LEGISLATIVE DYNAMICS IN THE FIELD OF ORGANIZATION AND FUNCTIONING OF AUTONOMOUS LOCAL PUBLIC AUTHORITIES IN ROMANIA

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Abstract

The principle of legality - a true constitutional postulate presupposes systematized, clear and coherent rules that govern the activity of local public administration authorities, so that the normative system is understood by all and, therefore, easily controllable. Recipients of the law must be able to know, without ambiguity, the rights and obligations conferred on them, respectively imposed by law, and the law must be predictable.

Key Words: *the principle of legality, laws, the County Council, local autonomy, local elected officials*

JEL Classification: [K16]

1. Introduction

The problems of the Romanian legislative framework, including in the field of public administration, are known by the state authorities, which, through several strategic and programmatic documents, state the need to rationalize and systematize regulations, including through codification tools. This need is, also, signaled in the context imposed by the European Union, which puts particular accent on "good governance" and "smart regulating".

Through the Administrative Code are repealed 16 normative acts: eight laws, two emergency ordinances of the Government, four ordinances of the Government, one decision of the Government and one Decree of the Grand National Assembly.

We find that is not the case of a simple juxtaposition of existing regulations, is about a process that in terms of substance, but also form, is elaborated and integrative.

A second argument that supports the significance of the Code and derives from the first is that, by reuniting, in the same normative act, the regulations applicable to public administration, is eliminated the parallelisms, contradictions, multitude of rules in which not only the practitioner but also the theorist risked getting lost or they were effectively lost (Vedinaş; 2019:12).

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2. Analysis of legislative technique dysfunctions in the legislation of the public administration in Romania

As a result of some analyzes[1], a series of legislative dysfunctions were identified, such as: the non-existence of unitary definitions of the main concepts in public administration; redundant and parallel legal provisions (more common in the field of local public administration); the existence of contradictory legal rules; legislative vacuum and difficulties in applying the legal provisions in force generated by unclear and uncorrelated legal norms.

No legislation is given once and for all, especially the one on which the public administration is based, called to put into action, in execution, the provisions, if not of all the laws, in any case most of regulations which exists in a state (Cozmâncă & Preda; 1996:7).

Therefore, the administrative legislation is the most mobile of all the profile legislations.

It is also the reason why the law of local public administration has been amended and supplemented several times in an attempt to be brought into line with the requirements of the present.

The incessant increase of the number of legal regulations has as first effect the decrease of their quality. Some projects are unfounded or pursue surface purposes. Arise contradictions between old and new regulations, which are not resolved by direct express repeal techniques.

This unprecedented increase in the number of laws leads to the proliferation of "soulless laws", especially in the economic-financial and social field, which are followed by their non-application. The situation of the ordinary, organic laws and of the constitutional laws adopted in the period 1990-2011 is presented and analyzed by professor Ioan Vida in the specialized paper "Formal logistics" (Vida, 2012:21).

Local authorities cannot determine their own competence, because Romania is not a federal state; only the state has the competence to determine its own competence, for the other public authorities the competence being established by law (Dragoş, 2011/2012).

Public administration authorities are put in a position to interpret certain normative acts when they apply them, and the interpretation must be in accordance with the law. The issue that arises is the risk of misinterpreting a legal norm, in good faith.

Which public authority has the obligation to interpret a normative act in the phase preceding the initiation of a legal conflict, because, in this case, brought before the judge, the normative act is to be interpreted by the latter?

First of all, we must note that there is no effective system of unitary interpretation of normative acts: a legal provision can be interpreted in one way by some administrative authorities and in another way by others. The solution to the

[1] See *Explanatory Memorandum of the Administrative Code*, p. 1.

risk dilemma of interpretation is offered by Law no. 24/20004[2] on the rules of legislative technique, according to which the interpretation given by the person applying the rule (administrative interpretation) is valid if it is made in good faith until the moment when an official interpretation from the issuer or another competent body occurs[3].

Public administration is largely translated into law enforcement, rather than the creation / development of laws or regulations, and the ability of elites to go beyond mere rhetoric and build a coherent long-term program for administrative reform is essential, but still difficult to achieve (Hințea, 2011:178-180).

The County Council and the Local Council are elected on constituencies, by vote cast on the basis of the list ballot[4] and the mayors of communes and cities are elected by vote cast on the basis of uninominal ballot (Fodor, 2008:49).

The president of the County Council, the vice-president of the County Council, the deputy mayors are elected by indirect secret ballot by the councillors, according to Law no. 115/2015[5].

3. The need to adopt the Administrative Code

The adoption of the Administrative Code in our country was a difficult process, with many and difficult "trials", with stagnation and restarts, with obstacles and oppositions, we could say an fascinating and passionate legislative process, which finally saw the light of printing", in the Official Gazette of Romania and became law[6]. In the literature it is argued that (Vedinaş,2019:5-13) the adoption of an Administrative Code should be seen as a "bible of public law", as the Civil Code has the same character for private law.

According to the specialized literature, the local and county councils are representative authorities of the local public administration with eligible and deliberative character, exercising a general competence based on the local

[2] Republished in the Official Gazette of Romania no. 260/21.04.2010.

[3] See art. 69 (1) of *Law no. 24/2000* regarding the norms of legislative technique, republished in the Official Gazette of Romania no. 260/21.04.2010, paragraph (1) The legislative interventions for clarifying the meaning of some legal norms are carried out by an interpretative normative act of the same level as the targeted act, by interpretative provisions contained in a new normative act or by modifying the provision whose meaning must be clarified, paragraph (2) The legal interpretation intervened according to para. (1) may confirm or, as the case may be, refute or modify the judicial, arbitral or administrative interpretations, adopted until that date, with the observance of the won rights.

[4] The original meaning of the word ballot refers to the method of voting and comes from the Latin *scrutinium* vote which consists of inserting a ballot in the ballot box, then counting all the ballots to find out who won the election. Synonymous with the term of elections is the election which indicates the appointment of deputies, senators, local and county councilors, mayors.

[5] *Law no. 115/2015 for the election of local public administration authorities*, for the amendment of the Law on local public administration no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 on the Statute of local elected officials, published in the Official Gazette of Romania no. 349/20.05.2015.

[6] *Government Emergency Ordinance no. 57/2019 on the Administrative Code*, published in the Official Gazette of Romania, no. 555 of July 5, 2019.

autonomy they have, deciding, in accordance with the law, the public matters aiming at the interests of the communities they represent (Santai, 2005:350-351).

The local council of the commune or city as well as the County Council - as decision-making bodies and the Mayor and the President of the County Council - as executive bodies are the local powers (Roș, 2015;15-19).

The appointment of local mayors through free elections also attracts their accountability to the community that delegated their mandate.

In other words, the governing bodies and local public authorities are accountable to the citizens who voted for them and not to the central public authorities.

Mayors and local councils, authorities understood as elements of administrative decentralization are those who solve in the administrative-territorial units the problems specific to local communities.

In order to find ourselves in front of the administrative decentralization, it is necessary for these local authorities to be the representatives of the local community and not representatives of the state placed at the head of the administrative-territorial units.

This presupposes that the local authorities result from free elections, held in the administrative-territorial unit.

4. New regulations according to the Administrative Code

1. New regulations on the organization and functioning of inter-community development associations (IDAs) in the sense of specifying as their governing bodies the General Assembly, the Steering Committee and the Commission of censors in order to harmonize with the regulations on associations and foundations.

2. Regulation of the establishment of the local council, in the sense of modifying the procedure for validating the mandates of the elected local councillors. The procedure for validating the mandates of local councillors elected by court decision (and not a validation commission composed of invalid elected councillors) was regulated, with a limited role of the prefect's institution regarding the organization of the meeting on the ceremony of constituting the local council and organization of taking the oath by those declared elected. Also, are listed the conditions that must be met for the validation of mandates.

3. Detailing the regulations regarding the draft decisions of the local council from the perspective of the documents necessary for the debate of the project decision (eg. opinions, reports), the actors involved, as well as the necessary deadlines, before their registration on the agenda of the local council meeting.

4. Reviewing the majorities necessary for the adoption of the decisions of the local and county councils; qualified majority, respectively two thirds of the number of local councillors in office, for the decisions regarding the sale-purchase of real estate privately owned by the administrative-territorial units, the rest of the decisions to be adopted by absolute majority, respectively half plus one of the number of councillors in office.

5. Modification of the dissolution situations of the local council (eg. if it either does not meet for 4 consecutive months or does not adopt any decision in 3 ordinary and / or extraordinary meetings, during 4 months), correlated with the tightening of situations of termination of the mandate of local councillor (eg unjustified absence from 3 council meetings or from 3 ordinary and / or extraordinary meetings, convened / held for 3 months) so as to ensure the stability of local authorities.

6. Detailed regulation of the moment of legal termination of the mandates of local councillors, county councillors and the president of the county council which may be determined by a state of affairs (as in the case of resignation), by the final court decision(as in the case of a conviction at a custodial sentence) or the decision of a certain legal person (as in the case of exclusion from a political party or in the case of the elaboration of an evaluation report by which a state of incompatibility is found). The exact specification of this moment is likely to clarify the situation of the mandate of the local elected official.

7. Modification of the deputy mayor's status, in the sense of clarifying his role as legal substitute for the mayor, by defining the situations in which the deputy mayor exercises this quality (e.g. in case of suspension of the mayor, in the situation when the position of mayor is vacant).

8. Reviewing the procedure applicable in situations of incompatibility in which local elected officials may find themselves, specifying when they intervene (depending on the specifics of each situation) and the obligations of the local elected official and the role of the National Integrity Agency.

9. Clarification of cases that constitute situations of conflict of interest of local elected officials - conflict of interest manifests itself when, in the exercise of function, the local elected which is called to take a decision or participate in a decision, issue / adopt an administrative act or concludes a legal act has a personal interest of patrimonial nature; the express specification of the sanction applicable to the local elected as a result of the finding of the existence of a situation of conflict of interests (legal termination of the mandate).

10. Harmonization of the regulations on the obligation to submit declarations of interests and declarations of assets by local elected, the procedure and the applicable sanctions. Thus, the local elected officials will submit the same declarations of interests and declarations of assets, in the same deadlines with the other categories of staff [7].

Conclusions

In these conditions, we can say that the mayor or local council are authorities of local autonomy because they resulted from elections, while the prefect and heads of decentralized services in administrative-territorial units are authorities of executive activity, by virtue of their appointment by the authorities and the powers it exercises on behalf of the specialized central administration (Vida, 2012:24).

[7] See *Explanatory Memorandum of the Administrative Code*, p.6.

Providing a single legal instrument to which practitioners but also theorists should refer, equally, when carrying out public administration or, as the case may be, when analyzing and developing the regime or legal status of the institutions, the principles, legal acts and its other ways of materialization, including from the perspective of permanent reporting to the requirements imposed by Romania's membership in the large family of the European Union.

It is a truth that we do not stop supporting in our academic concerns, namely that Romanian law can no longer be conceived outside the law of the European Union, equally as the activity of public authorities, whether executive, legislative or judicial, can no longer be achieved by ignoring the principles and values enshrined at European level, the jurisprudence of European courts or the common requirements and policies of the European Union (Vedinaş; 2019:12).

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