

## ADEQUATELY ADMINISTERING THE ADMINISTRATOR. AN ECONOMIC ANALYSIS OF PUBLIC LAW PERSPECTIVE ON MANAGING

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*Abstract: Managing the intricate State architecture is a daunting task, leaving most experts puzzled to this day as to the best methods of approaching it. The end result should be a purposeful reform, culminating in an administrative apparatus worthy of being deemed excellent, engaged and efficient, functioning in a streamlined manner. However, perhaps the greatest difficulty lies in the fact that in order to attain this desirable outcome, key procedures have to be enacted and key persons have to be selected and endowed with relevant authority. Therefore, what are the keys to unlocking this riddle? How do we manage the State in all its diversity, great offices and controlled enterprises included? What are some of the ways we could optimize the various services that are being rendered to the State? I expound that legal reform must meet economic reasoning, the interests of the management and citizens-shareholders must be reconciled, and cutting-edge means of cooperation in the service of the public good – such as enacting Public Social Private Partnerships – must be explored. These solutions will be necessarily tailored according to national specificities, following an extensive intercultural analysis, in the broader context of globalization.*

*Keywords: Public Management; economic analysis of public law; servicing the State; Public Social Private Partnership; intercultural dialogue.*

### 1. Brief guide to obtaining an optimal management of the public sector

In most any country, the public sector is a director of socio-economic policy as well as a main actor of national development. The kaleidoscopic category of public sector management includes specific issues such as productivity supervision and administration of the various available resources (e.g. raw materials, labor and capital). It addresses the needs of the society through a wide array of activities ranging from planning to implementation. The quality of its constant efforts is essential to the attainment or surpassing of the State's long-term goals. (Government of Botswana, 2002, p. 363)

Anticipating the inevitable Constitutional reform that Romania will undertake in the near future, I feel it is important to reestablish a theoretical distinction between legislation and policy before we continue our more in-depth foray into the intricacies of public sector management. Each of the three branches of government (legislative, executive and judicial) plays a significant part in the process, but is at the same time only one of the latter's components. The law, even if it is of the highest constitutional nature, is not the main instrument for carrying out long-term plans. The pursuit of specific daily goals by undertaking various tasks is what policy ultimately amounts to. As long as its ideal policies are compatible with the Rule of Law, the Government will further have to rely on an economic costs/benefits type of analysis in order to properly exercise administrative discretion. (Miller, 2010, pp. 134-136)

Thus, within the general legal framework, subsequent opportunity deliberations will inevitably have to occur, as it is impossible to carve a perfect one-size-fits-all guide to the complex realities of life. This paper therefore sets out to analyze and propose improvements to the supporting structure according to which policy will unfold. Finally, it will also investigate various means of making public sector management more efficient in its carrying out of chosen policies, through an analysis that is both structural and functional.

Public sector optimal performance means high quality services delivered by skilled professionals, in an efficient manner and with great care towards outcome measurement.

(Global Expert Team, 2014, p. 1) Therefore, the three pillars on which the analysis focuses are the managerial role selection procedures, the management process and the accountability of managers.

In the public sector, the key driver of effort is intrinsic pro-social motivation. However, recent studies found that high wage professionals are mainly motivated by the attractiveness of their compensation schemes. (Banuri, Keefer, 2013, pp. 23-24) Focusing on creating a powerful Global Employment Brand that draws top talent to the organization is of absolute necessity. (Bersin by Deloitte, 2013, pp. 43-44) So is the implementation of a talent analytics model, structured in a manner that will reveal individual capabilities at the operational level (basic and advanced), as well as expertise in managing “big picture” challenges. Top managers have to be versed in rare skills such as statistical modeling, strategic planning and risk analysis and mitigation, on top of the more common ones such as proactivity, consistency, efficiency or timeliness. (*Idem*, pp. 54-56) Addressing these main issues will help in overcoming the need for high quality management. In turn, this will enable the development of the privatization arena, in the processes of preparing and subsequent carrying out of the various operations. (Zbârcea, 2014, p. 1)

The management process is tainted by the following shortcomings. Even though dialogue between individual shareholders and directors of companies is encouraged, it is not yet widely implemented. Safeguards have to be enacted in order to prevent electively disclosing material information that could negatively impact trading or have legal significance. (Calkoen, 2012, p. 284) However, as the developments in this area currently stand, the efficient flow of information between the owners and the managers is somewhat restricted and can have adverse effects on the quality of the management process. Secondly, it is recommended that risk committee and officers become mandatory elements of the corporate structure of all public companies, not just financial institutions. Even though some listed companies created bodies that deal with the topic of risk assessment, the progress of this process remains slow. (*Ibidem*)

The prerogatives that managers enjoy must become more flexible, as the public sector regulations are currently too rigid. Progress has to be made in the areas of allowing the top officials to have an impact on the organizational culture, to tailor the offices that they oversee, to define measurable outcome targets for every level of the entity, as well as to be able to implement systems of monitoring quality and specific e-Government strategies. (CAF, 2013, p. 18) Improvements can then be achieved through practical self-assessment tools such as those offered by the European Common Assessment Framework. (Polet, 2006, p. 58)

Whenever a potential decision to innovate the organization is considered, needs have to be clearly identified in order for the monitoring and evaluating of raw data to commence. The use of innovative tools and technologies should not be an end by itself, so it is really important that the organizational capacity to make informed decisions in this regard is created first. (United Nations Development Programme, 2013, pp. 20-21) Thus, the implementation of approaches such as crowdsourcing, mobile data collection, participatory statistics, remote sensing, intelligent infrastructure or dynamic data visualization can be achieved through educating the existing personnel or deciding to seek new talent. Extensive feedback from the citizens is a *sine qua non*. (*Idem*, p. 22) Public Social Private Partnerships can be chosen as vehicles of concrete development, because they will greatly enable the desired outcomes.

As far as the accountability of managers is concerned, it has to be enforced tightly regardless of the specific type of leadership position. Politicians and technocrats have to be responsible and subject to similarly high standards of performance, as they are all entrusted with public power and resources. Also, accountability should extend to groups as well. In the case of entities that cannot face dissolution (such as the military), individual positions have to be carefully scrutinized. If the entities undergoing analysis are rather experimental or

potentially superfluous, then group accountability becomes a useful tool. However, upon careful observation, some consultants have noted that the lack of credible threats easily turn serious accountability reforms into pure bureaucratic formality. (Saxena, 2013, p. 23) Game theory can help in the process of designing these negative consequences that failures could potentially attract.

The creation of a core agency, charged with exercising strategic leadership and monitoring the system of dispersed management instead of operating through bureaucratic controls, is a recommended measure. (United Nations, 2005, p. 21) A mature model that could be used in order to implement this change is the United States of America office of the Under Secretary for Management, an institution that oversees the Bureau of Administration, Bureau of Human Resources, Bureau of Information Resource Management or Office of Management Policy, Rightsizing, and Innovation, among other entities. Internal organizational controls are just as important as macro-level controls, such as top-level reviews or public expenditure audits. (United Nations Development Programme, 1995, p. 62) Public pressure has to also become a more potent factor in the processes of influencing and carrying out policies.

## **2. Public Social Private Partnerships**

Classic Public-Private Partnerships implement projects with a vast array of objectives, but are mainly business-oriented. They create efficiency by having each participant focused on and acting according to its core competences. Public Social Private Partnerships on the other hand are exclusively social-oriented and represent a guarantee of achieving the targeted social objectives over the medium to long term. (Fandel, Giese, Mohn, 2012, pp. 815-816) As these latter partnerships result in synergy effects and allow for cost savings to be efficiently allocated between the participants, they will also motivate future collaboration. It has been suggested that the methodological approach that analyzes the gain distribution upon the completion of such a project can be useful in determining the economic efficiency of other partnerships as well, mainly Public-Private ones. (*Idem*, p. 823)

These vehicles allow for a more balanced distribution of the responsibility and benefits stemming from collective public projects. By partnering the public authorities with private and social enterprise actors, advantages are created in the areas of public relations, know-how exchange, employee satisfaction, economies of scale and building more powerful cooperative networks. Access to European Union subsidies and institutional financing for any of the collaborating parties becomes easier as well. (Hasiba, 2007, pp. 26-27)

The added value that they create in the management arena are significant. The taxpayer stands to gain from an optimal risk transfer and management, as well as from the more effective achievement of the social objectives, the performance and accountability of the top-officials that are involved in the management of the vehicle are assured. (le Masson, Kaiser, 2012, p. 7) Economies of scale also affect the managerial interactions.

Romania has to enact rules that govern the management of these most beneficial instruments of cooperation. Involving the local administrative authorities to a large extent is extremely desirable, especially where information asymmetries abound (e. g. the health sector). (Jütting, 1999, pp. 9-10) The drafting of a regulatory framework is thus of the utmost importance.

## **3. Quality management in the public sector**

A recent study concluded that our country's central Government has to be strengthened, in order for it to be able to effectively establish and pursue the vast policy

agenda that it oversees. The various Ministries must be corrected whenever they create conflicts that stall the administration. The General Secretariat of the Government or the Chancery of the Prime Minister have been deemed theoretically able to best fill the management role in this case, but only if the mix between their political and technical competencies is tweaked towards a predominance of expertise over (fleeting) influence. (World Bank, 2013, p. 30)

Bodies (such as Government Delivery Units) that can monitor the quality of the various governmental programs and their overall relevance towards reaching the fundamental policy objectives, as well as offer crucial advice and feedback to the managers have to function effectively and efficiently. (*Idem*, pp. 31-32) A long-term approach, transcending individual political cycles, is the only course of action that can produce the desired beneficial outcomes.

Romania's legislation upholds the principle of politically neutral, professional and stable public managers. It is imperative that the political involvement in the latter's selection procedures is greatly diminished. This can be achieved by raising the seniority levels that are currently required for top level positions (5 years) and by rigorously implementing performance standards in the selection process of senior managers. Tests that verify whether the candidates are equipped with relevant technical and leadership skills should be applied rigorously and uniformly. Flexible performance standards should also be implemented throughout the various public structures' hierarchies, down to individuals. (*Idem*, pp. 39-40)

Apart from reducing political involvement in determining the leaders of public entities, a clear distinction must be established between political leadership (a necessity in modern representative democracies) and public organizations' management. The two types of top officials must be encouraged to work together in a seamless manner. (CAF, pp. 17-18)

Even though the public sector is connected to clients, customers, consumers and citizens, the fact that it has so far been more shielded from market forces did encourage it to disregard crucial issues such as costs. Whenever the allocation of resources takes center stage, interest group pressures also emerge and distort efficiency. (Redman, Mathews, Wilkinson, Snape, 1995, p. 30)

#### 4. Future perspectives

Changing the existing ways of large, slow, bureaucratic organizations such as State administrations is not an easy task. Nor is it a process that can happen over the course of single political cycles. Moreover, every tweak has the potential to disrupt the organization, hence controlling the release of changes is of critical importance. (Cisco Systems, 2008, p. 22) But this can be no excuse for static behavior that fosters old uncompetitive structures and means of addressing social issues.

The Constitutional reform that Romania will undoubtedly undertake is a monumental opportunity to enact changes of the very foundation of the system. Choosing optimal improvements and reaping their full benefits can only occur if interdisciplinary analyses are considered. The fields of Law and Economy are so intertwined in their influences that disregarding one can literally render changes made considering only the other obsolete.

I showed that a top-down reform is most necessary. Managers have to become true leaders that can direct organizational improvements, and they must be adequately rewarded and exposed in order to achieve their goals. In addition, the use of Public Social Private Partnerships and the implementation of a mechanism that can monitor the quality of the system and its management are most recommended courses of action.

The decision to change is never an easy one. Individuals or organizations can only walk the path voluntarily. In the case of aging complex bureaucracies it is an especially

daunting task, as the incentives to advance are not necessarily in place. However, certain dynamic variables such as citizens-consumers' evolving needs and willingness to actively pursue improvements, coupled with the sheer force of global competition help in revealing that forward is the only direction worth pursuing. But the States and the individual workers that staff their public offices and institutions are not bound to do so in the dark. Modern interdisciplinary scientific analysis, such as the generous body of knowledge that comprises the field of Law and Economics, can most certainly light the way.

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