

PUBLIC POLICIES ON CLIMATE CHANGE

Gabriel MANU*

ABSTRACT: *The paramount importance of the whole issue of global warming is reflected throughout all public and private structures, either local, state or international. In terms of action, public authorities have the major responsibility to generate and implement public policies, of a legislative, economic and administrative nature.*

The identification of appropriate instruments implies on the part of public authorities, including administrative ones, a culture / institutional competence in addressing climate issues. In this respect, there are major gaps between the states involved in solving the "climate dossier" and an objective assessment can be based on criteria for the national regulatory framework on climate and the involvement of citizens in its development and consultation in adopting related administrative decisions.

KEYWORDS: *global warming; public authority; United Nations Convention on Climate Change; Paris Agreement; European Green Deal; public policies; citizen consultations; collaborative administrative action; administrative decision; participatory democracy.*

JEL Code: *K 32*

1. GENERAL ASPECTS

Climate and its problems, the state and evolution of its relationship with the present and especially with the future of the human species, is a central theme of ecological thinking, both in size and novelty of the challenges they address, as well as the vigour of reactions, which it requires and generates (Duțu, 2021) (Duțu, M.; Duțu, A., 2014).

The extraordinary importance of the whole global warming issue, justified by the quality of the common good climate and focused, in terms of causes and solutions, on the impact of human activities on the climate, is reflected on the level of all the public and private structures, either local, state or international. In terms of action, the major responsibility lies with the central and local public authorities, deliberative and executive, which are constrained to generate appropriate instruments of a legislative, economic and administrative nature and to implement them, based on concepts and practices that promote, in particular, actions on the local level, coordinated with regional, national and transnational approaches, according to the principle “think globally, act locally”. (Manu, 2021) (Manu, 2021)

* PhD., Associate Professor–Faculty of Law, Ecologic University of Bucharest, ROMANIA.

2. INTERNATIONAL LEGAL FRAMEWORK ON CLIMATE CHANGE

Given the global nature of climate issues, solutions and objectives are developed and assumed at global or regional level, through specific instruments. (Dușcă, 2021)

*The United Nations Convention on Climate Change*¹ has as ultimate objective to stabilize the concentrations of greenhouse gases in the atmosphere on a level that prevents any dangerous anthropogenic disturbance of the climate system. The parties agreed to achieve this goal in sufficient time for ecosystems to be able to adapt naturally to climate change, food production not to be threatened and economic development to take place in a sustainable manner.

*The Kyoto Protocol, adopted by the parties of the United Nations Convention on Climate Change*², set the goal of reducing greenhouse gas emissions by at least 5% compared to 1990 levels in 2008-2012. Through its content, it has engaged industrialized states and the U.E. in a policy of reducing GHG emissions, through the use of the global "market" of emission allowances, by setting a global emission ceiling and according to a top-down mechanism, distributed to states in the form of "emission rights" which, in turn, have allocated them to polluting entities (M. Duțu, M. M. Duțu-Buzura, 2020).

*The Paris Agreement*³, adopted in order to maintain the increase of the average temperature below 2° C compared to the pre-industrial period, established a series of implementation mechanisms, among which: the international transfer of units for reducing greenhouse gas emissions; sustainable development mechanism; the mechanism of increased transparency; the periodic global evaluation mechanism.

*The European Green Deal*⁴ proposes a broadening of the scope of action in the field, asserting itself and at the same time assuming the fundamental role of the European Union's medium - and long-term development strategy, in line with the imperatives of adapting to the effects of climate change. Its ultimate goal is to dissociate economic growth from resource use and restore the quality of the environment and health both for citizens and for nature, based on a roadmap consisting of actions to promote the efficient use of resources (especially by moving to an economic circular), reduction of GHG emissions, greater adaptation to climate change, loss of biodiversity and pollution (air, water and soil); it also outlines the necessary investments and funding instruments available and explains ways and means to ensure a fair and inclusive transition. (Duțu-Buzura, 2021)

*The Climate regulation*⁵ sets, with binding value and legal force, the Green Deal targets on climate neutrality for 2050, setting an intermediate one - a 55% reduction.

¹ Done in New York on 9 May 1992 and submitted for signature in June 1992 at the United Nations Conference on Environment and Development in Rio de Janeiro, it entered into force on 21 March 1994 and is currently being ratified by 195 states.

² At the Third Session of the Conference of the Parties (COP3), on December 11th, 1997.

³ Adopted on December 12th, 2015 by the signatory states to the XXI Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change.

⁴ Presented on December 11th, 2019 by the European Commission, it aims at making Europe the first climate-neutral continent by 2050, with the intermediate stage of reducing EU GHG emissions by 2030 by at least 55% compared to 1990 levels.

⁵ Proposal for a Regulation of the European Parliament and of the Council establishing a framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM (2020)

Also, in the context of the European Green Deal, it was launched on December 9th, 2020 the *European Climate Pact*⁶, a EU-wide initiative meant to encourage individuals, communities and organizations to take part in climate action, get involved in the green transition and build a greener Europe.

3. PUBLIC POLICIES ON CLIMATE CHANGE

Subsequent to the assumption, on the international or regional level, of obligations such as the above, the action of the national authorities to elaborate an adequate normative framework and its implementation, through public policies, becomes essential.

Identifying the right tools for formulating and implementing public policies implies an institutional culture / competence, within the public authorities, including central and local administrative ones, in addressing climate issues.

In this respect, there are major gaps between the states involved in solving the "climate file", their assessment can be made based on criteria for the national regulatory framework on climate and the involvement of citizens in its development and consultation in adopting administrative decisions.

The implementation of the Green Deal for Europe in the Member States has led to the adoption of national climate legislation and laws, or in a broad sense, of any legal regulation on climate (including issues of limiting greenhouse gas emissions, but also adequate response and resilience issues), or in a more restrictive and applied, regulatory sense that meets three cumulative characteristics: sets a national target for the post-2030 horizon, organizes reporting. This last type of regulation is under development, by adopting specific regulations, in countries such as the Netherlands, Denmark, Ireland, Norway, Germany, Sweden, France, Scotland or Spain (in other countries, such as Belgium and Greece the procedures are ongoing) (Duțu, 2021).

In Germany, the Federal Climate Protection Act of December 12th, 2019 was declared partly unconstitutional⁷, considering that some of its predictions are insufficient, namely that the reduction of greenhouse gas (GHG) emissions by 55% by 2030, compared to 1990 levels „does not comply with fundamental rights, as there are no sufficient requirements for further emission reductions from 2031 onwards”.⁸

In France, the provisions of the "Climate and Resilience" Law have generated widespread social and critical movements, its objectives being claimed as too unambitious.

Romania is not yet part of this process, which becomes necessary due to: the need for national adaptation of international and European objectives; predictability and stability requirements; lack of concrete grounds and tools for action available to citizens, for the

final, 2020/0036 (COD), Brussels, 4.03.2020, adopted with amendments by the European Parliament on 8 October 2020.

⁶Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the region, *European Climate Pact*, COM (2020) 788 final, 9.12.2020.

⁷By the Decision of the Constitutional Court of Romania of April 29th, 2021.

⁸ M. Duțu, For Germany, climate protection becomes a protection of freedom. Decision of 29 April of the Karlsruhe Court, published on *Juridice Essentials*, on May 13th, 2021, available at <https://www.juridice.ro/essentials/4676/pentru-germania-protectia-climei-devine-ocrotire-a-libertatii-decizia-din-29-aprilie-a-curtii-de-la-karlsruhe>.

obligation, including through the assistance of justice, the state and public authorities to comply with their obligations, supplemented only in part by the application of the European Convention on Human Rights (Coman, 2017) or other contentious instruments (M. Botina, F. Nedea , E. Mirea, 2018).

A law on climate protection, having at its core the consecration of the objectives assumed and the establishment of the returned responsibilities, in front of those of the state and the public authorities, is necessary to: establish a certain complete and adequate legal foundation expressing in operational terms the commitments and obligations to meet the objectives set out in the Paris Agreement and relevant EU documents; foreshadowing the governance framework, with a permanent character, perfectible over time and permanently adapted to the evolutions of ecoclimatic realities; ensuring the preservation in time of the priority of the climate action and the energy transition, of the constant progress in the matter and the affirmation of the international standing of the Romanian state (M. Botina, F. Nedea , E. Mirea, 2018).

4. A NEW MODEL OF ADMINISTRATIVE ACTION

Another indicator of the competence of public authorities in the climate field is the degree of consultation and involvement of citizens in the regulatory process and in connection with the adoption of related administrative decisions, a process found in over 30 countries, in the form of citizen consultations.

The issue of climate change occurs in the public administration systems, at a time of transformations generated by a broad liberal current at the level of administrative action and the administration-citizen relationship. They aim at the progressive replacement of the unilateral character of administrative action, with models based on dialogue and consensus and the transition from representative to participatory democracy. (Amilhat, 2018).

The generalization of the dialogue between the administration and the citizens is a way of promoting new forms of action, such as the collaborative one, as a model of future administrative conduct. (Manu, 2020)

The collaborative model represents an innovation in the field of public action, designating a more important involvement of the public in the elaboration of the normative and administrative decision, favoured by new models of public consultation. This trend is also supported by European Union law, which obliges institutions to give citizens and representative associations, by appropriate means, the opportunity to make their views known and to exchange views in public, in all areas of action.

5. CITIZEN CONSULTATIONS ON CLIMATE (Manu, 2021)

The need for a broad social acceptability of solutions to ecoclimatic problems has generated a number of new experiences of consultation and involvement of citizens in selecting priorities and promoting the objectives of political and legal action in this area (Duțu, n.d.), two such recent processes in France are relevant.

5.1. Grand Débat National (GDN).

The social and political crisis⁹ associated with the "Yellow Vests" movement and the polarization of French public opinion regarding the demands of its militants led to the launch, on January 15, 2019, by the French President E. Macron, of a Great National Debate (GDN).

This debate was conceived and carried out on the national level, as a participatory democratic exercise, open to all citizens willing to engage in one or more of the four themes selected by the government: "Democracy and citizenship", "Taxation and public spending", "Ecological transition" and "Organization of public and state services".

In Europe similar experiences have taken place in the past, such as the European Citizens' Initiative (2012), the Citizens' Dialogues (2012) and the European Citizens' Consultations (2018).¹⁰

The idea of "rebuilding" Europe from dialogues with European citizens was launched by the French President Emmanuel Macron in a speech in Athens in autumn 2017. He said that "Europe cannot continue its destiny. unless this destiny is chosen and desired" by its citizens. The express theme of the consultations was the re-founding of the EU, including adjacent themes, and the stated aim was to involve European citizens as much as possible in the debates on the future of the European Union.

The great French National Debate took place over two months, generating almost 2 million online contributions, 10,000 local meetings and a series of citizen gatherings.

The debates were subject to the obligation to respect six fundamental values: transparency, pluralism, inclusion, equality, neutrality and respect, being overseen by five independent guarantors - elected by the government and parliament for their expertise as scientists.

Most experts describe the Grand Débat National as a success in terms of public involvement, responding to a legitimate popular aspiration to participate in decision-making.

Theorizing the framework and effects of combining the legitimacy of this type of assembly with that of the elected representative public authorities, the specialized research concluded that they are complementary and the failure to combine them weakens democracy as a whole, affecting citizens' trust (Rosanvallon, 2008). Participatory democracy requires political commitment on the part of citizens and authorities and requires time both in organizing and in implementing the results.

5.2. Citizens' Convention on Climate Change.

The result of the Great National Debate, *Citizens' Convention on Climate Change* was set up in 2019, an unprecedented democratic experience, by the decision of the

⁹C. Dobler, *The 2019 Grand Débat National in France: A Participatory Experiment With Limited Legitimacy*, available at <https://www.democracy-international.org/2019-grand-debat-national-france-participatory-experiment-limited-legitimacy>.

¹⁰The objective of "Citizens' consultations for the future of the European Union", launched on May 9, 2018, is to create a democratic framework to debate the most important issues on European level, both those directly concerning Romania and its citizens and those relevant to the future of the European Union. This series of events began on Europe Day and is an opportunity to highlight the institutional openness to dialogue with citizens, in the process of preparing the mandate of the Romanian Presidency of the Council of the European Union, as well as strengthening the sense of belonging to the project, construction and European processes that will determine the future of Europe.

President of the French Republic, who pledged that the proposals that would emerge would be submitted "without filter" to either a referendum, a vote in Parliament or a direct assimilation, by regulation. For the first time, a group that respects the diversity of French citizens in terms of structure is directly involved in the preparation of regulations, through the direct formulation of proposals to accelerate the fight against climate change.

The mandate of the Convention was to identify measures and instruments that would lead to a reduction of at least 40% in greenhouse gas emissions by 2030 (compared to 1990) in a spirit of social justice" (R. Barroux, A. Garric, n.d.).

The Convention addresses issues related to energy consumption, thermal renovation of housing, agriculture, mobility, environmental taxation and other relevant instruments, summarized in five major themes, defining for everyday life: travel, housing, food, consumption, production and the work.

Composed of 150 French citizens, designated by lot (V. Mazuir, n.d.), The Convention reflects the diversity of French society, namely *all ages, social classes, sectors of activity and regions of France*.

In June 2020, the Citizens' Climate Convention presented its conclusions to the Minister for the Green and Inclusive Transition. The proposals, which cover all sectors, present a new society in which people work, produce, live, travel, eat and consume differently. In them, the members of the Convention expressed their desire to submit to the referendum a series of measures, including:

- modification of the preamble and of art. 1 of the French Constitution to include objectives for the conservation of the environment and biodiversity, but also the fight against climate change;

- submission to the referendum of the objective of legislating the "crime of ecocide", defined as "any action that has caused serious ecological damage by participating in the manifest and significant exceeding of the planetary limits, committed with the knowledge of the consequences".

Responding to the Convention's proposals, the French President rejected three of the proposals (limiting the maximum speed limit on the motorway to 110 km / h, imposing a 4% tax on dividends of companies exceeding a certain value ceiling and amending the preamble to the Constitution) and announced a „specific" draft law.

In this context, on February 10th, 2021, the law draft "Climate and resilience" developed as a tool against climate change and to strengthen resilience to its effects was presented to the Council of Ministers.

It reflects some of the 146 proposals of the Convention, being characterized as a law that integrates environmental requirements in the whole of French society (in public services, in the education and development of children, in urban planning, in mobility activities, in the consumption model, in justice) and has the effect of fundamentally changing the lifestyle.

6. CONCLUSIONS

The solution of the climate issue, through the observance of the objectives and obligations assumed on the international and European Union level, requires a substantial involvement of the national public authorities, in order to adopt an adequate and efficient

normative framework and its implementation, through public policies and administrative decisions.

In this context, it becomes important to create skills within the public structures for the competent legal and administrative approach to the climate change phenomenon.

REFERENCES

- Amilhat M.(2018), „Contractualization, negotiation, consensualisme : nouvelles approches du droit public”, in *Revue française de droit administratif*, nr. 1/2018.
- Barroux R., Garric A. (2021), *La convention citoyenne pour le climat se sépare sur une note sévère au gouvernement*, available at https://www.lemonde.fr/planete/article/2021/02/28/la-convention-citoyenne-pour-le-climat-se-separe-sur-une-note-severe-au-gouvernement_6071502_3244.html.
- Botina M., Nedea F., Mirea E.(2018), *Promoting the action in administrative litigation by the Ombudsman's Institution. Practical Aspects* (in original in Romanian), Universul Juridic Publishing House.
- Coman R. M.(2017), *The effects of the jurisprudence of the Strasbourg Court on the Romanian criminal trial Aspects* (in original in Romanian), Universul Juridic Publishing House, Bucharest.
- Dobler C., *The 2019 Grand Débat National in France: A Participatory Experiment With Limited Legitimacy*, available at <https://www.democracy-international.org/2019-grand-debat-national-france-participatory-experiment-limited-legitimacy>.
- Duțu M., Duțu A.(2014), *Environmental law. University course*, 4th edition (in original in Romanian), C.H.Beck Publishing House.
- Duțu M. (2021), *Climate law. The legal regime for combating and mitigating global warming and adapting to the effects of climate change* (in original in Romanian), Universul Juridic Publishing House.
- Duțu-Buzura A. (coord.) (2021), *Law and climate change. Answers, concerns, perspectives* (in original in Romanian), Universul Juridic Publishing House, Bucharest, 2021.
- Duțu M., Duțu-Buzura M.M. (2020), *Introduction to climate law - Complex legal regime and a unique scientific discipline* (in original in Romanian), , *Studii și Cercetări Juridice / Legal Studies and Research*, year 9 (65), Nr. 3 July–September 2020, p. 346.
- Idoux P.(2018), „Dynamique contractuelle et dynamique deliberative dans la renouvellement des methodes d’action publique.
- Manu G. (2020), *Administrative law and administrative action in the “digital age”* (in original in Romanian), *Dreptul / Law Journal* no. 12/2020, p. 70.
- Manu G. (2021), *Citizen consultations - an “eco-democratic” tool* (in original in Romanian), *Dreptul / Law Journal* no. 7/2021, p. 109.
- Mazuir V. (2021), *La convention citoyenne pour le climat*, <https://www.lesechos.fr/politique-societe/societe/la-convention-citoyenne-pour-le-climat-1137904>.

Rosanvallon P. (2008), *La Légitimité démocratique: impartialité, réflexivité, proximité*, Paris, Éditions du Seuil.

