

ASPECTS REGARDING CITIZENS' PARTICIPATION IN DECISION-MAKING IN ADMINISTRATIVE LIFE. CASE STUDY

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Abstract:

Citizens' participation in the city's life is a desire of the administration, being, on the one hand, a measure of their degree of involvement and, on the other hand, leading to a large-scale acceptance of the decisions taken by the authorities.

The level of development of a community is given by the way in which the citizens perceive the services provided by the administration as satisfying their public interest.

The present work follows the way in which the regulation in Romania favors the involvement of citizens in decision-making through their participation in the legislative activity at the central and local level, following, as a case study, the results obtained by some administrative authorities in the application of a participatory budgeting system.

The analysis of the implementation of the participatory budgeting tool at the level of UAT Constanța leads to conclusions that reveal significant differences between public opinion, which is most dissatisfied with the way public funds are spent, and the low interest in a concrete involvement in the decision-making activity.

Keywords: *Citizens' participation in decision-making, public administration, administrative authorities, local public administration*

Citizen participation. Introductory considerations

Citizen Participation represents the process by which citizens' concerns, needs, and values are incorporated into the decision-making process of the local public administration. There are two directions of communication (between the citizens and the administration), with the general aim of improving the decisions (of the local public administration) supported by the citizens

American President Abraham Lincoln stated, for the first time in 1863, that the essence of democracy is a system of government with and for the people. These words are as true and relevant now as when they were first spoken. This concept of democracy is as valid for Romania as it is for the United States of America, England, or any other modern democracy.

The implications of this statement are that democracy represents much more than free elections, but these are necessarily the starting point, the foundation without which nothing can be built.

Government with and for the people must become and remain a partnership - a partnership between citizens and elected officials in whom they have invested their trust. This trust must extend to all civil servants and all administrative institutions.

In democratic countries anywhere in the world, this trust is achieved through honesty, transparency on the part of elected officials, and the opportunity offered to people to play an important role in the governance process, and even in day-to-day activity.

Citizens' participation in decision-making in a traditional democracy is a gradual process, which involves going through certain stages organized on two levels, drawing an apparently ideal model of citizen involvement.

In this structure, the first level of participation is information, which requires efforts from both the citizens and the local administration. The public administration is obliged to issue information to the citizens regarding its activity and plans so that they can understand the priority directions of the administrative policy of the local elected officials. The second level is constituted by the citizens' consultation, considered as the action of the authorities to identify the needs of the citizens, to evaluate the priorities of some actions, or to collect ideas and suggestions regarding a certain problem.

For all this to be achieved, it is necessary to fulfill several elements simultaneously. We appreciate that, first, the local administration must be open to the involvement of citizens in the complex activity of the governance process. This can be achieved, first, by adopting some regulations that, on the one hand, ensure the possibility of real involvement of citizens in the administrative activity, but also the possibility for them to have access to the necessary information to be able to make decisions, make reasonings and submit proposals.

It will be mandatory to achieve a continuous transfer of information starting from the administration and having the citizens as recipients, but also find the most effective ways for the administration to collect the information coming from the citizens.

Thus, they will participate as equal partners in the activities of the administration and will thus successfully honor their civic obligations, because they will understand the problems faced by the administration and will be able to propose, in full knowledge of the case, the most appropriate solutions to solve all situations.

The responsibilities of citizens are:

- To observe what the local administration does and for what purpose.
 - To be prepared to contribute when the administration plans to do something that may affect their interests.
 - To approach representatives of the administration with a positive attitude.
 - show an interest in understanding the issues, including the restrictions on what the administration can do.
 - To express his interests and ideas clearly and completely.

In appropriate situations, try to collaborate constructively with local government officials to find and implement mutually satisfactory solutions.

Since these ideas are new to many Romanian citizens, local government officials should be ready to encourage, guide, and educate citizens regarding these responsibilities.

Legal regulation

In Romanian legislation, we can consider transparency as a cover principle of the rule of law. At constitutional level we can find in art. 31 of the Constitution, which provides the right to have access to information of public interest, a right that cannot be restricted. moreover, the constitutional text emphasizes in paragraph (2) the obligation of the authorities, be they central or local: to ensure the correct information to citizens on public affairs(1). [1]

All this from the consideration that state institutions, authorities, and agencies have public interest attributions, their decisions and activities are, in general, the object of the person's right to information.

the implementation of these principles began to be achieved through the adoption in 2003 [2] of the law on decision-making transparency in the public administration, which aims to increase the degree of responsibility of the public administration towards the

citizen, as the beneficiary of the administrative decision, stimulating the active participation of citizens in the process of making administrative decisions and in the process of drafting normative acts and, finally, increasing the degree of transparency at the level of the entire public administration.[3] The normative act establishes the minimum rules and procedures for ensuring decision-making transparency within local and central public administration authorities and public institutions that use public financial resources, in relations with citizens and their legally constituted associations. [4]

The individual administrative acts of authority produce legal effects, i.e., they create, modify, or extinguish rights and obligations only in the charge of natural or legal persons provided for in the respective act or, in other words, previously and individually determined or about several persons but referring to situations determined. [5]

Romanian legislation expressly enshrines the right of the public to participate effectively and in time in the authorization procedure of construction works, "to document and transmit comments and opinions to the competent local public administration authorities, before taking a decision on the application for the authorization of the execution of construction works related to the investment for which the competent authority for environmental protection established the need to assess its effects on the environment (art. 43, 1). Since in paragraph 2 of the article it is mentioned that the information and consultation of the public "are carried out in accordance with the provisions of the legislation on the assessment of the impact of certain private projects on the environment", the question arises whether the information and consultation concern only the aspects of the ecological impact and the procedure for issuing the administrative act of the competent authority for environmental protection or the entire authorization procedure for the execution of construction works. As it concerns the application of Council Directive 85/33//EEC of June 27, 1985, on the assessment of the effects of certain public and private projects on the environment (amended by Directive 97/11/EC of March 3, 1997), the correct answer, in a teleological interpretation, would be that public participation concerns the procedure carried out by the environmental authorities regarding investments that require an environmental impact assessment. But, from the general wording of art. 43, 1 (referring to the "authorization procedure for the execution of construction works") in conjunction with the provisions of art. 43, referring to

the administrative litigation related to investments that require environmental impact assessment and public participation, it can be concluded that it is the procedure for authorizing "the execution of construction works related to the investment for which the environmental protection authority has determined the need to assess its effects on the environment". This confusion between environmental and urban and construction aspects has considerable practical complications.

The transparency of the authorization procedure for the execution of construction works - both at the level of the urban planning certificate and the construction/demolition authorization - is achieved by ensuring their public character, respectively by ensuring the public's right to be informed.

In a situation where the competent authority for environmental protection has determined the course of the procedure for assessing the impact of the investment on the environment, the public has the right to be informed and to effectively and in time participate in the authorization procedure, to document and submit comments and opinions of the competent public administration authorities, before taking a final decision on the application for the issuance of the building permit related to the investment, and, consequently, the public information and consultation procedure is carried out in accordance with the provisions of the legislation regarding the assessment of the impact of certain public and private projects on the environment.

It is true that the field in which citizens' participation in decision-making has penetrated the most, at least from a legislative point of view, is in the field of the environment, [6] the right to a healthy environment which also included the right of all individuals to be informed about plans and projects that may damage the environment, to participate in the process that leads to decision-making, and when it is necessary to dispose of the legal means to restore the damage caused to the environment.

The key to this system is represented by public participation, which is based on the information and can be represented by any tool used to involve the public in environmental decision-making and includes the right to information, the right to participate, and the right to access to justice.

Those in a position to decide on the way to realize the projects are obliged to ensure the information and the framework for public participation in each phase of project approval.

Many times, public participation in the decision-making process is incorrectly defined, for this reason, it is considered ineffective. Some believe that simply informing citizens can be defined as a process of public participation. Other times, public participation stops in the consultation phase. Citizens' consultation on the decisions to be taken can only be effective when it takes place from their conception phase when the options are open. However, there are procedures that allow the public to intervene in the decision-making process up to the influence and control phase. In this sense, it is necessary to know the legal procedures for access to information and the effective techniques of public participation. An objective process of public participation in decision-making involves the following important steps:

- identification of the public (the group of people affected by a certain decision to be taken), respectively the separation of persons and institutions directly interested in obtaining or building the decision.

- receiving public opinion, and building consensus within the affected group, respectively: access to information for all those interested, separation by interest groups, negotiations, acceptance of problems, and a delegation of people to represent the interests of the group.

- the action itself, namely the use of public participation techniques to obtain the decision (see the chapter "Several formal and informal methods of involving citizens in solving environmental problems").

Problems arising in the citizens' consultation process

Public participation, misunderstood, can acquire less pleasant accents that we do not want to hide, being specific to all situations where democracy is not correctly understood. Often, the process of informing and consulting the public in making decisions creates problems, leading to open conflicts between groups separated based on antagonistic interests. The struggle to influence decisions in favor of the option of a certain group is often the most important part of some businesses in which many resources are

invested. Promoting business success treats antagonistic interests as obstacles, and managers skillfully construct solutions to overcome these obstacles. Often these solutions mean: speculating on loopholes in the legislative system, corruption, hiding intentions, etc. The designers and beneficiaries of some projects, aware of the possibility that the public will reject their intentions or be unwilling to accept the costs related to informing and consulting the public, often resort to circumventing this process, resorting to corruption or disinformation techniques. Based then on the apparent ignorance of the public, they obtain the decisions to implement the projects and proceed to their practical realization. In this phase, it is difficult for the affected citizens to intervene, often resorting to desperate actions to prevent the implementation of projects (public demonstrations, collecting signatures, sabotage, and individual and collective protests). Even if Justice will give them justice in the end, the project can advance enough in this time to produce significant damages or the cost and discouraging procedures of the legal processes can constitute insurmountable obstacles for those who cannot afford them. The solution for solving these conflicts is informing all parties about the project that creates the dispute and negotiating through open and honest dialogue all the problems that have arisen. Many times, a process of public participation is only an apparent one, the public being made up of supporters of a certain project or supporters of a competing company, or people who want to settle personal accounts, opposing not the project itself but its promoters. These cases can be avoided by applying public participation procedures clearly adapted to each individual situation.

Citizens' participation in decision-making regarding the spending of public funds.

Case study - participatory budgeting at the TAU Constanța level

In 2021, for the first time, the territorial administrative unit Constanța Municipality tried to implement the participatory budgeting procedure, according to the model already existing in several cities - Oradea, Cluj-Napoca, Brașov, Bucharest, Pitesti, etc.

Participatory budgeting is intended to be a process through which civil society assumes the role of an active participant in the life of the community and the ideas and initiatives of citizens can be transformed into projects that will be carried out by the public administration to solve problems of interest to the community.

Participatory budgeting aims to increase the level of dialogue between citizens and the administration, the assumption by citizens of the community's problems, the increase the transparency of the administration's activity, and, equally, the creation of an instrument through which citizens participate directly in the decision-making process regarding the destination of a certain part from public funds.

At the level of TAU Constanța, funds of 500,000 ron/project were allocated - the citizens will decide how part of the local budget will be spent. People with a minimum age of 18 who live, work or study in the municipality of Constanța could submit projects or vote for those proposed. 10 areas of interest were established: culture, planning of public spaces, planning of green spaces and playgrounds, mobility, accessibility and traffic safety, environmental protection/animal protection, digitalization, sports, social, education, and health, and the projects of interest could be voted online, following a previously established procedure

Analyzing the way this action was carried out and the results obtained in the end, we can see the limited impact that the initiative had among citizens. 5 projects were submitted and declared eligible for the design of public spaces, 6 projects for the design of green spaces and playgrounds, 3 projects for the field of culture, 4 projects for the field of mobility, 3 projects for the field of accessibility and traffic safety, 3 projects for the field of environmental protection/animal protection, a single project for the digitization field, 5 projects for the sports field, 2 projects for the social field, 6 projects for the education field. No health project has been registered.

The low participation recorded, both in terms of the projects submitted, but also in terms of their appreciation - 2145 votes were recorded - each voter being able to express his opinion for each of the 10 proposed areas forces the administration to an analysis process regarding, how to implementation of this activity. The first conclusions reveal, on the one hand, poor knowledge on the part of the citizens of the authority's intention, although the administration had the ambition of total transparency of the procedure, and on the other hand, a cumbersome implementation due to the relatively difficult access to the platform used by the town hall.

An explanation can be the low level of allocation for these projects, but we can add to this "handicap", the limited capacity of the administration to implement them, its lack of

openness in the period leading up to the launch of the program, in this sense, the authority is limited to posting on the own website of the regulations and the schedule of events. These are not the coordinates of real consultation and transparency, but the concrete involvement of citizens from the preparatory stages, in the elaboration of the regulation or the organization of specific workshops.

Moreover, we notice, at the national level, a distrust of citizens in this instrument, used quite little and, often only at a declarative level, by some administrations that put too little effort into completing it in optimal conditions. In a study [7] carried out at the level of 2022, it is observed that only 13 county residences - to which the municipality of Bucharest is added - ran, in 2022, participatory budgeting programs.

Some conclusions

We can say that citizen participation, although essential in a democracy, is not always easy to achieve. Often, political will and perseverance are needed, but also a certain disposition to educate both authorities and citizens about their responsibilities in a democracy.

The partnership between people and government depends on the extent to which citizens have access to the information that influences their lives.

The authorities should encourage more citizens to actively participate in the meetings of the City Council, and the procedure by which one or another decision is made should be widely publicized. To help the administration fulfill its responsibilities most effectively, citizens should be invited to participate as voluntary community representatives in various working groups, specialized commissions, or citizen advisory committees. In such structures, the role of citizens can be very creative and useful in finding solutions to problems that trouble the community; at the same time, they can help solve daily work tasks. Some town halls and local councils in Romania have already started using citizens' advisory committees to help them in the local governance process, and some of these examples will be presented below.

Many local governments partially understand the importance of citizen participation, and although the less happy experience in this area (several projects approved but later abandoned) could naturally help them to identify shortcomings and

correct them, in practice for most, this cannot be observed. Finally, we come to the measurement of the efficiency of the administration, a ranking in which Romania is still in a not very desirable place.

The solution we see remains education on both sides: of the administration to the citizen and of the citizen to the administration, in a real partnership between them with the common goal of ensuring the satisfaction of the public interest.

References:

- [1] Anca Jeanina Niță, *Drept constituțional*, Universul Juridic Publishing House, Bucharest, 2022, p. 57
- [2] Law no. 52/2003 privind transparența decizională în administrația publică, republished in Official Gazette of Romania, Part.I, no 749 of 03.12.2003.
- [3] art. 2 of Law 52/32003, with with subsequent amendments
- [4] Dana Apostol Tofan, *Unele considerații în legătură cu Legea privind transparența decizională în administrația publică*, in Curierul judiciar Review, no. 3/2003
- [5] Ion Imbrescu, *Unele aspecte ale ale procedurilor specifice adoptării/emiterii actelor administrative cu caracter normativ, consecință a prevederilor Legii nr. 52/2003, OG 75/2003 și Legii 189/2004 of modification and completion of Law 24/2000*, in RDP no 3/2004, p.115 and next.
- [6] In 1972, at the Stockholm conference, the right to a healthy environment was formulated for the first time, thus making the connection between human rights and environmental protection in the first principle of its declaration.
- [7] to see: Alexandru Damian, *Despre bugetarea participativă în România. Și de ce este ignorată de primari*, in Contributors, December 2022, available on site: <https://www.contributors.ro/despre-bugetarea-participativa-in-romania-si-de-ce-este-ignorata-de-primari/>, accessed at 20.12.2022.