as other legal entities within which they the categories of staff provided for in the framework legislation on remuneration of staff paid from public funds; b) civil servants, staff employed under an individual employment contract or with management contract, as well as other categories of staff paid from public funds".

The juridical framework is completed with the definition of the „public function" presented, much earlier, in Article 5, which contains most of the definitions of concepts and institutions fundamental to the organization and functioning of public administration in Romania. According to Art. 5, letter y) of the Administrative Code, the public office represents the set of attributions and responsibilities, established under the law, in order to exercise the prerogatives of public power by public authorities and institutions.

These provisions are completed with those of the Framework Law no. 153/2017 on the remuneration of staff paid from public funds, which defines public administration staff (both civil servants and contract staff) as an „occupational family" in the budget sector. This categories are distinct from those working in domains such as: education, health and social work, culture, diplomacy, justice and Constitutional Court, Defense, Public Order and National Security.

Public positions in Romania can be classified according to several criteria. A

One of the most used criteria for classifying the public servants is the level of the public administration where they work. On the basis of this criterion, Art. 385 of the *Administrative Code* establishes the following categories:

- State public positions – Public positions established, according to the law, within:
  - Ministries and other specialized bodies of the central public administration (namely agencies, authorities, etc.),
  - Specialized structures of the Presidential Administration (e.g. Chancellery of Orders),
  - Specialized structures of the Romanian Parliament,
  - Autonomous public authorities (as established in the Romanian Constitution) and other administrative authorities, autonomous, as well as within the structures of the judicial authority.

- Territorial public positions – Public positions established, according to the law, within:

- the institution of the prefect and the deconcentrated public services of the ministries and other bodies of the central public administration in the administrative-territorial units, as well as the public institutions in the territory, subordinated / coordinated / under the authority of the Government, of ministries and other bodies of the central public administration (e.g.: directorates, agencies, etc.).

- Local public positions – public positions established, according to the law, within:

- own apparatus of the local public administration authorities and of the public institutions subordinated to them (ex .: town halls, county councils, local public services - taxes, records of persons, etc.).

Another criterion by which public servants can be classified is the level or types of responsibilities. Depending on this criterion (art. 387, *Administrative Code*), there may be the following categories of civil servants:

a) public positions corresponding to the category of senior public servants;
b) public positions in the category of leading servants;
c) public positions corresponding to the category of executive public servants (grade: beginner / assistant / principal / senior).

On the basis of the criterion of election/appointment, there are:

- Persons appointed or elected to positions of public dignity and functions assimilated to them (including local elected officials), representing the political level with a decision-making role in terms of the objectives and strategic directions of government.
- Persons appointed to public office (executive, management and senior public servants) following recruitment and selection procedures.

Public functions have in common the fact that they refer to activities that involve the exercise of the „prerogatives of public power", regulated in the *Administrative Code* in art. 370. The main activities involving prerogatives of public power are: elaboration of draft normative acts and other regulations specific to the public authority or institution; human resources and public funds management; elaboration of public policy proposals and strategies, of programs, studies, analyses and statistics necessary for the substantiation and implementation of public policies, as well as of the acts necessary for the execution of laws; representation of the interests of the

public authority or institution in its relations with natural or legal persons of public or private law, from the country and from abroad, etc.

In close connection with the above mentioned categories, there are also two other categories, namely general public functions and specific public functions.

- General public functions (such as adviser, legal adviser, auditor, expert, inspector, director, director general, secretary general, etc.) exist in most public authorities and institutions and represent the set of general and common responsibilities and responsibilities of all public authorities and institutions, in order to achieve their general competencies.
- Specific public functions represent the set of attributions and responsibilities specific to some public authorities and institutions, in order to achieve their specific competencies, or which require specific competencies and responsibilities. These are usually defined within certain institutions, such as the Court of Accounts, the Anti-Fraud Department, the National Integrity Agency, etc. Some functions are specific not due to the institutional characteristics, but due to the specificity of the completed training programs and the attributions related to the function, as in the case of public managers.

Article 386 of the *Administrative Code* provides also a classification of public positions, according to the level of education required. Based on this criterion, public positions are divided into 3 classes, defined in relation to the level of education necessary for the occupation of public office, namely:

„ a) Class I includes the public positions for whose occupation an university educational level is required, with a licence's degree or equivalent;

b) Class II includes the public positions for the occupation of which is required a short duration university educational level, according to education programs existing prior to the application of the three Bologna type cycles;

c) class III includes the public positions for the occupation of which a high school educational level is required, respectively high school, completed with a baccalaureate degree".

In what special statutory rules are concerned, we can remark that certain categories of public servants carry out their activity under special provisions. These categories are presented in art. 380 of the *Administrative Code*. Art. 380 states that „may benefit from special statutes, public servants who perform the activities provided in art. 370 para. (3)". This legal provision makes reference to special activities that involve the exercise of the prerogatives of public power within: „the specialized structures of the Romanian Parliament; the specialized structures of the Presidential

Administration; the specialized structures of the Legislative Council; diplomatic and consular services; institutions of public order and national security; customs structures; other public services established by law, which fulfil the activities provided in art. 370 para. (3) lit. h) ". In the latter category, *the Code* includes activities of a special nature that concern the exercise of public authority in areas of exclusive competence of the state, under and in the execution of laws and other normative acts.

The main authorities responsible for the management of the public function are: the Ministry of Public Works, Development and Administration (MLPDA) (Ministry of Regional Development and Public Administration in 2019), National Agency of Public Servants and National Institute of Administration. The Ministry of Public Works, Development and Administration is the central public authority responsible for drafting public policies and strategies for public administration through the Directorate-General for Public Administration.

The National Agency of Public Servants, subordinated to MLPDA, is mandated, according to the Administrative Code, with „the creation and development of a professional, stable and impartial body of public servants" and „of the records necessary for the management of staff paid from public funds" (National Agency of Public Servants, 2019, p.: 14). The agency is responsible for developing public function policies and strategies, developing, and monitoring the enforcement of legislation in the field, setting priority training areas for public servants, as well as the management of the public function and public servants. The Agency can promote legislative and policy projects targeting the public function only through the Ministry (National Agency of Public Servants, 2019, p.: 14). The National Institute of Administration (INA), also subordinated to MLPDA, fulfils responsibilities regarding specialized training and professional development for public administration staff. INA's current mandate also includes the development or updating of occupational standards for public administration functions.

2. Organization and public functions within French Law

The organization and coordination of the public function in French law is established, mainly, in the *General Code of Public Function* (*Code Général de la Fonction Publique/* CGFP) that entered into force on March 1, 2022. Prior to this Code, the principal normative act was the *General Statute of Civil Servants*.

The *General Code of Public Function* (CGFP) reaffirms the cross-cutting nature of the general public service, its status and principles, while also enshrining the recent developments in the law on the transformation of the public function. These developments refer especially to the current provisions regulating the organization of the public functions and the role of entrepreneurs.

The new *Code of 2022* fulfils a prominent goal of codification of all statutory texts governing the public service. It brings together, in 1265 articles, the four laws of 1983, 1984 and 1986 called „statutory", as well as numerous other provisions on public service that have been distributed under other laws, which the Code strives to modernize and harmonize. Among the more recent provisions that the code includes, are those of *Ordinance no. 2021-702 of June 2, 2021*, on the reform of the senior management of the state civil service

Using a terminology specific to all 3 facets of the public function, the Code also responds to the requirement of simplification and accessibility to the legislation of the public function. The thematic plan of the code, which enhances its operational use and readability, recalls the basic principles of the public service, grouped within eight parts or „books", as it follows:

Book I - Rights, obligations and protections - defines the elements that define the framework of the exercise of civil servants: rights and freedoms, protections granted to civil servants, obligations and ethics.

Book II - Exercise of trade union rights and social dialogue - establishes the constituent elements of social dialogue, as well as its implementation (advisory bodies, negotiation, exercise of trade union rights, single social relationship).

Book III - Recruitment - is dedicated to recruiting civil servants, civil servants or entrepreneurs. The positions established by the government and the leadership positions on the three sides are dealt with in a title dedicated to them, as well as other ways of accessing public office, such as recruitment without competition or specific ways of access reserved for the military, as well as methods of employing people with disabilities or the use of contract workers.

Book IV - Principles of organization and management of human resources - details the notions of „body" (staff), employment framework and professional training of agents. One title is dedicated to teleworking, another to service reorganizations and a final one to organizations that carry out management missions such as the National Center for Territorial Public Service, management centres and the National Management Center.

Book V - Career and career paths - details the positions and mobility, the procedures for assessing the professional value of agents as well as their possibilities for advancement and promotion. The title devoted to discipline makes it possible to unify the provisions regarding disciplinary sanctions in the three public positions. It also includes a job title.

Book VI - Working Time and Holidays - brings together in a legible manner all the provisions on this subject, in particular those concerning working hours and holidays.

Book VII - Remuneration and social action - brings together the provisions on the remuneration of civil servants. Various benefits (especially accommodation in the company) and payment of travel expenses are included in this book. Elements related to social action (objectives, services and management) are also included.

Book VIII - Prevention and protection in matters of health and safety at work - contains the rules on health and safety but also all the provisions on prevention. Title II is devoted to protective measures relating to sickness, accident or invalidity which are similar from one public service to another.

Article L1, from the „Introductory Chapter: Scope and definitions" of the *General Code*, states: „This code defines the general rules applicable to civil servants. It constitutes the general status of civil servants". Other public agents to which the Code is applied are pointed out in the following article: „To the extent provided for in this Code, this Code shall also apply to contract staff of State administrations, independent administrative authorities and independent public authorities, state public institutions, local authorities and their units, and to the units or services referred to in Article L. 5. In public services and units of an industrial or commercial nature, it applies only to agents who are civil servants" (Article L2, *General Code of Public Function*). The definitions of the main categories of public servants are provided in the following articles. For instance in Article L3, we find the definition of „state public servants": „State public servants are persons who have been appointed to a permanent full-time job and have been established in a grade of the administrative hierarchy of state administrations or state public institutions other than those mentioned in Article L. 5". Articles L4 and L5 establish the other 2 categories of public agents, namely „territorial public servants" and „public hospital servants" („public hospital" referring to various types of public establishments and institutions). Mention must be made, that in common language, the word „civil servant" designates all administration staff. But civil servants are only a part of government agencies. Permanent civil servants (public servants and other categories) and

non-tenured civil servants (auxiliaries, contract staff, temporary staff) are also employed.

In accordance with the legislative framework in France, there are three major public function categories (totalling 5.417 million civil servants):

- State Public Servants – *Fonction Publique d'Etat* (FPE).
  State public service posts are divided between:
  - Central administrations: central departments of ministries generally located in Paris, responsible for designing and coordinating state actions at the national level;
  - Deconcentrated services: concern the actions of the state at the level of the region and the department (prefectures, rectories, regional health agencies, regional directorates, departmental directorates, etc.)
- Territorial public servants – *Fonction Publique Territoriale* (FPT): includes all the positions occupied within the local authorities (city, department, region) and their public institutions.
- Public Hospital Servants – *Fonction Publique Hospitalière* (FPH): includes, except for medical staff (doctors, biologists, pharmacists and orthodontists), all jobs in the following units: public hospital units; public homes for the elderly; public institutions within the departmental child protection services; public facilities for minors or adults with disabilities, or other public social or health establishments.

Other categories of public servants may be established on the basis of their assignment to a „corpus/body" or employment framework. These categories are presented in *Book IV- Principles of organization and management of human resources* -, Chapter I, Article L411-1 and subsequent. Art. L411-1, of the General Code of Public Function, states:

„The civil servant belongs to:

1. A body in the state public service and in the hospital public service;

2. A framework in the territorial public service.

Each body or employment framework includes one or more classes. It groups civil servants who are subject to the same special status of a national nature and who are entitled to the same ranks".

Article L411-2 of the General Code defines the classes, as follows: „Bodies of employment and management staff are divided into three

categories, designated, in descending order, by the letters A, B and C. The particular status of each body of work or director determines its classification in one of these categories according to their level of recruitment". In close connection to the „class", there is the concept of „grade", which is mentioned in Article L411-6: „ The hierarchy of grades in each body or employment framework, the number of treads in each grade, the rules for promotion and promotion to the higher grade are set out in the specific statute".

All these efforts of codification and clarification have prepared the new stage of the reform of the public function in France. It has been „a long journey which is not finished yet" (Fonction Publique en France, *Code General de la Fonction Publique*, 2022).

3. Stages and accomplishments in public function reform in Romania and France

Public function has been the topic of debate within various media of Romanian public administration and politics, along many years. Numerous strategies, laws and government decisions and each government reform plan (namely the *National Reform Program*, an annual strategic document elaborated by the Romanian government) have established the transformation of the public function as a priority of the reform process. This priority may be considered, in fact, one of the essential dimensions or facets of the reform in public administration.

Among the documents that have marked a progress in the process of transformation and reform of the public function, we consider that the *Strategy for the Consolidation of Public Administration* 2014-2020 (shortly *Strategy for Consolidation*) and the *Strategy for Public Function Development* (SDFP) 2016-2020, played a major role. The main contribution of the *Strategy for Consolidation* consists in its provisions of the actual measures and steps of the reform. From these steps, presented extensively in the *Strategy for Consolidation*, we point out:

- an extensive revision process of the normative framework in the field of civil service;
- implementation of a highly efficient management in public administration;
- revision of the recruitment and selection system by introducing a framework of general competences and access through an exam organized at national level;

- creation and establishment of a collective body of human resource specialists, meant to represent a high-profile board of professionals in this domain;
- consolidation of ANFP's role of coordination and strategic management of human resources in public administration, as well as accomplishing a necessary clarification of the roles of other institutions involved in human resources management;
- transition to an information system for the record of all public administration human resources;
- a strategic, unitary and integrated approach to human resources and personnel policies in public administration.

The most significant measures for revising the regulatory framework for human resources management in public administration targeted in the *Strategy for Consolidation* occurred in April 2019 and June 2019. The first one, is a law adopted by the Parliament: *Law no. 69/2019* on the establishment of the *National Council for the development of human resources* in public administration (published in „Monitorul Oficial" /the Official Journal of Romania, Part I no. 329 of April 25, 2019). This law officially created the *National Council* entrusted with the role of guidance and inter-institutional coordination for strategies and legislation concerning human resources management. This *Council*, as it was designed by the law, includes both relevant social partners (stakeholders) and representatives of public institutions. The negative aspect is that the board exists only in its legal form, but it has never been functional.

The second extremely important legal act is the *Administrative Code*, adopted in June 2019, not by the Parliament, but by the Government Emergency Ordinance (GEO) no. 57/2019. The *Administrative Code* contains the majority of the rules and provisions referring to public administration and public function. The modifications established by the *Code* are:

- introduction of the rule of „national exam" for general skills and knowledge, organized by the National Agency of Public Servants, based on a recruitment plan. The competence for organization is assigned to the public institutions for „competition for the occupation of a public position";
- the National Agency of Public Servants develops competence frameworks, realizes a standardization of the conditions in the job description and establishes the tools of career development;
- improvement of the recruitment procedure and workforce planning, and implicitly, the quality of services;

- management by the National Agency of the National Electronic System for keeping the records of employment in the public sector and keeping track of all staff movements that are paid from public funds.

Despite the fact that the *Administrative Code* established these provisions to consolidate the National Agency's status and capacity of management and to improve the development of career in the domain of public function, the framework have not been effectively established. In order to implement the new aspects introduced by the *Code*, additional measures have to be applied. First of all, a secondary regulatory framework have to be elaborated and imposed, as well as making new amendments to the government decision on the organization and functioning of the National Agency. Similar problems delayed the creation of the National Electronic System for keeping the records of employment in the public sector and of all staff movements that are paid from public funds. The IT system and the appropriate regulatory framework are not yet generated, but are in course of development.

Partially brought into effect are measures aimed at the development and implementation of competency frameworks, the standardization of job descriptions, and a new model of recruitment by national exam, as provided in GEO no. 57/2019. The application of these new provisions started through the project Development of a management system unit of human resources in public administration, SIPOCA 136.

The reform of the public function in France does not share many similarities with the Romanian one. Effective changes have been made to the legislative framework, starting with the huge effort of creating a single code for the public function. Moreover, the revision of the normative system includes other deeply transformative laws in addition to the *General Code of Public Function*.

The complexity of the new French code was heralded by the adoption of the *Law 2019-828 of August 2019*, named „*of transformation of the public function*". The ***5 fundamental*** „***axes***" (action domains) that the law concentrates on are:

Axis 1. Promotion of a highly strategic social dialogue, in compliance with the guarantees established for civil servants.

Axis 2. Development of more receptive and efficient managerial levers for public action.

Axis 3. Simplifying and ensuring transparency and fairness of the management framework for public agents.

Axis 4. Promoting mobility and supporting easier transitions of civil servants from and to the civil service and private sector.

Axis 5. Strengthening professional equality in the public function.

Along these 5 axes, the law establishes a series of objectives, such as:

- a more flexible and simpler management of the public function,
- the establishment of a single body for social dialogue, the social committee („administrative" social committee, for the state public function; „territorial" social committee for the territorial function, and „institutional social committees" for the hospital functions),
- organization of national competitions for local public functions to allow candidates to choose their territory of assignment,
- recognition of new rights for the public servants in order to: enable employees in the three branches of the public function to enjoy the same rights as private sector employees; improve their working conditions and promote their professional development; better take into account their personal situations that can affect the proper development of their careers,
- reinforcement of ethical control at the entrance to the public function, through a review of the files of candidates for the highest positions,
- ensuring gender equality and implementing an action plan for professional equality in each administration.

The *Law of August 6, 2019, on the transformation of the public function* creates new tools whose aim is, in particular, the promotion of a more effective and extensive social dialogue, while respecting, at the same time, the principle of participation by public employees in determining working conditions (DGAFP, 2021: 15). It is also within this new framework that the professional elections in 2022 are prepared.

Conclusions

The two administrative systems proposed for analysis are known for their similarities, as the Romanian system is considered to have been inspired from the French one. Nevertheless, along the years, the Romanian public administration have been confronted with difficult problems that made it lag behind other European states, France included, in terms of administrative

reform and its essential facets. We can remark that both countries have made efforts to adapt their public administration and human resources system to the new pace and „face(s)" of their societies.

Both initiated a vast reform process, on multiple domains of activity and on multiple levels, but this process has had quite different effects in the two countries, in particular in the field of the public function and public service. Whereas, the *General Code of the Public Function* (2022) and the *Law of Transformation of the Public Function* (2019) in France have definitively created the normative framework and the juridical instruments required for an effective and pervasive change, the Romanian *Administrative Code* of 2019 had a modest success. Our *Administrative Code* has partially reached its objectives and is still prone to improvement. It certainly needs more hard work, more inspiration and ample collaboration of all political factors, public servants and other stakeholders to bring the necessary reform into effect.

The French administrative system proved that, almost eighty years after the creation of the public servant status, is capable to initiate great changes in the organisation and coordination of the public function, without neglecting its core values and principles. The fundamental goal of this major French reform aims to build the 21st century public function, more agile, more open and more attractive, with more efficient public services closer to the community. As we seen before, we can only express our hope that the French model may be, once more, a source of inspiration for the Romanian public administration.

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