

European civil service. The principles of the legal framework in force

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Abstract

The concept European civil service is being used in two ways, depending on specific context: In the broadest sense of the term, European civil service means the persons working for a European public institution and in the narrow sense of the term, it means only the European officials, who are not invested with public authority. European officials' legal framework is governed by principles of law, guiding ideas for their overall activity and mandatory rules for the interpretation of any legal text adopted by an institution or European body. These principles are, on one hand, common with other branches of Community law in general (e.g. the principle of subsidiarity, the principle of equality, non-discrimination) and, on the other hand, specific principles of European civil service regulation (e.g. public competition principle and the principle of dispersion territorial). The paper demonstrates that the general principle of subsidiarity is strongly applied and that there is a dispute between the regulation based on the idea of legal status and/or the contractual status of civil service. There are legal restrictions and specific liabilities for the personnel working within EU institutions and the paperwork makes some improvements propositions.

Keywords: *European civil service, European official, institutions of the European Union, the principle of subsidiarity.*

JEL Classification: K23, K33

1. Introduction

The institutions of EU could not function without a precise personnel structure. The features and the specific roles of these institutions demanded a body of professionals, with strong educational background and particular expertise. As a result, *European Civil Servant* and *European Civil Service* are concepts that recently entered into the custom vocabulary for each of us. A new area for administrative law has been launched and developed together with the progress of the member states (MS) cooperation.

2. The legal framework for civil service at EU level

Article 24 of the Treaty merging the executives of the Communities (1967) imposed a regulation establishing a single, joint legal framework for the staff activity. Unification was achieved by Regulation EEC, ECSC and C.E.E.A. no. 259 from February 29, 1968, several times amended. In EU law, the regulatory framework for public office was influenced when the European Commission

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adopted the White Paper on administrative reform (March 2000). This document highlighted the principles of public administration in Europe, focusing on quality of services, officials' independence, their liability for all committed acts, efficiency and transparency of the public services provided to citizens.

The most important changes were made by Regulation EC and Euratom no. 723 from March 22, 2004. The above regulation, further amended and together with other European institutions' internal texts, form the legal framework for the European public servants activities.

3. The civil service concept

The concept *European Public Servant* is being used in two ways, depending on different specific context. In the broadest sense of the term, *European Public Servant* means the persons working for a European public authority, institution or organism and also the officials in public administration structures for each of the MS of the EU. Following this analyze, we note that there are two categories of public officials in EU countries:

- First, there are persons working in the EU institutions (European civil servants)
- Second, there is the body of the employees in each country's own administration (national civil servants)

According to the regulations in force, people who work for EU institutions and bodies are considered European officials (in the narrow sense of the term), contract staff, or self-employment under a contract (who are not invested with public authority).

We note that in this field the principle of subsidiarity is applied, as each Member State is creating its own rules of law for its officials, in accordance with local legal system demands. There is a dispute in this filed between the countries that use the concept based on the idea of legal status of civil servant (as Romania is) and the countries that use the contractual status for its civil servants. Between these two concepts, the major difference is the assignment of legal framework for the officials within public law model adopted in their country, or within private law institutions, which strongly affects the ratio of authority for the officials.

For the implementation in Romania of the principles from the European Commission White Paper on administrative reform, The Code of Good Administrative Behavior was adopted on September 13, 2000, designed primarily as a tool for staff of the European institutions working directly with the public. Furthermore, the code aims to inform citizens of their right to receive quality services and the conditions in which they must expect to be treated when addressing European institution. Among the most highly publicized provisions of the code and analyzed in the literature, we noted the citizen's right to good administration, most general principle which has a multivalent implication over the whole public administration.

As the national publications and compared administrative studies show, in each country there are traditions of the civil service. It is estimated that the first country to adopt a civil service status is Spain, by the Law of 1852, followed by Luxembourg by a law in 1872 and Denmark in 1899. In Italy, the first statute of civil servants was adopted on 22 November 1908 and in Republic of Ireland first law on the civil service dates from 1922. Netherlands and Belgium have adopted the first law officers in 1929 and the General Rules of officials in the United Kingdom and Northern Ireland appears in 1931².

It seems that Germany has traditions in terms of civil service regulation since the Middle Ages, as Professor Jacques Ziller appreciate the overall encoding the first law on civil service rules was adopted by the National Socialist regime in 1937, although there was a Bavarian function code public since the early nineteenth century, i.e. from 1 July 1806. German legal paradox is found in France, where civil traditions are far before the Revolution of 1789 and the parliamentary chambers discussed the issue on several occasions (1879, 1885, 1909 and so on), but the first law for civil service was only adopted by the Vichy regime (October 1946.) Greece adopted the first state civil servant in 1951, being inspired by the status of civil service from France, Germany and Great Britain.

Two issues require to be analyzed to assess civil service regulation in EU countries:

a) the categories of officials covered by the statute, i.e. the personnel protected by the public law,

b) what is the degree of generality of the rules contained in the statute³.

In most countries (Belgium, Greece, Spain, France, Ireland, Netherlands, Portugal) the civil service status applies to all public administration, i.e. central, local authorities and independent establishments. This was the situation in Italy, by Law Amato government in February 1993.

In a second group, there are Germany and Luxembourg, where tradition requires a distinction between civil under the protection of public law regime, on the one hand and employees and workers, subject to contractual arrangements, on the other. The distinction is based on the difference among functions, German law establishing a hierarchy of public administration staff. German doctrine considers that only officials can exercise public authority powers or functions related to defense of the public interest, while the other two categories of personnel are performing functions at the office or administrative functions. In the UK, the difference is between common law and civil statutory regime, as conceded that crown servants are subject to the rules of common law, and the status of civil servant is exclusively reserved for the agents of state government. Also, Denmark has a particular situation; the vast majority of officials are subject to the statutory regime, although in 1969 a reform was performed in the contractual direction.

² Antonie Iorgovan, „Tratat de drept administrativ”, vol. I, ALLBECK Publishing House, Bucharest, 2002, p. 530.

³ *Idem*, p. 542.

Although specific terms have influenced the state regulations on civil service, in the field the regulations have recently converged to values and principles that have emerged since the second half of last century, what is now called the European civil law.

4. The principles of law applied in the EU civil service

European officials' legal framework is governed by principles of law, guiding ideas for their overall activity and mandatory rules for the interpretation of any legal text adopted by an institution or European body. These principles are, on one hand, common with other branches of Community law in general (e.g. the principle of subsidiarity, the principle of equality, non-discrimination) and, on the other hand, specific principles of European public servant regulation (e.g. public competition principle and the principle of dispersion territorial).

The procedures of recruitment is generally based on the following principles: the equality of access, the public contest, the independence, the competence, the efficiency, the integrity, the territorial dispersion, the principle of providing all necessary means and methods to meet in optimal conditions of their employment duties and the stability in the public function.

The principle of equality is a general principle of contemporary law, all legal disciplines proving respect for equality of individuals, based on the idea that we are all equal and have equal rights. The principle of equality of access is contained in the Declaration of Human Rights and the Citizen of 1789 and is reproduced in art. 21 of the Universal Declaration of Human Rights, with the following wording: "All persons have the right to access, on equal terms to public service in their country." Are thus restricted and prohibited discrimination based on sex, religion, race, opinions. The only limitations are accepted on nationality, morality, conditions, age and mental skills. All written constitutions in the EU countries enshrines the principle of equality before the law and constitutions, except Denmark and the Republic of Ireland, all provide equal access to public service principle. For these two exceptions, the principle is not neglected by the entire state legislation, being inserted in special laws that complement the sphere of constitutional norms.

Equal access to public service should be regarded as equal treatment of aspirants to public office. Each state imposes a number of specific conditions for access to public office, but that does not mean that the general principle of free access is violated. The essence of the general principle is respected for all those who fulfill the initial selection criteria, so they all are in the competition, which will determine as objectively as possible the occupant for the position in the game. The principle of equal access to public office was ruled as a reaction against promotion on the basis of rank of nobility. It is considered that Germany is the first union between countries that regulated the system of promotion and access to public office on grounds of personal qualities and results.

The principle of free access to public office and the principle of merit competition for the position or are simultaneously complementary principles, but also contradictory. All national legislation of the MS in the United Europe have ruled the principle of a competitive civil service employment, either by the constitution or by other acts. The principle of equal access should be understood more as an equal treatment in front of the authorities, as equal opportunities and conditions. All the persons that qualify to the competition may participate, in order to choose among all, the worthy occupant. For Romania, the principle of equal access to public office derives from the principle of equality of all citizens and it is included in the statutory provisions for the civil service.

The principle of public access to public office often involves a way of selecting candidates aspiring to public function. The contest is the non-discriminatory manner in which the selection of officials is made, the procedure for conducting contests being determined by special laws of each Member State of the European Union. France and Spain are the countries to use this way for recruiting almost all positions in government, except some which are subject to political nominations. In France, there is the prestigious school for high civil servants "Ecole Nationale d'Administration", which provides elite selection and then their solid formation for the integration of civil servants in key positions.

Admission to this institution and their subsequent selection to fill high positions in the French administration is very tough. Competition system ensures the fulfillment of two major objectives:

- accurate assessment of candidate ability,
- and ensuring the independence of the authority's selection task.

Italy also admits this principle, but it is applied only to a small number of areas, including diplomacy and magistracy. In the UK and Belgium, independent bodies conduct the assessment of the candidates. In Germany, candidates must complete a training course before applying for a position in public office. In France and Germany, the civil service is seen as an independent force to ensure "continuity of the state". It acts as a mediator between the state and society and guarantees respect the public interest.

In the UK, civil servants are considered faithful helpers of government, democratically elected. Of course, ministers have some discretion in appointing senior officials as their subordinates and how competition combines theoretical and the competition to elect them usually consists of practical test samples and actual exercise period of job related duties, as a probationary period. In Romania, recruitment and promotion of civil servants is subject to regulatory status of civil servants, the law includes in art. 4 both the principle of free access to public service and the principle of employment and selection of officials solely on the criterion of competence. As shown in the comparative doctrine, the methods for the examination of candidates, goes from theoretical to practical tests, even personality tests.

For Romanian law, the Government Decision no. 1098/2001 provides that the organization of the competition for public office should consist of a written test

and an interview, the final grade is given by the arithmetic average of the final marks awarded to the two samples. The written test is performed in the presence of competition commission and it could be a written work or completion of multiple-choice tests. The interview consists of answers to questions from members of the Commission, both questions and answers are recorded exactly in the report prepared by the secretary of the competition commission and signed by all members of this commission. Methodological norms regarding the contest for public office in our country prohibit questions about political views of the applicant, trade union activity, religion, ethnicity, gender, wealth, social origin, but allows that the interviewed to be tested, where appropriate, for the foreign language skills and operating on your computer abilities.

According to the general prevision of the right to defense, right to appeal and the right to see the result of the deliberations of the Commission, the applicant may appeal the final decision within 5 days after the results. Board of Appeals must decide within three days on the complaint of the candidate, and if he/she is dissatisfied with the outcome, the applicant may appeal to the administrative court of justice.

As shown in the comparative doctrine, the methods for the examination of the candidates in the contest for civil service are different from one European country to another. In some countries theoretical tests dominate on the grounds that official will be taught the practical realities of office to which they aspire. For others, on the contrary, the practice tests prevail, to test if that person's efficiency and ability to handle specific situations, taking into account the fact that the presentation of diplomas obtained a guarantee of theoretical knowledge⁴.

In France the notion of competition for public competition applies whenever the following conditions are met:

- the existence of a post or of vacancy;
- an independent panel of both political power and the heads of the holiday which was created;
- a ranking of candidates admitted considering their results;
- obligation of the appointment authority to respect the ranking.

In Germany, theoretical examination is combined with work stages while in the UK and Ireland the law on competitions is nonexistent. Spain, Luxembourg, Belgium uses competition exclusively on theoretical tests, while Italy and Portugal awards priority to the practical tests.

Independence principle is expressly regulated in the explanatory memorandum to the adoption of Regulation no. 259/1968 of the Council of the EEC, EURATOM and ECSC and reiterated in many of the rules of organization and functioning of institutions. Specifically, the principle of independence says that a Community official is serving the state of nationality, but must act only towards community ideals as European citizens. Thus, for example, European Central Bank Governing Council members must act independently and not as representatives for

⁴ Augustin Fuerea, *Instituțiile Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2002.

the country of origin, in all decisions they take on monetary policy in the euro area. This principle must be respected despite the fact that most of the Council members are representatives of national central banks and, therefore, might be inclined to decide in accordance with the interests of the state of origin⁵.

Competence principle can be analyzed from a dual perspective:

- first, competence can be seen as a component of the civil service, i.e. the possibility recognized by legal rules for a particular official to have a specific mission and to have the power to perform certain tasks;
- second, the principle of competence refers to the duty of the civil servant to prove high professional and moral qualities, consistent with the position held and the tasks assigned to it.

We consider that the principle of competence applies in the EU in both meanings above, European officials work as determined by the limits set by the regulatory environment of that function and they have to show high moral and professional skills⁶.

The principle of efficiency for the work of civil servants is strongly emphasized by the practical connotation: the civil servant work is subject to periodic evaluation. Specific mission that is given to civil servant in general and European officials in particular, involves assuming a career in the sense of civil duty to improve their abilities, to perform their work in a more accurate way and to achieve quality parameters for the position they occupy. Recognition of achievements for the appropriate level of service is the career development, by the advancement to a higher echelon, gradation and grad or to a better-listed category.

The principle of integrity is in connection with the civil servant integrity, closely related to morality, i.e. the rules of conduct that are placed sooner in the register of ethical propriety than in the register of strictly normative aspect of employment relationships. The civil service involves both individual qualities and public authority, so it is mandatory to understand and to respect the work in the civil service. Just to shape better the integrity requirements for the European officials, a Code of Ethics for officials of the European Commission was recently adopted. Romania also adopted a Code on this topic (see in this respect the Law no. 7/2004), in which the integrity of officials is seen primarily as a general obligation for them to refrain from any conduct contrary to the ethical and moral values, but also their particular obligation to refrain from acts punishable by the criminal law as crimes of corruption.

The principle of territorial cover of the EU aims at using in EU institutions citizens from all the MS, if possible on a proportional basis. As Romania is one of the newest countries of the EU and the Romania's population is about 22 millions, this principle supports the applications for civil service in EU for the Romanian citizens.

⁵ Augustin Fuerea, *Manualul Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2004.

⁶ Jean Paul Jacque, *Droit institutionnel de l'Union Européenne*, Dalloz, Paris, 2004.

Principle of providing all necessary means and methods to create for European civil servants the optimal conditions of service joins the principles of integrity, independence, competence and efficiency of European civil servant to confer a particular framework for European civil service. The implementation of this principle involves providing all the rights necessary for each category of European civil servants, to serve the mission, the goals and the tasks that position held involved in the best way⁷.

The principle of stability in the career for the civil service protects the right to a career of civil servants. This right requires, above all, stability of employment, regulated under very different forms. Some categories of officials, in the widest sense of the term officials have even the benefits of immovability regulation (eg magistrates in France). In principle, Germany officials are appointed for life (*Amstellung auf Lebenszeit*)⁸. One of the essential characteristics of civil service in countries with original democratic systems of government is the stability. In this philosophy, the civil servant is not a fluctuating officer, a passenger character in the life of a community, but he is a permanent reference for good or bad conduct or public service activities. Civil service stability appears as a logical consequence of the continuity of public service, even if, as shown, has an objective existence beyond the individual owner. We consider the legal aspect of the problem and not the real motive that could lead to one point at restructuring an apparatus, forming new functions and suppressing some of the existing ones.

All EU countries practiced the career system and employment system (*Systeme de Carrière et Systeme d'emploi*), applying the principle of stability only in the first case. Career systems are based on the concept of stability and continuity, either within a body of officials or by moving from one body to another. Talking about career outside body concept is a non-sense. Civil service is not isolated, but hierarchical horizontally and vertically. Once a person becomes civil servant, fits a certain posture that can develop his professional life in that body, exercising his career right. The career involves a form of appreciation thus constant civil activity, and certain civil rights in terms of their professional development. The right to result in an entitlement to career advancement is obviously subject to certain conditions.

Unfortunately, the Romanian law applies with great difficulty legal provisions in order to make a career civil service function. Changing interests of the state machine generated very inventive ways to circumvent the law that supports stability of employment. Thus, in order to replace civil servants in key positions to fulfill election promises and to occupy all points of interest in the administration of newcomers by people in government, it was enough to change the name of the public institution that hosted these positions. The result was the

⁷ Roxana Mariana Popescu, Mihaela Augustina Dumitrașcu, Augustin Fuerea (coordonator), *Drept comunitar european – caiet de seminar*, PROUNIVERSALIS Publishing House, Bucharest, 2005.

⁸ Constanța Călinoiu, Verginia Vedinaș, *Teoria funcției publice comunitare*, Lumina Lex Publishing House, Bucharest, 1999.

artificial creation of vacancies, followed by their occupation through contests "objective" conducted by those meant.

With all these failures in law enforcement, Romanian regulatory framework is no stranger to the concept of a career civil servant. Staff status includes regulations likely to have a hierarchy of public offices and can even establish structures to promote the institution to which an official is initially placed. Furthermore, the changes to the regulatory institution of the prefect, transforming this function in a career function and a professional body are further steps towards conferring legal guarantees necessary for the implementation of the principle of stability in the civil service.

Such a new and important domain of law could not be effective without a specific institution that is entitled to solve the conflicts between the European public servants and the institutions they act for. The European Court of Justice, then by the Court of First Instance (after 1989) has exercised this jurisdiction and now The Civil Service Tribunal is competent to solve disputes involving the EU civil service.

Conclusions

According to the legislation in force and the cases already solved, there are certain particularities that rule the European civil servant activities and the European civil service. The present paper identified the special legal rules governing the field, analyzed their purpose and their practical effect and suggested possible improvements. Although this area of regulation is quit new, there are many rules to conduct the civil servant activity and a new field of law might arise, the European civil service law, with aspects to be taken into consideration both on European level and at national level for each member state.

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