THE ROLE OF THE COOPERATION AND VERIFICATION MECHANISM IN CONSOLIDATING THE EUROPEAN VALUES IN THE ROMANIAN TERRITORIAL COLLECTIVITIES

Ionuț-Bogdan BERCEANU*

ABSTRACT: Understood as forms of democratic organization of the State in social, cultural, administrative and financial fields, the administrative decentralization and local autonomy should promote and articulate the relationship between state, society and economy. In this space of networking and concerted action among different stakeholders, citizen engagement, transparency, subsidiarity and other European values must converge. In light of these structural changes produced in the state that must meet new social demands, territorial collectivities face a series of new skills, roles and responsibilities. The aim of this article is to analyze the role of the Cooperation and Verification Mechanism (CVM) and the European values promoted by the state and reflected at the local public administration level. Some of these values could be identified as the following in the Romanian territorial collectivities: legality of administration, the principle of reliability, the guarantee of fundamental rights and freedoms and equality before the Law. The CVM is a tool to maintain the reform momentum in Romania and Bulgaria and prevent reversal of the rule of law reforms enacted during the EU accession negotiations. Every six months, the Council issues a CVM report for Bulgaria and Romania, evaluating progress on the established benchmarks and flagging the most pressing issues that should be addressed before the next report.

KEYWORDS: public authorities, European Union principles, Romania, rule of law.
JEL CODE: K10, K19, R5, Z18.

1. INTRODUCTION
European Union enlargement has been closely associated with the region’s rapid post-communist movement toward stable democratic institutions, decreasing corruption,
increasing protection for minorities and other political reforms (Levitz, Eleches, 2010, p. 461). The Cooperation and Verification Mechanism is closed related to this issue, and is seen as an important tool to enforce the democratic institutions.

„The Cooperation and Verification Mechanism (CVM) was set up at the accession of Romania to the European Union in 2007. It was agreed that further work was needed in key areas to address shortcomings in judicial reform and, the fight against corruption. Since then CVM reports have charted the progress made by Romania and have sought to help focus the efforts of the Romanian authorities through specific recommendations\(^2\).

The hypothesis of this work is that the CVM has played an important role in the consolidation of the rule of law in Romania as a key facet of European integration, in this regard, in the 2105 Report it was stated that “monitoring and cooperating with the work of the Romanian authorities to promote reform has had a concrete impact on the pace and scale of reform” (CVM Final Report, 2015, p.1).

This affirmation made in the 2015 Final Report on Romania, by the European Commission, consolidates our assumption regarding this research, namely trough this Mechanism of Cooperation and Verification the values of the European Union may be promoted at the territorial collectivities – seen as component part of the local public administration.

In this regard, the Treaty of Lisbon is providing in the Art. 2F that the values promoted by the European Union are:” human dignity, liberty, democracy, equality, human rights and minority rights”. These are general values which are valid for individuals and the administrative forms of organization of the Member States, such as the public administration in generally and its territorial collectivities in particular.

All these assumptions represent the fundaments from where the research of this work starts and which has as main goals: to see if the CVM has a role in the consolidation of the values promoted by the European Union at the level of the territorial collectivities.

This paper is a descriptive one, using as research methodology the qualitative analysis, based on the the reports, documents, and specialty literature.

2. SHORT EXPLANATION OF THE COOPERATION AND VERIFICATION MECHANISM

„In 2007 Bulgaria and Romania joined the European Union. But unless the last wave of enlargement from 2004, the countries from 2007 had to demonstrate that the rule of law was fully observed in their domestic systems. In order to identify and address any shortcomings, the EU developed the Cooperation and Verification Mechanism, a

\(^2\) Conclusions of the Council of Ministers, 17 October 2006 (13339/06); Commission Decision establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, 13 December 2006 (C (2006) 6569 final)
monitoring process that asks for a prompt policy response from the Bulgarian and Romanian governments” (Vachudova, Spendzharova, 2012, p.2).

The CVM is a tool to maintain the reform momentum in the two countries and prevent reversal of the rule of law reforms enacted during the EU accession negotiations. Every six months, the Council issues a CVM report for Bulgaria and Romania, evaluating progress on the established benchmarks and flagging the most pressing issues that should be addressed before the next report. These monitoring reports have been widely praised for being very detailed and for following the evolution of specific administrative reforms, judicial cases, and political developments.

“In the case of Romania, it was established through a Commission Decision of December 2006, just before the Treaty on the Accession of Romania and the Republic of Bulgaria to the EU took effect after being signed on 31 March 2005. Consequently, even though the treaty itself did not enter into effect, the Commission had already elaborated a Decision on how it may be applied” (Carp, 2014, p.3).

This Decision is providing that: “if Bulgaria or Romania has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such breach the Commission may, until the end of a period of up to three years after accession, upon the motivated request of a Member State or on its own initiative, adopt European regulations or decisions establishing appropriate measures” (European Commission Decision C (2006) 6569).

“These measures shall be proportional and priority shall be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the first day of accession unless they provide for a later date” (Carp, 2014, p.5).

Practically, the CVM was introduced for protecting the European Union in its relation with Romania and Bulgaria, as member states, in two main problems:

1. the first problem was regarding the fact that despite their progress, the new members had not yet reached EU governance standards at the time of their admission;
2. the second problem, that further progress in governance reforms was uncertain in the post-accession period in the absence of what had been one of the strongest reform incentives for East European governments in the post-communist period: the golden goal of achieving the statute of EU member (Levitz, Eleches, 2010, p. 462).

Implementation of EU regulations, the basic standards of democracy and rule of law required by the Copenhagen Criteria of membership were by no means perfectly in place at the time of admission, and this seems to have been especially true for the ‘laggard’
applicants, Bulgaria and Romania. The second concern was directed at the future of governance reforms in the new EU members, and in particular the possibility of ‘backsliding’ after EU accession, or in other words, that the new member countries would abandon or reverse the reforms they introduced in order to qualify for membership in the European Union (Levitz, Eleches, 2010, p. 463).

3. EUROPEAN VALUES PROMOTED ON PUBLIC ADMINISTRATION AND TERRITORIAL COLLECTIVITIES

As we already stated, the CVM was set up as a tool for controlling Romania and Bulgaria in their reforms implementation regarding the rule of law and the strong institutions after the accession to the Union.

Part of the system which have to implement these requests is the public administration system. The public administration can be understood as a system of institutions, including administrative structures which organize and oversees the execution of the laws of the state (in the broader sense, the whole range of regulations mentioned in the Constitution).

The public administration, in the rule of the law, is the main lever by which the values established at the level of the political realm are carried out. It has to be continuous, omnipresent, prompt and energetic, since it represents the state the whole time, both within and outside the country. According to some scholars (Dincă, 2012, p.55), the approach that we have today to the public administration is the result of the present constitutional system, namely: “The public administration is a professional body meant to permanently provide services and ensure law and order, under the authority of the executive power, especially the Government. This body of public servants is specialized, permanent, and has to operate in order to ensure the continuity of the public services provided to the citizens”.

“The direct influence of the European Union over the administrative systems of the Member States is quite limited. In fact, the Union has no direct competence in this area. The administrative organization of Member States is a matter that falls only within their competence. But there are sources of indirect influence of Member States and of those who adhere to EU” (Cărăuşan, 2010, p.18).

Thus, the administrative systems of the EU member states have shown a considerable diversity. They have varied not only in rules and regulations that must be applied in society, but also in those rules that bureaucrats apply to them. Recent studies show that diversity can be reduced in the bureaucracies that have become exposed to the process of the European integration. The concept of the European administrative space was designed from examples of the European economic and social spaces. Also it links with the system of legal cooperation, including the mutual assistance in law enforcement and some approximations relevant to the legal fields (Matei, Berceanu, 2014, p. 78).

The territorial collectivities are part of these systems of public administration, and they are making these structures and institutions even more complex, considering that all EU is
composed by 28 different systems of public administration, each one with its traditions and history.

According to Manda C. at present, “the local territorial collectivities claim to play an increasingly significant role in the European context, being encouraged even by the states to which they belong, in the context of recognizing autonomy as an efficient management system of the public affairs. As in many other states, in our country, the process of awarding administrative vocation to the local collectivities followed the roller coaster evolution of the process of implementing the Romanian public administration reform, the local collectivity standing out due to its double nature, of decentralized collectivity, but also of state territorial circumscription, with legal personality and with bodies empowered to act in its name (representative public administration)”. Manda&Manda (2008, pp. 24-25)

Thus, the decentralization process experienced, depending on the degree of administrative modernization, different stages: from the simplistic approach, by means of which decentralization is reduced to a sum of transfers of competences and functions to considering it as an intention to rebalance the political system, by redefining the state territorial levels (Manda, Nicolescu, p. 2014).

Regarding the local public administration and the territorial collectivities, the constitutional principles on which it is founded in Romania are: the principles of decentralization, local autonomy, and deconcentration of public services. The Local public administration however, comes and adds to the above principles also the principle of the eligibility of local public administration authorities, the principle of legality and the principle of citizens’ consultation in solving local issues of particular interests.

4. CONSOLIDATING EUROPEAN VALUES THROUGH THE COOPERATION AND VERIFICATION MECHANISM

It has been observed that the diversity of the administrative systems of the EU member states can be reduced by the complex process of European integration. This process implies to implement EU law and aquis, to respect the values promoted by the Union. The CVM is doing exactly this, controlling the way in which Romania is complying after accession the EU requirements, watching principally the and secondary the public administration system.

In support of creating a set of rules applied to European countries, the OECD (created by SIGMA, 1999, p. 9) stated in a document that these common can be considered to be the following:

- reliability and predictability;
- openness and transparency;
- accountability;
- efficiency and effectiveness.
Regarding these principles, the most common used by the CVM reports are those of reliability and predictability, because these attributes derive from the essence of the value of the rule of law which affirms the law supremacy as a “multi-sided mechanism for reliability and predictability” (OECD-SIGMA, 1999, p.98). It may be rephrased as “administration through law”, a principle meant to assure the legal certainty or juridical security of the public administration actions and public decisions.

Other connotations of this principle may be observed, according to OECD-SIGMA (1999, p.12) “when we refer to the opposition of the law supremacy in regard to the arbitrary power, cronism or other deviations of the latter that should not be seen as similar to the discretionary power applicable in cases when, within the legal framework, a certain degree of decisional freedom is allowed”.

Joseph Raz (in Carp, 2014, p.3) „tried to identify some principles that are associated with the rule of law in most democratic societies:
- Laws should be prospective rather than retroactive;
- Laws should be stable and not changed too frequently, as a lack of awareness of the law prevents one from being guided by it;
- There should be clear rules and procedures for making laws;
- The independence of the judiciary has to be guaranteed;
- The principles of natural justice should be observed, particularly the right to a fair hearing.
- The courts should have the power of judicial review over the way in which the other principles are implemented;
- The courts should be accessible, no one may be denied justice;
- The discretion of law enforcement and crime prevention agencies should not be allowed to pervert the law”.

Most of these principles identified by Raz are directly linked to the judiciary. But, some of them can be also enforced by the local collectivities. In these regards, we can state that the first three of these principles could be applicable for the territorial collectivities and they consolidate the rule of law. For example, the “local laws” (decisions of local council or of county council) from the bodies of the territorial collectivities should respect the principle of non-retroactivity, and the clear procedure of elaboration and approval stated by the Law no. 215/2001 (with subsequent amendments) on the Local public administration.

Regarding the fact that no one may be denied the accession to justice, in their activities, the local collectives, are subject of a judiciary control concretized in the Law no. 554/2004 (with subsequent amendments) regarding the administrative disputes, which states the fact that any citizen whom the administration has violated a right or a legitimate interest may appeal administrative court.
The rule of law value promoted by EU and considered by the CVM for the periodical report is completed by another principle which is regarding the territorial collectivities, that of legality. This principle appears for the first time stipulated by the constitutional revision in 2003. Previously, its application was inferred from the activity’s nature, through the enforcement of law by public administration. This principle must be respected by all local public administration authorities, whether or not they have a mandatory character for the entire state. The entire activity of local authorities should be based on strict law obedience. As a result, legality means in fact also the implementation of law content.

The principle of legality requires that all elements, aspects of local public administration to comply with the Constitution and other laws and legislative acts based on law. These aspects relate to: the organizational and functional aspects, the organizational structures of local public administration, their constitution and functioning, powers, duties, issued documents, relationship with other public institutions, etc. As a result, the administrative-territorial units cannot create other structures of government than those of Constitutional Law and other laws, in this case, the Local public administration law. In other words, any form of local autonomy manifestation involves respect for legal norms and for the public interest.

Thus, we consider that the values and principles underlying the public administration are provided either by the constitution or by the organic laws and they are protected by a judicial system which is permanently observed by the CVM through its benchmarks.

Also, through its benchmarks, in July 2012 a CVM Report included some recommendations in seven areas. Some of these were related to the integrity in the public sector, which included here apart from the judicial and political system, also that of the public administration – with its territorial collectivities. These values of integrity, promoted by in the CVM reports are today applicable in the territorial collectives as well as in other sectors of activity as a set of rules regarding the conflict of interest and incompatibilities. The evaluation of conflicts of interest and incompatibilities is conducted by the National Integrity Agency, under the Law no. 176/2010 on integrity in the exercise of public functions and dignities, amending and supplementing Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency and amending and supplementing other laws (Berceanu, 2015, p. 183).

5. SITUATION OF THE CVM REPORT FOR 2015

The 2015 CVM report noted a number of areas of continued progress showing signs of sustainability, notably through the action taken by the key judicial and integrity institutions to address high-level corruption and the increased professionalism in the judicial system as a whole. At the same time, the Report highlighted that: “there remains a strong sense that progress needs to be consolidated and further secured, with many legislative issues outstanding and doubts about the political consensus behind reform. The
Council also concluded that an overall, continued political commitment to sustained reforms and respect for the independence of the judiciary are essential in order to ensure the sustainability in progress towards the CVM objectives”.

Even if this report didn’t make any direct link with the public administration system, it can be observed that by underlining the progress and sustainability of the integrity actions and integrity initiations activities and the fight against corruption, relates these findings with the local collectivities, because they are one of the major subjects of these reforms.

The Commission of EU in underlying in the Report that in 2015 it has been established a new instrument in the form of a Structural Reform Support Service (SRSS) dedicated to providing technical assistance to the reform efforts of EU Member States in a broad range of areas.

6. CONCLUSIONS

The principles and values which have been analyzed in this paper as part of the territorial collectivities in Romania, were stipulated also in the previous CVM reports. They were introduced there for underlying the progress and reforms in the judicial system and to sustain the fight against corruption. The public administration system is to one called to enforce the law and to. In these sense, it had to adapt and to respect all the requirements promoted by CVM especially in the benchmark of integrity, corruption and rule of law, where public officials, part of the systems were part of the monitoring actions.

The CVM benchmarks played an important role in Romania as driver for reform and an incentive to maintain consistency in track record. Some of these reforms, as stated in the paper, reflected the values promoted by the EU: ratability, legality, rule of law, integrity. The judiciary – direct subject of observation of the CVM had an important role in guaranteeing that the principles are respected is also ensured by law, by establishing sanctions for both local public administration authorities and officials when their conduct and their actions do not comply with the law.

Even if the public administration was not a direct subject of the CVM and many of the changes which took place in the system didn’t derive directly form the CVM, it had and an important role in promoting reforms which also affected the local administration. Due to its constrains some of the European values of the European Union could be enforced. Local collectivities are now directly and strongly affected by the requirements of administrative transparency that aim for the free access of citizens to information of public interest, as well as the motivation of such acts by the administration itself. Achieving public interest through opening, respectively by ensuring the free access of citizens to administration - a citizen’s fundamental right - it has as a mission the limitation of mismanagement.

In the last Report published on 27.01. 2016 is staying for the for the first time very clear that “reform has taken root”. And it is also mentioned for the first time the possibility that after “a number of important tests in 2016 to further demonstrate sustainability”, the mechanism could no longer be required (COM, 2016, p. 41 final REPORT FROM).

ACKNOWLEDGEMENT

A version of this paper was presented at the 2nd Annual International Conference on Law and Administrative Justice from an Interdisciplinary Perspective, 20-22 November 2015, in Bucharest, Romania, organized by the National University of Political Studies and Public Administration from Bucharest and University “Magna Graecia” from Catanzaro.

Paper elaborated within the Project Setting the ground for public policy elaboration at the level of the large territorial collectivities in Romania, on the coordinates of the relevant European values), won in the competition for grants - Researchers in Training - National School of Political Studies and Public Administration (SNSPA) / Faculty of Public Administration 2014, implementation period 2014-2016. Contracting Authority: SNSPA.

REFERENCES

Berceanu, B. (2015), Reflecting the European values on incompatibilities and conflicts of interest in the Romanian local public administration. Revista Romana de Drept European. Supliment, pp. 179-186;
Cărăuşan, M. (2010), The Pertinence of the Regionalization Project in Romania Acta Universitatis Danubius, No. 1, pp. 18-27;
Carp, R. (2014). The Struggle for the Rule of Law in Romania as an EU Member State: The Role of the Cooperation and Verification Mechanism, Utrecht Law Review Volume 10, Issue 1 (January);

4 The all CVM Report it is available at the following link: http://ec.europa.eu/cvm/progress_reports_en.htm, accessed: 28.01.2016
COMMISSION DECISION C(2006)6569 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption;
Manda, C.C., Nicolescu, C.E., Legal and practical aspects of the associations between the city of Bucharest and the large territorial collectivities – actuality and perspective, Theoretical and Applied Economics, Volume XXI, No. 12(601), pp. 97-122;