BOOK REVIEWS


In reviewing the book, I have to begin with the short presentation made by the author on the back cover: “It is not possible to conceive a modern state without a fully articulated system of the administration and a good management of public service, all built to sustain the general interest; this is why it looked only natural to analyse the traditional administrative law concepts from this perspective also.” Although the author is focusing on traditional subjects of the administrative law, such as the structure of public administration, the public servant, the activity of administration, public domain, administrative responsibility and the contentious administrative, a fresh attitude is to be detected as most of the comments are focused on the goal of a good public service. The author provides a good understanding of the system, as many of the comments are proven to be right by new legislative acts or initiatives.

After presenting in chapter one a short introduction on the administrative law and the concept of administration, the second chapter is presenting the structure of public administration in Romania. In presenting the central administration, the author is discussing some decisions of the Romanian Constitutional Court, regarding the possibility of contesting the Presidential Decrees to court and the ministerial responsibility. A comment on the concept of high treason as a special responsibility of the President of Romania leads to a possible interpretation sustained by the author that it is in fact a criminal offence of treason with a special actor. Also, the French constitutional solution, of replacing the high treason with a form of administrative-political sanction is presented. Commenting on Government Decisions, the author points out that these acts must only organise the implementation of laws and may not alter the law. Also, the lack of a Government Decree cannot deprive a law of its legal effects, cannot stop the law to be implemented.

The part concerning local administration refers to local autonomous authorities and decentralised public service, the Prefect and deconcentrated public service. The principles of local administration structure are thoroughly analysed, as well as the relationship between different local authorities or between Government and local authorities. A special attention is given to two problems that have appeared due to continuous and rapid changes in legislation.
One of them is the nature of the function of President of the County Council and the possibility of the Prefect to contest its decisions to court. Strong arguments are presented to sustain the opinion that the President of the County Council was an authority of the local public administration, although the Constitution failed to mention it as such in article no. 122. According to this conclusion, even if both Law No. 215/2001 for local public administration and Law No. 340/2004 for the Institution of the Prefect refer strictly to the possibility of the Prefect to contest in court the acts of Local Councils, Mayors and County Councils, according to Law No. 554/2004, of the contentious administrative, the Prefect can contest to court the acts of all local autonomous administration authorities. If it is agreed that the President of the County Council is an authority of the local autonomous administration, it is obvious that the administrative tutelage of the Prefect is exercised over his Decisions. This logic is sustained recently by a legislation initiative approved by the Legislative Council in October 2010.

Another problem is concerning the competence of appointing the secretary of the territorial administrative unit. Law No. 286/2006 excluded from Law No. 215/2001 the dispositions regarding the fact that the secretary of the territorial administrative unit is appointed by the Prefect. The only remaining dispositions from Law No. 215/2001, on the subject, said that this service is governed by Law No. 188/1999 of the public servant. But, according to this later law, the public servant is appointed by the head of the administrative authority. The secretary of the territorial administrative unit does not belong to a specific authority, he is exercising his duties for the administrative territorial unit and there is no head for this legal person. The Local Council and the Mayor, respective the County Council and the President of the County Council, have equal position and between these authorities there is no subordination. The author is presenting strong arguments to the interpretation of the actual legal frame in the way that the Prefect is still the competent authority to appoint the secretary, to sanction him, or to terminate his service, and not the Mayor, respective the president of the County Council, as these latest authorities would have a conflict of interest in this matter. Recent petitions of large groups of secretaries, addressed to the Government, using the same arguments as a support of their demands for appointing by the Prefect, sustain the author’s point of view.

Chapter four, dedicated to the activity of administration, is another substantial part of the book. Concerning the administrative acts, the author is exploring a field where things are regulated by doctrine and jurisprudence, without general regulation. A good selection of theories and points of view, as
well as jurisprudence, are shaping the rules agreed by a majority of specialists. The part dedicated to public service is highlighting the importance of preserving the general interest in an era dominated by commercialisation of public service. Example of the change of view of the European Union in this respect is strengthening the argument. A fine comparative study on the administration of justice as a public service is closing the chapter. The author also presents the organisation of the judiciary system in Romania, the main legal dispositions that lead to a good justice management, and methods for enhancing the public trust towards justice.

Chapter five deals with the public domain, presenting the actual regulation (Law No. 213/1998), main principles related to public property and methods of achieving public property.

The responsibility in administrative law is the subject of chapter six. The author refers to the responsibility of the administration, emphasizing the difference between the legal systems recognising the difference between public and private law and the ones where such a difference does not exist. The larger part of the chapter refers to the responsibility for breaching administrative law and administrative sanctions. A special attention is given to the subject of contraventions. The penal origin of this form of illicit conduct is highlighted, as well as the characteristics that mirror to this day this origin. Also, the author presents a well substantiated plea for the use of other administrative sanctions, especially with a reparatory or preventive nature.

The last chapter is focused on the contentious administrative. Two of the problems that Law No. 554/2004 has raised in case-law are well pointed out. First, the author sustains the opinion that normative administrative decisions should not be verified through the exception of legality, as the same decision may be found legal by one court and not legal by another, resulting in breaching the principle of equality before the law, which means that the law should be enforced in the same way on everyone. Regarding the possibility of the court of analysing the legality of administrative decisions issued before the enforcement of Law No. 554/2004, the author sustains the legislator’s opinion, the existence of the possibility. The author shows that the exception could be raised before Law 554/2004, when the competence to solve the exception belonged to the court where it was raised. The only change introduced by Law No. 554/2004 was that the competence of solving the exception was transferred to the contentious administrative courts. The intention of the legislator was to legally establish an exception created by case-law and jurisprudence and to ensure a
specialised solving. The interpretation of the High Court of Cassation and Justice, that Article 4 of the law only applies to decisions issued after the enforcing of Law No. 554/2004 is seen as a limitation of previous existing rights.

A systematic presentation of issues and problems concerning the administrative law, as well as a sharp analyse of the concordance of administrative laws with the goal of administrative activity and fundamental citizens’ rights, the book does not resume at students needs but presents opinions useful for those legislating or enforcing the law.

Paul Popovici


The publication at Argonaut Publishing House, in Cluj-Napoca, 2010, of the volume entitled *Children’s Rights. A Theoretical and Applicative Outlook* by Ioana Boldiș is an important editorial event in the specialized literature in our country. The concern with children’s rights has scarcely been represented in books, being a theme mostly approached from the viewpoint of the national legislation or meant only for a limited number of experts.

In the very structuring of this book there took part experts in social assistance, law and psychology, four co-authors being mentioned (Mihaela Bălaj, Adrian Boldiș, Anca Rusu and Andreea Ulici). Their contribution is to be found in chapters five, nine and ten.

The volume opens new outlooks concerning the understanding of children’s rights, trying to draw attention not only upon the theoretical content, but also on the way in which these rights act in everyday life. We may find in it most of the basic concepts of children’s rights, doubled by recent specialized studies, the book being therefore accessible to experts belonging to more than one professional field.

Along 314 pages, the volume is structured in ten chapters, followed by bibliography. The content and quality of the book are accompanied by a clear, rigorous style, bringing together theoretical concepts and practical aspects, thus, building up a bird’s view image upon children’s rights.