INFLUENCE OF THE PUBLIC DEVELOPMENT AND CULTURAL CHANGES ON THE LEGISLATION IN TERMS OF FUNCTIONING AND STATUE OF PUBLIC ADMINISTRATION IN BULGARIA

The article are issues related to the making and application of legal norms in Bulgaria for the period between 1991 and 2010. The field of article is the norms regulating the right for legislative initiative, the making of legal texts and the guarantee of their objective application from the perspective of the Civil Service Law.

The thesis discusses that the successful normative regulation must concern a wide range of possibilities for legislative initiative, highly professional units that constantly evaluate the influence the legal norms as well as the firm introduction of state administration without a party membership.

Key words: public development, cultural changes, legal norms, administrative process, legal system.

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Problem definition. Public management has developed dynamically within the last century as it has been significantly influenced by the changes made in the political system/ including the expanded voting right and hence reaching absolute completeness, namely to vote and be elected/ as well as the changes made in social aspect, cultural dynamics and the boom of information technologies.

In the mean time former communist countries are facing an additional pressure, which can be also defined as a public phenomenon. A number of social rights were put in practice during the regime in such countries, for instance the right for education free of charge/ including higher education /, free healthcare/ including dental medicine/, the right for social security and pensions that guaranteed proper life to those who
had it. Simultaneously these societies were devoid of political rights in the classic sense of the word: the right for political plurality, the right for active involvement in the governance, the right for inviolability of the correspondence, the right for private property, etc. The year 1989 turned down the already established political system but also evoked a real drama. A large number of the population, mainly those at the age of 40-50 found democratic changes senseless and disastrous. The citizens gained full human and political rights in terms of legislation but fully lost all the social rights they had in real. The administration in Bulgaria faced severe requirements for reforms:

- The frameworks, which were applicable for the administration, were publicly execrated and rejected by the legislation
- The country was influenced by the world ideas and tendencies for reform in public management and New Public Management theories.
- Bulgaria was challenged to join and become a member state of the EU which was closely related to the requirement to adapt its administrative system to those of the EU member states

Public administration was put to the test again in conditions of world economic crisis. Thus the aforementioned highlights raise the question for discussion what public welfare is and if the entities that earn money are willing to give a certain amount of it to those who don’t, as well as the question to what extend the money-makers are willing to agree with this or in other words to get involved in public agreement reaffirming that giving their money for social activities they serve their personal interests.

**Goal of research.** The aim of the current studies will be to analyze the influence of public changes and political platforms on the legislation related to the public sector and what the extent of interrelation between them is.

Key findings of the research.

«What cannot be understood cannot be wisely managed»

John Dewey

The above quotation will be the milestone of the present survey with reference to a need to sign enactments that are adequate with the Bulgarian origin, historical development and, last but not least, with public attitude and the possibility of its adoption and application.

The changes result in problems that can be summarized in several groups: a dramatic decline in the quality of the newly made legal norms compared to those made in the 70ies and 80ies of the XX century; a lack of legal, and more precisely, procedural mechanisms that will lead to the successful application of the new legal norms and the realization of the aimed result; this unconsidered coinage of European norms to our interior legislation does not work (this is a problem typical not only for Bulgaria but also for most EU country members; that is why the European Committee exchanges the formal method of receiving community norms with the Open coordination method, with which the leading argument is not the coinage of norms but the ambition to assimilate with others, and even be better than them.

The need to sign enactments will be discussed from the point of view of Public Administration and, more precisely – the issue of the right of legislative initiation as well as that of the civil service.

A rapid restructuring of the active legislative frame is multitudinously needed in the contemporary Bulgarian history, together with the introduction of new institutional mechanisms to shape policies, as well as control methods of the public sector. Since the 90s of the past century, the pursuit to depoliticize the legislative norms as well as the legislative theory has been clearly emphasized. The preparation for the EU admission and the admission itself, necessitated the transposition of numerous European norms in our internal legislation. However, at the time of its writing and passing, the national normative text bears the features of the present political management. This connotation is clearly differentiated with the interpretation of the most recent Bulgarian law, especially that regulating the civil service, privatization and restitution processes. Thus, we face the hardship to make legal norms to manage and regulate a society of a mixed culture (what the Bulgarian is) combining different legal systems. If we consider Joseph Raz’s argument that «the compatibility of legal systems depends on the level of their controversy «then the investigation of these controversies in the Bulgarian legal system, related to the national, institutional and normative traditions, established at the end of the 19th till the mid 20th century, with the socialist period as well as with the adaptation of our legal system with that of Europe, will help reduce the differences and increase the efficiency of the legal system.

Here we are to clarify that the present study differentiates between the notions of «politisation» and «partisation». Undoubtedly, the legal norm cannot be apolitical. Politicians are legitimate to make and change the norm. A characteristic feature of developed democratic societies is that there is a consensus on values that has to be observed and preserved. The
change of the political elite does not change the society values; on the contrary, it subordinates the country management to them. The country management in post-socialist countries, however, characterizes itself with superficial politisation of the legislative process, a politisation that reaches partying levels, which leads to discrete party-like lawmaking. Additionally, it contradicts a rational ruling.

The next note to make at the very start of the present survey is related to the stability of the legal systems. Any legal system is unique for its home country. That is especially typical for the Continental Law. It is conservative when it comes to public changes. Therefore, the law reflects society values rather than creates them. That is why the system is slow to change. With the research of the problems of lawmaking and legal regulations, the theory reflects three major moments with regard to the legal system: firstly, the definition of the object, the means and mechanisms of the legal regulation; secondly come the procedures and the related problems about the making and passing of normative acts and thirdly, the issues related with the judicial technique1. The mere notion of «legal system» is theoretically defined as an agreement and interaction of all elements regulating the behavior of law subjects2.

A possible explanation can be ascribed to the influence of the political parties over public processes (a deportment typical not only for Bulgaria, but also established as a worldwide tendency). On the ground of this influence «the representative management itself exits as the management of the parties; a common predisposition that is exhibited among milty- and single-party regimes.»3 Should we accept the theory-stated understanding that the focal point of the political process is altered from the facere legem to the political decision-making, which forms the objectives of the management4, on the one hand, and the abstract legislative norms are set by the political power represented by the body of legislation (in Bulgaria this is the National Assembly), then we can simply conclude that the establishment of regulations in Bulgaria does not keep pace with the world tendency, and that the norm-establishing process is strongly political.

On the other hand, the realization of a modern state requires the existence of a modern elite and a modern citizen. If we assume (in the present survey we do assume it) that «the modern citizen is ready to delegate their will; what is more, without delegating their will, the existence of the modern citizen is unthinkable»5, then who and how practically establishes the norm6. The theory behind the citizens' remoteness of the law establishment is ascribed to their trust in the state as a whole, as well as the established institutions, which are to guarantee everybody's rights and liberty. 7 Purely judicially, it seems to me that this delegated trust refers to the realization of policies rather than their formation. Meanwhile, the statistics indicates a worldwide decline in the public trust in the government, the state institutions and public sector.8 The relevance of the issue to make the legislative initiative possible stems, in this case, from the formation of judicial norms as one of the tangibility of realized politics.

A characteristic feature of our political and legal systems is that the politisation of the judicial process is constitutionally guaranteed. The symbiosis is reinforced, unlike other European countries, where means of wide and direct civil participation in the management are actively sought after; the possibilities to participate with judicial initiative are also expanded. The argument for strong politisation of the established judicial process can be proved with a succinct overview of the constitutional texts from the time of the Liberation till now, which execute the right of judicial initiative9.

The Tarnovo Constitution gives the right for judicial initiative to the Prince, the National Assembly (article 108), the Government as well as to each deputy, if only their initiative or bill is signed by j of the attending deputies (article 109). The 1947 Constitution recurs the tradition for restricted terms for the right of judicial initiative; it authorises merely the Government and the deputies, as the latter are to

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2 This definition is almost entirely coined by Rossen Tashev's definition published in his book Theory of the legal system, page 127. There the author denoted regulation with reference to people. I find it right to expand the definition and include all legal subjects, i.e physical and legal bodies (author's notes).
6 The term norm denotes a legislative text in the sense of the law of positivism; legislative/judicial positivism.
7 Todorov, A.
8 Demke.
9 The right for judicial initiative of the citizens is one of the three criteria featuring the existence of actual democracy; the other two are conditions that guarantee real possibilities to make decisions by means of referendum and judicially regulated opportunity for the voters to preliminary withdraw National Assembly Deputies as well as Municipal Councillors.
exercise their right only if their bill is signed by 1/5 of the overall number of deputies (article 23). The 1971 Constitution dramatically expands the number of subjects authorized for judicial initiative. These are the Council of State, the Council of Ministers, permanent Committees of the National Assembly, the deputies, the Supreme Court, the Prosecutor General as well as public organizations like the National Council of Fatherland Front, the Central Council of Professional Unions and the Board of the Central Cooperative Union – about issues concerning their activities (article 80). The Law of Normative Acts further develops this idea stating that any organ that has the right for judicial initiatives has also the right to initiate to enact a normative act. The present Bulgarian Constitution again limits the number of subjects authorized to initiate judicially and lapses the normative regulation 100 years ago, authorizing only the Council of Ministers and each deputy. Thus, a constitutional text, being self-defined as democratic about numerous regulations, fuses both the political and legislative processes and ignores the participation of interest groups, which are not parliamentary represented, in the latter.

Both the legislative and the administrative systems are stable and they slowly change even when the external reality necessitates a faster pace. This justifies the fact that all legislatively coined ideas are slowly transformed into successful national legislative norms. To do this, one has to make them Bulgarian-like, that is to relate them to the established administrative-legal system and culture. Despite initiating ideas and products initially produced by western societies, the term «Bulgarian-like» connotes positive shades of meaning in the present research. The problems related to the adoption of foreign legislative norms and constitutions are relevant especially in view with Bulgaria’s EU admission. To relate our national legislation with acquis communautaire, several judicial techniques are employed. First, the direct enactment of EU contracts is ascertained as much as this is necessary for the functioning of the common market and the community. The most frequently used legal act in this respect is the Council-of-Europe directives whose incorporation in the legislative system of the member countries is a must. To establish administration compatible with European practices requires the settling of a depoliticized civil service. Vihar Kiskinov’s understanding supports the above reasoning, i.e. «the legal system is «normatively closed»», because law is made by legal norms not by the environment. The legal system is «cognitively open» in terms of its environment as it is capable of selecting external information and thus, adjusting to environmental changes.12

Meanwhile, the problems related to the establishment and enforcement of new legal acts compatible with the present active legal system, are stipulated by the existence of administrative-legal norms and standards, established both between 1879–1950 and the socialist period 1944–1989.

The Labour code, 1951 from the socialist period (1947–1989) erases the trials to enforce the dichotomy between politicians and administration – a dichotomy established and enforced for half a century alone. In that period, the Bulgarian legal doctrine and lawmaking are strongly influenced by the Soviet law science, which is heavily ideological. The study of Marx is predominant and the postulate for primary economy in terms of legislation is defined by theoreticians as unappeasable. It is stated that the historical materialism is the starting point for all public occurrences, law included; this is defined not only as a negative aspect, but also as a possibility «to search integrated and summative notions for law- scientific creativity in the frames of the monolithic philosophical base».13 According to Marx’s Engels’ and Lenin’s philosophy, the social structure of the community comprises an economic basis and superstructure, being a combination of political, legal and religious institutions, as well as all moral, esthetic and philosophical ideas stemming from them. What challenges science is the fact that the historical materialism flopped in its economic philosophy – at basis level, whereas the superstructure is still publicly supported as far as the moral, esthetic and philosophical ideas are concerned. The socialist legal theories of the mid-80ies, as well as the western ones, establish the system as the most vital characteristic of law.14 The regime leaves its lasting mark in relation to the state – as property and resource, as well as service, in its favor: «The organized party-state symbiosis between nomenclature selection and total control over resources enabled and organized official corruption of social layers, persons and spirit.»15 Such established attitudes continue to define public opinion

12 Kiskinov, V. «Legal system: ontology and methodology», Sv. Kliment Ohridski, 23006, p. 84.
14 Kiskinov, V, p 81.
15 Avramov, R., ibid, p. 123.
today as regards civil servants as physical bodies that realize sinecure, or better to say, obstruct public development rather than to be its constructive.

The civil service politisation is rooted in the Bulgarian reality as well as public attitude towards it. The Civil Servants Act (1922) will turn there requirements into a high-quality normative text, pointing that civil servants cannot be owners, publishers or editors of politically-oriented newspapers and magazines, not to participate actively in political party propaganda or manifestations.

As stated above, the 1951 Labour Code terminated the privileged status of civil servants, equating workers labour with that of servants making compulsory the ethics and morale approved in the Bulgarian Communist Party Statute. In general, all communist supporters, irrespective of their being or not party members, are to adopt ethical and moralistic conduct set in the statue of the party. For centuries, these rules and principles have established a different morale and entirely altered the long-developed values to serve the society and to achieve political neutrality. The pyramid of values, valid for the state administration does not serve the society but the party, as the public interest would not be different from that of the party. Moreover, the political and public lives entirely overlap. The discrepancy between ethical and moral standards, as well as corruption practices is not new for the Bulgarian reality. During the socialist period they were just transformed, leaving dramatic traces in the contemporary Bulgarian political administrative culture and environment. «The communism altered the corruption regime. After the initial brutal robbery and arrangement of social layers, for the bigger part of the society it allowed the best «filed» and transparent method of corruption that has ever existed in the country.»16

The jurisprudence of the period accepts that any labour-legal relation can be once terminated by the administration/organization unilaterally, when an individual is inadequate. Inadequacy can be:

a) Business – lack of labour qualities or dexterity, inability, or others;

b) Political – unsuitable political orientation in cases when it is vital to accomplish properly the assigned tasks;

c) Law – lack of set educational or professional qualifications to take the respective position.17

In 1999 under article 116, paragraph 2 of the Constitution as part of the state administration reform, and with view of the forthcoming EU membership of Bulgaria, the Civil Servant Act was passed. The act reintroduces the established distinctions, before the period of socialism, between the employment in the public and private sectors. Law enforcement, having been passed, as well as its alterations and text changes throughout the years, demonstrates a trial to achieve the unachievable, combining as a whole law regulations that adequately solve public relations, in accordance to EU requirements and serving conjuncture political interests.

Indisputably the act is passed as part of a reform to reflect European traditions and practices in the civil service. To establish an adequate administration is a compulsory condition to realize community policies. The signed European treaty to associate European Communities and their member countries on the one hand, and the Republic of Bulgaria on the other18, as well as the introduced requirements in Chapter III of the «Approximation of Legislation». Of the statutory with the European norms, a more conservative variant is selected defined as «career system»19. This legislative choice is in compliance with the established regime of Bulgarian civil service till 1952. As regards the unification of the Labour Law with the norms of the Community Legislation, a number of norms are transposed like Directive 96/34/EC about the framework agreement on parental leave made between Union of Industrial and Employer's Confederation of Europe (UNICE) and European Trade Union Confederation (ETUC). The directive is transposed with the Civil Servant Law Expansion (renewed OSG, issue 70 from 10th August, 2004, in force since 1st April, 2004) in article 63 «Social Insurance Leave».

In 2006 a practice was introduced to select junior experts via a centralized competition, applied by European Personnel Selection Office (ESPO)20 renewed OSG 24/21st March, 2006 – article 10e «Centralized Competitions». The procedure is justified by the possibility to shortlist young, well-qualified people, willing to work in the State Administration. The list is indicative and handy for EPSO rather than obligatory. The Administration management decides whether to appoint a short listed employee, or to conduct a competition.21 Civil servants' internal mobility is also coined – «Transfer

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16 Avramov, R. – ibid, p. 123.
19 See Bosser,D and Demke Kr «Civil Service in Candidate-Member EU Countries» – NBU, 2003.
21 Reasons for the Civil Servant Law Expansion Project (№602-01-2 from 10th January, 2006).
to another civil service position in another administration» article 81a as well as «A temporary transfer to another administration», article 81b. The change has been envisaged in the Civil Servant Law Expansion Project since the beginning of 2006. Its main motivation is the willful stimulation, full value utilization of human resources in the civil service. The change also aims to stimulate and enhance civil servants’ motivation, enabling opportunities for career development. That also serves as a stimulus for the management to head hunt, «brain» hunt, to attract, to select and respectively, to retain the best civil servants.

In 2008 the law was changed with the view of Bulgaria’s admission to the European Union (EU). This change guarantees an access to civil service positions not only of Bulgarian citizens, but also of citizens of EU country members, as well as countries that are a side of the European Economic Area Agreement and the Swiss Confederation – article 7 of the law (the expansion is renewed in OSG 43/29April, 2008). The law accepts the present normative practice and requires allegiance with activities related to powers and security of the state and national sovereignty (defense, public order, external politics, national security and state secret keeping). The provision corresponds to article 39, paragraph 4 (former article 48) from the Treaty of European Community, as well as the practice established by the European Court of Justice with absolute decision from 26th May, 1982, case №149/1979 of the European Union Committee against The Kingdom of Belgium. A civil service coined model is a preliminary promotion opportunity. The model is coined from the British, the Irish to be precise, model for fast stream for civil servants. Its aim is to boost motivation among servants in the state administration, especially those of junior positions, enabling them to climb fast the career ladder. «The fast stream» is envisaged with the 2008 expansion of the law and is signed in article 75, para.2 of the law.

The Civil Servant Law has had a number of other changes over the years, which are off focus in the present research. Some of them are related to the need of the law to be synchronized with our interior legislation. Others relate to the mobility requirements – Bulgarian civil servants into European Administration included. Such is the latest change in the law introduced in February, 2010 – article 81c, para2, according to which a civil servant in the EU keeps their contract relation for 4 years and receives their monthly salary from the appointing body. Next, part of the changes reflect the incapability of some of the norms to adjust to the established legal system in the country as well as the historical development encumbrance of Bulgaria, which requires to create its own system rather than coin ready-made ones.

Logically, the provisions related to the social activities rapidly become part of the civil service legislation and its enforcement practice. It is explicable because the whole legislative system especially the 1986 Labour Code introduces principles and norms that guarantee the rights and the social redemptions of employees. For instance, these are the provisions that guarantee social redemptions for child care unpaid leave until their age of 8, as well as the regulations for safe and healthy work conditions, introduces as new texts in 2006 – article 38a, para1 and 2, and in 2008 – article 38a, para3.

Hardly are the norms incorporated in the Bulgarian judicial reality, however, the ones related to the depolarization of the civil service and career development of its servants.

The above can be exemplified with the provision under article 16a, enforced with the 2006 law expansion, according to which a civil servant can be appointed to the administration part-time, with legal work relation. According to the law, the appointment to civil service is to be preceded by a competition to make candidates competitive on professional grounds. However, the requirement is not applicable to part-time appointments. According to article 10, para 3 – new, a competition is not required: a regulation that can be defined as «a day after the fair, a day too late for the fair.»

The competition element underlying professional qualities is set as a major, even obligatory requirement for the state administration appointment. Meanwhile, the Bulgarian legal reality offers article 10e (10д), para2 and 3 that regulates the control over those committees that objectively and impartially should test the candidates’ qualities and test results. The committees’ decision and candidates’ shortlist do not undergo a judicial control (para. 2). That applies to the appointing body too; the one that considers the complaints made by those candidates that are not listed in the first positions (para. 3).

A good, or better to say bad, example of negligence, inattention or a dexterous protection of interests (a matter of sophisticated knowing of the law, its options and enforcement) is the regulation of article 40, para.1 from the 2009 enforced Law to prevent and detect conflicts and interests. According to the text regulation, persons appointed to public positions, who, in the last year of serving their duty have taken part in public order procedures or, in procedures related to European Union funds, or funds given to Bulgaria by the European union, are not allowed, within a year after being released, to participate in similar
procedures or to represent physical or legal bodies in front of the institution to which they were appointed. In case they violate the law, they are given 10000–15000 leva fine. The law, however, does not envisage an organ or institution to penalize lawbreakers, when the offence is proved.

In relation to the described above procedure for mobile administration (article 10f (10e)), we will briefly mention that there is no regulated procedure.

Conclusions and perspective of the next research. The relevance of the issue can be justified by the fact that in the latest history a fast restructuring of the functioning legal frame has been multitudinously necessitated together with the introduction of new institutional mechanisms to realize policies, as well as systems to control the public sector.

These succinct notes are an introduction to a global research whose objective is to investigate the stability of the Bulgarian legal system, its validity to adapt effectively and wisely, and a trial to comprehend the processes and mechanisms of the Bulgarian lawmaking and its enforcement with view of common-sense management.

References