

## Proposals for improving the legislation on local public administration

**Lecturer Mihai Cristian APOSTOLACHE, PhD.**

Petroleum-Gas University of Ploiești, Romania

*mihaiapostolache5@yahoo.com*

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### **Abstract**

*The implementation of different regulations in the practice of local public administration has allowed the observance of the legislative gaps and barriers that hinder the correct application of the legislation governing local public administration. The administrative practice at local level has revealed that some norms lack clarity, precision and consistency, creating difficulties in their implementation and violating the European standards regarding the quality of the law. This paper aims to provide a range of legislative solutions to correct such deficient regulations and to make them compatible with the European requirements, bringing into focus the latest legislative interventions of the Parliament and Government in matters of local public administration.*

**Keywords:** *legislative proposals, local public administration, local authorities, legal regime, administrative practice.*

### **Preamble**

The evolution of the Romanian society has led to a permanent transformation of the legal framework on local public administration. An important place within the regulations concerning local public administration is occupied by the law on local public administration, the law on the status of local elected officials, the law for the election of local public administration authorities and the law on local public finances. These normative acts have undergone some recent amendments and supplements as a result of the Parliament having adopted Law no. 115/2015 [1]. At the same time, Law no. 215/2001 on local public administration has been amended by Law no. 119/2015 [2] and the Government Emergency Ordinance no. 14/2015 [3]. Despite these recent changes, the normative acts mentioned still contain some objectionable provisions, as the legislative interventions fail to offer efficient solutions and clarify legislative ambiguities. This is the reason for initiating this scientific endeavour that seeks, on the one hand, to highlight the latest amendments and supplements to the most important regulations of the local public administration, and, on the other hand, to bring a series of

de lege ferenda proposals under attention. We have previously stated [4] that the law on local public administration requires substantive changes to settle the legal institutions specific for local public administration in their natural order and allow the correlation of certain norms belonging to this regulation with the provisions of other normative acts. We further support the idea that the norms of the framework law on local public administration must be correlated with the provisions of the law on the status of local elected officials, the law regarding the regime of incompatibilities and conflicts of interest, the law for the election of local authorities and the ordinance on the framework regulation for the organization and functioning of local councils. Moreover, amendments and supplements must be introduced to Law no. 273/2006 on local public finances.

### **The main legislative changes brought by Law no. 115/2015, Law no. 119/2015 and G.E.O. no. 14/2015**

Law no. 115/2015 creates a new regulatory framework for the election of local public administration authorities, amending and supplementing the law on local public administration and the status of local elected officials. This new regulation has abated Law no. 67/2004 for the election of local authorities and any contrary provision in the matter, bringing new legislative solutions in the legal order, with the aim of improving, as the initiators declare, the mechanism for the designation of local public administration authorities and to ensure a transparent electoral process, in full compliance with the requirements of a democratic society. The law includes three titles, each title covering a particular subject matter. Title I concerns the election of local public administration authorities, Title II is devoted to the amendment to Law no. 215/2001 on local public administration, and Title III amends and supplements Law no. 393/2004 on the status of local elected officials. Despite the fact that it regulates three different matters, the legislator has merely mentioned in Article 1 of Title I that the law governs the regime of elections for local public administration authorities. It would have been normal to mention, under the effect of this act, the regime of elections for local authorities, together with the amendments and supplements to certain normative acts. Among the novelties included in Title I of the law, there is the indirect election of the president of the county council from among the county councilors, where the county council president

retains the quality of county councilor, an amendment operating with the following mandate, enabling the persons holding the public office to be part of the electoral offices without entering a state of incompatibility, plus a clearer regulation of the rights and responsibilities of actors involved in the organization and conduct of elections etc.

The second title of the law amends several articles of the local public administration law. A aspect worth mentioning is that the legislator clarifies a legal institution in a different manner throughout the same normative act, namely the president of the county council, in the sense that Article 1 of Title I of the law includes the county council president among local authorities, while Title II establishes that local autonomy, as a right, is exercised by the mayor, local council and county council, in their capacity as local public administration authorities elected by citizens through universal, direct, secret and freely expressed vote, excluding the president of the county council from the category of public administration authorities implementing local autonomy. Even if indirectly elected by county councilors, the county council president remains a public authority establishing local autonomy at county level. In fact, Article 1 paragraph 1 letter d of Law no. 215/2001, which defines the concept of executive authorities, includes the president of the county council in the category of local authorities. We believe that the correct wording should have been as follows: "This right (local autonomy) is exercised by local councils, mayors and county councils, local public administration authorities elected by universal, equal, direct secret and freely expressed vote, as well as the president of the county council, a local public administration authority indirectly elected from among the county councilors".

Title II of the law amended the manner of removal from office of the deputy mayor, opting for a more rigid legislative solution than the one in the old regulation; it also provided that this operation is done by the local council, with the vote of two thirds of the local councilors in office, according to a reasoned proposal of the mayor or a third of the local councilors in office. The initial version of the law provided for the removal from office of the deputy mayor by a majority vote of the local councilors in office. What will be problematic in the administrative practice, in our view, is the interpretation of the phrase "reasoned proposal", since the text of the law is not clear whether it is a mere formality or it must represent a substantial step in showing that the person proposed for

the removal from position has committed certain acts or has behaved contrary to the position held. The law does not provide any reason for the removal from office of the deputy mayor, leaving for the mayor or a third of the councilors an opportunity to formulate a reason adequate to their political interests.

The solution adopted in the case of the deputy mayor is also regulated for the vice presidents of the county council, in the sense that their dismissal from office may be done by the county council, through the secret vote of two-thirds of the county councilors, on a reasoned proposal of at least one third of the county councilors in office. Compared to the regulation specific to the deputy mayor, for the provisions concerning the replacement from office of the county council president and vice presidents, the legislator provided the interdiction to replace the holders of such positions at county level in the last six months of the mandate of county councilor. Drawing a comparison between the regulation of the removal of the deputy mayor and that of county council president and vice presidents, we find that the legislator uses different phrases for the same operation (in the case of the deputy mayor the phrase “replacement from office” is used, while for the president and vice presidents of the county council the phrase “dismissal from office” is used); it also introduces the interdiction to replace from office in the last six months of mandate only for the president and vice presidents of the county council and expressly stipulates the secret vote only for the president and vice presidents of the county council, and not for the deputy mayor as well.

Another amended provision is related to the number of local and county councilors; the law provides that this number is determined by prefect order, depending on the number of inhabitants of the commune, town or municipality, respectively county, in accordance with the population reported by the National Institute of Statistics on 1 January of that year. The minimum number of local councilors is 9, and the maximum is 31. For county councilors, the minimum number is 31 and the maximum 37.

Law no. 115/2015 has eliminated the 90-day period within which the Government was obliged to hold elections for local council if this was dissolved by law or by local referendum, as well as for the position of mayor if the mandate was legally terminated. This legislative change is basically a continuation of the approach initiated by the

Government in 2014, when, by E.O. no. 68/2014, the Executive amended the provisions of Article 72 of Law no. 215/2001, removing the 90-day period when it was obliged to hold elections for the position of mayor, if this position became vacant. In our opinion, the variants the organic and the derivative legislator opted for are counterproductive, and we propose that this period should be reintroduced in the legislation, together with sanctions for the Government if it refuses to hold elections within the 90 days.

The return to the indirect election of the county council president from among the county councilors in office has determined the amendment of Article 102 paragraph 2 of Law no. 215/2001 regarding the political accountability of the county council president. In this respect, it was provided that the county council president is responsible before the county council for the proper functioning of county public administration. In our view, the president of the county council has a dual political accountability: on the one hand, before the citizens who elected him or her as county councilor and, on the other hand, before the county council which elected him or her the president of the deliberative county forum.

Title II of the Law no. 115/2015 also ordered the republishing of Law no. 215/2001 on local public administration.

Title III of the law, entitled "Amendments and supplements to Law no. 393/2004 on the status of local elected officials", contains two articles which amend a number of provisions of the law on the status of local elected officials. Thus, it is provided that mayors, local and county councilors are elected by the universal, direct, secret and freely expressed vote of the citizens entitled to vote from the administrative-territorial unit where they will exercise their mandate, and the presidents and vice presidents of county councils, as well as the deputy mayors, are elected by indirect secret vote, in accordance with the provisions of Law no. 215/2001 on local public administration. This was practically a correlation with the changes brought to the local public administration law. Also, to remove the obstacles from the local or county deliberative authorities if the termination of mandate for a councilor is noted following the loss of membership of the party on whose list he or she was elected, the legislator has enacted the prefect to issue the order for the legal termination of the mandate as a local or county councilor respectively. Therefore, it was provided that within 30 days from the notification of the

political party or organization of national minorities on whose list the local or county councilor was elected, the prefect should find, by order, the termination of the mandate before the end of its normal period and declare vacant the position of that local or county councilor. For other cases of legitimate termination of councilor mandate the procedure remains unchanged, meaning that the local or county deliberative authority adopts, during the first ordinary meeting, at the mayor's proposal, or that of the county council president, a decision which notes the situation created and declares vacant the position of the respective councilor. In connection with this legislative amendment, there is the question whether the local and county councilors who have left the party on whose list they were elected, under G.E.O. no. 55/2014 (declared unconstitutional by the Constitutional Court of Romania) lose their mandate or this particular case of mandate termination is applied only to those who are about to transfer from the party on whose list they were elected to another party? Given that the decisions of the Constitutional Court apply in the future, a principle valid for the temporal application of the law, and the local and county councilors left the party on whose list they were elected, based on G.E.O. no. 55/2015 (which, at the time, enjoyed the presumption of constitutionality) it can be stated that the prefect, even if notified by that political party on whose list they were elected as local or county councilor, cannot issue the order for legal termination of the mandate of the respective councilor, because the transfer to another party happened before the issuing of the Constitutional Court decision and the amendments to Law no. 215/2001 on local public administration brought by Law no. 115/2015. The only institution that can clarify this situation is the Parliament, which must pass the law rejecting Ordinance no. 55/2014, regulating, in accordance with the constitutional provisions, the issue of the legal effects of the respective ordinance [5]. In our opinion, urgent clarification is needed because it is unnatural to apply a rule to one local councilor but not to another, in the same mandate. We consider the situation of a councilor who already is a member of another party than the party on whose list he or she was elected and the situation of another councilor who is still a member of the party on whose list he or she was elected and decides to leave that party. For the former, the termination of the mandate does not apply because the norm stipulates the loss of membership of the party on whose list they were elected, and they are no longer a

member of that party, and if they do leave the party, the mandate does not terminate; for the latter, who is a member of the party on whose list they were elected and, if the party membership is lost, the mandate as local elected lawfully ceases.

Another legislative change is related to the time of reception of the mandate by the county council president, county council vice presidents and deputy mayor. It is stipulated that they can effectively exercise their powers after they are declared legally elected, according to Law no. 215/2001 on local public administration. As regards the termination of their mandate, the law provided for a rightful termination, following the termination of mandate as local or county councilor, and also a termination due to the release or dismissal from office, under the law regarding local public administration. The term revocation seems unnatural, given that local public administration law operates, in the case of the deputy mayor, with the phrase “replacement from the position”, and in the case county council president and vice presidents, with the phrase “dismissal from the position”; for the regulatory unity the same terms must be kept.

In this Title, as in Title II, the republication of Law no. 393/2004 regarding the status of local elected officials is stipulated.

Another normative act which amended Law no. 215/2001 on local public administration is Law no. 119 of 21 May 2015. This legislation amended Articles 66 and 105 of the law on local public administration. Under the new legislative changes, the mayors of communes, towns, municipalities and county capitals can employ a number of personal consultants, an opportunity offered to the county council president as well. Indeed, this possibility was included in the old regulation, but this legislative intervention brings some clarifications necessary to correct the implementation of these legal provisions. Thus, the mayors of communes may establish, to the extent of the positions approved, a position of consultant of the mayor, while the mayors of towns, municipalities and county capitals may establish, in turn, to the extent of the number of positions approved, the cabinet of the mayor. The cabinet of the mayor is a distinct department formed of maximum 2 positions in towns and municipalities, and a maximum of 4 positions in county capitals. The consultants of the mayor are appointed and dismissed by the mayor. With regard to county council presidents, they are entitled to set up, in the

maximum number of positions approved, the cabinet of the president, a structure which takes the form of a separate department, consisting of a maximum of 4 positions.

The third normative act that supplemented, in 2015, the Law on local public administration is G.E.O. no. 14/2015. With this legislative intervention the Government has sought to regulate the exceptional situation in some administrative-territorial units in Romania where there is no executive authority, no deliberative authority or no secretary of the administrative-territorial unit; because the deliberative authority is dissolved, the mayor or county council president can not exercise their mandate and the position of secretary of the administrative-territorial unit is vacant. This affects the proper management of public affairs at the level of administrative-territorial units; therefore it was imposed to be governed by way of emergency ordinance.

In this hypothesis, the prefect appoints by order a person through detachment, under Law no. 188/1999 regarding the status of public servants, republished, with the subsequent amendments, who would take on the duties of the secretary of the administrative-territorial unit and solve the current problems of the commune, town or municipality, until the public position of secretary is occupied in accordance with the legislation on the public office and public officials. This person must meet the requirements of education and experience in the specialization provided by the law in force.

As this is an exceptional situation, the prefect must expeditiously request the National Agency of Public Servants to organize the contest for the leading position of secretary of the commune, town or municipality, under the law. The appointment of the secretary of the commune, town or municipality is done by the prefect, at the proposal of the National Agency of Public Servants.

The same procedure is used at county level, if the county council is dissolved, the president of the county council can not exercise the mandate and the position of county secretary is vacant. G.E.O. no. 14/2015 has also established some derogatory norms from the provisions of Law no. 273/2006 [6] on local public finances, in the sense that these enable the secretary of the administrative-territorial unit to act as main credit for current operations.

All the normative acts presented have brought specific legislative solutions in legislation, leading to the amendment and supplement of Law no. 215/2001 on local public administration and other laws. Unfortunately, some of these amendments and supplements are not of help, but on the contrary, lead to blockages in local administrative practice, creating the need for new legislative initiatives. Moreover, many of the regulatory issues of local public administration have not been addressed through these normative acts, which is why we will further make a series of *de lege ferenda* proposals.

### **De Lege Ferenda Proposals**

As observed in this analysis, both Law no. 215/2001 on local public administration and Law no. 393/2004 on the status of local elected officials are to be republished and the texts contained in the two normative acts will receive a new numbering, which is why we propose only the legislative solution, without indicating article to be amended or supplemented.

First, we consider that the definition of local elected officials should be deleted from the law on local public administration and that from Law no. 393/2004 on the status of local elected officials should be maintained. According to the provisions of Law no. 393/2004, local elected officials are the local and county councilors, mayors, and the general mayor of Bucharest, deputy mayors and the presidents and vice presidents of county councils, also assimilating the village delegate. In connection with the village delegate, we consider it necessary to improve its status in the sense of adopting clear rules on the appointment procedure, mandate, the body that verifies the election process, conditions which must be fulfilled by a person in order to be designated local elected official and their rights and duties [7].

Second, we propose that the Article of the Law on local public administration enshrined to local autonomy should specify that local autonomy, as a right, is exercised by local councils, mayors and county councils, local public administration authorities elected by universal, equal, direct, secret and freely expressed vote, and by the county council president, a local public administration authority elected indirectly from among the county councilors.

Third, we state that the plural form “competences” used in the local public administration law in relation to local authorities should be replaced by the singular form “competence”, so as to speak of exclusive, shared and delegated competence of local public administration authorities (Article 5 of Law no. 215/2001), and also to correlate the provisions of Law no. 215/2001 of local public administration with those of Law no. 195/2006, the framework-law on decentralization.

Fourth, we consider necessary a stricter regulation of the manner in which central authorities intervene in the legislative and address the problems of local communities. State practice has showed that, quite frequently, central authorities govern local issues without taking into consideration the local needs and expectations. The associative structures of local authorities are formally consulted, or, even worse, in the management of the associative structures of local authorities, the central level offers support to persons sharing the same opinion, thus the whole point of the consultation becoming useless. Precisely for the efficiency of the consultation process of local authorities by the central ones, we suggest that in the management of the associative structures of local authorities there should mostly be representatives of the opposition, and these associative structures should have the right to notify the Constitutional Court with regard to normative acts coming from the Parliament and Government that affect local autonomy.

Fifth, we believe that the association of the administrative-territorial units should be encouraged more by the Government, which is why we suggest the establishing of the rule according to which the financing of local authorities projects from national funds should be done by supporting those local authorities running projects in association, and then the projects of other authorities. Creating regional targets, regional public services facilitate the consolidation of administrative-territorial units and the administrative-territorial reform. We also propose that the distribution of funds to administrative-territorial units should be made according to a formula that would ensure the operating expenses for all administrative-territorial units, and for development, if there are funds, there should be given support to localities with ongoing projects, performance criteria should be established (attract or create investment, European

funds, the collection rate of local taxes, projects in association, penalties received from financial control bodies, employing administrative sciences graduates etc.).

Sixth, we suggest the use of the same phrase for the change from office of the deputy mayor, county council president and vice presidents, i.e. "replacement from office". However, in the case of the deputy mayor, county council president and vice presidents, the secret vote must be expressly regulated, together with the fact that the holders of such positions can not be changed in the last six months of mandate in local or county council. We also propose the correlation of the norms from the Law on local public administration no. 215/2001 and those of Law no. 393/2004 on the status of local elected officials as regards the replacement from office of the deputy mayor, county council president and vice presidents in order to eliminate legislative duplications.

Seventh, we support the need for clearer regulation for the legal institution of the suspension from mandate of local elected officials. Currently, there are norms in the legislation that govern in a different manner the same legal institution. Thus, Law no. 215/2001 on local public administration provides that the mandate of local elected officials is suspended by law only if they are in custody, while Law no. 393/2004 on the status of local elected officials, states, in turn, a case of legal suspension of mandate when local elected officials fail to submit the declaration of personal interests. Since the local public administration law stipulates that the mandate is legally suspended only if the local elected officials are in custody, this entails that other cases of rightful mandate termination can not be regulated. However, we consider that the suspension should operate in other cases as well, that is why we suggest the rephrasing of the Law on local public administration regarding the legitimate suspension of the mandate of local elected officials.

Eighth, we consider that there should be introduced a new case for the legal termination of the mandate of local elected officials, namely the situation of conflict of interest. The special regulations concerning integrity establish the ceasing of mandate if there is a conflict of interest, but this case of legal mandate termination for local elected officials is not found among the cases stipulated by Law no. 215/2001 on local public administration and Law no. 393/2004 on the status of local elected officials. To ensure a

regulatory unit, we suggest supplementing Law no. 393/2004 with this particular case of legal mandate termination of local elected officials.

Ninth, we propose to reintroduce the 90-day period within which the Government is required to hold elections for mayor, local council and county council in case of early termination of the mandate of these authorities, together with penalties for the Government if it fails to meet this legal obligation.

Tenth, we believe that the subordination of the deputy mayor before the mayor should be removed from the Law on local public administration. The deputy mayor is appointed by the local council in office, not by the mayor, and both legal subjects benefit from popular support.

Eleventh, we propose that the persons to occupy positions of consultants of the mayor or county council president should be mainly graduates of administrative sciences. This would ensure a faster access of young persons specialized in administrative sciences in the field of training, an increase in the quality of the staff from public administration, and the investment in their theoretical training would be recovered immediately.

Twelfth, we suggest the correlation of the norms regarding the incompatibility state of the mayor comprised in Law no. 161/2003 with those contained in Law no. 215/2001 and Law no. 393/2004 on the status of local elected officials. Law no. 161/2003 provides that the incompatibility of the mayor comes after validation of the mandate, a period of 15 days being calculated in which the person with the quality of mayor must renounce the position or quality that generates the incompatibility. Given the fact that the mayor enters the mandate starting with moment of the oath, we propose that the incompatibility should intervene starting with this moment, and not from the validation date.

Thirteenth, in order to eliminate legislative duplications we suggest that, on the procedure for finding the incompatibility of the mayor, it is better to opt for the legislative solution contained in Law no. 176/2010 and to abrogate the norms contained in Law no. 161/2003. We currently find in the Romanian legislation two different procedures for establishing the incompatibility state of the mayor. One is provided by Law no. 161/2003 and states that, if the mayor in a state of incompatibility does not give up one of the two

incompatible functions within the period prescribed by law, the prefect shall issue an order that finds the legal termination of mandate as local elected official at the expiration of the 15 days, at the proposal of the secretary of the administrative-territorial unit. Any person may notify the secretary of the administrative-territorial unit. These provisions are supplemented by those contained in Law no. 215/2001 and Law no. 393/2004 regarding the termination of the mandate.

The second procedure is that established by Law no. 176/2010 on integrity in the exercise of public office and dignities, amending and supplementing Law no. 144/2007 and other normative acts; this is a more complex procedure implemented by the National Integrity Agency. As stated before [8], “the legislator must maintain in force norms which offer guarantees to protect the rights of citizens and which are consistent with the principles of modern administration and to abrogate, at the same time, those norms that create difficulties in their implementation and whose existence leads to legislative duplications”.

Fourteenth, we suggest the inclusion of the public administrator within the definition of the city hall contained in Law no. 215/2001 and the development of its legal status.

Fifteenth, we suggest that the norm contained in Law no. 393/2004 regarding the right to holiday of the mayor, deputy mayor, county council president and vice presidents should be supplemented by the right to parental leave. The transposition into national legislation of the European regulations concerning the incentives for both parents to be involved in the upbringing of the child (among which there is also the establishment of the obligation for both parents to take care of the child until the age of one to two years old), requires the correlation of the general norms of local public administration with the special norms of social care.

Sixteenth, we support the need to introduce the procedure for the secret vote and for the election and dismissal of the chairman of the local council given that it is a vote for the appointment of a person in a certain position and the vote must be secret.

Seventeenth, we propose the introduction of a sanction for the mayor or county council president in the event in which the ordinary assembly of the local or county council is not convened on a monthly basis. The mayor and the county council president

represent the only legitimate subjects authorized by law to convene the ordinary monthly meeting of the local council or county council respectively. The administrative practice at local level has shown that situations may arise where the mayor or county council president does not convene, monthly, the ordinary meeting of local or county council due to the fact that the local or county deliberative body met in that respective month in an extraordinary or immediate session, and there is no need to convene the ordinary meeting.

Eighteenth, we support the elimination of the phrase “invited by the mayor” from the provisions relating to the participation of certain national or county dignitaries and other stakeholders in the local council meetings, because the rule states that these local council meetings are public, and the attendance of other persons besides local councilors must not be determined by an invitation from the mayor.

Nineteenth, we consider that the norms contained in the Law on local public administration regarding the delegation of powers by the mayor or county council president need rethinking, in the sense of reducing the number of the legal subjects to whom these powers may be delegated. At the same time, we believe that the possibility of delegating the tasks set by the local public administration law, and those contained in other normative acts, should be provided for the county council president in the same way as for the mayor.

Twentieth, we consider that Government Ordinance no. 35/2002 approving the framework regulation for organizing and functioning of local councils should be revoked and a new normative act should be adopted, one that respects the constitutional requirements, with norms compatible with those contained in Law no. 215/2001 on local public administration and Law no. 393/2004 on the status of local elected officials. We have previously expressed our opinion [9] with respect to this normative act, stating that it brutally violates the fundamental law through the adoption procedure and certain provisions it contains.

## **Conclusions**

The dynamics of social life prints a faster pace of change with regard to regulations. The administrative practice, the emergence of new European regulations,

the change in the view of local issues, a necessity to correlate certain normative acts that cover the same field all these determine the legislation on local public administration to require substantial amendments and supplements. We hope that, through these proposals, we meet this necessity and we would like them included, as soon as possible, in the legislation.

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