

**THE RIGHT TO TRAINING AND IMPROVEMENT OF
VOCATIONAL TRAINING. COMPARATIVE ANALYSIS
REGARDING CIVIL SERVANTS, CONTRACT STAFF
FROM PUBLIC ADMINISTRATION AND EMPLOYEES
FROM THE PRIVATE SECTOR**

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Abstract: *Our study intends to analyze comparatively the improvement of the professional training for civil servants, the contract staff from the public administration and the employees from the private sector. As far as civil servants are concerned, the training and improvement of the professional training has the particularity that it represents, equally, a fundamental right and a duty, being reflected in the Law no. 188/1999 regarding the Statute of civil servants, partially repealed, at present the regulations are taken over and supplemented by Government Ordinance no. 57/2019 regarding the Administrative Code. In the case of the contract staff, the Labor Code and the labor law also recognize it, specifying that we consider that a differentiation of its legal regime is required, as we refer to the contract staff in the public and private sectors. Regarding the contractual personnel in the public sector, we express ourselves in the sense that certain dimensions of the legal regime of the professional development of the civil servants also reverberate in the matter of the professional improvement of the contractual personnel in this sector. We embrace and strive to develop through our study the thesis formulated by Professor Ion Traian Stefanescu, according to which elements of the legal status of civil servants and of the legal situation influence each other, the two staff categories “borrow” each other characteristic traits, what it is natural, on the other hand, because, as we have already mentioned, the status of those*

who carry out their activity in the public sector does not have a determining relevance, especially, the content and the purpose of the activity they carry out. And it aims, in essence, to provide public services that meet the general interest needs of the beneficiaries of these services, starting with January 1, 2020 the exercise of public power prerogatives returning exclusively to civil servants as a result of the entry into force of the Administrative Code.

Keywords: *civil servants, contract staff, employers, employees, status of civil servants, public sector, private sector, budgetary personnel, public services*

JEL Classification: *H83, J21*

1. Constitutional foundation of the vocational training improvement

In analyzing this problem we must start from two hypotheses, which complement each other: on the one hand, the general provisions regarding **the right to education**, given that **the improvement of the vocational training is a component of the right to education**, and, on the other hand, those regarding **the right to work and the general status of the employees**.

Regarding **the right to education**, it is regulated in art. 32 of the Constitution of Romania, being a constant of the Fundamental Laws in regulating, guaranteeing and consecrating the essential elements of its legal regime (For example, the Constitution of Germany regulates it in art. 7, the Constitution of Italy in art. 33, that of Spain in art. 27, of Greece and Hungary in art. 16, of Poland in art. 70, corresponding to the structure of each of them). The connection between this right and the problem analyzed by us is found from the first paragraph of the text, according to which *“The right to education is ensured through compulsory general education through high school and vocational education, through higher education, as well as by forms of instruction and **improvement**.”* We find, from the interpretation of this text, that **improvement is a component of the right to education**, which, in turn, is *“considered a part of the right to education. (...) The purpose of guaranteeing this right is complex, on the one hand, it ensures the education of the person to be able to fit, according to his performances and aptitudes, in the social structures. On the other hand, the right to education imposes a series of obligations on the person, in the relations between parents and children, but also at the end of the educational process”* (Selejan-Guțan, in Muraru, Tănăsescu, 2008, p. 306).

The second constitutional reference to which we refer is **art. 41** which regulate **the labor and the social protection** and which, in par. (2) provides that

*“Employees have the right to social protection measures. These concern the safety and health of the employees, the working conditions of women and young people, the establishment of a gross minimum wage in the country, the weekly rest, the paid annual leave, the provision of work under special conditions, **vocational training**, as well as other specific situations, established by law.”*

Analyzing comparatively the constitutional regime of the two fundamental rights, **the right to education** and **the right to work**, we notice that **if in the case of the right to education the *improvement* term is used, which is a component of it, in the case of the right to work we find the concept of *vocational training*, which is a component not of the right to work, but of the right to social protection.** Moreover, from art. 41 we find that **between the concepts of *right to work* and that of *social protection* there is an indissoluble connection, one without the other cannot be.** Why is the right to vocational training a component of the right to work? Because, through it, the employee acquires the knowledge, qualifications, skills, abilities, competences and expertise necessary to cope with any changes in his professional evolution and in the effective exercise of the right to work, including the situation in which certain changes occur, which can also materialize in the effective ceasing of the employment or employment relationship - certain situations. Vocational training allows him to adapt, to reorient himself, to face new demands and even challenges in his activity. All this, with the concession of assuring the capacity to continue work, to support himself and those who owe him, according to the law of morals and accepted principles of morality, the maintenance assurance.

The two constitutional texts must be interpreted in relation to each other. *Learning* represents preparing someone to work, to earn his own living, for himself and his family. We can say, without the fear of error, that **the purpose of learning is the professional expression, personally and socially, of the individual.** It is a component of **the right to education**, without overlapping with it. Education is a continuous process, which each individual has to go through his entire existence, to face the challenges that technology faces, with its most evolved component, computerization, the phenomenon of globalization, which “swallow”, with greed, all domains, complex hypostases of the times we live. Intuiting their coming, the people expressed this truth by the following saying: “It is never too late to learn”, whose meanings, initially related to the common life, must be transferred to the professional life plan, to cover something that cannot be challenged: the fact that it is necessary to constantly evolve, to adapt to all changes, to be able to respond to all the expectations we have of ourselves or others of us.

In pedagogy, a parable full of core and teachings is used. It is about a teacher, who was the object of an evaluation, which he passed very well, obtaining the maximum result. As this assessment took place periodically, at the next evaluation, he was surprised when he found that he obtained the minimum grade. He rebelled against this situation, whose correction he pursued, explaining to those who evaluated him *that he does not understand why the qualification obtained is so low, because he proceeded in a manner identical to that used three years ago, when the results had been maximum.* The answer of those who evaluated him, on both occasions, was that **this is precisely why they did not find any change in his working method, in his teaching and learning techniques.**

Not only in pedagogy, but in every field it is the same situation. We must constantly perfect ourselves, in order to be able, on the one hand, to succeed, in the profession we are pursuing, and on the other, to convince ourselves that we have the resources to respond to future tasks.

In this sense, in the evolution of the internal vocational training, organized by the public authority and institution for its own staff with lecturers or trainers among the employees, in the public system has developed in addition to the formal education and the non-formal education, besides the “lecturers”, being placed very great emphasis on the **trainers training** and the distribution, mainly, in their task of organizing activities, together with the personnel of the department within the structure of human resources with attributions in this regard, and supporting the courses of internal vocational training.

It is necessary to clarify the use of the title of *lecturer* compared to that of *trainer*, strictly in the field of public administration, so the *lecturer* is the person who organizes and has courses of internal vocational training without having **the professional qualification of trainer**, defined according to the Romanian Occupational Classification (COR) thus: “*specialists in training and staff development plans, develops, implements and evaluates the training and development programs, to ensure that both the management team and the staff acquire their skills and develop the competencies required by the organization to achieve the organizational objectives.*”

2. Improving vocational training: law, obligation or law and obligation?

In close connection with those previously expressed, the question arises which represents the professional improvement: a right, an obligation or, equally, a right and an obligation. The answer, in our opinion, is undoubtedly the one

expressed by the last proposed variant, in the sense that **the improvement of the vocational training must be understood, interpreted and applied, both as a right and as an obligation of the man in general and of the one who pursues a profession in particular.**

We will customize and substantiate this assertion by referring to different categories of personnel, who carry out an activity or a job, in the broad sense of the term. As far as **civil servants** are concerned, things are extremely clear, because the legislation that regulates their legal status, consecrates the vocational training under its dual legal regime, of law and obligation of the official, from which derivative rights and obligations correlate for the individual and the employer. We consider, on the one hand, the name of the third section of chapter V of Law no. 188/1999 regarding the Statute of civil servants (republished in the Official Gazette no. 365/ 29.05.2007), bearing the name of “*professional training of civil servants*”, as well as the actual content of the first article in this section, which stipulates, expressis verbis, that “*civil servants have the **right and obligation** to and continually improve your skills and vocational training*”.

At the time of writing this study, we are in the situation, in the normative plan, of the adoption, by emergency ordinance, of the Administrative Code (Government Ordinance no. 57 /2019), which regulates the status of civil servants in Part VI, even under this name, where we find the same conception, of law and duty, of the vocational training. This normative act has gone through *a real epic* in the last years, being adopted by the ordinary parliamentary procedure in July 2018, declared unconstitutional by Decision no. 681/2018 (published in the Official Gazette no. 190/11.03.2019) so that, in almost a year, the procedure for adopting it will be resumed and it will be adopted by emergency ordinance, a procedure that contains certain critical aspects, when it is used without the conditions provided by art. 115 of the Constitution. However, we agree with the opinions expressed by the theorists of administrative law who support the usefulness of adopting this normative act and we confess that, although it does not concern our strict preoccupation in the field of the legal discipline to which we have devoted ourselves, respectively the labor law, we cannot assert that it is foreign to us. The public administration represents the segment of activity that influences the professional and private life of each one of us (Beyond these aspects, our doctoral thesis aimed at researching the status of civil servants, which legitimizes and maintains our concern regarding this legal institution, including from a comparative perspective with the legal situation of the employee).

As we have already shown, the professional development for the civil servant is qualified *expressis verbis* as representing, equally, a **right** and an **obligation**.

By entering into force of the Administrative Code, the scope of exercising this right and the obligation established by law was extended, being regulated by art. 458 “**Training and professional development of civil servants**”, provisions that also apply to contract staff in the public administration. We note that a distinction is made between the two types of vocational training, the regulation being adapted to the needs of competences and qualifications of public authorities and institutions.

Unfortunately, although Law no. 188/1999 regarding the Statute of civil servants, currently repealed by the Administrative Code, has been adopted for almost two decades, we consider that, in terms of legal realities, such a vision is not yet fully accepted, with all the consequences that derive from it. We consider at least the following aspects:

- the lack of concern of the public authorities and the state in including and securing, through their own budgets, the necessary funds to guarantee the right to perfect the vocational training, as a rule it is on the “*minimum resistance*”;
- lack of interest in the actual results obtained after completing the training programs, including the way they are carried out in concrete. We consider the formalism that manifests both on the part of the staff, as well as of the public authorities and institutions, to take these courses and to grant them other validities than those of contributing to a real evolution of the professional competence and even of the quality, personality of those who graduate.

Even the media contributes to maintaining this state, presenting too often the participation of local officials or dignitaries in such courses as “walks or tourism on the state money and our own money”. In fact, they should be considered as real investments in the public administration, as the exercise of the powers conferred by the law and, without exaggeration, in the future.

Regarding the analysis of the problem of the professional training of the employee, if “*the organization and functioning of the national education / education system belong, as a rule, to the administrative law*”, in the object of analysis of the labor law enters “*with priority those legal norms that establish concrete- by positions, positions, trades - the conditions of studies for employment*” (Ștefănescu, 2017, 215-216).

Common to the employees in the private domain, the contract staff from the public administration and the civil servants is the fact that **their vocational training is carried out both in the education system, whose regulation we find in the Law of national education no. 1/2011** (published in the Official Gazette no. 18/10.01.2011), **as well as outside the education system**, through training and professional development modalities regulated by different normative acts, and more recently and by non-formal education, which through art. 330 paragraph (3) of Law no. 1/2011, is regulated in this way “learning in non-formal contexts is considered as integrated learning within planned activities, with learning objectives that do not explicitly follow a curriculum and may differ in duration. This type of learning depends on the intention of the learner and does not automatically lead to the certification of the acquired knowledge and skills”.

For the public sector, the activity of the National Institute of Administration (I.N.A.), created for the first time by Government Ordinance, no. 81/2001, abolished by Law no. 329/2009 regarding the reorganization of some public authorities and institutions, the rationalization of public spending, the support of the business environment and the compliance with the framework agreements with the European Commission and the International Monetary Fund and **recreated** through Government Ordinance no. 23/2016 (published in the Official Gazette no. 658/29.08.2016), even if in the name of the ordinance and in its first article it is foreseen that it is **established**, in reality it is **re-established**, as critically observed in the doctrine (Vedinas, 2018, 134). The role of this Institute, as it results from art. 2 paragraph (1) of Government Ordinance no. 23/2016, is *to implement the strategic directions of the Government regarding the efficiency of the public administration by professionalizing the personnel from the central and local public administration*. It is interesting to note that **the National Institute of Administration does not organize courses only for civil servants and, eventually, public officials**. As it results from art. 2 paragraph (2) lit. a) of the text, **the National Institute of Administration** “*organizes specialized training programs for the occupation of a public function in the category of senior civil servants, civil servants, contract staff, persons elected or appointed according to public dignity or assimilated to them, elected local, public managers, as well as for other categories of persons established by law*”. We find that within the organized courses not only holders of a public function or dignity but the contract staff from the public administration also can improve the training.

The Administrative Code states that (2) “specialized training programs designed to develop the competencies necessary for the exercise of a public management role are organized by the National Institute of Administration, according to the law”, regulations against which we consider that it is intended to ensure a management superior within the public authorities and institutions by the management personnel, by developing competences within an institutionalized framework with the purpose of applying unitary management methods, a situation that will, in our opinion, effect the efficiency of the activity. At the same time, in the situation of the change of the management personnel, the execution personnel will benefit from continuity in the coordination and organization of the activity by implementing the same methods or improved methods, accepted institutionally, accepted and verified in terms of the positive effects.

In the Labor Code, we find the regulation of **vocational training** in Title VI, which bears this very name. According to art. 192 para. (1), the professional training, for the contract staff, has several objectives, among which are *the adaptation of the employee to the requirements of the job, obtaining a professional qualification, professional conversion, but also acquiring advanced knowledge, modern methods and procedures, necessary for carrying out professional activities as well as promoting in work and developing professional career. In the doctrine it is appreciated that „the objectives of the training activity listed in par. (1) in art. 192 are not exhaustive, others can be established ...”* (Ezer in Ștefănescu, 2017, 309).

If it is to analyze comparatively the regime of professional development, on the one hand in the case of civil servants, and on the other hand of the contract staff from the public administration and of the employees in the private sector, we can say that in the first situation the improvement is a condition of the career development of the civil servants public, whereas in the case of contractual employees it is more of a consequence, it entails promotion in work and career development, without proposing to draw lines of rigid demarcation between the two categories, at least under this aspect. Moreover, as the doctrine has already pointed out, we share the opinion that the legal regime of the civil servant, of the contractual staff of the public administration and of the employee in the private sector lends itself permanently to elements that influence them and bring them closer, at the same time, without overlapping them to identity. In this regard, it is noted that *“For over a century, there has been a mutual movement to influence labor law by rules of public law and the law of public function by protective rules of private labor law”* (Ștefănescu, 2017, 27).

In agreement with the ideas expressed in the doctrine (Ezer in Ștefănescu, 2017, 311), we largely agree with the view that **the modalities** in which the vocational training of the employees in the private sector is materialized are, from the point of view of their source, of three categories: modalities provided by art. 193 of the Labor Code;¹ modalities provided by the Government Ordinance no.129/2000 regarding the adult vocational training (republished in the Official Gazette no. 110/13.02.2014), whose provisions are implemented by Government Decision no. 522/2003; modalities provided by Law no. 76/2002 regarding the unemployment insurance system and the stimulation of employment (published in the Official Gazette no. 103/06.02.2002), modalities that are also used in the public administration, as it results from the provisions of art. 458 paragraph (2) of the Administrative Code which stipulates that “The public authorities and institutions have the obligation to ensure the participation for each civil servant in at least one training program every two years, organized by the National Institute of Administration **or by other providers of vocational training, according to law**”.

We note that, distinct from the normative acts that previously regulated the public function and the contract staff in the public administration, the Administrative Code ensures the cyclicity of the designation of the personnel who will take courses, in our estimation, in order to eliminate the “favoritisms”, regulations that have proved necessary and of nature. to ensure the fulfillment of the duties regulated by the Administrative Code in the task of the management personnel, respectively “to ensure equal opportunities and treatment regarding the development of the career of the subordinate personnel”. We recall that in Law no. 7/2004 regarding the Code of conduct of civil servants and in Law no. 477/2004 regarding the Code of conduct of the contract staff from public authorities and institutions, this obligation is regulated by art. 16 - Objectivity in evaluation.

We consider, however, that the sphere of the three categories of modalities should be supplemented by a fourth one, which concerns **the modalities provided by the Government Ordinance no. 23/2016 regarding the establishment, organization and functioning of the National Institute of Administration, as well as of other normative acts**, considering that the contract staff in the budgetary system, mainly follow the training courses organized by the National Institute of Administration, but also by other training

¹ Art. 193 of the Labor Code lists the following categories: participation in courses organized by the employer or by the providers of vocational training services in the country or abroad; internships of professional adaptation to the job requirements; internships in the country and abroad; organized apprenticeship at the workplace; individual training; other forms of training agreed between the employer and the employee.

institutions. For example, for the staff in the Romanian banking system, there is the Romanian Banking Institute, for the one within the Ministry of Public Finance, regardless of whether we refer to civil servants or contract staff, we find specialized forms of training and improvement, as well as conducting courses through the School of Public Finance and Customs, and examples can continue.

Relevant to the legal regime of vocational training of employees in the private sector is art. 194 of the Labor Code, which stipulates **the obligation of employers** who have **at least 21 employees**, to ensure the participation in vocational training programs at least **once every 2 years**, and of those **under 21 employees**, to ensure the participation **at least once every 3 years**. This obligation is also **a right of the employees**, so that *the expenses with the participation in the training programs* provided under the aforementioned conditions **are borne by the employers**. In the absence of express provisions of the legislature, we appreciate **that the participation in the training programs can be initiated by both the employer and the employee**. In the case of those initiated by the employer, in order to fulfill their obligation under art. 194 of the Labor Code, the amount of the expenses incurred by the following program is borne by the employer. But another is the problem if the employee is the one who has the initiative to take a certain course. We consider, in agreement with the opinion expressed in the doctrine, that, *“because there is no express legal provision, it is not excluded that the employer accepts, from one case to another, to bear all or part of the expenses incurred by a course of vocational training identified by the employee (whether or not the employee has already fulfilled the obligation to ensure the professional training of the employees)”* (Ezer in Ștefănescu, 2017, 311). Equally, we consider that it is not excluded the imposition of conditions in order to achieve this, by which the employer will ensure a certain benefit in the future from the improvement of the training of his employee.

In the case of vocational training in public administration, the Administrative Code regulates the conditions and limits in which training and professional development programs can be followed at the initiative of public administration employees, establishing also the restriction of rights and obligations according to the period in which such programmes are taken, the budget from which they are paid and their usefulness in carrying out the duties of the public authority or institution.

Conclusions

The issue of vocational training is important and sensitive, at the same time, for both the civil servant and the contract staff in the public administration,

as well as for the private sector employee. The administrative code brought changes and completions regarding all the dimensions of the status of the civil servant, including that of his vocational training and improvement, applicable also to the contractual staff of the public administration. This is because the old Law no. 188/1999 was included in its contents, without a content identity between the new and the old regulations.

Regarding the contract staff, we find a framework regulation, to which we refer in the present study, to which other normative acts are added, from the level of the primary law but not only, which establishes rules regarding the training for different employee categories. Technological changes, which have an alert rhythm, also force them to adapt, to specialize, to create the premises that employees can adapt to new technologies.

These changes must be reflected more developed also by express provisions adopted in the legislation, by the establishment of regulations that protect, equally, the public or private sector personnel, as well as the employer. And guaranteeing the right to improvement, by supporting its value, must be realized for the benefit of both parties and those who are the recipients of the activity provided by them, in order to improve the quality of public services, public interest services and the quality of services and products from the private sector.

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