

THE MECHANISMS OF ADMINISTRATIVE DOCUMENTATION IN ELABORATING OF ORGANIZATIONAL DOCUMENTS AND DOCUMENTS OF DISPOSITION

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Abstract

This article is a study of the problem of administrative documentation in elaboration of the organizational documents and those of disposition, which was shown not only as a stage of the decision-making process but as an activity that requires knowledge in various fields and involves the use of certain mechanisms. Relevance and actuality of this topic consists in the fact that organizational documents contain rules on the organization and functioning of public administration authorities and represent local regulatory laws. On the other hand, due to the fact that public administration authorities have to solve everyday a lot of various problems, documents of disposition are the main tools which help them to achieve their aims.

A qualitative administrative documentation and a correct use of documentation mechanisms by the subject who will elaborate a document of disposition or an organizational one, will finally determine its quality. That's why the use of inaccurate and incomplete information in elaboration process, can have as a consequence not only worsening the quality of management and unjustified extension of time for make correct decisions, but also appealing the elaborated document in the administrative court.

Keywords: document, organizational document, document of disposition, administrative documentation, mechanisms of administrative documentation, electronic mechanisms of administrative documentation

Central and local public administration authorities have to process and operate with a large number of various documents, activity that has become a routine, but also is an indispensable for realization of an effective documentation which is important for both organization the activities of public authorities or adoption of administrative decisions materialized in administrative acts. The complexity and heterogeneity of these documents is determined by the multipolar nature of the problems which public administration have to solve daily. In the following, we will define disposition and organizational documents, we will specify administrative documentation mechanisms, including the electronic ones, and we'll analyze legal acts which regulate the activity and mechanisms of documentation in Republic of Moldova.

The term "document" is a central, fundamental one for the science of administrative documentation. It reflects the whole activity of collecting, analyzing, synthetic processing, storage, dissemination and use of information fixed on a physical or, more

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recently, digital support. This term is widely used in almost all areas of public activity, and documents are playing a crucial role in any organization, institution, body or local public administration. Document can be defined as information recorded in any way, on any material support adopted by any individual or entity, in any organization, for use in their own work"¹, in our case, we are talking about documents adopted by public administration authorities. Documents have a double essence: informational and material, that determines its characteristics: operational and informational. So, first determine the integrity and continuity of the document depending on the material support's resistance to harmful mechanical, thermal, biological factors, etc, and the latter determine document's ability to transmit information fixed on a particular support and to create certain legal effects according to their nature².

Typology of documents is so diverse that the possibilities of classification and subclassing can be hardly represented in a single schematic structure. However, from the point of view of public administration authorities' activity, it is relevant classification of documents according to their nature:

1) Documents of disposition (decision, disposition, order, instruction) according to the doctrine, these are a part of the executive activity of public administration authorities, through which they can decide on various issues related to their competence³.

2) Organizational documents (Statutes, Regulations): Resolution of the Government of Republic of Moldova on approving Rules of preparation of organizational and dispositive documents and Instruction-type on secretariat activities in central public administration bodies and local administration of Republic of Moldova establishes that statutes and regulations are some acts or sets of provisions with official character through which is regulated the purpose, structure and functioning of an organization, association etc.⁴

3) Informative documents (informative and explanatory notes, protocols, expert opinions, etc.): communicate certain information, which catalyze the adoption of decisions, (for example, they can initiate management solutions and can be an incentive to act in a certain way, also, they do not contain direct orders or instructions. They play an auxiliary role in relation to organizational documents and those of disposition⁵.

Also, we can classify documents by the authority which adopt them, so we can distinguish: the documents adopted by the central public administration authorities (ministries) and those adopted by local authorities of level II (deliberative: District or Municipal Council, Executive Committee of Autonomous Territorial Unit with special status Gagauz-Yeri; and executive ones: President of the district, city mayor and governor of Gagauzia) and of level I (deliberative: Local Council of city, village (community); and executive authorities-mayors).

¹ Kirsanova M.V., Aksenov M. Course of record keeping. Document Management: Training Manual. – Moscow-Novosibirsk: Publishing INFRA-M-Sibirskoe Soglashenie, 2007, p. 3.

² <http://www.unibuc.ro/ebooks/stiinteadm/secretariat/>

³ Kirsanova M.V., Aksenov M. cited work., p. 102.

⁴ Government Resolution on the approval of Preparation Rules of the organizational and dispositive documents and of the Instruction-type on secretariat activities in central public administration and local self government organs of Republic of Moldova no.618 from 05.10.1993 // Of. B. Moldova no.000 from 05.10.1993.

⁵ http://www.edou.ru/enc/razdel23/?COURSE_ID=4&LESSON_ID=70#1.

Organizational and dispositive documents adopted by central public administration authorities and by local ones of level I and II, play a triple role in their activity and are meant to: ensure the realization of the executive power⁶; to give birth, to amend or to annihilate rights and obligations (if we refer to documents of disposition) to organize the internal activity of the authority (in the case of organizational documents).

Multifunctionality of these documents inevitably implies the existence of a legal framework governing the procedure of their elaboration and mechanisms of administrative documentation, which alongside with doctrine, facilitate substantially the activity of civil servants who elaborate organizational and dispositive documents or who realize the documentation. Organizational documents are regulated by the Labor Code of the Republic of Moldova, Law of Local Public Administration no. 436-XVI from 28.12.2006 and Law of Framework-statute of the village (commune), city (municipality) no. 436-XV of 06.11.2003; and documents of disposition are regulated by: Law of Government no. 64-XII of 31.05.1990, Law of Local Public Administration no. 436-XVI from 28.12.2006, Law of Normative Acts of the Government and other central and local public administration authorities no. 317-XV from 18.07.2003, Law of the Special Legal Status of Gagauzia (Gagauz-Yeri) no. 344-XIII from 23.12.1994 and the Resolution of the Government of Republic of Moldova on approving Rules of preparation of organizational and dispositive documents and Instruction-type on secretariat activities in central public administration bodies and local administration of Republic of Moldova no. 618 of 05.10.1993.

The most important provisions relating to documentation activity and the mechanisms used to achieve it, is contained in the Law of Normative Acts of the Government and other public central and local administration authorities and in the Resolution of the Government of Republic of Moldova on approving Rules of preparation of organizational and dispositive documents and Instruction-type on secretariat activities in central public administration bodies and local administration of Republic of Moldova.

The first one includes important provisions on administrative documentation mechanisms applied to the preparation of dispositive documents in the specialized central public administration authorities, in the authorities of autonomous territorial unit with special legal status and in local authorities. These provisions are relevant for the civil servant who is involved in administrative documentation and in elaboration of the draft document; as well they are important for the whole authority. This law regulates the entire process of elaborating normative acts beginning from the project and finishing with its publication. The law emphasizes the need for correlation and concordance of elaborated documents with constitutional and legal provisions, with resolutions and orders of the Government. Chapter VI of Title II⁷ are regulates directly the powers of the working group which is responsible for elaborating draft document, which will then be submitted for adoption to the competent authority. This law determines that the

⁶ Creangă Ion. Administrative law course for students of law faculties. Volume I.– Chişinău: Publishing House. Epigraf, 2004, p. 214.

⁷ Law of Normative Acts of the Government and other public central and local administration authorities no. 317-XV from 18.07.2003// Official Monitor of Republic of Moldova no. 208-210 from 03.10.2003.

elaboration process must be preceded by a documentation; by a scientific and sociological analysis, with the purpose of gaining necessary knowledge of economic and social realities which have to be regulated; by analyzing of legislation history in the field which will be regulated, of the practice of legislation's application; by analyzing similar regulations in foreign law. In documentation process can be used such sources as: the practice of the Constitutional Court in the domain which will be regulated by the future document; jurisprudence, including the European Court's of Justice jurisprudence; and legal doctrine. The results of the documentation realized on the project's planning stage will be presented together with the draft document in an annexed folder.

Resolution of the Government of Republic of Moldova on approving Rules of preparation of organizational and dispositive documents and Instruction-type on secretariat activities in central public administration bodies and local administration of Republic of Moldova is called to improve the activity of documentation and to determine the basic requirements to the administrative activities' document and to the organization of work with documents. But perhaps the most relevant in this context are the provisions relating to the preparation and adoption of certain types of dispositive documents such as: order, decision and disposition. So, civil servants who are responsible for preparing the draft document may use different mechanisms: analysis of all documents that relate to the topic of the document which will be elaborated; analysis of the precedent; or consultation of specialists in various fields⁸. Overall, this law contains the most developed and detailed provisions on dispositive documents and establishes specific rules that must be taken into account in drafting these documents, compared with the other acts listed above.

In conclusion, after the analysis of normative acts listed above, we can say that although organizational documents and those of disposition enjoy of legal regulation, however, the current legislation does not provide a clear definition of administrative documentation mechanism. The legislator pays attention to the stages of drafting documents devices and is neglecting the documentation stage, which is essential; and, at the same time, does not regulate the sources that can be used by decision maker or by civil servant who is responsible for documentation. However, we propose to enumerate and analyze what are the mechanisms of administrative documentation used in drafting the two types of documents addressed in this article.

One of the most commonly encountered types of organizational documents in public administration authorities' activity is the **Regulation on organization and functioning of a public administration authority** or Internal Regulation as it is nominated in labor law doctrine. According to art. 198 of the Labor Code, it represents a legal document that is elaborated in each organization after consultation of employees' representatives (in this case employees are civil servants) and is approved by employer's order (disposition, decision). It will be attached to the order or decision, as an annex⁹. In drafting Regulation

⁸ Government Resolution on the approval of Preparation Rules of the organizational and dispositive documents and of the Instruction-type on secretariat activities in central public administration and local self government organs of Republic of Moldova no.618 from 05.10.1993 // Of. B. Moldova no.000 from 05.10.1993.

⁹ Law of Normative Acts of the Government and other public central and local administration authorities no. 317-XV from 18.07.2003// Official Monitor of Republic of Moldova no. 208-210 from 03.10.2003.

are usually used: **normative mechanisms, precedent and practice**. Thus, civil servant who realizes the documentation activity, first consults the normative acts which regulate the activity of the respective public administration authority. He/she can also consult other similar documents drafted by public administration authorities of the same level from Moldova or from abroad, or organizational documents drafted previously in the same authority.

Law of Normative Acts of the Government and other public central and local administration authorities establishes that drafting **documents of disposition**, according to their importance and complexity, should be preceded by the activity of scientific and sociological documentation and analysis for gaining necessary knowledge of the social and economic realities to be regulated, the history of legislation in the field which will be regulated, the practice of application of the legislation in force, and similar regulations of foreign law¹⁰. Drafting documents of disposition in public administration authorities is a complex process involving the completion of certain steps and achieving certain activities prior to, simultaneous and back issue. Also, this process supposes the involvement of some specific administrative documentation mechanisms, such as:

1) **Normative mechanisms** – which involve legal acts examination to determine competence of the authority and to ensure the legality of the document;

2) **Statistics** – which involves statistical analysis of certain phenomena to be regulated by the document, conducting studies and statistical calculations or the use of statistical data offered by specialized authorities;

3) Make certain **studies** when there is a need;

4) The use of certain **accounting or technical expertise**, etc. or **investigations** that contain explanations and conclusions;

5) Preparation of **reports** which reflect problems in the field of research and contains data and, sometimes, proposals;

6) **Regular press**¹¹;

7) Analysis of the **opinion or report of the expert committee of the City, Municipal or District Council**;

8) **The report or opinion of City Hall and/or the relevant subdivision of the deconcentrated or decentralized public service**;

9) **Summary of recommendations received during the public consultation**¹²;

10) **Archives of the authority and the State Archives Fund**;

11) **Doctrinal mechanisms** – which require a series of general and specialized bibliographical research;

12) **Precedent** – which means the activity of documenting the provisions previously developed within the same institution, selecting the necessary regulations and filling them with new ones;

¹⁰ Law of Normative Acts of the Government and other public central and local administration authorities no. 317-XV from 18.07.2003// Official Monitor of Republic of Moldova no. 208-210 from 03.10.2003.

¹¹ Creangă Ion. Administrative law course for students of law faculties. Volume II.– Chişinău: Publishing House. Epigraf, 2005, p.133, p.214.

¹² Law of local public administration no. 436-XVI from 28.12.2006//Official Monitor of Republicii Moldova no.32-35 from 09.03.2007.

13) Also, **the participation or involvement of specialists from various professional organizations such as think-tank organizations, NGOs**, as well as using **specialized studies** which refer to the topic of the document, can be applied as a modern mechanism of documentation, in order to obtain specialized information. This mechanism is plausible when the object of the document requires specialized knowledge that the authority does not possess, or when it is necessary to analyze broad perspective on the possible consequences that may result after adopting the document.

The procedure of the adoption and mechanisms of administrative documentation applied in drafting documents of disposition and organizational ones differs depending on the character of the originator. Documentation is done by civil servants who prepare the draft document: if we are talking about decisions of the Local, District or Municipal councils, it is done by the members of the special commission in collaboration with the Secretary of the Council; or, in the case of dispositive documents drafted by the specialized central public administration authorities, the heads of these bodies, ie people with decision-making power – ministers participate at the adoption process.

Civil servants who realize the documentation often use a very important mechanism – **practice**, their own and authority's experience in drafting organizational and dispositive documents. Because decisions that will later be adopted depends on their will and competence, it is necessary for them to have a perfect logic; a powerful spirit of discernment and responsibility; a full and accurate knowledge of social realities, current and future requirements, of the possibilities of meeting them¹³. All these qualities should be crowned with multipolar knowledge, including knowledge in the field of working with information and administrative documentation, because on abilities and skills of civil servants who prepare the draft document will depend the quality of the adopted decision.

Besides the classical mechanisms of administrative documentation, nowadays, can be used **electronic mechanisms**. Studying modern trends in administrative documentation is significant and necessary because they can contribute substantially to simplifying and efficiency of the public administration authorities' activity¹⁴. Using information technology has a positive impact on process of administrative documentation by reducing certain routine activities, acceleration civil servants' activity and freeing them from specific functions

Nowadays, public administration authorities try to establish some embedded systems or databases containing information grouped by certain principles that will facilitate document management (including those of organizational and dispositive nature). This may contribute to the ordering of document flow, to increase the efficiency and simplicity of administrative activity, and also, to reduce the cost of creating, processing and transmission of these documents.

Therefore, if a public administration authority haven't a clear and well organized concept of management of information and documents, there can appear adverse consequences in authority's activity, causing a serious deterioration of the quality of

¹³ Brezoianu Dumitru. Romanian administrative law – Bucharest: Publishing house All Beck, 2004 p.106

¹⁴ Oroveanu Mihai T., Treaty of administrative science – Bucharest: Publishing house Cerma, 1996, p. 366.

management and decision-making process. So, the reliability and quality of public administration's activity is directly proportional to the quality and reliability, transmission speed, proper organization of information unit, properly organized documents' searching, use and storage process. So, at that point, the main tasks of automating administrative documentation are:

- 1) reducing the flow of information to the optimal minimum level;
- 2) simplification and reduction of the processes of collecting, processing and transmitting information using the latest technology and automation of these processes.

In Republic of Moldova the rhythm development of science and information technologies, unfortunately, is not the same as in states of Western Europe or in United States, where computer holds an important place in human life since the early 80s. But ultimately, this wave of computerization has reached up to the Moldova. Of course IT technologies didn't become an instant panacea but they are improving gradually as well as software are. Although information technologies gain more ground in the daily activities of public administration authorities, yet in Moldova using specialized software for working with organizational and dispositive documents is not practiced widely. Typically, civil servants use Microsoft Office applications, which are standardized and cannot meet the necessary requirements established by law. They are not sufficient and cannot fully meet the needs and specific of public administration authorities' activity. So, that's why there is a need of new solutions, which could materialize in the development of specialized software which can operate either autonomously or in a local network/regional or on-line.

Automating of administrative documentation may be viewed as a favorable framework for overall ameliorating of management in public administration. A complex documentation computerizing requires creating a single information space in which civil servants could work on the basis of uniform rules in the documents' management and processing. This unique system should allow:

- 1) easy access to documents, regardless of the distance at which civil servant is from their storage place;
- 2) simultaneous access to documents when users need the same documents without reducing performance of activity regardless of location;
- 3) using new mechanisms of communication, such as specialized sites, e-mail, social networking, video conferencing on-line, newsletter service, etc;
- 4) maintaining the integrity of documents;
- 5) operative searching of documents by text or elements;
- 6) open access database when users require certain documents which were created previously;
- 7) assuring security of information and creating resistant software to any kind of attack;
- 8) creating personalized settings according to specific of user's activity;
- 9) permanently digital database widening and improvement.

A good example to follow might be **specialized software** created by the company from Russian Federation named Cognitive Technologies, which are created by experts in the field of IT in collaboration with civil servants in order to adapt it to the specific needs of public administration; and in collaboration with specialists in law, to ensure the

compliance of newly created program with state standards regulated by federal law (GOST). Recently on the market appeared such products as: "Evfrat", "Lotus – Notes", "DEC – PathLink", "Microsoft – Exchange", etc. Their strong point is that they are adapted to the state language, they fully meet all the requirements of the law and allow their revision depending on the specific tasks of the client, and provide a permanent link between client and company it via a hotline of technical support¹⁵.

This software is widely used by both public administration authorities and private units due to its affordable price and adaptability to specific needs of a concrete client. The software is simple to use as it is fully compatible with the Microsoft Windows OS, so civil servants are not required to have special knowledge in the IT area. The working principle of this software is that all computers in the authority are connected in a LAN (local area network), which allows the exchange of electronic documents among its subdivisions. When creating a document, civil servants will use the default templates and will save it automatically in .doc or .xls format. After the document is saved, it is indexed and can be used in other divisions of the authority or can be sent to other authorities. Also, it can be found instantly by name, content or its elements¹⁶.

Regarding Moldova, unfortunately, use of the modern technologies in administrative documentation is still in draft form. The roots of this problem lies in the lack of specialists in the field of administrative documentation and in the fact that public administration doesn't cooperate with IT specialists for the purpose of development of specialized software that will ensure compliance with national legislation. Implementation of such technologies in public administration authorities in Moldova can create favorable conditions for boosting their efficiency, for adaptation to modern requirements and for increasing of efficiency of civil servants' activity.

We conclude that nowadays, in the public administration authorities' activity, the concept of administrative documentation mechanisms, besides theoretical dimension, has taken a strong practical connotation, due to the impact of their applicability in the process of drafting organizational documents and documents of disposition, which will influence their quality. Organizational and dispositive documents are regulated by a large number of laws. However, this heterogeneity of legislation does not provide an adequate regulation of administrative documentation mechanisms and sources or of overall documentation activity, because it contains only some fragmentary, timid references on about administrative documentation.

In this regard, we highlight the importance of the adoption of special legislation which would regulate administrative documentation in the public administration, adoption of an Instruction – type on organizational and dispositive documents management within central and local public administration authorities, which will complete the provisions of the Resolution of the Government of Republic of Moldova on approving Rules of preparation of organizational and dispositive documents and Instruction-type on secretariat activities in central public administration bodies and local administration of Republic of Moldova no. 618 of 05.10.1993, and last but not least, increasing collaboration between civil servants and specialists in information technology, in order to develop software adapted and personalized to the activity of public administration authorities and to support civil servants' education in digital innovation.

¹⁵ <http://www.cognitiveforms.ru/products/>

¹⁶ http://www.cognitive.ru/products/euph_doc/

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