

THE ROLE OF THE PRIME MINISTER'S ADMINISTRATIVE CONTROL (ACCOUNTABILITY) OFFICE IN RESPECTING LEGALITY IN PUBLIC ADMINISTRATION

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Abstract: *The Prime Minister's Administrative Control (Accountability) Office is a traditional institution of administrative control in Romania. This authority exercises its purpose and powers on the basis of the constitutional role of the Government in public administration, on the principle of legality and on the application of the governing program in the light of this principle, as well as on the European principle of good administration.*

Key words: *administrative control, good administration, the principle of legality*

1. Introduction

Good administration implies the right of the individual to an administrative decision in a reasonable time, to a motivated decision, to the respect of the right of defense, of the right of information and of expression, as well as the obligation of the public administration of transparency and enforcement of administrative obligations and court decisions. At the level of the European Union institutions and of the Member States, the right to a “good administration”, enshrined in Article 41 of the Charter of Fundamental Rights of the EU has a double dimension: it is a right, a guarantee for the individual against the arbitrariness of the administration, and on the other hand, it is a standard, an obligation and a task likely to hold the administration accountable.

The effectiveness of a “good administration” also involves exercising the control over the administration. At the national level, the legitimacy of administrative control derives from the constitutional principle of the rule of law. The Constitutional Court of Romania, the political-jurisdictional body that ensures the supremacy of the Constitution and controls the constitutionality of laws (Barbu, Muraru and Bărbăţeanu, 2021, p. 13), has held in its jurisprudence (Decision no. 70 of April 18, 2000) that the rule of law implies

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the subordination of the state to the law, allows the law to censor the political options and, in this context, the abusive or the discretionary tendencies of the state structures. The rule of law therefore implies a submission of the state, respectively of the administration to the law, as well as the possibility of its control and sanction in case of non-compliance with the rule of law.

The legality of the administrative acts also implies forms of control of the public administration over itself. The administrative control can be defined as a specific activity consisting in analyzing, verifying and measuring the quantitative and the qualitative performance, of tasks or works, comparing them with the planned objectives and indicating the measures required to carry out the activity of public institutions and authorities. The administrative control may be internal, when it is carried out by persons or compartments within the controlled administrative body or external, when it is exercised by bodies or persons outside the controlled bodies.

2. The Government's Right of Administrative Control

The Romanian government is a collegial body. It forms the executive branch, together with the head of state. The government has administrative control over the other public authorities. This right results from the logic of the national Constitution. Article 102 para. (1) of the Romanian Constitution provides that the Government, according to its governing program accepted by the Parliament, ensures the realization of the internal and the foreign policy of the country and exercises the general management of the public administration.

According to the Article 102 para. (1) of the Constitution the Government has a political and an administrative role. The political role refers to the realization of the internal and of the foreign policy, the Government being obliged to put into practice the provisions of the governing program. The role of the Government in the general management of the public administration is the commanding role of the Government, based on which the approved measures must be fulfilled. The general management of the public administration also implies a right of control of the Government.

The control is exercised through structures set up at the central level, such as the Prime Minister's Administrative Control Office, as well as through prefects - representatives of the Government in the territory. Thus, the Government exercises control over the bodies subordinated to it, based on the principle of subordination. The Government also exercises the control over the autonomous central bodies, only insofar as the Constitution does not regulate a special control of the President of Romania or of the Parliament. Thirdly, the Government exercises an administrative control over the local public administration bodies.

According to the Administrative Code, a function of the Government is that of control over the specialized central administration bodies and over the prefects. The control can address issues of legality as well as opportunity. The Government may request the revocation of illegal, unfounded or inappropriate administrative acts issued by the authorities subject to control, as long as of the acts that have not entered the civil circuit and have not produced legal effects. *A contrario*, for the acts that can no longer be revoked, the Government may request before the administrative courts the suspension of operation of an act and /or its annulment.

3. General Characteristics of the Specialized Administrative Control

The specialized administrative control is exercised through the administrative bodies (called "authority", "inspectorate", "service", "Accountability Office", "Administrative Control Office", etc.) from various sectors of activity, which the legislator has invested especially with control attributions. In the Romanian legislation we do not identify general procedural rules regarding the administrative control. Most of the structures with administrative control attributions operate based on the normative acts on the organization and functioning of the public authority or institution of which they are part and use their own operational procedures. In this context, at the national level, administrative doctrine and practice are the main sources of good administrative control practice. According to the doctrine (prof. A. Iorgovan, 2005, p. 495-496), the administrative control exercised by the specialized inspections is a control of legality, in all aspects of administrative acts, including their opportunity. The specialized control is exercised *ex officio* or upon notification. This control is not based on legal relations of subordination. Typically, the specialized control bodies have the right to give mandatory guidance to controlled bodies, including restoring of the legality of the administrative acts. The specialized control does not imply, as a rule, the annulment of the administrative acts. This sanction is applicable only when the law provides for it.

4. The Prime Minister's Administrative Control Office

4.1. Historical View

The Prime Minister's Administrative Control (Accountability) Office is a structure with a long tradition. Without proposing an exhaustive historical analysis, we remind that after the revolution of 1989, by Decree no. 94/1990, the Council of the National Salvation Body established the Prime Minister's Economic-Financial Control Authority. The Control Authority exercised control attributions in the financial and economic field i.e. the preventive financial control over the legality and the efficiency of the expenditures made from the state's budget, by the central bodies, as well as by the county town halls, checked the execution of the state's budget and of the balance of external receipts and payments, checked the legality of the balance sheets of the central bodies of the state. By the Government Decision no. 260/1991, was established the Government Control Department, directly subordinated to the Prime Minister. The department was composed of several compartments and had extensive control over the financial field, the state patrimony, and the use of human, material and financial resources by the central and local bodies of the administration, on the consumer's protection, etc. During the EU pre-accession period, the Government Control Department had attributions of internal control, of checking the notifications regarding the conflict of interests, of ensuring the coordination of the anti-fraud fight and of protecting the financial interests of the European Union in Romania, it coordinated the activity of the ministries' control bodies and of central public authorities, the implementation of the National Corruption Prevention Program and of the National Anti-Corruption Action Plan. The Government Control Department controlled the implementation of the programs with international financing and the follow-up of the

application of the “*acquis communautaire*”. The authority mainly exercised the administrative control within the apparatus of the Government, in the ministries, in the other specialized bodies of the central public administration, as well as in the national companies.

4.2. Legal Nature and Main Competencies

The Prime Minister's Administrative Control Office (Accountability Office) is currently organized as a structure without legal personality, within the working apparatus of the Government, under the direct subordination of the Prime Minister of Romania. The control body carries out its activity based on the normative framework composed of the Government Emergency Ordinance no. 87/2020 on the organization and functioning of the Prime Minister's Accountability Office, as well as for the establishment of measures to improve its activity and of the Government Decision no. 603/2020 on the organization, functioning and responsibilities of the Prime Minister's Accountability Office. The Office carries out administrative control activities, materialized in control and documentation actions, as well as activities for monitoring the activity of the ministries and of decentralized public services, public institutions subordinated to the Government, of specialized bodies of the central public administration, offices, agencies, departments, commissions, national companies and corporations, with state capital. The Office verifies the objectives and investment projects financed from the state budget, carried out by local public administration authorities and their subordinated public institutions, respectively controls the management of public funds allocated by the state, respecting the limits of competence and authority established in charge of other fundamental institutions of the state, as well as respecting the principle of local autonomy.

4.3. Acts

Following the control or the documentation action, the Office draws up a statement of findings, which it sends to the controlled public entity. The public entity may object to the findings. At the end of the control activity, the representatives of the Office draw up a control report or an information note. These acts are approved by the head of the Prime Minister's Administrative Control (Accountability) Office and are forwarded to the Prime Minister for information. The control report and the information note shall be communicated to the controlled authority or person, and, where appropriate, to the entity hierarchically superior to it or to the entity under whose coordination or authority it is, to public entities within its specific area of competence and to any specialized body competent to take remedy measures. The control report and the information note shall also be communicated to the competent criminal investigation body when there are indications of a possible criminal offense.

4.4. Limits of the Administrative Control

According to the decision of the Constitutional Court no. 1555/2009, the Prime Minister's Administrative Control (Accountability) Office cannot substitute for the

competences of other public authorities and cannot interfere with the executive power in the activity of the legislature or of the judiciary.

5. Similar Institutions in the European Union and in the United States of America

In Bulgaria, the Inspectorate General reports directly to the Prime Minister and carries out administrative control in the government apparatus and in the administrative structures. The Inspectorate General mainly coordinates and supports the work of the inspectorates, conducts inspections on allegations of corruption against employees of the government administration, as well as on illegal actions or on the inactivity of employees in the administration.

In Croatia, the Administrative Control Body is authorized to request reports and data, to determine directly the facts and circumstances and to establish, by instructions, the measures that are required in order to eliminate the identified irregularities and to ensure the legal and proper fulfillment of the administrative tasks.

Where the controlled administrative body does not act in accordance with those instructions, the administrative control body shall be authorized to suspend the act and to notify the administrative court. There is an Electronic Register of Inspections, which contains data on the annual schedule of administrative inspections, inspections with related records, measures required and actions taken.

In France, the Inspectorate General of Administration (IGA) evaluates the public policies, audits of services and carries out support and advisory missions.

In Italy, the Department for Transparent Administration operates under the Council of Ministers, which reports to the Office for Internal Control, Transparency and Integrity. The Office is the support structure of the political-administrative bodies in the activities of strategic planning, measurement and evaluation of performance and management control. It also contributes to the reporting activities to the Court of Auditors.

In the United States, the institutions responsible for overseeing U.S. departments and agencies are the Offices of Inspectors General. The purpose of the Offices is to hold accountable all persons working in the State apparatus for all specific activities, from the perspective of efficiency and cost-effectiveness of public finances, as well as to prevent, identify, expose and eliminate fraud, waste, corruption, abuse and criminal acts.

In Hungary, the Government Control Office is subordinate to the Government. It mainly carries out control activities with regard to the implementation of the government decisions, the use of European funds, the granting and withdrawal of state guarantees.

(Domşa - coordinator, Coşman, Vasc, *Prime Minister's Administrative Control /Accountability Office – CCPM, "Analysis of the institutions similar to the Prime Minister Control Body from the EU member states and from USA", 2022, CCPM Bucharest*).

6. De lege ferenda

The regulation on the organization and functioning of the Prime Minister's Administrative Control (Accountability) Office could be improved in order to increase its legal role and powers.

Although at the European level, with the exception of Croatia, there is a preference of the legislator rather for a role of prevention, coordination and information of the governmental administrative control offices, according to our opinion the role and powers of this authority should not be limited to those of informing the Prime Minister regarding the controlled facts and of the conclusions which have resulted.

We consider that our national legislator should provide the right of the Prime Minister's Administrative Control (Accountability) Office to request the revocation of administrative acts that may harm the public interest, issued or adopted by the controlled public institutions or authorities, which did not enter the civil circuit or did not produce legal effects, according to art.1 paragraph 8 by the Administrative Litigation Law no.554/2004.

On the other hand, for the administrative acts that entered the civil circuit according to The Administrative Litigation Law no. 554/2004 any subject of public law may bring an application before the administrative courts, under the conditions of this law and of the special laws.

Whereas the legislator links the access to the administrative justice to the compliance with the special rules of the authority addressing the court, we consider it would be useful to provide in the special legislation the possibility of the Accountability Office to request in the administrative contentious court the suspension of the operation or the annulment of the illegal administrative acts of the controlled authorities.

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