

PREDICTABILITY OF THE NORMS AND THE STABILITY OF LEGAL RELATIONS – COMPONENTS OF THE LEGALITY OF ADMINISTRATIVE ACTS

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ABSTRACT: *The author examines the principle of legality in the activity of public administration and the way in which the compliance with or the violation of this principle affects the efficiency of the activities of public authorities, the safety of legal relations of administrative law, as well as the trust of the citizens in their capacity of recipients of the administrative acts.*

In reference to providing the legality of the administrative acts, the author shows that the public authorities, in the process of elaborating administrative acts, must observe not only the internal law dispositions with higher legal force, but also the main or derived communitarian acts, as well as the general law principles, some of them codified in internal and European legal acts, and others imposed by the established practice of the Luxembourg Court and the Strasbourg Court.

In this context, the author focuses on the necessity of the predictability of normative administrative acts and of the stability of legal relations within the procedure of issuance of individual administrative acts, for the purpose of ensuring the legitimate trust of the citizens in the activity of public authorities.

KEYWORDS: *State subject to the rule of law, public administration, legality, predictability, stability, legitimate trust*

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1. INTRODUCTION

In order to characterize a state as being “powerful” we inevitably refer to its degree of economic development, its military capacity, as well as its relations with other states.

However, we cannot consider that a state is powerful (under the conditions of the modern era, in which guaranteeing human rights is predominant) if its citizens are not protected against its excessive power, being constrained to always fight the obscurity and/or inconsistency of legal norms, as well as the “incompatibilities” of constitutional nature between said norms.

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Therefore, a particular significance in the crystallization of the vision on a state or another is determined by the relation existing between it and its nationals.

A powerful state (subject to the rule of law¹) is the one which, on the one hand, protects its citizens against the possible abuses of its authorities and which, on the other hand, is represented by an efficient public administration² which complies, in its activity, with the general principles of administrative law³, as well as the predictability of legal norms, the legal stability and the legitimate trust.

The compliance with these principles by the state is fundamental for the instauration of a legality climate in its relations with its nationals.

In what follows we will proceed to an analysis of the principle of legality, which coordinates the entire activity of the public administration and which also contains the abovementioned principles, which we will discuss in detail.

2. THE PRINCIPLE OF LEGALITY OF ADMINISTRATIVE ACTS

The notion of principle has the common meaning of conduct norm, fundamental idea or basic law on which a scientific theory, a political or legal system is founded.

In a strictly legal sense, from the point of view of administrative law, the principles of this branch of law represent “those fundamental, guiding ideas of the organization and activity of public administration.”⁴

One of the fundamental principles of administrative law is the principle of the legality of the activity conducted by the public administration bodies, sanctioned in art. 1 par. (5) of the revised Constitution of Romania.⁵

By virtue of this principle, the public authorities are compelled, within the activity they conduct, to observe the contents of the law, that is, to issue or adopt administrative acts in view of organizing and enforcing the law, without modifying or completing it.

The basic significance of this principle of administrative law resides, in fact, in the subordination of the administration to the Constitution and the law, subordination which represents the guarantee of the citizens against the arbitrary, the incoherence and the inefficiency of the actions of public authorities.⁶

¹ “State subject to the rule of law” does not mean simply a formal legality which ensures the regularity and the coherence in the instauration and enforcement of democratic order, but also a full acceptance of the supreme value of the human being. (Tudor Drăganu, *Introduction to the theory and practice of the state subject to rule of law*, Dacia Publishing House, Cluj-Napoca, 1992, p.10).

² „Efficiency” refers to the fact that the performances of administration are directed towards the proposed purposes, by solving the problems legally. (I. Alexandru, M. Cărăușan, I. Gorjan, I.V. Ivanoff, C.C. Manda, A. L. Nicu, C. Rădulescu, C.S. Săraru, *Administrative Law in the European Union*, Lumina Lex Publishing House, Bucharest, 2007, p. 341).

³ About the systematization of general principles of administrative law of the European Union, see Rodica Narcisa Petrescu *Administrative Law*, Hamangiu Publishing House, 2009, p. 42.

⁴ Anton Trăilescu, *Administrative Law*, 4th edition, C.H. Beck Publishing House, Bucharest, 2010, p. 8-9.

⁵ This constitutional text has the following content: “In Romania, the compliance with the Constitution, its supremacy and the laws is obligatory”.

⁶ Rozalia Ana Lazăr, *The Legality of the Administrative Acts*, All Beck Publishing House, Bucharest 2004, p. 52

This type of “guarantee” functions not only in internal law, but also in European law, the various bodies of the European Union being empowered to act only within clearly delimited scopes, established by means of the various formal provisions.⁷

It is thus created a bridge between the national law and the European law, which will ensure, as we will notice along the way, the taking over in internal law of other principles of the European law, which are part of the legality principle. As a matter of fact, one of the major benefits of Romania’s adhesion to the European Union is the return of the Romanian law system to principles whose observance is essential in a democratic society, in a state subject to the rule of law (*Rechtsstaat*⁸) because, we consider, the principles are the ones which provide certitude and authority to a law system, originating right from the social realities.

According to the principle in question, the administrative normative acts⁹ of the bodies of the central and local public administration must be conformant with the law, and the individual administrative acts¹⁰ must also be issued in accordance with the normative administrative acts, observing the hierarchy of these acts.

However, the compliance with the principle of legality does not mean only the conformity of the administrative acts with the internal laws, but also with the European law norms. In this sense, art. 148 par. (3) of the revised Constitution of Romania provides that, as a result of our country’s adhesion to the European union, “the provisions of the constitutive treaties, as well as the other binding communitarian regulations have priority over the contrary dispositions in the internal laws, with the observance of the provisions in the adhesion deed”.

Moreover, the legality of administrative acts also implies their conformity with the general principles of administrative law (such as the predictability of legal norms, the legitimate trust of citizens in the administrative bodies, legal safety, equality, proportionality¹¹, non discrimination, etc.) created and promoted by the constant jurisprudence of the European Court of Justice and of the European Court of Human Rights, some of them being codified by the Treaty of Lisbon¹² and by the European Convention of Human Rights.

⁷ In this sense, on April 23rd, 1986, the European Court of Justice, in the case 294/83 – *The Ecologist Party “Les Verts” against the European Parliament*, decreed that communitarian institutions cannot elude the control of the conformity of the acts adopted by them in relation with the treaty.

⁸ Towards the end of the 18th century and the beginning of the 19th century was formulated and theorized the idea that the fundamental purpose of the state is to provide the concretization of the rights and that people who hold the power (governing authorities) are subject to the law and limited by it. This conception has been expressed by the German doctrine under the name of *rechtsstaat*. (Ioan Muraru, Elena Simina Tănăsescu, *Constitutional Law and Political Institutions*, edition 13, vol. II, C.H. Beck Publishing House, 2009, p. 77).

⁹ These are the acts of public authorities containing general and impersonal dispositions, relating to an undetermined number of persons.

¹⁰ These are the acts of public authorities, containing concrete dispositions and producing rights and obligations to the benefit or in the charge of previously determined persons.

¹¹ This principle sustains that the legality of internal/ communitarian rules is subject to the condition that the means used be in accordance with the target and not exceed what is necessary in order to attain this target. In this sense, see Marius Andreescu, *Proportionality – constitutional principle*, in the magazine *Dreptul*, no. 2/2010, p. 76.

¹² The Treaty of Lisbon (of modification of the Treaty regarding the European Union and of the Treaty of institution of the European Community) has been signed on December 13th, 2007, ratified by Romania by Law no. 13/2008 and it came into force on December 1st, 2009.

Illustrative, in this sense, is the Law no. 554/2004 of the administrative law¹³, which, in art. 21 par. (2)¹⁴, imposes on the national judge the obligation to verify the legality of the administrative acts by relating them to European law, thus implicitly to the principles of the European law, which take priority.

The abovementioned law article also provides that the settlement of a proceeding of repeal of an administrative deed with the violation of the principle of the priority of European law, and, implicitly, we add, of the European law principles, constitutes a reason for revising the final and irrevocable court decision.

Synthesizing the abovementioned facts, the principle of legality implies that the provisions of internal law be sufficiently accessible, precise and predictable, one having to interpret and enforce them in accordance with the standards of the European Convention of Human Rights.¹⁵

In what follows we will discuss in detail these general principles of administrative law, the inobservance of which by the public authorities leads to the sanction of nullity of these administrative acts.

3. THE PRINCIPLE OF PREDICTABILITY OF LEGAL NORMS

The principle of predictability dictates that public authorities regulate social relations by adopting normative acts which come into force after a certain period of time, in order to allow any person to be able to resort to specialty consultancy and correct their conduct.¹⁶ The absence of this requirement of legal norms determines an uncertainty of administrative legal relations, which entails the violation of the legitimate rights and interests of the citizens.

This principle has been crystallized in European states with a solid constitutional tradition (such as Germany) at the same time with the wider and wider acknowledgement of the fundamental rights, being a component of the principle of legality of administrative acts.

Taking it from the national law of member states of the European Union, the European Court of Justice, by its jurisprudence, raised the predictability of legal norms to the rank of principle of the European administrative law. For instance, the Luxembourg Court, for legal security reason, imposed to the European institutions the obligation to warn the economic operators in a precise and clear way when it intends to deviate from a certain practice in certain domains of activity, with the purpose that the recipients of the norms do not feel the shock of unpredictable changes which could harm them.¹⁷

¹³ This law has been published in the *Official Journal of Romania*, no. 1154 dated December 7th, 2004, subsequently being modified and completed gradually, the last time by Law no. 100/2008, published in the *Official Journal of Romania*, no. 375 dated May 16th, 2008.

¹⁴ This law article provides: "A reason for revising, to which are added the reasons provided by the Civil Procedure code, is the pronouncement of final and irrevocable decisions by violating the principle of priority of communitarian law, regulated by art. 148 par. (2), corroborated with art. 20 par. (2) of the Constitution of Romania, republished. The request for revision is submitted within 15 days since the communication, which is made by derogation from the rule established by art. 17 par. (3), upon strongly motivated request from the concerned party, within 15 days since the pronouncement. The revision request is resolved urgently and with priority, within maximum 60 days from registration".

¹⁵ Decision of the European Court of Human Rights in the case *Buzescu versus Romania*, published in the *Official Journal of Romania*, no. 210 dated March 8th, 2006.

¹⁶ In this sense is the decision of the European Court of Human Rights, in the case *Rotaru versus Romania*, published in the *Official Journal of Romania*, no. 19 dated January 11th, 2001.

¹⁷ The Ordinance of the President of the Court, case *C-152/88 R, Sofrimport versus Commission*, Collection 1988, p. 29-31.

As a matter of fact, this European court has constantly sanctioned the inobservance of the predictability principle, declaring null the acts issued/adopted with this inobservance with the motivation that they are abusive, depriving their recipients of the possibility to get acquainted with them within a reasonable term and to adapt their conduct in accordance with the changes brought by them.¹⁸

Although in the Romanian law system it is not expressly regulated, the predictability principle is nevertheless applied, reminding that, in the matter of contraventions, the dispositions by which these are established and sanctioned produce legal effects only after 30 days or, in urgent cases, after 10 days since the date of their publication.¹⁹ Also, by art. 62 par. (3) of the Law no. 24/2000 regarding the legislative technique norms²⁰, one has pursued the purpose to ensure a certain normative stability, decreeing that it is forbidden to public authorities to reinstate a normative act by abrogation of its abrogation deed, with the exception of the provisions in the Government's ordinances which provided abrogation norms and have been rejected by law by the Parliament.

Thus, the public authorities must take into account a certain tolerance margin when adopting the normative acts so that their recipients are not taken by surprise by certain regulations, which, in case of inobservance, could harm them.

Nevertheless, The European Court of Human Rights gave its verdict on the violation of the principle of predictability of legal norms, sentencing the Romanian state (countless times) to pay damages to the persons who have been harmed by the abusive activity of public authorities by issuing norms which have not been sufficiently accessible, precise and predictable.²¹

Such sanctions of the Romanian State must constitute sufficient signals for the necessity of a better adaptation of the normative process to the requirements of the principle of predictability of legal norms, established both in the European law, and in the jurisprudence of the European Court of Human Rights and the European Court of Justice, in full conformity with the requirements imposed by them.

Thus, in their jurisprudence, the European courts have decreed that legal norms must be of quality, namely to allow their recipients to adapt their behavior to their requirements, in other words to be predictable.²²

¹⁸ Decision of the European Court of Justice in the case C-368/89, *Crispoltoni versus Fattoria Tavacchi di Citta di Castello*, Collection 1991, p. I-3695.

¹⁹ In this sense are the dispositions of art. 4 par. (1) and (2) of Government's Ordinance no. 2/2001 regarding the legal status of contraventions, published in *The Official Journal of Romania*, no. 410 dated July 25th, 2001.

²⁰ This law has been published in the *Official Journal of Romania*, no. 260 dated April 21st, 2010.

²¹ Relevant in this sense are: the decision of the European Court of Human Rights in the case *Burghilea versus Romania*, published in the *Official Journal of Romania*, no. 736 dated October 29th, 2009; the Decision of the European Court of Human Rights in the case *Kaya versus Romania*, published in the *Official Journal of Romania*, no. 213 dated March 29th, 2007

²² See the Decision of the European Court of Human Rights, in the case *Non-PCR Communist Party and Ungureanu versus Romania*, published in the *Official Journal of Romania*, no. 1044 dated November 24th, 2005.

Also, said courts have considered that one can only call “law” that legal norm worded with enough precision to allow the citizen to guide his/her conduct, resorting, if need be, to qualified counselors, so that they can foresee with a reasonable degree, in the circumstances of the case, the consequences which can arise from a certain act.²³

The quality of the legal norms is also given by the fact that they must generate certain stability, the state authorities not being able to be inconsistent with respect to a certain social reality.

The instability of legislations, which generates the insecurity of legal relations²⁴, can also be discussed with reference to the enforcement in time of the legal norms.

Thus, the retroactive enforcement of legal norms can be false/apparent/ material, when a normative act is applied to situations arisen before its publication, but which have not concluded their legal effects, and it can also be real/formal, when the normative act comes into force before its publication, or in the case in which it regulates past and fully accomplished legal relations. While the first form of retroactivity is allowed, the second one is forbidden for reasons easy to understand. Thus, the Luxembourg Court has established that if a normative act corresponds to the general interest of the citizens and is compatible with the principle of legitimate trust, it can be materially retroactive. A relevant example, in this sense, is the Decision of the European Court of Justice, pronounced in the case 331/88, *The Queen c. Ministry of Agriculture, Fisheries and Food*²⁵, which decreed that it is allowed to adopt a new directive with retroactive effect in order to replace a directive which was cancelled for reasons of fundamental flaw, if the new directive aims at a high relevance purpose and respects the principle of legitimate trust.

Thus, we consider that no prejudice is brought to the principle of predictability of legal norms and of safety of legal relations in case in which by retroactive enforcement of normative deeds one creates favourable situations for their recipients.²⁶

In conclusion, the compliance with the principle of predictability of legal norms confers consistency to the normative system, ensuring a smooth and amiable relation between the authorities and the citizens, so that the latter not be surprised by unforeseen (thus abusive) normative acts, which harm their interests.

²³ In this sense, see the Decision of the European Court of Human Rights in the case *Petra versus Romania*, published in the *Official Journal of Romania*, no. 637 dated December 27th, 1999, as well as the decision of the European Court of Human Rights in the case *Sissanis versus Romania*, published in the *Official Journal of Romania*, no. 784 dated November 24th, 2008.

²⁴ By means of the decision pronounced in the case *Beian against Romania* (published in the *Official Journal of Romania*, no. 616 dated August 21st, 2008), the European Court of Human Rights sustains that the states must adopt laws which can be applied with reasonable clarity and coherence in order to avoid the legal insecurity and uncertainty.

²⁵ In the Jurisprudence Collection of the European Court of Justice 1990, p. I-04023.

²⁶ For instance, art. 15 par. (2) of the revised Constitution of Romania provides that: “The law decrees only for the future, except for the penal law or more favorable contravention law”.

4. THE PRINCIPLE OF LEGAL SECURITY OR OF STABILITY OF LEGAL REPORTS

The natural state of a human being is the state of community²⁷. However, within the community a human being can develop satisfactorily only when stability and security are the predominant state(s) of the social relations to which he/she participates.

Consolidated in the scope of European law, by the constant jurisprudence of the Luxembourg Court and the Strasbourg Court (taken over from the German, Swiss and Dutch law), the principle of legal security could be defined as “the possibility acknowledged for every citizen to evolve in a safe legal environment, safe from the indefiniteness and unforeseen changes which affect legal norms”²⁸.

The principle of legal security or of stability of the legal relations enjoys a widespread acknowledgement, not only in the scope of European law, but also in the scope of most internal legal systems of the member states.

This is due to the fact that between the European law and the national one there is a live “communication” (legal “melting pot”), in the sense that the national courts pronounce legal decisions taking into account the practice of European courts, but the latter also appropriate some of the legal institutions of the internal law of member states of the European Union.

In contradiction with the widespread acknowledgement of the principle of legal security, the European courts have to deal with many litigations which have as the central problem the inobservance of this principle by the national authorities or by the communitarian institutions. We consider that this is due to the fact that the principle of legal security has been received only to its letter, its spirit still remaining hidden.

Being confronted with a multitude of particular situations, the European Court of Justice and the European Court of Human Rights have given special consideration to the principle of legal security, starting from the premise that, in its absence, the proper functioning of a legal system would be strongly disturbed. Let us only imagine what would mean for a national to be subjected to the repeated modifications of an administrative act which affects him/her directly, namely to be the victim of a permanent inconsistency of public authorities. Precisely in order to be able to avoid such situations, some states of the European Union have expressly acknowledged the principle of stability of legal relations, codifying it in their fundamental law (for instance, the Constitution of Spain – art. 6, of Portugal – art. 282-284).

In order to be functional, the principle of legal security needs a clear and easy to understand definition, so that it is not understood as an abstract notion.

The importance of clarification of the content of the principle of legal security is essential in a state subject to the rule of law, because both public authorities and courts of law must take it into consideration, the first ones when issuing/adopting administrative acts, the second ones when settling litigations having as object the verification of the legality of administrative acts.

²⁷ In the concept of Aristotle, man is a social being (*zoon politikon*) who cannot exist outside the community (see Ioan Muraru, Elena Simina Tanasescu, op. cit., p. 41).

²⁸ See Ion Brad, *Revocation of administrative acts – the Institution of Revocation under the Requirements of European Law (Doctoral paper)*, University “Babeş-Bolyai”, Cluj-Napoca 2009, p. 125.

In order to fulfill this desideratum, the state bodies must receive the new European tendencies, according to which the principle in question must be the expression of clarity and precision of the law.

In other words, the nationals of a state enjoy legal stability when the state issues norms whose contents are accessible both to specialists, and especially to the uninitiated persons.²⁹

The European Court of Human Rights has decreed, by its jurisprudence, that the legal security of the citizens of the European Union states is also ensured by avoiding reversals of jurisprudence, by complying with the authority of *res judicata*, as well as by enforcing final decisions.³⁰

Thus, the principle of legal security/stability has been expressly imposed by the practice of European courts, the national legislations proving to be, in great part, receptive to the requirements implied by its observance.

However, this principle does not enjoy an express legal regulation in autochthonous law, but its existence can be deduced both from the provisions of art. 1 par. (3) of the Constitution of Romania, according to which Romania is a democratic and social state, subject to the rule of law, as well as from the preamble of the Convention for the protection of human rights and fundamental liberties, as interpreted by the European Court of Human Rights, in its jurisprudence³¹.

Nevertheless, national courts of law often proved reticent in applying the principle in question, fact which has been sanctioned by the European Court of Human Rights, which, without any reserves, concluded that the legislative inconsistency and the contradictory jurisprudence have created in our country a general climate of legal insecurity³².

Thus, no matter if we consider it a fundamental requirement, an indispensable element for the proper functioning of institutions or a general principle inherent to legal order, the principle of legal security is a basic component of the legality of administrative acts and one of the fundamental elements of the supremacy of law³³.

In administrative law, this principle imposes the limitation of the conditions of revocation of administrative acts, one considering that the revocation with *ex tunc* effects of a legal act which conferred subjective rights is incompatible with the general principles of law, while the revocation of an illegal act is allowed only in the presence of certain terms and conditions³⁴.

²⁹ In the case *T-115/94, Opel Austria GmbH versus the Council of European Union*, the European court of Justice decided that "any communitarian act which produces legal effects must be clear, precise and notified to the concerned party so that the latter be able to know for certain the moment since when that act exists and begins to produce legal effects".

³⁰ See the decision of the European Court of Human Rights in the case *Teodorescu versus Romania*, published in the *Official Journal of Romania*, no. 386 of June 9th, 2009.

³¹ In this sense, see the Decision of the Constitutional Court of Romania no. 404 dated April 10th, 2008, published in the *Official Journal of Romania* no. 347 dated May 6th, 2008, which settled the exception of non-constitutionality of the provisions of art. 4 of the Law no. 554/2004 of administrative law.

³² Decision of the European Court of Human Rights in the case *Tudor Tudor versus Romania*, published in the *Official Journal of Romania*, no. 778 of November 13th, 2009.

³³ In this sense, see the decisions of the European Court of Justice in the case 24/69 *Nebe versus the Commission*, in the case 61/79 *Amministrazione delle Finanze dello stato versus Denkavit Italia* and in the case 57/69 *Azienda colori nazionali – ACNA S.p.A. versus the Commission of European Communities* (*The Jurisprudence Collection of the European Court of Justice 1972, page 00933*). Also see the decision of the European Court of Human Rights in the case *Teodorescu versus Romania*, published in the *Official Journal of Romania* no. 386 dated June 9th 2009.

³⁴ For a detailed presentation of all these necessities of the principle of legal security, see Ion Brad, op. cit., p. 138-148.

In the Romanian doctrine, was imposed the principle of revocation of administrative acts both for reasons of illegality, and for reasons of inopportunity³⁵, provided that they have not become irrevocable, namely they have not given rise to rights and obligations to its benefit or in the charge of private persons.

However, even if they have produced legal effects, one can revoke the inexistent administrative acts³⁶, as well as the individual administrative acts issued by fraudulent or misrepresented workings of their beneficiaries, but one cannot revoke, for instance, the jurisdictional administrative acts and the administrative acts which have been materially carried out.

Revocation for reasons of illegality produces retroactive effects, the parts of the legal relation of administrative law being placed again in the situation prior to the issuance of the act, as if they had never existed. However, if the non legal act has been issued by exclusive fault of the public authority and has produced legal effects, said authority can no longer revoke it because, otherwise, it would create a situation of legal instability for the recipient of the act, who is in fact the holder of subjective rights, arisen based on the individual administrative act. Nevertheless, *de lege lata*, in such a situation one acknowledges the possibility of the public authority which issued the non legal act to request, within maximum one year since the date of emission, that a competent court of law pronounce its cancellation³⁷.

Revocation for reasons of inopportunity only produces *ex nunc* effects, because until the moment of occurrence of the inopportunity state, the act was legal and opportune.

In the case of normative administrative acts, abrogation produces its effects only for the future, even if it occurs for reasons of non legality or inopportunity, conclusion which is deduced from the interpretation by analogy of the dispositions of art. 23 of the Administrative Law³⁸, which provide that court decisions annulling normative administrative acts produce *erga omnes* effects and only for the future. The abovementioned legal disposition is in accordance with the principle of security of legal relations, because the abrogation/annulment of normative administrative acts with retroactive effect would entail the revocation/annulment of those individual acts issued based on the abrogated normative acts, which would create, on the one hand, a general state of legal insecurity and, on the other hand, great prejudices to the private persons who have obtained rights in compliance with the acts in force.

³⁵ Opportunity has been defined in the specialty literature as the possibility of the public administration authorities to choose between two or more possible versions the one which serves best the interest of the collectivity, according to certain situations of place, time and circumstances. (Dana Apostol Tofan, *The Discretionary Power and the Excess of Power of public authorities*, All Beck Publishing House, 1999, p. 167-191).

³⁶ Inexistent administrative acts are the acts which never enjoy the presumptions of legality, truthfulness and authenticity, any person with medium education being able to realize that such acts are not obligatory. In the category of inexistent administrative acts are the decrees of the President of Romania, as well as the decisions and ordinances of the Government which have not been published in the Official Journal of Romania, as decreed by the dispositions of art. 100 par. (1) and art. 108 par. (4) of the revised Constitution of Romania.

³⁷ Art. 1 par. (6) of the Law no. 554/2004 of the administrative law provides that: "the public authority issuing an unilateral non – legal administrative act may request to the court to annul it, in the situation in which the act can no longer be revoked because it has entered the civil use and has produced legal effects. In the case of admission of the proceeding, the court also decides, if it has been notified by the request for calling to trial, on the validity of the legal acts concluded based on the non legal administrative act, as well as on the legal effects produced by them. The proceeding can be initiated within one year from the date the act is issued".

5. THE PRINCIPLE OF LEGITIMATE TRUST

The principle of legitimate trust is (like the other principles which we have already discussed) a component of the principle of legality of administrative acts and it institutes, on the one hand, the obligation of public authorities to protect (by means of a consistent and non – contradictory behavior) the legitimate expectations of private persons, and, on the other hand, it institutes their right to evolve in a stable and predictable legal environment, which they can trust, being safe from the brutal modifications of same³⁹.

The principle in question has been delineated in the post-war period by the Constitutional Court of Germany and subsequently it has been codified in the Law regarding the non-litigation administrative procedure of that country, the value of this principle being gradually acknowledged in the European space⁴⁰.

At the level of the European Union, the principle of legitimate trust has been imposed particularly by means of the jurisprudence of the European Court of Justice, which insisted on the necessity of respecting the trust of private persons in administrative acts of the European institutions. The Court constantly decreed that the abrogation of normative acts with immediate effect and without warning harms the legitimate trust of private persons because it does not allow them to avoid or limit the losses they can suffer because of the inopportune action of the issuing authority.

Thus, in the view of this European court, the principle of legitimate trust takes priority over the interest of public authorities to revise their own decisions, recommending to the member states not to revoke those legal administrative acts which conferred subjective rights to the interested persons precisely in order to protect their trust in the stability of the acquired rights⁴¹.

Also, the Luxembourg Court decreed that the administrative acts issued/adopted with the violation of the legitimate trust of their recipients are null, the concerned parties having the right to initiate actions for compensation for the damages they suffered.

It is noteworthy that the proceeding to repeal the administrative acts adopted with the violation of the principle of legitimate trust is also based on psychological reasons. Thus, the court called to annul such acts must judge both by law, and in equity (*ex aequo et bono*), thus having to find out if there has been an unjustified and unpredictable interference of public authorities in the exercise of the right of private persons, and also if there has been an actual trust in the coherence of the conduct of public power, trust produced by certain acts or behaviors.

Initially, the European Court of Human Rights has been reticent concerning the acknowledgement and promotion of the principle of legitimate trust, but subsequently it

³⁸ This law article has the following content: “Final and irrevocable court decisions which cancelled totally or partially an administrative act with normative character are generally binding and have power only for the future. They are obligatorily published after motivation, upon request of the courts, in the Official Journal of Romania, Part I, or, as the case may be, in the Official Journals of the counties or of the municipality of Bucharest, being exempted from the payment of the publicity taxes”.

³⁹ See S. Calmes, *Du principe de protection de la confiance legitime en droits allemand, communautaire et francais*, These, Dalloz2001, p. 9-18.

⁴⁰ S. Calmes, op. cit. page 31.

⁴¹ See the decision of the European Court of Justice in the united cases 7/56 and 3-7/57, *Algera versus Common Assembly of CECO*, Collection 1957, p. 81

applied it, preferring to use however the term of “legitimate hope”⁴², which, according to the Court, must be licit, possible, achievable and reasonable.

In the view of this European court, the principle in question represents the non concretized possibility by which private persons (enjoying certain stable normative references) carry out certain rights⁴³.

In this sense, for instance, the Strasbourg Court has condemned the activity of state authorities to initiate proceedings for the demolishing of constructions after a long period of time since they were built, such a practice harming the legitimate trust of their owners, who came to believe that the buildings can no longer be demolished, considering that they have been tacitly accepted by the competent bodies. As a matter of fact, in its jurisprudence, the Court decreed that the lack of reaction of the authorities who have tolerated an illegal situation for a long period of time, without intervening, constitutes the basis for the existence of a legitimate hope⁴⁴.

We would like to specify that, in the autochthonous law, in the matter of construction authorization, there are legal regulations which limit the extension in time of the right of public authorities to find and request the demolition of the illegally made constructions⁴⁵, provided they have not been built on public property lands.

Consequently, the principle of legitimate trust arises from the existence of fair administrative legal relations, in which the dominant position of public authorities should be moderate, and not excessive, taking into account not only the public interest, but also the legitimate interests and hopes of the nationals.

The whole jurisprudence of the European Court of Human Rights can be reduced to this idea, which constitutes a great benefit for the Romanian law system, rendering it democratic and freeing it from the classical strictness.

6. CONCLUSIONS

In order to avoid profound and repeated abuses from the states it is essential that the legal systems acknowledge the pre-eminence of the law and the law principles.

Otherwise, if the public authorities are above the law, it can come to “brutal” manifestations towards the nationals of the states, as in fact happened in Romania, during the period 1945-1989, when the Constitution only had a decorative role and the principle of legality was emptied of its specific content, in this way one being able to even confiscate private properties.

⁴² Decision of the European Court of Human Rights, in the case *Kopecky versus Slovakia*, (Grand Chamber, no. 44912/98, 2004-IX).

⁴³ Decision of the European Court of Human Rights in the case *Pine valley Developments and others versus Ireland*, dated November 29th, 1991, series A, no. 222, paragraph 48.

⁴⁴ Decision of the European Court of Human Rights in the case *Hamer versus Belgium*, dated November 27th, 2007, in the ECHR Bulletin, 1/2008, page 48.

⁴⁵ art. 31 of the Law no. 50/1991 regarding the authorization of performance of constructions works (republished in the *Official Journal of Romania*, no. 933 dated October 13th, 2004) provides that: “The right to find contraventions and to apply the fines provided in art. 26 is lost by prescription within 2 years from the perpetration of the deed”. Even if the law does not expressly provide it, we consider that the prescription of the right to find contraventions also entails the prescription of the right to apply the sanctions, including the one of demolishing the construction.

Thus, in order to guarantee social security, the public administration authorities have the obligation to adapt their entire activity in conformity with the requirements of the law and the lawful principles.

In a state subject to the rule of law, the observance of principles such as legality, legal security or the predictability of legal norms, must be in the domain of normality. However, when the normal becomes abnormal, we are dealing with a state of legal insecurity, which, as we have seen, generates the lack of trust of the citizen in the public authorities and in the norms decreed by them. It is obvious that the permanent modification of legal norms or creating legal norms with an obscure meaning is a certain source of social unbalance and, consequently, of mistrust on the part of private persons.

We are thus in the presence of permanent cause-and-effect relations, the lack of predictability of the norms leading to a legal insecurity, situation which in its turn gives rise to a feeling of mistrust (legitimate, in fact) on the part of the nationals.

Consequently, the more democratic and evolved a state is, the easier it accepts the imperative character of the presented principles. In fact, it is even to its advantage to regulate its activity in accordance with these principles, otherwise always having to compensate the nationals, who will not hesitate to appeal to European courts. It is not very difficult to realize the fact that, eventually, the state authorities will have to comply with the requirements that we mentioned above, since a permanent climate of legal insecurity and of mistrust on the part of the citizens will lead to a more and more obvious radicalization of them with respect to the state.

At present, the member states have difficulties in receiving the principles imposed by the jurisprudence of the Strasbourg Court and the Luxembourg Court. For a better acknowledgement and enforcement of them, it is necessary that the member states have a permanent preoccupation to adapt the legislation, including the normative administrative acts, to the requirements of European law.

