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ASSESSMENT OF THE PUBLIC SERVANT.

Empirical
studies

ASPECTS REGARDING THE COMPETENCE OF THE COURT IN CHANGING THE MARK GRANTED BY THE ASSESSOR

Keywords

public servant
assessment of activity
evaluation of professional performance
competence
administrative legal court

Abstract

The assessment of the performance – aims to analyze the way in which the job tasks are being accomplished and the work tasks related to the professional standards. The results obtained are considered in fulfilling the tasks specific to the job he/she is on and other gathered tasks, the results of the professional training in the assessed time, the performance obtained related to the individual performance objectives and to the performance standards, contribution in fulfilling the tasks of the unit and the deficiencies in activity.

The evaluation of the performance characteristics highlights the strong and the weak points, under the form of certain levels which will be taken into consideration, as a synthesis reflection, in establishing the general mark of the performance.

The general evaluation of the performance, under narrative form, considers the detailing and the explaining of the performance characteristics, of the way in which the objectives and the performance standards of the assessed public servant are reached, so that it can distinguish his/her professional particularity and personality.

The law issue subject to debate aims at the competence of the court in proceeding to a new assessment of the public servant activity, which contests the mark granted by the assessor.

The process of evaluation targets the way the employment responsibilities and goals of activity are fulfilled, related to the standards of performance. In such cases, there are taken into account, several items such as: the results that ensure from department of specific responsibilities and other cumulated assignments, professional training results, the performance acquired related to individual endpoints, personal standards of performance, the contribution in fulfilling professional goals and the determined shortcomings.

The modality and the evaluation criteria regarding the evaluation of professional, individual, activity of the public servant are provided by Law no. 188 from 1999, *Status of Public Servants*ⁱ. Within the framework of evaluation, the annual/special personnel specification is compiled.

According to the provisions of art. 68, Law no. 188 from 1999, the annual official assessment of the public servant has two components: the performance evaluation and the potential evaluation, both reflected by the personnel specification.

The performance evaluation has two sides: one - *appreciation of performance* features, in the guise of levels and *global appreciation of performance* and of the developed activity.

The appreciation of performance features relieves both strong and weak points, in the guise of levels, which are going to be taken into account as synthetical reflection for performance general score determination.

The global appreciation of performance, under narrative form, alludes to particularization and illustration of performance features, of the manner in which the evaluated public servant's goals and standards are accomplished. Using this procedure, public servant professional individuality and personality may be singularized. The general appreciation has to reflect the personality, the character, the abilities and the work deficiencies for each public servantⁱⁱ.

According to the provisions of art. 69, above-mentioned regulatory document, the annual appreciation is indicated by one of the following scores: 1- excellent-F.B., 2- good-B, 3. sufficient-S, 4. insufficient-N. The score is mentioned on the section called *The evaluation of performances* and denotes the accomplishment of functional responsibilities and of performance purposes correspondent to public servant positionⁱⁱⁱ.

The potential evaluation aim is to distinguish the intrinsic features of the public servant. The results are used in order to ensure the effective professional growth. Concurrently, public servant's needs of up growth are determined.

The professional public servant assessment represents a continual process of evaluation, monitoring, guidance and leading, in the general

context of functional responsibilities achievement and professional training during the entire cycle of his duty. As a general rule, the evaluation committee provides the professional appreciation and evaluation of each public servant. Within the framework of evaluation, the annual narrative of assessment is drawn up.

The conferred score is justified according to explicit criteria, by taking into account all professional tasks included in the personnel specification, in terms of performance targets settled at the beginning of the year and the features of performance. The jurisdiction algorithm has to be explicit and verifiable.

In the petition of filing a lawsuit, the claimant, in the main, claims the avoidance of the annual personnel specification evaluation and the issuance of a new personnel specification, for excellent score^{iv}. The reasons appealed in assertion of the petition of filing a lawsuit, ensues that the claimant affirmations point aspects that may be the object of legal control of professional, individual performance evaluation. *The evaluation must be done with probity, professional deontology, realism and fairness* (art. 53, para. 4). The activity of evaluation has to be reflected in the individual personnel specification of performances and skills. *The personnel specification must contain appreciations of the personal behavior, faculties, adjacent qualities of the employee* (art. 54 para. 1). The law provisions assess that the three criteria of evaluation related to professional, individual evaluation of the public servant are the same, no matter if the position of the public servant, leading position or executioner position (art. 57). In this context, *the professional competence* means the discharge of art. 58 para. 1 items. The criterion *employee behavior* means the discharge of art. 59 para. 1, and the criterion *adjacent abilities and qualities of the employee* imply the achievement of art. 60 para. 1 items from the same law.

After the approval done by the department headmen, the public servants are informed about their personnel specifications/narratives; the assessors must take into account the opinions of those who were evaluated related to correctness and objectivity of the appreciations and must justify their decisions.

The summary of the appealed document shows that all appreciations made by the evaluator, considering the claimant's competences and performances are not grounded on appropriate documents. None of the negative aspects highlighted by the personnel specification is reasoned by denominate examples or is based on circumstantial explanations. Also, both the evaluation method used and the concrete criteria are not mentioned. They should have been mentioned in order to eliminate any eventual discrimination. The evaluation criteria should, also,

have been notified to the evaluated employee. The modality of elaborating personnel specification of evaluated performances and competences must be done with probity, professional deontology, realism and fairness. It has to truthfully reflect the professional competence, personal behavior, skills and adjacent qualities, such as to, the score conferred by the evaluator to be justified square with the above-mentioned provisions of law. The motivation represents an essential element when it comes to any perspective of legality evaluation of the adopted action. In no uncertain terms, additionally, the assessor must listen to the evaluated public servant; otherwise he defies the employee's rights, causing presumed damages (these kinds of damages don't have to be proven by the one who is evaluated). However, any context opposite to the above-mentioned law provisions and theoretical circumstances, when the litigation was settled in default of legal parties, the public servant was not heard, and the solution taken by the committee of evaluation^v was, in no wise motivated, it entails the invalidity of the solution, keeping the conferred score of the public servant evaluation. In such case, the law court has not the legal prerogative of invalidating the committee of evaluation decision, or furthermore of acting on a new evaluation in order to confer a higher score than the one conferred by the committee of evaluation. If the law court proceeds in this manner, it will exceed its area of general competence, the responsibilities as judiciary, having no legal ground on reevaluating the personnel specification of evaluation in educational managing, conferring grades instead of the evaluator assessment.

Therefore, The Supreme Court of Cassation and Justice Decision no. 1580 from April 11th, 2008, Administrative and Fiscal Court Department, in print, evidences that investing an authority with discretionary power can be accepted by the constitutional state as an unbounded, absolute power. The exercise of discretionary authority represents an act of inobservance related to the fundamental rights and liberties of the citizens provided by Constitution or by any other law. The provisions of Romanian Constitution (art. 31 para. 2) show the obligation of public authorities to guarantee accurate information of the citizens regarding both public occasions and other matters of personal interest. It also underlines that acting the opposite means an abuse of power. Consequently, The Supreme Court of Cassation and Justice considered that any decision regarding the fundamental rights and liberties must be justified not only from the competence of issuing the specific document, but also, taking into account the individual possibilities or company rights of appreciation the legality of any measure, respectively the correct observance of the border

between discretionary power and abusiveness. Accepting the thesis that assessor has the right of taking decisions without motivating them is assimilated to discharge of any content the essence of democracy and the constitutional state based on the principle of legality.

As a matter of fact, the community jurisprudence reveals that the motivation must be adequate to issued document and must demonstrate clearly and unequivocally the algorithm followed by the institution that adopted appealed measure. In this way, the competent subject may justify the decisions and may allow the community competent courts to re-examine the document (cause- C – 367/1995).

Therefore, as The European Court of Justice decided, the width and the particularization of motivation rest upon the nature of the act, and the motivation requirements rest upon the circumstances of each case. Deficient or wrong motivation are considered equivalent to lack of motivation, exactly like in the current cause. Furthermore, inappropriate motivation or lack of motivation entails the nullity and invalidity of the community documents (cauza C – 41/1969).

The particularization of the arguments is also required when the issuing institution was invested with a wide power of appreciation, because the motivation furnishes clearness of the act, each person may check if the act is correctly substantiate. At the same time, the court is allowed to exercise the jurisdictional control.

In other words, but in plenary accord with the same Decision of The Supreme Court of Cassation and Justice, we consider that scoring represents the prerogative of the assessor, within the framework of annual evaluation of the professional performances. The law court endowed with nullity court proceeding of the annual personnel specification for professional activity has only the competence of controlling the procedure's legality, without pursuing other evaluation process and assigning other score.

Not lastly, in accordance with the above-mentioned reasons, it is obvious that the law court, in the context of the legality control, cannot partially defeat the personnel specification. The law court does not have the prerogative of making appreciation on the appropriateness of the evaluation, respectively to evaluate the activity considering the legal provisions and to issue other employment assessment, with *superior rating*.

Furthermore, taking as benchmark both law provisions and relevant case law^{vi}, we consider that law court cannot confer any mark type. The law court has only and exclusively the competence concerning the control of legality of the individual performance evaluation of the public servant. The law court can dispose the reconvention of the evaluation procedure; taking into consideration law

rigor, without subrogating legal parties involved i.e the law court cannot bear the rights or the obligations of the assessor.

Granting the mark in context of annual procedure of evaluation of individual professional performances is the prerogative of the assessor, whereas the *amendment* of the score/mark represents the exclusive attribute of the Evaluation Committee. Thereafter, we assert the opinion the law court is allowed to censor the document, i.e to abate it, and eventually to coerce the authority to re-evaluate, without subrogating in the committee responsibilities and without altering any certificate relevance upon the candidates^{vii} qualification and competences. This thing may happen only if the assessor bears his rights abusively.

Legislation:

[1] Law no. 188 from 1999 , *Status of Public Servants*;

[2] Administrative Legal Department Law no. 554/2004;

[3] Verginia Verdinaş, *Public Life Deontology*, Juridical Universe Publishing House , 2007.

[4] Civil adjudgement no. 138, October, 6th 2009, Arad Law Court, Identification record no.1050/108/2009;

[5] Civil adjudgement no. 937 from March, 26th 2014, Arad Law Court, Identification record no. 672/108/2014;

[6] Civil decision, no. 262 from February, 19 th 2010, Timișoara Court of Appeal, Identification record no 1050/108/ 2010;

Notes

ⁱ Law no. 188 from 1999 , *Status of Public Servants*, modified and reappeared, published in Romania's Official Monitor, published in Romania's Official Monitor no. 365, May, 29th, 2007;

ⁱⁱ Verginia Verdinaş, *Public Life Deontology*, Juridical Universe Publishing House , 2007.

ⁱⁱⁱ The provisions of art. 70, Law no. 188/1999, the methodology of evaluation of individual professional performances of the public servants adopted by government ordonnance, National Agency of Public Servants motion, after accession the national public servants union;

^{iv} Civil adjudgement no. 138, October 6th 2009, Arad Law Court, Identification record no.1050/108/2009;

^v Civil adjudgement no. 937 from March, 26th 2014, Arad Law Court, Identification record no. 672/108/2014;

^{vi} Civil decision, no. 262 from February, 19 th 2010, Timișoara Court of Appeal, Identification record no 1050/108/ 2010;

^{vii} According to the provisions of art. 18, from Administrative Legal Department Law no. 554/2004, in Romania's Official Monitor, published in Romania's Official Monitor no. 1154 from December, 7th, 2004.