

LEGISLATIVE EXAMINATION OF THE AMENDMENTS AND ADDITIONS TO THE ADMINISTRATIVE CODE

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Abstract:

The Administrative Code was adopted by the Government of Romania through Emergency Ordinance no. 57/2019, after the law on the administrative code was declared unconstitutional by the constitutional court. Since its entry into force, the normative act has undergone several changes and additions, these legislative events taking place through acts of the Parliament or the Government. The paper aims to highlight the transformations that the Administrative Code has undergone since its entry into force until today, by presenting the legal acts that modified and supplemented the normative content of the act and certain relevant legislative solutions provided by them.

Keywords: *emergency ordinance, administrative code, legislative changes, public administration*

Introduction

After long efforts and countless discussions, the Administrative Code became a reality through its adoption by the Government of Romania, in 2019, through Emergency Ordinance no. 57/2019 [1]. Moreover, the unification and systematization of the legislation were objectives that were constantly found in the governing programs of the various political parties that succeeded each other at the rule of the country. The materialization of concerns regarding the codification of legislation in the field of public administration was achieved, initially, by adopting the Law on the Administrative Code of Romania, a law that did not pass the constitutionality test. Because the grounds of unconstitutionality did not concern the substance of the regulation, but were of an extrinsic nature, the content of the normative act declared unconstitutional was taken over, with certain additions, in the Government Emergency Ordinance no. 57/2019. As shown on another occasion [2], the emergency ordinance constitutes an exceptional instrument for regulating primary social relations that the fundamental act makes available to the Government and that can be used by the Government under the conditions stipulated by the Constitution and developed by the jurisprudence of the Constitutional Court. Even the form of the Code adopted by emergency ordinance was not spared from criticism of unconstitutionality, in the sense that the court was called to rule on the constitutionality of the provisions of the

emergency ordinance as a result of the referral made by the People's Advocate, shortly after its entry into force. By Decision no. 60 [3] of February 12th 2020, the constitutional court judged that the provisions of the administrative code are constitutional in relation to the criticisms made.

From the moment of its entry into force, Emergency Ordinance no. 57/2019 saw several legislative interventions, determined by the permanent transformations in society, to which the legislator had to provide an answer. It is also worth remembering that, soon, it will have been 4 years since the adoption of the Administrative Code and the emergency ordinance has not even been approved, by law in the Parliament. This situation has a positive side as well, being viewed in the doctrine [4] as an opportunity that the legislator must exploit to complete the content of the regulation with "solutions that will provide legal efficiency" and "ensure the legal basis for a functional and capable public administration to exercise its constitutional and legal role".

The legislative interventions on the Government Emergency Ordinance no. 57/2019 were produced through an equal number of normative acts originating from the legislative authority, respectively from the delegated legislator, the Government. Thus, since the entry into force of the aforementioned ordinance and until today, 14 laws and 14 emergency ordinances have been adopted that modified and completed the ordinance or just approved the Government ordinances.

Normative acts that amended and supplemented the Administrative Code

The first normative act that completed the provisions of the Administrative Code was the Government Emergency Ordinance no. 63/2019 [5]. The legislative solution chosen by the executive took into account the completion of Article 61 paragraph 2, by introducing letter c¹) whose rules recognize the general secretary of the ministry, who has the status of a high civil servant, the capacity of main credit release authority when the position of minister is vacant or in the situation where the holder of the portfolio is in the absolute impossibility of exercising its powers. The purpose of this amendment was to create the legal framework for the taking over of an important attribution of the minister, that of principal authorizing officer of credits by the general secretary of the ministry, in extraordinary situations, in order to ensure the continuity of the activity within the ministry,

as it results from the preamble of the normative act. The text of Article 61 paragraph 2 letter c¹) was supplemented, with the entry into force of Law no. 153 [6] of June 4th 2021, regulation by which the general secretary of the ministry was recognized also the right to acquire the capacity of legal representative of the respective authority, in the situations previously presented.

Another normative act originating from the Government and which also concerned norms from the Administrative Code was Government Emergency Ordinance no. 1/2020 [7], a normative act that suspended until January 1st 2021 the application of the provisions of Article 210, which regulates the age limit allowance for the mayor, deputy mayor, president of the county council and vice president of the county council. These norms aroused deep discontent in society and forced the legislator to postpone their application. The initial suspension was extended until January 1st 2022, through the entry into force of Emergency Ordinance no. 226 [8] of December 30th 2020 and then until January 1st 2023, as a result of the provisions of Article XXII of GEO no. 130/2021 [9] regarding certain fiscal-budgetary measures, the extension of some deadlines, as well as for the modification and completion of some normative acts [10]. Emergency Ordinance no. 226/2020 was approved by Law no. 274/2022 [11]. It is necessary to specify that the norms establishing this privilege for certain categories of local elected officials (mayor, deputy mayor, president and vice-president of the county council) were analyzed from the point of view of their compatibility with the constitutional text, when they were included in a another regulation, and the constitutional court judged that they are contrary to the Constitution [12]. Despite this decision of the Constitutional Court, the Government included these rules in the Administrative Code, but, as a result of public pressure, postponed the moment of their application. We hope that, with the adoption of the law approving the Emergency Ordinance no. 57/2019, the legislator will remove these unconstitutional provisions from the active fund of the legislation, solving, in this way, both a problem of constitutionality, and also one of public morality, and giving this complex legislative work a more agreeable appearance.

By Government Emergency Ordinance no. 44/2020 [13] the mandate of local public administration authorities was extended from 2016-2020, as a result of the impossibility of organizing local elections on time, a situation determined by the pandemic.

This normative act was declared unconstitutional by the Constitutional Court [14]. The constitutional court justified the fact that the extension of the mandates of local authorities cannot be done by the Government, through an emergency ordinance, but only by the Parliament, through an organic law [15]. In order to allow the continuation of the activity by the local authorities elected in the 2016-2020 mandate, it was necessary to discuss and approve in an emergency procedure Law no. 84/2020 [16], a law that ensured the legislative instruments for extending the mandate of local authorities, changed the holder of the right to establish the date of the elections and completed the provisions of Article 151 paragraph 3 of the Administrative Code.

Emergency Ordinance no. 61/2020 [17] modified article 134 paragraph (5) letter a), article 137 paragraph (1), article 141 paragraph (1) and article 180 paragraph (1) and introduced letters a¹) and a²) in article 134 paragraph (5). The amendments and additions to the Administrative Code allowed local deliberative authorities to hold online meetings as well, and not only with the physical participation of local/county councilors, and at the same time established the right of local/county councilors to participate in ordinary or extraordinary meetings of local and county councils using electronic means of communication. By recognizing this right, local or county councilors can participate in the meeting of the deliberative authority including in a mixed system, in the sense that some can be physically present, others online, using the means of communication indicated by the technical staff in charge of organizing and conducting the meeting of the local or county deliberative authority in good conditions. The ordinance was approved through Law no. 63/2022 [18].

Another normative act that completed the Administrative Code is the Government Emergency Ordinance no. 164 [19] of October 1st 2020, a normative act that introduced in the body of the aforementioned regulation article 364¹ and paragraph (1¹) in article 510. Through this legislative initiative, the Government sought to cover the legislative void that determined the blocking of the granting of donations to the state or to the administrative-territorial units whose object is goods that fall into their private property and to ensure the legal instruments so that the holders of public functions exercised temporarily be able to continue their activity, without involving the organization of a contest. The Emergency

Ordinance was approved by the Parliament, through Law no. 272 [20] of September 29th 2022.

Government Emergency Ordinance no. 4 of January 27th 2021 amends and completes several provisions of the Administrative Code and, at the same time, repeals article 389 letters b) and c), points 3 and 4 of annex 5 point I letter A. Thus, this normative act modified: article 250, article 251 paragraph (3), article 267 paragraph (1), article 397, article 494 paragraph (5) letter a). In annex no. 6 there was amended article 3 paragraph (1) letter b), article 3 paragraph (2), article 4 paragraph (1) letter b) and paragraph (2). It also introduced paragraphs (2¹) - (2⁵) in article 251, paragraphs (11) - (14) in article 265, paragraph (1¹) in article 275, letter (c¹) in article 389, point 6 of annex no. 5 point I letter A. Government Emergency Ordinance no. 4/2021 was approved by Law no. 155 of June 4th 2021, which, in turn, introduced paragraph (15) in article 265 of the Administrative Code. The provisions of this paragraph give the prefect the right to delegate, by order, the duties of the general secretary of the prefect institution to the head of the legal department within the prefect institution, in the situation where the position of general secretary is vacant or temporarily vacant or in the situation where its holder is in the impossibility of exercising its powers. The prefect's order must be reasoned.

Law no. 153/2021 amended article 494 paragraph (1) the introductory part, paragraph (2) and paragraph (5) the introductory part and article 598; introduced letter c¹) in article 61 paragraph (2), article 292¹, paragraph (8¹) in article 494 and annex no. 7 - Norms regarding the constitution, organization and operation of disciplinary commissions, as well as the composition, attributions, reporting method and disciplinary procedure, and repealed article 494 paragraph (9) and article 625 paragraph (1) letter a).

Government Emergency Ordinance no. 138 of December 28th 2021 modified article 597 paragraph (1) letter d), article 618 paragraph (24), article 619 paragraph (2) the introductory part and paragraph (10), note from annex no. 5. At the same time, paragraph (3) was introduced in article 384, with annex no. 5¹ and point II letter A was repealed with points 15-19 and letter B points 20 and 25 of annex no. 5. The normative act was approved by Law no. 156/2022 [21]. With the approval of the ordinance, the legislator amended and completed the Administrative Code, through the approval law. Thus was amended article 618 paragraph (24) and annex no. 5¹ was also amended and

replaced. Annex no. 5 also had some changes and article 292² and article 610¹ were introduced.

Government Emergency Ordinance no. 1/2022 [22] amended article 22 paragraph 3 of the Administrative Code, in the sense that it stipulated that the attributions, organization and operation of the Chancellery of the Prime Minister should be established by a Government decision. In the original form of the regulation, the competence of the Chancellery and its way of organization and operation were established by the decision of the Prime Minister. After its entry into force, the Government act was approved through Law no. 19/2022 [23].

Another normative act that amended and supplemented the Administrative Code is the Government Emergency Ordinance no. 94 [24] of June 29th 2022. This act amended article 272 paragraph 7 letter b) and introduced article 300¹ made up of two separate paragraphs.

An important law that developed the normative framework in the matter of the association of administrative-territorial units and determined the amendment of article 5 letter q) and article 89 paragraph (2) of the Administrative Code and led to the repeal of article 5 letter e) from the contents of the same regulation is Law no. 246 [25] of July 20th 2022. This is the first Romanian normative act regarding metropolitan areas [26], through which the legislator gave a new meaning to the notion of metropolitan area by expanding the scope of administrative-territorial units that can form such an associative structure and by establishing the phrase “metropolitan territory”, eliminating, in this way, the notions of “immediate area” and “border area”. In the initial form of the Administrative Code, the notion of urban agglomeration was also defined, which, with the promotion of a new concept regarding metropolitan areas, was removed from the legislation [27]. Metropolitan areas are particular forms of intercommunity development associations, which, paradoxically, benefit from their own regulation. The association of administrative-territorial units is an alternative to the merging of localities, a variant that is very difficult to apply in the absence of political will and the opposition of local actors who want to maintain local identity. The current normative framework allows the association of administrative-territorial units in intercommunity development associations, in metropolitan areas, as species of intercommunity development associations, in

administrative consortia and in local action groups, the latter being structures created on the basis of public-private partnership, supported financially through the European mechanism for the support of rural areas.

Another normative act that brought changes to the Administrative Code is Law no. 261 [28] of July 21st 2022, which amended article 363 paragraph 6). In the initial form of the Administrative Code, the rule was established that the appraisers, natural or legal persons authorized, under the law, drawing up the appraisal report of the goods in the private domain of the state or the administrative-territorial units subject to sale, should be selected by public auction. Through the aforementioned legislative intervention, the legislator established that this selection be made in compliance with the legislation in the field of public procurement.

Law no. 283 [29] of October 17th 2022, amends article 458 paragraph (5) and introduces paragraph (3)-(11) in article 374, article 374¹, letter j) to article 529 paragraph (1). Also, after article 534 sect. a 2¹-a was introduced including articles 534¹ and 534², letter e) to article 537 paragraph (1) and the mention regarding the transposition of directives after article 638.

New legislative solutions were also introduced through the entry into force of Government Emergency Ordinance no. 191 [30] of December 28th 2022, in the sense that several articles were amended and supplemented and article 617 paragraph 3 was revoked. Thus, article 382 was amended, the introductory part, article 401 paragraph (1) letter m) and paragraph (3), article 411 paragraphs (2), (5) and (8), article 598, article 619 the introductory part of paragraph (2), article 619 paragraphs (10) and (12) and article 398¹ letter m_1) was introduced, in article 401 paragraph (1), paragraph (1¹) and (1²) in article 410, paragraph (1¹) and paragraphs (8¹)-(8⁴) in article 411, article 485¹¹, letter i) in article 597 paragraph (1), paragraph (4) in article 597 and annexes no. 8 and 9.

The last two normative acts that brought changes and additions to the Administrative Code are Law no. 72/2023 [31] and Government Emergency Ordinance no. 34/2023 [32].

Law no. 72/2023 amended and supplemented article 150 paragraph 1). From the comparative analysis of the original text and the amended and completed one, the following result:

- The legislator establishes the rule for the mayor taking the oath in the meeting regarding the local council establishment ceremony. If the original text established that the oath should be taken in the first meeting regarding the local council constitution ceremony, the amended text mentions the meeting regarding the local council constitution ceremony, a change that allows the mayor to take the oath in another meeting of this kind as well, as after validation, the local councilors can meet at the convocation of the prefect in the first meeting regarding the establishment ceremony or in another meeting, if the conditions provided for by article 116 of the Administrative Code are not met;

- Apart from the variant of taking the oath in front of the local deliberative authority, the mayor has the possibility of taking the oath in the court as well, given that their mandate is validated by the court, more precisely, in the council chamber, in front of the judge delegate. One can resort to such a variant, in the situation where the meeting regarding the local council constitution ceremony does not take place within 30 days of the elections or when, for other valid reasons, the mayor cannot take the oath in the meeting regarding the constitution ceremony of the local council. Other valid reasons can be those listed in article 116 paragraph 8 of the Administrative Code, namely hospitalization or bed rest, proven by a medical certificate, travel abroad in the interest of work, force majeure events, such as floods or other catastrophes that prevented travel, death in the family or other similar situations.

- The procedure of taking the oath before the delegated judge is completed by drawing up the conclusion, which is final and must be communicated immediately to the prefect and the general secretary of the administrative-territorial unit.

Government Emergency Ordinance no. 34 of May 12th 2023 amended article 546 letters a)-h) and letter d) was inserted to article 548 paragraph (2).

Conclusions

From the moment of entry into force until today, the Administrative Code has been amended and supplemented by various normative acts originating from the Parliament or from the delegated legislator. This complex legislative work, the law of laws for administration [33], “a guidebook for every ‘actor’ on the social scene in a relationship with the authority”, [34] whose appearance reduced the number of normative acts in the

field of public administration and opened the way for the systematization of legislation in this field, also needed improvements determined by objective needs, resulting from administrative practice or imposed by the exceptional situation that we witnessed and crossed with difficulty, but also experienced changes of a subjective nature, especially in the matter public office. At the same time, Government Emergency Ordinance no. 57/2019 was also the subject of referrals before the Constitutional Court, introduced both by the People's Advocate, who has the right to refer directly to the constitutional court with the exception of unconstitutionality, together with other legal issues. Of these, one was admitted, and in the Admission Decision [35], the Constitutional Court highlighted the fact that the provisions of article 517 paragraph (1) letter d) are constitutional to the extent that the phrase "standard age conditions" does not exclude the possibility of the female civil servant to request the continuation of the work relationship under the same conditions as the male, respectively until reaching the age of 65.

From the analysis carried out, we note that while a large part of the Government emergency ordinances that brought changes and additions to the Administrative Code were approved by law, Emergency Ordinance no. 57/2019 has not yet been approved, by law in the Parliament. As shown in the content of the article, this delay can also represent an opportunity, the legislative authority having the opportunity to bring into the Romanian legal reality an improved law text, which includes other solutions from practitioners, but also the ideas supported by theoreticians in various specialized works.

Administrative practice will also highlight other shortcomings of the regulation, but beyond the shortcomings found and, some of them, corrected by the legislator, this substantial regulation represented a "legislative event" [36] that proved its usefulness and provided an impetus for the urgent adoption administrative procedure code.

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