

# ELABORATION OF THE DRAFT DECISIONS OF THE LOCAL COUNCIL / COUNTY COUNCIL ON THE INITIATIVE OF THE LOCAL ELECTED OFFICIALS, RESPECTIVELY OF THE CITIZENS

*Nicolae ROȘ\**

## **Abstract**

*The exercise of the local legislative initiative was regulated by Law no. 141/2004 for the amendment and completion of the Law on local public administration no. 215/2001.*

*Until the publication of Law no. 141/2004, the citizens could have legislative initiative only at national level.*

*Law no. 141/2004 comes to remedy the omission of the legislator and expressly confers the right of citizens to initiate draft decisions of local and respectively county councils, for promotion being necessary the support of at least 5% of population with the right to vote from the respective administrative-territorial unit*

*Therefore, every citizen has the right to promote a legislative initiative with the condition that is supported by other citizens by through materialized adherence on a list of signatures.*

**Keywords:** *local council decision, county council decision, project, opinion, general secretary, explanatory memorandum, specialized report, meeting*

**JEL Classification:** [K16]

## **1. Introduction**

To administer, to make administration means, till last, to act by issuing or adopting legal acts or performing material acts, services, executions (Ștefan, 2010:73).

The regulation of the right of the citizens to propose draft decisions for debate and approval to the Local Council, respectively to the County Council is natural, as these authorities are elected by the citizens of the respective administrative-territorial unit, which she represent them (Preda, 2007:317).

Apart from the threshold of support from the citizens, Law no. 141/2004 regulates the procedure for exercising the legislative initiative with reference to: the signatures of the supporters<sup>1</sup>, the attestation of the list of supporters, the registration of the legislative proposal (Roș, 2015:75).

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\* Assistant Professor, Ph. D., “Dimitrie Cantemir” Christian University Bucharest, Faculty of Law Cluj Napoca, Romania.

<sup>1</sup>According to Law no. 141/2004 - The lists of supporters will include the name, surname and domicile, the series and number of the identity document and the signatures of the supporters, respectively the lists of supporters can be signed only by citizens with voting rights who have their domicile within the territorial administrative unit in which the local or county council is going to debate the draft decision in question

## 2. Elaboration of draft decisions

The doctrine considers that (Drăganu, 2001:262 and the next ones) in order for an administrative act to be valid and produce legal effects, it is necessary that it fulfill, mainly, four conditions: the administrative act to be issued by the competent body and within the limits of its competence; the administrative act to be issued in the form and with the procedure provided by law; the administrative act must comply in terms of content with the law and with acts of higher legal force; the administrative act to be issued according to the interest pursued by the law -opportunity of the administrative act - (Petrescu, 2001:262 and the next ones).

Draft decisions can be initiated by the mayor, local councilors or citizens.

The elaboration of the projects is done by those who propose them, with the support of the general secretary of the administrative-territorial unit/subdivision and of the relevant compartments within the specialized apparatus of the mayor.

Draft decisions and their approval reports shall be drafted in accordance with the rules of legislative technique.

Draft decisions of the local council accompanied by their approval reports and other documents of presentation and motivation shall be registered and transmitted by the general secretary of the administrative-territorial unit / subdivision:

- a) to the relevant departments within the specialized apparatus of the mayor in order to analyze and draw up the specialized reports;
- b) to the specialized commissions of the local council in order to debate and draw up the opinions.

Nomination of the relevant departments and of the specialized commissions to which the draft decisions of the local council are sent, as well as the other documents, according to the provisions of art. 136, para. (4) of the Administrative Code<sup>2</sup>, is made by the mayor together with the general secretary of the administrative-territorial unit / subdivision.

Together with the transmission of the draft decisions, the date of submission of the reports and opinions is also communicated, taking care that the reports of the relevant departments can be transmitted also to the specialized commissions before their pronouncement.

After examining the draft decision, the specialized committee of the local council issues an opinion with respect to adoption or, as the case may be, the rejection of the draft.

The opinion of the commission is sent to the general secretary of the administrative-territorial unit/subdivision, who orders the measures corresponding to its submission to the local councilors and to the initiators, as the case may be, at the latest on the day of the meeting.

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<sup>2</sup> Government Emergency Ordinance no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania no. 555 of July 5, 2019.

Each draft decision which is on the agenda of the local council meeting shall be debated only if it is accompanied by:

- a) the approval report, as an instrument of presentation and motivation, signed by the initiator;
- b) the reports of the relevant departments within the specialized apparatus of the mayor;
- c) the consultative opinions of the specialized commissions of the local council;
- d) other documents provided by the special legislation.

The general secretary of the administrative-territorial unit / subdivision ensures the fulfillment of the conditions from art. 136 para. (8) of the normative act indicated above, and brings to the notice of the local council the case of their non-fulfillment before the adoption of the agenda.

The reports and opinions provided in art. 136 para. (8) of the Administrative Code must be drawn up within the term provided in art. 136 para. (5) of the same normative act.

This must take place no later than 30 days after the registration of the proposed draft decisions in order to be included on the draft agenda of the ordinary meetings of the local council, respectively within 3 days from the registration of the proposed draft decisions to be included in the draft agenda of the extraordinary meetings.

In the case of extraordinary meetings convened immediately, the reports of the specialized departments shall be drawn up in the emergency procedure, at the latest together with the draft decision.

The initiator may retract or give up to support the project at any moment<sup>3</sup>.

### **3. Citizens' legislative initiative**

It has been noted in Romanian doctrine (Tofan, 2002:75-94), and we agree with this point of view, that in the practice of regulating through laws and ordinances the various aspects that should be found together in an administrative procedure code, it takes our legislation away from the long-term coherence and from the stability, stability that is needed (Ranta, 2021).

As it has been stated in the specialized literature (Ștefan, 2022:10), the administrative act, through its way of systematizing the legislation, brings news regarding the legal regime of the administrative act.

We mention, for example, definitions of notions or elements related to the formalism of adopting this type of act.

Citizens can propose to local councils and county councils on whose territorial area they live, for debate and adoption, draft decisions.

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<sup>3</sup> See art. 136 of the Government Emergency Ordinance no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania no. 555 of July 5, 2019.

The promotion of a draft decision can be done by one or more citizens with the right to vote, if it is supported by signatures of at least 5% of the population with the right to vote registered in the Electoral Register with domicile or residence in the administrative-territorial unit.

The initiators submit to the general secretary of the administrative-territorial unit / subdivision the form proposed for the draft decision.

The project is displayed for public information by care of the secretary general of the administrative-territorial unit / subdivision.

The initiators ensure the elaboration of the lists of supporters on the forms that are made available by the general secretary of the administrative-territorial unit / subdivision.

The lists of supporters include: name, surname and domicile, series and number of the identity card and signatures of the supporters.

The lists of supporters can be signed only by the citizens with the right to vote registered in the Electoral Register with their domicile or residence in the administrative-territorial unit / subdivision, whose local or county council, as the case may be, is to debate the draft decision in question.

After the submission of the documentation and its verification by the general secretary of the administrative-territorial unit / subdivision, the draft decision follows the regulatory working procedures of the local or county council, as the case may be<sup>4</sup>.

In our opinion, in order to have efficiency and effectiveness, the route of the legislative shuttle from the specialized departments to the commissions, respectively the plenary of the Local Council must be supported by the local elected official.

#### **4. The route of the legislative ship**

The steps of the legislative shuttle from idea to law must comply with the norms of legislative technique (Vida, 2012:151-152), within the local autonomy<sup>5</sup> regulated by the legislation in force<sup>6</sup>.

The procedural forms for the adoption of administrative acts may be grouped into anterior, concomitant or posterior (Fodor, 2008:184 and following), so:

1. The initiative can be exercised by: the mayor, the president of the County Council, the local / county councilors, individually or collectively, respectively by the citizens;

2. The drafting is done with the support of the specialized apparatus;

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<sup>4</sup> See art. 247 of the Government Emergency Ordinance no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania no. 555 of July 5, 2019.

<sup>5</sup> See art. 3 paragraph (1) of the European Charter of Local Self-Government, adopted in Strasbourg on October 15, 1985, ratified by Romania by Law no. 199/1997, published in the Official Gazette of Romania no. 331 / 26.11.1997.

<sup>6</sup> Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts, republished in the Official Gazette of Romania no. 260 / 21.04.2010.

3. Statement of reasons - is the administrative operation which sets out the considerations of fact and law, which justify and require the adoption of an administrative act;

5. The report of the relevant department - is necessary for each draft decision - reports with possible observations and proposals;

6. The legality notice of the secretary who assumes responsibility for their legality.

1. The secretary also ensures the preparation of documents which will be debated by the local council;

7. Preliminary agreements - if applicable;

8. Bringing to public knowledge- secretary of the administrative-territorial unit;

9. Report of the specialized commission (s) of the local / county council - with possible observations or proposals.

The opinion of the committee (s), even if it is advisory, is mandatory in the sense that it must be requested, otherwise the act is illegal. In the case of extraordinary or immediate meetings are not required.

10. Registration on the agenda; the draft agenda is drawn up at the proposal of the mayor, councilors, secretary, specialized commissions or at the request of the citizens;

11. Adoption of the decisions of the local council / decisions of the county council;

12. Signing - chair of the meeting or 3-5 advisers;

13. Countersignature - for legality by the secretary;

14. Verification of the legality by the prefect of the decisions communicated by the secretary;

15. The entry into force of the decisions of the local council / of the decisions of the county council - communicated, respectively brought to the public knowledge by posting in authorized places and by publishing in a high circulation newspaper;

16. Putting in enforcement of the decisions of the local council by the mayor, respectively of the decisions of the county council by the president of the county council (Roș, 2012:152).

We agree with the point of view expressed in specialized literature according to which local council decisions represent unilateral manifestations of will, adopted with the aim of producing legal effects within the framework of the activity of executing or organizing the concrete execution of laws, namely administrative acts issued in order to exercise the prescribed powers by law (Mihu, 2006).

The regulations contained in a normative act of the local public authorities must not deviate, in any form, from the constitutional regulations nor from the other provisions of the laws, ordinances, decisions of the Government, including the acts issued by the ministerial and extra-ministerial administration or of the normative orders issued by the prefects (Vida, 2022:10).

In the architecture of the documents issued by the local public administration authorities, the introductory formula must be present, which must include the legal bases (issuing authority, generic name of the act, depending on its legal nature, as well as the basic legal bases on which the document was issued, including the legal basis.

The external form of drafting administrative acts must comply with the procedural requirements regarding style and grammatical rules.

The legislative text must be worded clearly, fluently and intelligibly, without syntactic difficulties and obscure or equivocal passages.

Affective terms are not used.

The form and aesthetics of the expression must not prejudice the legal style, precision and clarity of the provisions<sup>7</sup>.

### **Conclusions**

1. The draft decisions adopted are the most important qualitative and quantitative indicator of the activity of the local elected officials.

2. Draft decisions can be initiated by local elected officials individually or in groups.

3. Draft decisions can be initiated by a minimum number of citizens, respectively 5% with the right to vote from the administrative-territorial unit.

4. The draft decisions are drafted with the support of the Secretary General of the administrative-territorial unit and we propose also with the support of the technical apparatus of the Local Council.

5. The draft decisions are drafted in compliance with the norms of legislative technique provided by Law no. 24/2000 on the norms of legislative technique for the elaboration of normative acts.

6. Draft decisions may not be placed on the agenda unless they are accompanied by the necessary reports and opinions.

7. The initiator may retract or give up to support the project at any moment.

8. In our opinion, in order to have efficiency and effectiveness, the route of the legislative shuttle from the specialized departments to the commissions, respectively the plenary of the Local Council must be supported by the local elected official.

9. The activity reports of local councilors should be discussed in the Local Council before publication on the institution's website.

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<sup>7</sup> Art. 8 paragraph (4) of Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts, republished in the Official Gazette of Romania no. 260/21.04.2010.

10. According to the Romanian Constitution and the incident legislation, at the initiation of any normative act, at least two conditions must be respected, respectively: indication of the legal basis and financial source.

11. The necessity to codify the administrative procedure is imposed.

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### Normative acts

1. Administrative Code – O.U.G. no. 57/2019, published in the Official Gazette of Romania no. 555 / 05.07.2019.
2. European Charter of Local Self-Government, adopted in Strasbourg on October 15, 1985.
3. Law no. 141/2004 for the amendment and completion of the Law on local public administration no. 215/2001, published in the Official Gazette of Romania no. 396/04.05.2004.
4. Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts, in the form republished in the Official Gazette of Romania no. 260/21.04.2010.