

DECISIONAL TRANSPARENCY IN THE PUBLIC ADMINISTRATION*Nicolae ROȘ****Abstract**

The lack of transparency in the activity, the secrecy of the administration and especially of the top of the executive power, of the governmental apparatus, put in discussion the issue of responsibility of persons, senior civil servants and can be a disruptive factor of the balance of the democratic model of public administration.

Key Words: *transparency, public administration, rules, sanctions, decision, measures, law, authorities.*

JEL Classification: [K16]

1. Introduction

In many countries and finally in our country, a law on the right to information has been wanted and was adopted to eliminate the secrecy of administrative action¹.

In principle, the administration is not willing to popularize the unpleasant and unsuccessful actions of the state (Ioan; 2004:164-165).

The lack of transparency in the autonomous local public administration in Romania is a situation that must be completely overcome, not only formally.

2. Procedural rules regarding the participation of interested persons in the decision-making process

The administrative code adopted by the O.U.G. no. 57/2019², in art. 138 stipulates that "The meetings of the Local Council are public".

The public character of the local council meetings is given by:

a) the access of those interested, in accordance with the law, to the minutes of the local council meetings;

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¹ Law no. 52/2003 regarding the decisional transparency in the public administration, published in the Official Gazette of Romania no. 70/02.03.2003, as well as Law no. 161/2003 regarding some measures for ensuring transparency in the exercise of public dignities, public positions and in the business environment, prevention and sanctioning of corruption, published in the Official Gazette of Romania no. 279/21.04.2003.

² Published in the Official Gazette of Romania no. 555 / 05.07.2019.

b) the access of those interested, in accordance with the law, to the draft decisions, to the decisions of the local council, as well as to the tools for their presentation and motivation;

c) the possibility of the citizens with domicile or residence in the respective administrative-territorial unit / subunit to attend the meetings of the local council and / or to follow on the internet, under the conditions of the regulation of organization and functioning of the local council.

The procedural rules are:

a) The participation of the interested persons in the public meetings will be made within the available seats in the meeting room, in the order of precedence³ given by the interest of the legally constituted associations in relation to the subject of the public meeting, established by the person who presides the public meeting.

The order of precedence cannot limit the access of the media to public meetings.

b) The person who presides the public meeting offers to the guests and to the persons participating on their own initiative the opportunity to express themselves on the issues on the agenda.

c) The adoption of administrative decisions is the exclusive competence of public authorities⁴. The points of view expressed during the public meetings by the invited persons have the value of a recommendation.

d) The minutes of the public meeting⁵ (including the vote of each member, unless a secret ballot has been decided) will be displayed to the headquarters of the public authority and will be published on its website.

Public authorities are obliged to elaborate and to archive the minutes of public meetings.

When is considered necessary, public meetings may be recorded.

The recordings of the public meetings, organized in this way, will be made public, upon request, under the conditions of Law no. 544/2001 on free access to information of public interest⁶.

e) within 3 days from the date of adoption of the minutes of the meeting⁷, the general secretary of the administrative-territorial unit / subdivision displays at the

³ According to art. 3, letter b) of Law no. 52/2003, by order of precedence is meant the order that determines the priority of participation in public meetings, in relation to the interest shown concerning the subject of the meeting.

⁴ Political decisions are made by a triumvirate composed of political leaders, high-ranking officials and leaders of pressure groups, who each try to achieve their own interests. According to most constitutions, politicians are the ones who make the decisions, which concern the community, while the officials must be content to carry them out, precisely and just in time.

⁵ According to art. 3, letter g) of Law no.52/2003, the minute means the written document in which the points of view expressed by the participants in a meeting are recorded in the summary, as well as the result of the debates.

⁶ Published in the Official Gazette of Romania no. 663/23.10.2001, with subsequent amendments and completions.

⁷ According to art. 138 par. 17 of the Administrative Code.

mayor's office and publishes on the website of the administrative-territorial unit / subunit a copy of the minutes of meeting.

f) Public authorities must to draw up and to make public an annual report concerning decision-making transparency.

This report will include at least the following elements:

- the total number of recommendations received;
- the total number of recommendations included in the draft normative acts and in the content of the decisions taken; the number of participants to the public meetings;
- the number of public debates organized on draft normative acts;
- the situation of the cases in which the public authority has been sued for non-compliance with the provisions of this law;
- own evaluation of the partnership with the citizens and with their legally constituted associations;
- the number of meetings that were not public and the motivation for restricting access.

The annual report on decision-making transparency will be made public on its website, by posting at its headquarters in a publicly accessible space or by presenting it in public meeting.

3. Legal sanctions in case of non-compliance with legal provisions regarding decision-making transparency in public administration

Chapter 3 of Law no. 52/2003 establishes the following legal sanctions that become applicable in case of non-compliance with the legal requirements regarding the decisional transparency:

a) Action in administrative litigation - in this sense, any person who considers himself harmed in his rights, provided by law, can make a complaint under the conditions of the law of administrative litigation (Dragoș, 2002: 175 sqq.).

The complaint and the appeal are judged in the emergency procedure and are exempt from stamp tax.

b) The disciplinary liability - within the meaning of the provisions of art. 14 of Law no. 52/2003, constitutes a disciplinary liability and is sanctioned "the act of the civil servant who, for reasons contrary to the law, does not allow the access of persons to public meetings or obstructs the involvement of interested persons in the process of drafting normative acts of public interest" (according to the provisions of Law no. 188/1999 on the Statute of civil servants, with subsequent amendments and completions, or as the case may be, according to the labor legislation).

c) Establishment of administrative measures - persons who assists at public meetings, invited or on their own initiative, must respect the regulation on the organization and functioning of public authority.

If the president of meeting notes that a person has violated the regulation, he will dispose his warning and when all is told, the evacuation of the person (Vlaicu, 2012: 160-161).

Regarding the access to information, the Administrative Code, at art. 218, stipulates that the right of local elected officials to have access to any information of public interest cannot be restricted.

The central and local public administration authorities, the institutions, the public services, as well as the legal persons under private law are obliged to ensure the correct information of the local elected officials according to their competences, on the public affairs and on the issues of local interest.

In connection with this right, the Administrative Code also includes provisions on information obligations for local elected officials, respectively they are obliged, in the exercise of the mandate, to organize periodically, at least once a quarter, meetings with citizens, to give hearings and to present in the local council, respectively in the county council an information regarding the problems raised at the meeting with the citizens.

At the same time, in order to ensure the transparency of the activity, the mayor, respectively the president of the county council is obliged, through the general secretary of the administrative-territorial unit / subdivision and the specialized apparatus, to make available to local councilors, respectively county councilors, at their request. for a maximum of 10 working days, the information necessary in order to fulfill the mandate in accordance with the law.

The reason for which the mayor's obligation to provide the councilors with the necessary information at their request was established, takes into account the need to fully inform them in the requested issue, or to document the concrete situation and the way the mayor, deputy mayor acted. , the specialized apparatus of the mayor, subordinated to the mayor or the institutions subordinated to the council, in order to be able to propose the corresponding measures, either to formulate possible questions or interpellations in the council meeting, in the respective field.

Of course, as the law itself provides, the mayor fulfills this obligation through the secretary and his specialized apparatus; however, the request must be addressed only to the mayor (Preda, 2007: 171-172).

According to art. 226 of the Administrative Code, the local councilors, respectively the county councilors, may address questions and interpellations to the mayor, respectively to the president of the county council, to the vice-presidents of the county council, as the case may be.

The requested answer is usually sent immediately or if not possible, to the next meeting of the local council, respectively of the county council and the respondent has the obligation to answer in writing or, as the case may be (Roș, 2015: 122), orally no later than next meeting of the local council, respectively the county council.

In the legislative process, transparency must not only enable the offering of information, but must be used for feedback, otherwise its purpose is not complete (Fodor, 2018: 148).

Conclusions

Based on the study of the doctrine (Preda, 2007: 171-172) that comments on the articles the incident legislation and of the studies and researches carried out in the local public administration⁸, we agree with them and formulate the following conclusions in the form of recommendations:

1. We recommend that the request be formulated in writing by the councilor, with a clear specification of the issues in connection with which he wishes to be informed, so that the information provided by the mayor is as complete as possible.

2. It is preferable for the local public authority to organize consultations at other stages of the public policy cycle - clarifying the problem, identifying solutions.

Both Law no. 52/2003 as well as the legislation regarding the legislative technique or the substantiation of public decisions allows, recommends and sometimes expressly requests the consultation of the interested parties in the stages of preparation of the normative acts.

Only by involving the public in the decision-making process from the stage of clarifying the problem and identifying solutions, can the issuing authority ensure that the proposed decision takes into account all perspectives on the problem.

The consultations organized exclusively in the stage of elaboration of the normative act may remain superficial or give the impression that they are formal.

Consultations held too late in the decision-making process can lead to conflicts between the local public authority and interested parties.

3. All documents subject to public consultation must be clear, concise and include all the information necessary to facilitate the obtaining of answers.

4. In view of the ultimate objective of the public debate process, namely the collection of views from civil society, it is preferable that the draft normative act be accompanied by an explanatory summary text which clarifies the general public, in accessible language, on to its content, the purpose for which it is elaborated, the solutions proposed by the initiators and the foreseeable effects of the future normative act directly on those who will be affected by its application.

⁸ Ghidul de bune practici privind transparența în administrația publică locală, precum și prevenirea și combaterea fenomenului de corupție pentru personalul din primăria municipiului Deva și al serviciilor publice din subordinea consiliului local, <https://www.primariadeva.ro/proiecte-cu-finantare-europeana-in-derulare/ghidul-de-bune-practici-privind-transparen-538-a-in-administra-538-ia-publica-locala-precum-si-prevenirea-si-combaterea-fenomenului-de-corup-538-ie-pentru-personalul-din-primaria-municipiului-deva-si-al-serviciilor-publice-din-subordinea-consiliului-local>, accessed on 25.06.2021.

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Legislation

1. *Law no. 544/2001 on free access to information of public interest*, published in the Official Gazette of Romania no. 663 23.10.2001, with subsequent amendments and completions;
2. *Law no. 52/2003 regarding the decisional transparency in the public administration*, published in the Official Gazette of Romania no. 70/02.03.2003;
3. *Law no. 161/2003 regarding some measures for ensuring transparency in the exercise of public dignities, public positions and in the business environment, prevention and sanctioning of corruption*, published in the Official Gazette of Romania no. 279/21.04.2003;
4. *Administrative Code – O.U.G. no. 57/2019*, Published in the Official Gazette of Romania no. 555 / 05.07.2019.