TRANSPARENCY OF THE ACTIVITY OF PUBLIC AUTHORITIES – A GUARANTEE OF DEMOCRACY

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Abstract

Democracy is a way of organising the society where people choose their leaders and hold them accountable for their ruling policies and their conduct in office. Democracy is associated with representability, the state of law and the ruling in the interest of the people. In order to keep the directly or indirectly elected ones, as well as all other persons that work „for the people" accountable, their activity and conduct has to be known, has to be transparent. Usually transparency is seen as a request for the activity of the public administration, the executive power. But democracy is protected by all the state's powers. The article analyses the means of ensuring transparency for the activity of those enacting the executive, legislative and judicial functions in Romania. Particular aspects, like the limits of transparency, the link between legal certainty and transparency and the transparency of the public consultation before legislative or executive decisions are discussed.

Keywords: *transparency, democracy, state powers, rule of law, judiciary*
JEL Classification: [K10]

1. Introduction

Our work was inspired by a quote from Abraham Lincoln: „*Democracy is a government of the people, by the people and for the people*".

In the antique Athenian democracy decisions of the city were taken through debates and direct vote. An oversight of public funds and the wealth and incomes of all public figures was established, so that no one would benefit from their public positions (Democracy Web, n.d.). Later on, as the political human communities enlarged, and the political systems gave power to the privileged few, the direct participation of citizens to debate and direct vote were no longer possible. Even so, accountability in government was introduced by Magna Charta in 1215, by forcing the king to accept the basic principle that taxes should not be raised without first consulting his wealthy subjects. The formal frame for modern democracy was set by the American Constitution in 1788. With this act, accountability and transparency broadened, encompassing what leaders owed specifically to the citizens. Normative acts were made public and the public was made aware of the government's actions through the periodic report of the president to the Congress regarding the state

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of the union and information about the national government's expenditures. Nowadays, transparency is seen as a key ingredient to build accountability and trust, necessary for the functioning of democracies (OCDE, n.d.).

Usually, transparency in a democratic regime is associated with the decision-making process of the public administration. But in a real democracy, people must be able to convince themselves if decisions of all state powers are made in their interest and must be able to give their opinion when important decisions that will affect their lives will be taken. So, transparency means to know what is done and why is it done, and it must be accompanied by participation, in order to be accepted by the people who have chosen the representatives. This is what Lincoln's words are about.

The article is analysing how Romanian laws guarantee transparency of the state powers' activities and decisions.

2. Transparency in the decision-making process of the public administration

Law no. 52/2003[1], regarding the transparency of the administration in the decision making process, and Law no. 544/2001[2], regarding the access to public information, regulate transparency of the public administration, framing a right to transparency of people in connection with the decision-making process of the administrative authorities.

The declared aim of Law no. 52/2003 is to enhance the responsibility of the administration towards the citizen, to enhance the participation of citizens in the decision making process and to enhance the transparency for all public administration authorities using public funding (art. 1). One can observe that accountability is not mentioned, as responsibility and accountability are not the same. The principles considered to enable the aim are information, consultation, active participation of the citizens through public debates, recording of the citizen's opinions and publicity of the debates.

The law imposes transparency only for normative acts, as art. 7 states the obligation of the administrative public authority to announce on its site and through local/national media a project for a normative act. People may send objections or amendment proposals that have to be mentioned in a special register. The rejection of the proposals, recommendations or objections must be justified in writing by the public authority. Public debates may be organised by request of a private association or a public authority. There is an obligation of each authority to draw an annual report of transparency of the decision making process, containing the number of recommendations received, recommendations

[1] First published in the Official Gazette of Romania, Part I, no. 70 from February 3rd (2003) and republished with amendments in the Official Gazette of Romania, Part I, no. 749 from December 3rd (2013).

[2] Published in the Official Gazette of Romania, Part I, no. 663 from October 23rd (2001).

included in the normative acts and decisions, the number of public debates, the number of legal actions against it due to lack of transparency (art. 13).

The law has several important flaws. There are no sanctions for the administrative authority if the annual reports are missing. This is why, a research conducted between February 2015 – February 2016 by Academia de Advocacy, a nongovernmental association, proved that only 32% of the normative projects have been submitted to the transparency procedure, the extremes being 70% at ministries level and 17% at city halls from the Muntenia South region (Academia de Advocacy, 2016). This shows that at local level authorities do not know the legal obligations or do not want to be transparent, and there are no sanctions applied by the central competent authorities. Such sanctions could be applied on hierarchical bases, for local authorities that belong to a hierarchy. For local autonomous authorities sanctions could be applied only according to legal dispositions.

Other flaws relate to the lack of obligation to give access to the documentation on which the project of the normative administrative act is based and the short time limit imposed for public consultation: at least 10 days to make objections, proposals or opinions within the 30 working days from the announcement to the adoption of the final form of the act. It is difficult to put up founded objections or critics, or it is difficult to assess the impact of a project of a normative act if there is no access to the documentation that founded the project. An effective participation should be an informed one during a period of time that matches the complexity of the issue. If we look for comparison to the Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters - Aarhus Convention[3], we would find in art. 6 para. 2, letter d), point (iv) that in environmental matters the public concerned shall be informed of the public authority from which relevant information can be obtained and where relevant information has been deposited for examination by the public. The idea of effectiveness of the process is underlined by art. 6 para. 3, stating that the public participations procedures shall include reasonable time-frames for different phases, allowing sufficient time for informing the public in accordance with para. 2 and for the public to prepare and participate effectively during the environmental decision making. Art. 6 para 6 is dedicated to naming the minimal information relevant to the public decision-making that should be available to the public, without prejudice to the right of parties to refuse to disclose certain information according to the same Convention.

Trying to overcome the flaws of the national laws, the nongovernmental organisations proposed guides recommending that all the documents the

[3] The Convention on Access to Information, Public participation in Decision-making and Access to Justice in Environmental Matters was adopted on 25 June (1998) by the EU at the Fourth Ministerial Conference as part of the "Environment for Europe" process, in the Danish city of Aarhus.

proposal for an administrative normative act are based on should be made public at the same time with the project (Dragomirescu, 2009).

Things do not look brighter if we look at the legal remedy possibilities in case the obligations concerning transparency in adopting normative acts are infringed. In the Romanian administrative law an administrative act is affected by absolute nullity for reasons expressly stated by law and in such a case the prejudice is presumed; otherwise, the person who claims the nullity of the administrative act has to prove the prejudice (Fodor, 2017, pp. 425-450). As Law no. 52/2003 attaches no consequences to the lack of transparency, the jurisprudence constantly considered that the administrative normative act adopted in breach of the transparency requirements is null only if prejudice can be demonstrated[4]. Thus, transparency is appreciated as a method of protection, not one for improvement of decisions, as an injury of the public interest in case of infringing dispositions regarding transparency is not recognised.

The courts also considered that there is no obligation to transmit the project to the media if it was posted on the web-site of the administrative authority. Such an interpretation is clearly erroneous, as the law no. 52/2003 demands that the administrative authority should announce a project for a normative act "on its site *and* through local/national media". The announcement through the media considers the fact that it is impossible for any citizen to follow the sites of all national and local administrative authorities in order to observe if there is a normative act prepared that might affect one's life. The media has the role to inform about the preparation of the act, as it is easier to follow the same source in order to find out if there is an initiative of a new normative act coming from any administrative authority. The site of the administrative authority is the one guaranteeing officially the content of the proposal for the normative act. Unfortunately, the jurisprudence shows that courts do not take the need for transparency seriously and affect the very essence of the right.

Law no. 544/2001 regarding the access to public information states that the free access of all persons to any information that is of public interest is one of the fundamental principles of the relation between persons and public authorities, in accordance with the Romanian Constitution and international documents ratified by the Romanian Parliament. Article 5 of the law presents the information that has to be provided *ex officio* by every public authority. Article 2 letter b) defines as being of public interest any information regarding the activities or results from the activity of a public authority, regardless information's support, frame or way of expression. If an information covered by the Law no. 544/2001 is not made public *ex officio*, or the demand for the

[4] See for example Decision no. 3168/(2014) of the High Court of Cassation and Justice, https://legeaz.net/spete-contencios-inalta-curte-iccj-2014/decizia-3168-2014-iq0, accessed at 11.09.2017.

information is refused, an action to court may be filed, to oblige the authority to disclose the information. A statistic provided by Institute for Public Policies proves that in the interval 2005 - 2011, only 34% of the complaints against the refusal of providing information have been admitted; in appeal only 17% of the decisions rejecting the claimants' actions were quashed (Institute for Public Policies, 2011, pp. 30-31). This shows, in our opinion, a poor clarity and predictability of the law regarding the meaning of public information.

As an example, we refer to the solution given in the file no. 2840/117/2007, by the Cluj Court of Appeal (Curtea de Apel Cluj). The plaintiff has asked information regarding the legal status of a piece of land that belonged to the public property of the town Cluj-Napoca. The city hall refused to provide the information. The first instance court considered that information about the legal status of the town public property is public information and obliged the city hall to provide the information to the plaintiff. In appeal (recurs), the Cluj Court of Appeal quashed the decision of the first instance and rejected the plaintiff's request, on the grounds that the interest of the plaintiff to obtain the information is a personal one, as the piece of land belonged to his family before being confiscated by the state and the information was necessary to the plaintiff in the process of claiming it back, according to the restitution laws; thus there is no public interest for the information. In our opinion the judgement of the Cluj Court of Appeal is confusing an interest that may be present and actual for many people at the same time with the right of any person to obtain a piece of information. The latter one corresponds to the definition given by the law. According to this definition, information regarding the public or private property of the state, counties and towns should be regarded as being of public interest. Also, information regarding contracts concluded by public authorities, using public funds, should be public. In this respect, Law 544/2001 was amended by Law no. 188/2007 [5] introducing the obligation of public authorities to give information about the privatisation contracts concluded after the enforcing of the amendment, if the information is not protected under the law.

In our opinion, Law no. 544/2001 should be interpreted in a broader manner, and should not be a barrier for obtaining information regarding one's own interest in connection with the activity of public administration, if the information is not protected under the law.

The fact that transparency, as it is regulated by laws no. 52/2003 and no. 544/2001 is not taken seriously has been noticed at the highest levels, as the Prime-minister of Romania showed in an interview that the monitoring reports regarding the implementation of Law no. 544/2001 show very serious transparency problems: the majority of institutions no longer present the annual report, the sites do not comprise the mandatory information and the

[5] Published in the Official Gazette of Romania, Part I, no. 425 from June 26t^{h} 2007.

requests for the release of public information are treated in a discretionary manner with the intent, sometimes, to make the access to public information difficult (Vasile Dâncu: Avem probleme grave de transparență în instituțiile publice, 2015). Also, a research conducted between February 2015 – February 2016 by Academia de Advocacy proved that only 32% of the normative projects have been submitted to the transparency procedure, the extremes being: 79% at ministries level and 17% at city halls from the Muntenia South region (Academia de Advocacy, 2016, p. 7). However, a new report drafted for the period October 2017 – January 2018 released by the Ministry for Public Consultation and Civic Dialog showed that the county prefects have fulfilled their obligations regarding public information at a medium level of 90.95% (Ministerul Consultării Publice şi Dialogului Social, 2018).

Romanian legislation concerning general rules about the transparency of the activity of public administration regards only the administrative normative acts. Special legislation is sometimes considering informing the person that may be adversely affected by a single-case decision. For example, the Methodology for informing and consulting the public in regard with drawing or revising urban planning, approved by the Order of the Ministry of Regional Development and Tourism no. 2701/2010[6], states that in case a detailed urban plan - DUP (plan urbanistic de detaliu – PUD) is requested by someone, the public administration authorities must notify the owners of the neighbouring parcels, on all sides of the one that generated the DUP, about the intention an the proposals of the documentation leaving at least 15 days for receiving observations or other proposals (art. 42 of the methodology). However, the legal text does not provide access to the whole documentation and usually only basic information are mentioned in the notifications. Also, notifications are made by public display of the request of the intention for obtaining the approval for a DUP, not by sending notifications to the interested persons mentioned by the Methodology, with proof that the notification has been received. So, basically, interested persons may not be aware of the request that may adversely affect them and, except for the basic information, there is no access to the documentation that supports the request.

It is our opinion that not only the decision-making process for administrative normative acts should be transparent, but the decision-making process for single-case decisions too. Comparing legislation of European countries shows that in numerous cases administrative procedure legislation provide, in general, access to the procedure and documents for the person adversely affected by a single-case decision regarding another. The German Administrative Procedure Act (VwVfG) consider that both those making and those opposing an application are part of the procedure, that the authority may *ex officio* or upon request involve as participants those whose legal interests

[6] Published in the Official Gazette of Romania, Part. I, no. 47 from January 19th (2011).

may be affected by the result of proceedings and that participation in the administrative procedure includes the possibility of the participants to inspect the documents connected with the proceedings where knowledge of their contents is necessary in order to assert or defend their legal interests, without impairing the right to secrecy with regard to private and business secrets; the Dutch General Administrative Law Act - GALA states that an interested party - a person whose interest is directly affected by a decision - shall be able to participate in the procedure that will lead to the decision, and this goes for individual decisions too; the Latvian Administrative Procedure Law mentions among the principles of the administrative procedure the principle of observance of the rights of private persons and the fact that a private person whose rights or legal interests may be infringed by the relevant administrative decision may be a third party in administrative proceedings having the possibility to obtain information in connection with an administrative procedure, except for the restricted information under the law; the Italian Administrative Procedure Act (Law 241/1990) states that in case a measure is capable of adversely affect identified or easily identifiable parties other than its direct addressees, the authority shall have the duty to inform them of the beginning of the procedure and that any party having a private interest adversely affected by a measure shall have the right to intervene during the related procedure with a right to inspect the procedure's documents and to present documents and written arguments; the Law on Administrative Procedure of Bosnia and Hertzegovina (2002) shows that a 'party' is not only the person under whose request the procedure has been instigated, or against whom the procedure has been conducted, but also the person who has the right to participate in the procedure in order to protect his rights or legal interests, all parties having the right to inspect case files and transcribe necessary files at their expense, under the supervision of an official (Fodor, 2016, pp. 221-223).

The lack of explicit legislation in Romania regarding access to documentation as a part of transparency in the case of single-case decisions is placing the third party that may be adversely affected by the decision in a position to have as a sole method of protection the access to court. One can contest in court the single-case decision addressed to another, but it will be a "shot in the dark", as one can have access to the documentation supporting the contested decision only as part of the access to the evidence in the file.

The European Charter of Fundamental Rights of the European Union attached to the Treaty of Nice (2000), considers the adversarial principle mentioned in article 41 as forming part of the right to a good administration. Access to the personal file during an investigative procedure (article 41 b) of the Charter of Fundamental Rights of the EU), while respecting the legitimate interests of confidentiality and of professional and business secrecy is part of this right. A report drawn in 2016 by the European Union Agency for Fundamental Rights (FRA) shows that national courts sometimes use the

Charter to grant direct access to an individual right although 2015 data confirm that the Charter is most often used in interpreting national law or EU secondary law, the national courts also sometimes consider the Charter as part of their national laws and the Charter serves as a source of legal principles that can address gaps in national legal systems (FRA, 2016, p. 44). Also, the Association of Councils of States and of Supreme Administrative Jurisdictions (ACA) shows that the article 41 regarding the right to good administration from the Charter has by now been referred to in numerous judgements by administrative courts by EU member states (European Comission, 2013). Considering Romanian legislation, we can thus consider that the Charter provisions regarding access to file and the adversarial principle can fill the gap in the case of investigative procedures.

As mentioned before, access to documents connected to the decision making process of the administration is limited by the need to protect personal data. In this respect, Romanian courts have issued relevant decisions. Decision 37/2015 of the High Court of Cassation and Justice in Appeal on points of law – regarding Law 544/2001, showed that the existence of personal data in an administrative decision does not limit the obligation of transparency of the decisional process and that personal data should be anonymized if they are comprised in the same document with the public information, due to the protection required by the Law 677/2001[7]. Decision 1107/2012 of the Bucharest Court of Appeal (Curtea de Apel Bucureşti) decided that there existed an obligation of the administrative authority to provide documents that lead to the issuing of a Property Title (according to article 12 (4) Law 18/1991[8]) and documents that lead to the issuing of a building permit, as the plaintiff stated that the information is needed for preparation of a civil trial.

Classified information, state secret and duty secret are regulated by Law 182/2002[9]. In this law, duty secret is not actually defined and the nomination of an information as a duty secret is at the will of the institution. Access to documents classified as duty secrets during trial, especially when the secret document is at the core of the trial, was subject of controversy before the courts. The Decision no. 225/2009, of the Cluj Court of Appeal gave priority to the principle of contradictoriality, as part of a fair trial, deciding that duty secret documents should be consulted by the judge and lawyer if they are the key to solving the case. This decision concerned a case where a policeman was contesting a disciplinary sanction and the document containing the conclusions of the preliminary investigation were classified as duty secret. The

[7] The law concerns the protection of personal data and the free circulation of such data and was published in the Official Gazette of Romania, Part. I, no. 790 from December 12th, (2001).
[8] The law on the land property, published in the Official Gazette of Romania, Part I, no. 37 from February 20th 1991 and republished with amendments in the Official Gazette of Romania, Part I, no. 1 from January 5th (1998).
[9] Published in the Official Gazette of Romania, Part I, no. 248 from Aprilie 12th (2002).

view of the court proved to be very broad, as the principles derived from article 6 of the European Convention of Human Rights (the Convention) regarding the fair trial only apply to cases regarding civil rights and obligations or in case of criminal charges. Or, according to the case-law of the European Court of Human Rights (The Court) the only disputes excluded from the scope of article 6 para. 1 were those concerning public servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities, a manifest example of such activities being provided by the armed forces and the police (*Pellegrin v. France*, 1999). However, neither does the Convention or the Court preclude the national courts to consider article 6 para. 1 applicable in such cases, if they find it necessary.

3. Transparency in the legislative process

Consultation regarding the legislative process in case of laws that affect the main social domains is an important issue for democracy, as laws are made for the people. "Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests" considers a report of the Organisation for Economic Co-operation and Development - OECD ((OECD, 2010, p. 71).

In 2014 a project for revising the Constitution of Romania, the most important national legislative act, was drawn. Unfortunately, the 2015 Report of the Commission to the European Parliament and Council regarding the progress of Romania within the mechanism of cooperation and verification found that there is poor consultation regarding the constitutional revision; another flaw of the legislative process regarding transparency was found to be the great number of emergency government ordinances, issued in a procedure that limits the consultation process (European Comission, 2015). Analysing the legislative process of the civil and criminal new codes, as well as the legislation regarding the magistracy, the 2017 Report of the Commission to the European Parliament and Council regarding the progress of Romania within the mechanism of cooperation and verification found that the Parliament had, at that moment, adopted none of the draft amendments proposed by the Government in 2016, which had been the result of broad consultations with the judiciary. It also found that the Ministry of Justice, following several decisions of the Constitutional Court regarding provisions of the criminal code, has started to address this through consultations with the judiciary, legal professions and civil society and the Government has indicated its intent to adopt relevant amendments, but none of the proposed changes have yet translated into legislative amendments "and such delays can result in divergent interpretations". The lack of consultation and mainly the lack of

consideration for the opinions expressed in connection with the criminal code, resulted for example in judicial insecurity due to adverse opinions of the Constitutional Court and the High Court of Cassation and Justice in fundamental matters. The High Court of Cassation and Justice, in Decision no. 2 from April 2014 of the panel for order matters of law in criminal matters, looking into the interpretation of the "more favourable law" concept expressed by article 5 of the Criminal code, decided that the time limitation of criminal liability is an autonomous institution in respect to the institution of criminal punishment. One month later, the Constitutional Court, in Decision no. 265 from May 2014, concluded that the same provisions of article 5 of the Criminal code are in agreement with the Constitution if they do not offer the possibility to combine dispositions from successive laws in finding and applying the more favourable law, meaning that the time limitation of criminal liability cannot be an autonomous institution in respect to the institution of criminal punishment.

We can conclude that the lack of consideration for the observations coming from relevant actors of the society equals a lack of transparency in the legislative process, as the purpose of transparency is to allow people to shape the best form of the law.

4. Transparency regarding justice

Transparency in the judicial procedure is ensured by the principle of the public hearing.

In 2011, in a decision against Romania, the European Court of Human Rights showed that "The public trial is a guarantee of the right to a fair trial, a protection against a secret justice outside of public control" (*AGVPS Bacău v. Romania*, 2011). The Romanian Civil procedure code[10] mentions publicity as one of the fundamental principles of the civil trial, article 17 stating that the trial is public except for the situations mentioned by law. At the same time, article 213 of the code makes the public hearing an exception, as it states that in the first instance, the trial is held in chambers if the law does not provide otherwise. The final arguments, however are presented in a public hearing, if the parties do not prefer the chambers procedure. In appeal (apel), if questions of fact are involved, the hearing will be public, according to article 240 para. 2 of the Civil procedure code.

The European Court for Human Rights decided that to establish whether a trial complies with the requirement of publicity, it is necessary to consider the proceedings as a whole (*Axen v. Germany*, para 28, 1983) and that leave-to-appeal proceedings and proceedings involving only questions of law, as opposed

[10] The new Civil procedure code was adopted by Law no. 134/(2010), published in the Official Gazette of Romania, Part I, no. 485 from July 15th 2010 and republished with amendments in the Official Gazette of Romania, Part I, no. 545 from August 3rd 2012.

to questions of fact, may comply with the requirements of article 6 (*Miller v. Sweden*, para. 30, 2005). The conclusion that has to be drawn is that the first instance trial must be public as a rule, because the appeal can be focused sometimes on facts but most of the times on points of law. Many courts consider that evidence that was not demanded in the first instance may not be demanded in appeal, so, in most of the cases the facts are established in the first instance. Also, the European Court of Human Rights considered that, in the interest of a proper administration of justice, it is normally more expedient that a hearing is organised at first instance rather than only before of the appellate court (*Salomonsson v. Sweden,* 2000), and this also goes for all the stages establishing the facts that are a whole with the hearing. In the first instance, exceptions and objections are risen and evidence is given. The way the courts handle all that has to be public in order for the justice to be seen it is done. The final arguments are only the final stage of a long process that, as the European Court of Human Rights decided, has to be transparent as a whole. Denying the right to a public hearing in the first instance, in the stages prior to the earing of final arguments, is contrary to the transparency needed in the justice system and is a violation of article 6 of the European Convention on Human Rights.

To the transparency of the judicial procedures the publicity of the decisions is also important. The Romanian Ministry of justice has implemented the display of all court solutions on the internet and created the opportunity for displaying the whole decisions in relevant cases, anonymising the personal data[11]. This kind of transparency helps the predictability of law, a condition for the fair trial and democracy based on the rule of law.

Transparency during the trial and regarding the judicial decisions has a strong connection with the accountability of the magistrates in enforcing the law and is a strong pillar in building the public trust in the justice system.

Transparency in the justice system also considered the relation between the courts and the public. Courts, as guarantors of justice, fulfil a fundamental mission in the state of law and need the public trust in order to function according to their mission (Ungur, 2009, p. 12). Since 2004, Law no. 304/2004[12] regarding the organisation of the judiciary, imposed the establishment of the Office for information and public relations that included the relation of the courts with the press. The existence of this office was considered prior to the enactment of law 304/2004, as the Annex to the Government Decision no. 1052/2003[13], „The strategy of judicial reform 2003-2007" mentioned in the section „Justice and civil society" that in the future law regarding the organisation of the judiciary, norms

[11] The legal portal „Portal Just" implemented by the Ministry of Justice provides such information at http://portal.just.ro/SitePages/acasa.aspx.

[12] Published in the Official Gazette of Romania, Part I, no. 576 from June 29th (2004) and republished with amendments in the Official Gazette of Romania, Part I, no. 827 from September 13th (2005).

[13] Published in the Official Gazette of Romania, Part I, no. 649 from September 12th (2003).

regarding the establishing of public relations offices in all courts and prosecutor's offices will be provided in order to ensure the transparency of the judiciary activity (Ungur, 2009, pp. 14-15). Besides answering different petitions of the parties involved in a trial, the main duty of these offices is to inform the press about trials of public interest. The information is covered by the requirements of law 544/2001.

Conclusions

As we have highlighted throughout the paper, democracy is not complete without transparency in respect with all public authorities, no matter if their activities relate to the executive, legislative or judicial function of the state.

We have presented strong arguments that transparency is not limited to problems of public interest, it has also to be present in personal matters. A true transparency of the activity of public administration cannot be achieved if there is no access to the documentation that support a decision, as a real participation to the decision making process must be an informed one. In investigative procedures, the European Charter provisions regarding access to file and the adversarial principle can fill the gap from the national legislation.

In the legislative process, transparency must not only enable the offering of information, but must be used for feedback, otherwise its purpose is not complete.

It is evident from our research that, despite of good will and results, there is still work to be done in order to have efficient mechanisms for transparency in Romania in the legislation process and implementation of legal norms.

*The present article is part of the research project "**Efficiency of legal Norms**" that is carried out during the university years 2012-2018 within the "Dimitrie Cantemir" Christian University of Bucharest, Faculty of Law, Cluj-Napoca.*

Bibliography

1. Academia de Advocacy. (2016) *Transparența decizională la raport.* [Online] Available at: http://advocacy.ro/sites/advocacy.ro/files/files/article/2016-04/02._aprilie_ 2016_ - raport_monitorizare_national_final_0.pdf. [Accessed 17 01 2017].
2. 2. Anon. (2015) Vasile Dâncu: "Avem probleme grave de transparență în instituțiile publice". *România Liberă.*
3. 3. Democracy Web, n.d. *Accountability and Transparecny: History.* [Online] Available at: http://democracyweb.org/accountability-history [Accessed 11 09 2017].
4. Dragomirescu, C. (2009) *Ghidul de organizare a dezbaterilor publice în baza Legii 52/2003.* [Online] Available at: http://coalitia52.ro/sites/default/files/files/file-list/ghid_ explicativ_de_aplicare_a_procedurii_minimale_unitare_in_baza_legii_52_ 2003.pdf [Accessed 11 09 2017].

5. European Comission. (2013) *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2012. Report on the Application of the EU Charter of Fundamental Rights /* COM/2013/0271 final */.* [Online] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013DC0271 [Accessed 23 02 2018].
6. European Comission. (2015) *Report from the Comission to the European Parliament and the Councilon Progress in Romania under the Co-operation and Verification Mechanism COM(2015) 35 final.* [Online] Available at: https://ec.europa.eu/transparency/regdoc /rep/1/2015/EN/1-2015-35-EN-F1-1.PDF [Accessed 22 02 2018].
7. Fodor, E.-M. (2016), "About Three Administrative Procedure Rules from a Human Rights Perspective". *Law Review*, 12, pp. 218-238.
8. Fodor, E.-M. (2017) *Drept administrativ.* Cluj-Napoca: Albastra.
9. FRA. (2016) *Fundamental Rights Report 2016 - EU Charter of Fundamental Rights and its use by Member States.* [Online] Available at: file:/fra-2016-frr-chapter-1-eu-charter-2_en.pdf [Accessed 23 02 2018].
10. Institute for Public Policies. (2011) *Accesul (ne) îngrădit la informaţii de interes public, la 10 ani de la adoptarea legii.* [Online] Available at: https://www.juridice.ro /wp-content/uploads/2012/02/Studiu-544.pdf [Accessed 17 02 2018].
11. Ministerul Consultării Publice şi Dialogului Social. (2018) *Ministrul Gabriel Petrea: Prefecturile au atins gradul de conformare de 90,95 % în ceea ce priveşte publicarea informaţiilor de interes public.* [Online] Available at: http://dialogsocial.gov.ro/ 2018/01/ministrul-gabriel-petrea-prefecturile-au-atins-gradul-de-conformare-de-9095-in-ceea-ce-priveste-publicarea-informatiilor-de-interes-public/ [Accessed 11 01 2018].
12. OCDE, n.d. *Openness and Transparency - Pillars for Democracy, Trust and Progress.* [Online] Available at: http://www.oecd.org/fr/etatsunis/opennessandtransparency-pillarsfordemocracytrustandprogress.htm [Accessed 12 07 2016].
13. OECD (2010) *Better Regulation in Europe: Finland - Transparency Through Consultation and Communication.* [Online] Available at: http://www.oecd.org/gov/ regulatory-policy/45054502.pdf [Accessed 22 02 2018].
14. Ungur, L. (2009) "Biroul de informare şi relaţii publice din structura instanţelor judecătoreşti şi a parchetelor de pe lângă acestea". *Fiat Iustitia*, Issue 2, pp. 8-28.