

# THE PRINCIPLES OF THE EUROPEAN PUBLIC SERVICES' LAW

**Mihaela Tofan**

"Alexandru Ioan Cuza" University, Iasi

**Ana-Maria Bercu**

"Alexandru Ioan Cuza" University, Iasi

**Abstract:** *European civil service law has emerged as an independent law branch relatively recently. At the EU level there were three categories of rules that regulate the public employees' activity, according to the treaty type that established one of the top three communities (ECSC, EEC, EURATOM). Following legislative changes that occurred in 1968, it was made a unification of these provisions, resulting in a common law text for all the officials, known as The Status.*

*Statutory provisions within the field recognize the law principles common to the entire Community law, such as the principle of subsidiarity, but also a number of new principles, based on this area of research, such as officials business efficiency principle, function stability principle, etc.. Romanian legislation, although relatively new comparing the laws of other states, has taken over many of these principles, being aligned with union provisions in this field.*

**Keywords:** community law, public service, regulation, legal framework, democracy, law principle

**JEL Classification:** E02, H11, E61

The Principles of the European Public Services' Law are the guiding lines that rule the whole activity of the European public servants and which must be taken into consideration when someone try to understand any legal document, drawn by an institution or an European organism.

These principles are, on one hand, the same for all the parts of the European Law (such as the subsidiarity, the equality and the non-discrimination principle). On the other hand, there are some particular principles that are applied only to the European public services (such as the public evaluation principle and the territorial spreading).

Although the legislation for the public servants activity appeared in every country in its own particular conditions, the rules regarding the public services convert to mutual values, starting with the second half of the past century. In this manner the European public services' law was born as a new legal discipline of study and also new domain of legislation for the European institution.

Before The fusion treaty, there were three different systems of rules for the European public services, one for each of the European communities. These systems were different as hierarchy, salary level, rights and liabilities also. Article 24 from the treaty of fusion for the communitarian executives (1967) imposed the consolidation of the public services legislation, adopting in this respect a unique regulation for the communitarian institutions' personal

The unification took place once the Reglement CEE CECA and CEEA no. 259 from the 29<sup>th</sup> of February 1968 was adopted. This regulation suffered much modification, the most important being done through the Reglement CE and EURATOM no. 723 from the 22<sup>nd</sup> of March 2004. This reglement, together with the internal rules for the European institutions, is known under the title STATUS – “Reglement’s and rules applied for the public servants and agents of the European Communities.”(Călinoiu și Vedinaș, 1999, p. 12)

In European democracy, the public servants recruitment is one of the major priorities for the institutions. The process of selection is realized taken into consideration the following principles:

## **1. THE EQUAL ACCESS PRINCIPLE**

This is a general principle for all contemporary legal frameworks, all the juridical disciplines being preoccupied to respect the equality between persons, as we all are equal and we have equal rights.

The equal access principles is stated in the Declaration of man’s and citizens’ rights from 1789 and it is restated in article 21 from The Universal Declaration of Human’s rights, in the following text: “all the persons have the right to accede, in equal conditions, to public services in their country”. In this manner, it is forbidden to establish discrimination criteria, based on sex, religion, race or opinion. The only possible limitations are referring to nationality, morality, age and physic abilities.

All the constitutions from the European Union establish the principle of equality in front of the law, excepting Denmark’s and Republic of Ireland’s constitution. In these two cases the principle is present in other very important internal laws, which complete the constitutional rules.

The equality in acceding to a public service must be understand as the same treatment for all the individuals who want a public job or mission, each state being obliged to draw special condition to accede to a public service, without affecting the general principle.

The constitution of Spain has one of the most successful manners of establishing the principle of free and equal access to a public service. The specialists consider that Spain has one of

the most competitive constitutions of the moment, because it had as a mother the France Constitution from 1958 and as grandmother the German Constitution from 1949.<sup>4</sup>

The same condition for access into a public service must be understood, on a juridical level, as a perfect identity of demands and chance for all the persons who applied for the job. Only the persons who respect all the conditions may enter into the public evaluation procedures, and the best of them shall win.

In Romania, this principle is considered as a derivation from the principle of equality in rights for all the citizens, and it is expressly stated in the law of the Public servants' status.

## 2. PUBLIC EVALUATION PRINCIPLE

The principle of free access to the public function and the principle of public evaluation are at the same time complementary and contradictory. All the constitutions of the member states of the European Union state the principle of equality in front of the law and a large majority of them state the principle of equal access to public functions (excepting Denmark and Republic of Ireland, who state this principle in a special law). Furthermore, all the national legislation in European Union establish the principle of occupying the public function after a public evaluation, and also a minimum level of conditions to respect even before the start of the competition. The equality of access is more a politic and moral demand than a condition imposed through technical and juridical methods.

France and Spain are countries that chose to recruitment after a public evaluation for all the jobs in the public sector, excepting the functions that demand a political nominalization. In France there is the well-known school that prepares specialists in the public sector (Ecole National d'Administration), school that insures the selection of top- public servants and the continuous forming for them, in order to occupy the key position in the public sector. The admission to this school and the further procedures of selection for important jobs in the higher administrative sector are very severe.

The procedure of public evaluation responds to the following major tasks:

- correct evaluation of the candidates' abilities;
- It stands for the independence and the objectivity of the ones that do the selection.

Italy also respects this principle, but it is applied in a less number of situations, such as diplomacy and ministrations sectors. In the Great Britain and Belgium the evaluation of candidates'

---

<sup>4</sup> It is considered that Spain has one of the most well done constitutions in the world, see for that opinion Antonie Iorgovan, „Tratat de drept administrativ”, vol. I, Editura Allbeck, București, 2002., p. 574

abilities is done by the independent organisms. In Germany, the candidates must attend an educational program of continuously forming. Germany and France consider the public function as an independent force that insures the continuity of the state power and authority. He/she actions as a mediator between state and society and stands for respect of public interest.

In Romania, the recruitment and the promoting of public servants is reglemented in the Status of public servant; the article 4 of this law establish both the principle of free access to the public service and the principle of occupying the public function only on competence condition. The Govern decision no. 1098 from 2001 establishes the procedures of organising the public evaluation, consisting in a written exam and an interview. The final mark must be minimum 7 out of 10.

A good mark in public evaluation is not a guarantee for occupying the job, but the scores are in a data-base and they are available to selection procedures for many years, if the others conditions are respected by the candidate. (Jacgue, 2004, p. 184)

In France, there are four conditions to respect if a public evaluation is organized:

- first, there must be a vacant job or position;
- second, an independent jury is required, and the independence must be shown both towards political power and towards the chiefs of the services where the vacant job appeared;
- an hierarchy of the candidates, according to the scored obtained during the public evaluation procedures;
- Obligation for the authority to respect the hierarchy established by the jury.(Iorgovan, 2002, p. 588)

In Germany, the exam that verifies the theoretical knowledge is followed by stages of activity in the job sector, but in Great Britain and the Republic of Ireland the public evaluation generated no legal conflicts at all. Spain, Luxembourg and Belgium use the public evaluation consisting in theoretical tests only, while in Italy and in Portugal the practical abilities prevail.

### **3. THE PRINCIPLE OF INDEPENDENCE**

This principle is regulated in the motivation for Reglement of the Council CEE, EURATOM and CECA no. 259/1968 and it is restated in many of the internal rules of the communitarian institutions.

The principle of independence considers that a public servant of any communitarian institutions is not a servant of the state whose citizenship he or she first beholds, but he or she must

act only with the purpose of the communitarian goals, as a European citizen. So, for example, the members of the Governors Council in the European Central Bank must act independently and not as a representative of his/ hers own country, in all the monetary decision for the euro zone.

This principle should be respected despite the fact that 12 out of the 18 members of the Council are the representative of the central banks and, normally, they might be tempted to act according to their state goals.

The independence of the public servant does not mean the denial of the authority extended on him or her by the institution he or she works for.

#### **4. THE PRINCIPLE OF COMPETENCE**

The principle of competence may be analyzed in a double perspective:

- first, the competence may be regarded as an internal element of the public service, that is the legitimate right of the public servant to do a certain job and to has at his disposal a certain authority;
- Second, the principle of competence refers to the liability of the public servant to prove higher professional and moral qualities, according to the job profile and the mission he is responsible for.

We consider that the principle of competence is applied in the European law in its both meaning detailed above, the activity of the public servants in the community taking place in the limits described by the legal framework and the moral and professional abilities.

#### **5. THE PRINCIPLE OF RENTABILITY**

For the public servants' activity, this principle has a powerful practical meaning, expressed in periodical evaluation that is applied for the public servant activities. The particular mission the public servant has to accomplish supposes a professional career, in sense of the obligation to do things better each day, to respond to the job demands properly and to realize the quality parameters required by the public service.

If the job tasks are realized in a positive manner, the public servant career will develop starting with his/her promotion to a higher level of responsibility and of rights.

## **6. THE PRINCIPLE OF INTEGRITY**

The public servant integrity is in connection with his/her level of morality, reflected in the way that the public servant respects the good behaviour rules, the ethics and the good intention in the relationship at work. The public servant abilities must reflect the way that the person occupying the job respects the public authority invested in him/her, but also the obligation to respect the person for whom he is working.

The integrity of the public servant is regarded first of all as a general obligation not to do anything against ethics and moral values, but also as a particular obligation not to do facts considered by the penal law as corruption crimes.

In order to express better the obligation of integrity, the European Commission adopted a Good Behaviour Code, which is present in the Romanian legislation too (see in that respect the Law no. 7 from 2004).

## **7. THE PRINCIPLE OF TERRITORIAL SPREADING**

The principle of territorial spreading of the public servants has the meaning of occupying the jobs in the European administration, as well as possible, taking into consideration the criterion of proportional representation for all the geographic area, according to the number of citizen that are in that area. At the European institutional level, the member states should be as well as possible represented. This demands the rule that the employees to have roots from all the geographic area.

This principle was the motive for opening the selection procedure to hire Romanian citizens in the European administration, as Romanian population is up to 22.7 million habitants. This amount justifies a large number of public servants in the communitarian institution from our country.

## **8. THE PRINCIPLE OF OFFERING TO THE PUBLIC SERVANT ALL THE MEANS AND METHODS REQUIRED IN ORDER TO ACCOMPLISH IN GOOD CONDITION HIS JOB GOALS**

This principle completes the principle of integrity, independency, competency and rentability of the public servant, in order to offer a particular framework for the European public service.

The application into practice for this principle insures all the rights that are necessary for each category of the public servants to reach the tasks of the mission they are invested with and the goals of the job they occupy.

The regulation of the rights for the communitarian public servants reflects this principle, deeply debated in the Public service law documents.

## **9. THE PRINCIPLE OF STABILITY IN THE PUBLIC SERVICE**

If we speak about the legislation of the member states of the European Union, we find a special concern for the right to a career in the public administration. This right requires, first of all, stability in the job, reflected under various forms.

Some categories of public servants, in the widest meaning of the term, have the privilege of immovability in the job (for example, the magistrates in France). In Germany also, the public servants are usually appointed to the job for lifetime (Amstellung auf Lebenszeit).

One of the essential characteristics of public service, in countries with real democratic governments, is stability. In this respect, the public servant is not a changing person in a position, but a permanent figure for the good or bad life of the community. The stability of the public servant is a logic consequence for the continuity of the public service, even if the public service has an objective existence, beyond the person that occupies the job. Of course, we refer to the juridical meaning of the problem, and not to the real motivation that could demands in a certain moment the changing of a person or the reform of the whole public authority we discuss about.

All the countries that are members of the European Union use the system of career or the system of employment in the public administration (system de carrière et système d'emploi) but the principle of stability is applied only in the first case.

The career system demands a form of constant appreciation of the public servant activity, or certain rights of the public servant towards his professional development. The right to a fair career involves the right to be promoted, of course, if certain conditions are respected.

Unfortunately, in Romanian law the legal framework for a right to a career in the public sector is confronted with difficulties. The indirect goal to change the whole public administration personnel with the occasion of new election created very inventive methods to ignore the legal constraints that protected stability.

Despite these disfunctionalities, the Romanian legal framework is not dramatically different from the criteria imposed by the concept "public servant career". The Romanian law establishes a

hierarchy of the jobs in the public administration and gives certain guarantees that the person that work in that field will go on in higher position every 3 years, if some conditions are respected.

The recent changes in the “prefect” status transform this category of public servants in a professional corpus. The principle of stability on the job is in this manner more protected.

## REFERENCES

- Călinoiu, C., Vedinaș, V. (1999), *Teoria funcției publice comunitare*, Editura Lumina Lex, București.
- Iorgovan, A. (2002), *Tratat de drept administrativ*, vol. I, Editura Allbeck, București.
- Jacque, J.P. (2004), *Droit institutionnel de l'Union Européenne*, 3e Edition, Cours Dalloz, Paris.  
[www.europa.int](http://www.europa.int).