

THE REGULATION FOR EUROPEAN CIVIL SERVICE: CONCEPT AND EVOLUTION

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***Abstract:** Since the beginning of construction of European Union, very close relations between Member States were based on the existence of specific institutions to ensure the enforcement of the provisions of the Treaties. In order to ensure continuous and correct operation of the Community institutions, there is a strong demand for a professional group to operate inside and in the name of EU, the European civil service. Considering the civil service regulations in EU countries, there is a dispute between concepts based on the idea of legal status of civil servant and contractual status. The EU civil service status emerged from these two versions, pointing out particular feature which the paper analyzes.*

***Key words:** European civil service, regulation, achievements, demands.*

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1. INTRODUCTION

From the three European Communities (coal, steel and atomic energy) and up to today's united Europe, states the old continent have come a long way and sometimes difficult. It is therefore greater satisfaction today when Europe is on the verge of political integration steps accomplishment. The entry into force of the Treaty of Lisbon removed the division on the three pillars and stated the legal capacity of the European Union as an autonomous legal subject with rights and obligations.

The integration developed in different forms, which conducted eventually to common political and administrative institutions (Onofrei, 2007). Treaty provisions that create the institutional prerogatives to exercise actually power were declared. There is now a comprehensive institutional framework for recognized EU's duties and functions. Union has an autonomous institutional structure, apart from the institutions of the Member States. The functioning of these institutions requires its own body of officials, selected based on their professional skills and performance with a very good knowledge on the relationship among Member States of the Union.

2. THE CONCEPT OF CIVIL SERVICE AT EUROPEAN LEVEL

There are two categories of public officials in EU countries:

- first, are officials working on the Community institutions and can be designated with the title of European officials

- second, there is the body of officials working in each country's own administration.

We note that in this area the general principle of subsidiarity applies. Each Member State is able to govern the body of its own officials in accordance with the requirements of the local legal system. With regard to European officials, the Community institutions are entitled to regulating their legal status.

Considering the civil service regulations in EU countries, there is a dispute between concepts based on the idea of legal status of civil servant (as the Romanian regulation was when first adopted) and contractual status. Between the two possible solutions, the major difference is in the recruitment procedure: it may be conducted within the institutions of public law (as it is the case of legislation adopted in Romania) or in the sphere of private institutions. In this last situation mentioned, the authority of a public official beside a private subject of law is strongly affected.

In EU law, the regulatory framework for civil service was influenced by the adoption by the European Commission White Paper on administrative reform, in March 2000 (Fuerea, 2002). This document highlighted the principles of public administration at European level, focusing on quality of services, official independence, and its liability for all acts committed, efficient and transparent public service provided to citizens. Starting from the idea that harmonization is a process, the question is who holds the control over it and how to do it better (Popescu, 2010). For practical implementation of these principles, The Code of Good Administrative Behavior was adopted on September 13, 2000, designed primarily as a tool for European institutions staff working directly with the public. Furthermore, the code aims at informing citizens of their right to receive quality services, the conditions that must be expected to receive when dealing with the European institutions and their officials.

The above mentioned Code is highly publicized and analyzed in the literature, pointing out the citizen's right to good administration, maximum generality principle that has a multi-talented implication of all government activities.

3. THE PUBLIC SERVICE CONCEPT IN THE EU MEMBER STATES PUBLIC ADMINISTRATION

As the doctrine of national administrative law compares and shows, in each European country are traditions of public service. It is estimated that the first country to adopt a general civil service status is Spain, 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 November 22, 1908 and the Republic of Ireland first civil service law dates from 1922. Netherlands and Belgium have adopted the first law officers in 1929 and the General Regulations of officials of the United Kingdom of Great Britain and Northern Ireland occurs in 1931 (Iorgovan, 2002).

It seems that Germany has a tradition in the civil service since the Middle Ages, for Professor Jacques Ziller appreciate that the first general law codified civil rules was adopted by the national socialist regime in 1937, although there was a Bavarian code of function public since the early nineteenth century, i.e. from 1 July 1806.

German legal paradox is found in France, where civil traditions are far past the Revolution of 1789 and the rooms have discussed parliamentary bills on several occasions (1879, 1885, 1909 etc.), but the first of the Civil Status was only adopted by the Vichy regime (October 1946). Greece adopted the first civil service status in 1951, being inspired from French status in German law and English law of civil service.

Two matters required to be analyzed to assess civil settlement in EU countries:

- a) Which are the categories of officials covered by the statute, and
- b) What is the generality of the rules contained in the respective statute.

In most countries (Belgium, Greece, Spain, France, Ireland, Netherlands, Portugal) the administrative public law status applies to all permanent government, i.e. state, local authorities and independent establishments. This was the situation in Italy, by Decree-Law of the Government Amato, in February 1993.

Rule applying to all state administrative officials is nuanced in terms of temporary staff, not to be confused with those who have part-time. In a second group lies Germany and Luxembourg, where tradition calls for a clear distinction between civil subjects of unilaterally public law regime (*Beaute*), on the one hand, and employees (*Angestellte*) and workers (*Arbeiter*), subject to contractual arrangements, on other. The distinction is based on the intrinsic difference of functions, German law establishing such a hierarchy of public administration staff. The German doctrine considers that only officers may exercise the powers of the public or general interest in the protection functions and the functions it permanent, while the other two categories of staff performing functions of office, administrative or functions ethnic character.

In the UK the difference is made between common law and statutory regime of civil service, the law conceded that the servants (crown servants) are subject to the rules of common law while the civil servant status is the only reserved for the state administration officials (Bercu, 2011). Also, in a particular situation stands Denmark civil service officials: the overwhelming majority of officials are subject to the statutory regime, although in 1969 a contractual reform was circulated in this regard.

4. THE LEGAL FRAMEWORK FOR THE EU INSTITUTIONS PERSONNEL

European Community institutions meet diverse training staff, whose activity is conducted in accordance with the provisions contained in special laws adopted. These civil rights laws emerge a new European law branch. It has acquired as a new autonomy discipline, granted to these rules due to special interest because of the importance of the legal and regulatory framework for the entire activity of the union.

European notion of public office came in the language of each of us, being used in two ways, depending on the context specifically different.

First, in the broadest sense of the term, the European position covers both those invested with public authority working for a European institution or body carries and officials in public administration structures for each of the Member States of the European Union.

In turn, people who work for institutions and bodies are either European officials (in the narrow sense of the term) or contract staff, or self-employment under a contract and are not invested with public authority.

The three initially established communities (European Economic Community, the Coal and Steel Community and the Energy nuclear power) had its own officials, with special legal regulations. Until the entry into force of the merger treaty, there were three categories of civil service rules as European regulations, especially distinct in terms of hierarchy ranks, level of remuneration, pension scheme etc.

Article 24 of the Merging Treaty of the executives of the Communities (1967) imposed a single regulation establishing common staff and community institutions.

Regulation EEC, ECSC and C.E.E.A. no. 259 of February 29, 1968, which has been several times amended, achieved unification of these rules. EC and EURATOM Regulation no. 723 of 22 March 2004 made the latest and most important change. This regulation as further amended and together with other internal texts of the European institutions is known as the Statute, the subtitle "Rules and regulations applicable to officials and other servants of the European Communities."

The narrow definition of European official is found in the art. 1 of the Statute, that states "an official of the communities within the meaning of this statute is any person who has been appointed as provided by this statute, a permanent office in one of the institutions of the Community, written by an act of the authority vested power of appointment of the institution".

The title of Community official is subject to the act of appointment issued by the competent authority. That the legal act of appointment has the following features (Vedinas, 2007):

- It is a unilateral act, which means that at the time of issue, the only party that bound itself is the issuer; the recipient or beneficiary of the act of naming receive obligations only after express acceptance of the office or dignity and after receiving public instrument of appointment;
- It is issued only in consideration of a vacancy that was filled by competition or by obtaining an elective office;
- It is an act of authority, which takes effect only if issued by the competent body or institution under the rules of Community law;
- It gives to the beneficiary or to the official receiver a new legal status, as a legal act of incorporation of rights;
- It is a formal legal document so it must necessarily be present in material form, an official paper or a document that must contain concrete provisions of the act of appointment;
- It necessarily must show the issuer, issue date, vacant position, beneficiary of the act of appointment, date of appointment, the basis and reasons for investing.

Article 5 of the STATUTE classifies the officials into 4 categories: A, B, C and D. In addition to these categories, some more categories are distinguished: interpreters and translators. Officials belonging to the same categories are subject to identical conditions of recruitment and performance of duties. Each category is further divided in degrees, and the degrees are divided in echelons. When issuing the act of appointment,

the powers vested with sworn in must specify the category, grade and considered echelon.

Officials in category A are organized in 8 degrees, grouped into functions or careers. In turn, functions or careers are subdivided into two echelons gradations or so in 16 subcategories of officials. To occupy these positions, mandatory rules of EU law require diploma from the university and any higher diploma is an asset of the candidate to access the civil service vacant position (Calinoiu, 1999). Officials from class A are in steering positions. Thus, CEOs are appointed to A1 or A2, executives and heads of division are appointed in A3.

Category B consists of five degrees, grouped in careers or functions, each of which is conducted on two echelons. Officials of B correspond to the positions and employment application, which requires knowledge of secondary education level (owner of final diploma from high school). Category B includes those who receive and analyze information necessary for policy or the Union, or to supervise and make that legislation, at present approximately 2892 positions.

Category C contains five degrees, divided in two echelons each. In this category, there are the officials that graduated secondary education or have equivalent professional experience performing the tasks of secretariat, archive or other permanent administrative activities. The number of officials in the category C is twice the number of officials from category B.

Category D groups together only 4 degrees and it consists of officials engaged in activities involving physical labor. Minimum level of training for staff in this category is primary education, possibly supplemented by a series of technical knowledge, the particular business requirements of the job concerned. In this category are found usually officials for guard activities, courier service staff, etc.

In addition to staff working for agencies or EU institution having the status of civil servants, there are many people working under employment contract or cooperation agreement, designated by the name contractual staff.

The contractual agent is different from the official working under the statute provisions, as the contractual agent is not legally entitled to develop a career, is not stable in the position once held, and does not acquired many of the rights contained in the statute. Contractual staff may benefit from the provisions of the statute only in exceptional situations; otherwise their situation is governed by rules applicable to the labor contract. These employees, working under a contract based on a private contract, are not directly involved in public service. They are not invested with public authority in carrying out their activities; therefore they do not enjoy the same protection as civil service rights.

Among EU staff working under private law contract, there are two categories: contract staff serving different EU institutions or bodies from their permanent location and representatives in particular region. Contractual employees to serve a representative of the EU in a Member State or a member of the Union, or staff to carry out certain tasks of the EU at the local level are included in this category. Such persons only receive their payment from EU sources, but their entire activity is conducted according to rules of law of the State in which they operate. Moreover, if the disputes on the activities of staff

under the STATUTE are competent to be solved by the European Court of Justice (mainly by the Civil Service Tribunal), litigations involving local law contractual staff are to be solved by the local courts. There have been cases of misusing the name of auxiliary position, although the person assigned to carry out permanent activity after a period of time. In these cases, judges of the European Court of Justice proceeded to re-contract, changing the name used for that function to the objective position title that was in fact occupied (see also ECJ, 01/02/1979, Desharmes, Aff.17/87, Rec. 189).

5. CONCLUSION

Although started in the specific national conditions, regulations and legislation on civil service function soon converged to common values and principles that have emerged since the second half of last century which today we call European civil law. To distinguish the EU civil service, in the narrow sense of the term, we should bear in mind that the activity of contractual staff always must be circumscribed to one of the following three situations. First, they conduct EU activities temporarily, for instance when occupying the position of a person who has a temporary post but for which the holder is unavailable for a period of time. Second, they conduct a support activity to current activity of civil service. Third, they may have the position of professional counselors for EU institutions, because the specialized staff in a particular field is missing. If the EU interests require skills and competence in a certain time, the persons having this temporary and specific mission will act as contractual staff of private law or under a contract of counseling (expert advice).

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