

SIMPLIFYING AND SYSTEMATIZATION OF LOCAL COLLECTIVITIES LAW IN THE REPUBLIC OF MOLDOAVIA

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Abstract

Simplifying and systematization of the national legal system is the task of maximum actuality of the European Community states. Legislative inflation, which occurred as a result of excessive elaboration of legal regulations from the last decades, makes it difficult to know and to apply correctly the rules of law compared with the social relationships, which are permanent changing. In the last two decades, the local government of Moldova has undergone multiple reforms (structural and functional) and, to achieve them have been adopted numerous laws. The quality of local governance, however, has not increased. The new legal regulations were adopted without a good correlation with existing ones, and sometimes their provisions overlap or exclude each other. Moreover, today this area is covered by dozens of laws and other regulations. In this context, we believe, a way of improving the quality of local governance could be to simplify and systematize the entire normative framework, which governs the organization and functioning of local authorities, in one Code. In this paper we will argue for such systematization, and, basing on the experience of other states, we will demonstrate the advantage of codification of local law in our country.

Keywords: *codification, systematization, local authorities, legal framework, legislative inflation.*

1. Introduction

Legal system is particularly important for the harmonious development of society. As Prof. Sofia Popescu mentioned, “the law is a mediator between the value and behavior. There is always the human, which values are inherited from one generation to another. There are fundamental values, common to all humanity, universal values, as life, peace, ideals of justice, truth, freedom... fundamental values justify overriding power of legal norms that are derived from them, but principles of law, before to be logical to any legal rule, have the axiological dimension transformed into legal provisions”¹. Law realization, efficiency of legal rules, depends largely on the quality, accessibility, clarity and understanding of both by those who must be applied, and by those to whom it is addressed.

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¹ S. Popescu, *About the right and the value, with special regard to the judiciary*, in the volume *Simplification of the law - imperative for modernizing and improving the quality of the law*, The Collection of papers presented at the Scientific Session of the Legal Research Institute of the Academy of Sciences of Romania on 17th April 2015, Bucharest CD ISBN: 9786066736053, p. 12.

At such performance, it is virtually impossible to come today, and it seems that we are caught in a vicious circle. On the one hand, the law is increasingly less respected by those to whom it is addressed, on the other hand, creativity legislative excessive decades made them lose the character of permanence and the generality of the law, becoming a political tool but not the expression of a rule of law², but uncontrolled multiplication of national legislation has led to a real "legislative inflation", with lacking of legal coherent logic rules, with contradictory provisions and ambiguous terminology. In our opinion, the codification would be a solution to reduce legislative "inflation", the phenomenon recognized today by most specialists.

Simplification and adjustment of the right consists in a necessity and an ongoing concern of the European community of states. Intense normative activity in contemporary society should be reflected in a stable legislative system, unified, drafted in strict compliance with the rules of legislative technique and with an impeccable drafting of the legislation, so as to avoid ambiguities or conflicting interpretations.

Republic of Moldova, which signed on June 27, 2014 the EU Association Agreement, has double duty in this regard: a) simplification and harmonization of national legislation, and, b) its adjustment (connection) to Community rules.

2. Prospects systematization and simplification of administrative law

Law simplification, mentioned by Prof. Marilena Uliescu, is not mean a unification, but it is the way of improving the justice, the service of organization and respectability in any state. The Code must retain a certain level of generality and leave room for true doctrinal and jurisprudential creation for true "plug" of legislation and to abandon the idea of wanting to regulate everything. Law codification constantly meet the accessibility, clarity and consistency, but stability need for codification of legal norms... constant law codification it is not only a preliminary step to simplify in the European and international context..."³.

Therefore, the coding is a perfect base to law systematization or judicial institution branches on their quadrille (e.g. Criminal Code, Civil Code, Contravention Code, etc.). As for administrative law, codification considered impossible, because public administration, which is the main object of regulation, has varied and complex duties, execution of which require an increased viability, for which branch of administrative law is in constant improvement expressed in the adoption of new regulations and frequent change, both relationships and legal norms that form. Just here is the great problem of administrative law. On the one hand, the plurality rules are an argument in favor of codification of administrative law, and, on the other hand, the large number of rules, enhanced sustainability and diversity make it impossible to

² See in this regard, Caroline-Gau-Cabe, *Historical dimension of simplification. Estilla that simplification of the law*, LGDJ, 2010, pp. 18.

³ M. Uliescu, *Codified as a tool to simplify the law. The critical analysis of the Civil Code in force*, in volume *Simplification of the law - imperative for modernizing and improving the quality of the law*, The Collection of papers presented at the Scientific Session of the Legal Research Institute of the Academy of Sciences of Romania on 17 April 2015 Bucharest ISBN CD: 9786066736053, p. 7.

systematize this branch of law into one code. Therefore, unlike to other branches of law, administrative law can not be coded only within certain institutions within it, such as: responsibility, public function, administrative procedures, organization and functioning of LPA, administrative justice (administrative proceedings - which I have repeatedly stated that it is unworkable in the absence of codification of administrative justice⁴), and so on.

The advantage of codification of the administrative law is to simplify and harmonize the work of public administration so that it can fully meet community needs that essentially remain the same at all times, but frequently change, sustainability rules of administrative law keep more of modernization tools by which the administration realizes the tasks which were puted before them. On the other hand, coding highlight the main areas of law institutions.

Sistemization of administrative law has been widely discussed in the literature of the interwar period. Thereby, J. H. Vermeulen mentioned: "find a country that codified its Administrative law: Portugal. On December 31, 1936 approved the Portuguese administrative code, divided into four chapters, dealing respectively on: administrative organization; administrative officials and employees; local finances; administrative proceedings".

In the same period, extremely complicated, between the two World Wars, great professors of Public law from Romania, as Paul Negulescu, Gheorghe Alexianu and Romul Boilă argued the need to upgrade and systematization of legislation, which regulate the organization and functioning of public administration, as follows: "peoples happiness can only come from good administration; evils and shortcomings of suffering humanity it is not as a consequence of political organization, but especially the bad administrative organization... And then, the whole endeavor of mankind is to review the laws of the organization, in order to organize a new order Administration". However, today we face the same problems of poor organization of public administration, but the legislature must show political will and take responsibility for the quality of legal regulations adopted.

In the same context, Prof. Verginia Vedinas, stated with reference to the current situation in Romania, "The codification of administrative law represents a matter which requires further interest, legislative steps, political projects, doctrinal debates, but which remains unresolved because, despite this "noise" that is around it, there is no doubt that there is not political will for the executive to propose and support a viable project, but the legislature will adopt it"⁵.

The codification of administrative law (a certain institution thereof) has been, and remains, an extremely difficult process, however, the results of such encodings are able to ensure good governance, efficiency and functionality of the entire system of public administration. In this context, Prof., Dana Apostol Tofan, states the following: „**simplification, systematization, normalization and unification of the**

⁴ See M. Orlov, *The administrative Course*, Type. "Elena-VI." SRL, Chisinau, 2009, pp. 138-139.

⁵ Verginia Vedinas, *Codified of the administrative law: Reflections, projections, Status and Prospects*, Published in Scientific Notebook no. 5 the ISAM "The administration of the republic of Moldovan in 20 years of independence", the scientific session materials, 29 to 30 October 2011", Tipogr. "Elena VI.", Chisinau, 2012, pp. 18. www.isam.fd.md.

activities of public administration represents perhaps the strongest arguments that would underlie on the basis of administrative coding... such regulation should lead **to eliminate any duplication or inconsistencies between regulations in this field...encoding administrative procedure will allow to use of unified terminology...**⁶

We fully support this view because, for issuing uniform administrative provisions, and for the efficient execution of powers by law, it is absolutely necessary to simplify and codify the legal rules, which governing the organization and functioning of public administration in general, and the local authorities, in particular.

3. Law Codification of local authorities (communities)

Upgrading the local public administration is one of the main tasks of the Republic of Moldova. This can be achieved only by improving the legislation in this area. The current legal regulation of the activity of local public authorities, including the status of the staff of these authorities (locally elected officials, civil servants, employees) is enshrined in multiple laws that are in constant change. Thus, knowledge, application and enforcement of these rules is becoming increasingly difficult. Therefore, adoption of a Code of local bodies, modeled on the French⁷ example, would contribute, greatly, to improve the work of local public authorities and to more efficient work of local administration.

The purpose of this codification is in perfect correlation systematization of the existing legislation in this area, removing gaps, duplication, ambiguities and developing uniform procedures for operation of local public authorities. For proper operation of local public authorities, there must be clear and concise rules that local elected (official from LPA) can find them in one place (the law). It is too difficult for staff from LPA to know and to effectively exercise so many duties which are vested, then, when they are enshrined dispersed in various laws, but their provisions often repeat, contradict or mutually exclusive.

Systematization, in turn, should focus on the following objectives:

- a) simplification and correlation of legislation which regulate the activity (skills) of the authorities from local public administration;
- b) elimination of redundancies, inconsistencies, overlapping, that were discovered in the regulatory framework of the authorities from local public administration;
- c) developing uniform procedures, which will remove various practices in the process of law implementation.

For the reasons stated above, I repeatedly supported the idea of adopting a Code of local authorities.

In the Annex below is presented a draft Code with the following wording taking into account the specific administrative organization in our country.

⁶ D. A. Tofan, *The discretion power and the abuse power of the public authorities*, All Beck Publishing House, Bucharest, 1999, p. 382.

⁷ <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633>.

Annex***Sketch of possible Code of local authorities*****LOCAL AUTHORITIES CODE
TITLE I. GENERAL PROVISIONS****Chapter I. The general principles of local public authorities**

- Local autonomy (administrative autonomy, financial autonomy);
- Decentralization (fiscal decentralization, decentralization of local public services);
- Participation of citizens in local decision-making (local referendum, consulting citizens on issues of local interest);
- Eligibility of local public authorities (the election campaign, the elections, the voting procedure);
- Inter-municipal cooperation and external activities (institutions and municipal enterprises, regional development, Euroregions).

Chapter II. National bodies with impacting on local public authorities

- Local Public Finance Department (under the Ministry of Finance)
- National Council for Evaluation of the requirements of local public authorities
- National Council for training local elected officials
- The National Council of Personnel Performance Review (qualifications) of LPA.

**TITLE II. PROPERTY OF ADMINISTRATIVE-TERRITORIAL SERVICES,
PUBLIC SERVICES AND ECONOMIC DEVELOPMENT****Chapter III. Property of administrative-territorial units**

- General legal status of property of administrative-territorial units (property of the public domain, property of private domain)
- Goods formation (LPA jurisdiction, competence PCA, Special rules on skills transfer)
- Property Management (direct management, indirect management)

Chapter IV. Local public services

- General principles (direct management, delegation of public services, and participation of citizens and consumers in the management of public services)
- Contracts (public-private contracts, public-public partnership, concession work contracts and public services)
- Special provisions relating to certain local public services (cultural services, civil protection and firefighting services, local services of electronic communication, local broadcasting stations)
- Public institutions for cultural cooperation, cooperation in education and training

Chapter V. Economic development

- Municipal enterprises (local public societies)
- Local mixed economic companies (mixed enterprises, ventures parts of the capital, contribution of LPA, ways of intervention, management and control)

- Support (subsidize) of the local municipal enterprises and local economic societies by state.

Chapter VI. Finance and Accounting

- General principles
- Adoption and implementation of the budget
- Compensation and transfer of skills
- Provisions on accounting
- General regime of exemptions from the obligation to transfer to state budget the incomes from the authorities and local public institutions

TITLE III: LOCAL PUBLIC AUTHORITIES SYSTEM AN THE LEVEL I AND II

Chapter VII: Commune authorities

- Commune organization, name and territorial boundaries, the delineation and border changes, the procedure for creating a new commune, commune liquidation.
- Local Council (formation, suspension, dissolution, order of operation, tasks assigned, delegated tasks, relations with other state authorities)
- The mayor and deputy mayor (description and sworn in, tasks, general conditions for the exercise of salaries for mayors, deputy mayors and village delegates)

Chapter IX. The conditions for exercising of mandate for local elected

- Guarantees for local elected officials: Guarantees provided in their official mandate and Guarantees given in pursuit of a professional activity; Guarantees awarded in the end of the mandate term.
 - The right to vocational (training)
 - Allowances for local elected mandate holder: reimbursement, function allowance (meeting attendance)
 - Social protection: social security, retirement
 - Responsibility

Chapter X. Local authority's documentation and its acts in administrative proceedings

- The legal status of the issued acts by local public authorities
- The lawfulness of their administrative courts

Chapter XI. Transparency and participation of citizens in decision-making

- Participation of citizens in local life, to solve problems of local interest, to organize and monitor public services.

Chapter XII. Public community services

- Municipal police, industrial and commercial public services, regulations and price calculation, garbage and other waste, warehouses, markets and other public

objects, gas and electricity, fire services, urban storm water management, cemeteries administration ...

Chapter XIII. Public property of the commune

- The legal regime of the property, forming property, donations, legacies, declaring abandoned land (unprocessed)
- The finance of the Commune, budget, accounts, expenditure, revenue collection of local taxes and fees, penalties for failure to pay fees, sponsorship from citizens

Chapter XIV. Special municipality statute.

Chapter XV. Local public authorities level II.

- The district council
- Chairman and Vicechairman of the district (same description of the compartments as in commune)

Chapter XVI. Public authorities in the administrative-territorial units with special status

- Statute of Gagauzia
- The territory statute of Transnistrian region