# REGULATIONS ON PUBLIC ADMINISTRATION AT THE CAPITAL LEVEL IN ROMANIAN LEGISLATION

**Associate Professor Flavia Lucia GHENCEA, PhD.**
Ovidius University of Constanța, Romania
*fghencea@hotmail.com*

**Abstract**
The organization of public administration is always a mirror of the level of development of the society it serves. Communities need clear regulations that make their implementation effective and ultimately reflect the living standards of their citizens. In any organizational structure of an administrative system, the state's capital is differentiated. Different needs and situations are met for participants in social life, citizens, public authorities, or economic agents that contribute to the area's development.
From this perspective, many capitals benefit from a special law on the organization and functioning of public authorities at the administrative level.
In Romania, the capital does not benefit from a distinct normative act, the regulations regarding the organization and functioning of the local public authorities at its level are found in the content of the Administrative Code.
This paper analyzes the regulations in the Administrative Code on local authorities in the capital, identifying several legislative overlaps, and gaps in the law and finally appreciating the need for a special law to regulate these authorities.
**Key words:** public administration, administrative authorities, local public administration, public administration of the state capital

## Introduction

The largest capitals have their own law on the organization and functioning of public authorities that ensure the administration of their territory. However, this is not the case in Romania. We will further analyze how the Romanian legislator regulated the local level of the capital.

The fundamental law establishes in Art. 3 that the territory of Romania is organized, from an administrative point of view, in communes, cities and counties, some cities being declared, according to the law, municipalities, and Art. 121 para. (3) provides

that, at the level of administrative-territorial subdivisions of the municipalities, local councils and mayors may be established.

In the infra-constitutional regulation, we find, in GEO 57/2019 on the Administrative Code [1], Chapter V of Title V of Part III reserved for the public administration in Bucharest, the most important administrative-territorial unit in Romania. This status makes the legislator to give the capital administration a distinct space, although the applicable legal regime is substantially similar to that applicable to public administrations in the other administrative-territorial units. Given the complexity, however, of the administrative phenomenon in the capital, we also support, together with other specialists [2], the elaboration of a separate normative act for the Bucharest municipality, which also regulate the metropolitan area of the capital.

Before the Administrative Code, the old regulation was included in the text of Law no. 215/2001 [3]. Currently, we find that the provisions regarding the public administration of Bucharest have been resystematized, reformulated in some places, but the substance of the regulation has remained the same.

In Bucharest the existence of two categories of authorities is regulated, namely: Bodies established at the municipal level, represented by the General Council of Bucharest and the General Mayor of Bucharest, and bodies established at the level of sectors: Local sector councils and sector mayors.

The current manner of organizing the capital, with 7 councils - 7 budgets - 7 specialized commissions, leads to overlapping of duties between sectors and the level of the capital, given that the services provided by local authorities are provided to the same citizens who are residents of both subdivisions, as well as of the administrative-territorial unit. As is consistently stated in the doctrine, the experience so far of the operation of these public authorities has signaled many dissensions, both between the autonomous authorities at the level of the capital and between them and those established at the level of the sectors [4].

The local councils of the sectors and the General Council of Bucharest are deliberative authorities, and the General Mayor and the mayors of the sectors are the executive authorities, the law granting them a similar legal status to the local councils, establishing, consequently, regulations contained in Chapter III of Title V of Part III of the Code.

**Public administration authorities at capital level**

The municipality of Bucharest is organized in six administrative-territorial subdivisions, established under the conditions of art. 100 para. (2) and (3) of the Code. At capital level and its subdivisions there are as executive authorities one mayor and one deputy mayor in each sector and one general mayor and two deputy mayors for the capital.

We note that the legislator granted the term *of general* only for the position of mayor, the deputy mayors at the level of the capital not benefiting from the agreement with the rank of their superior. We consider that, at least for reasons of unity of expression, given that the deputy mayors of the capital come from among the general councilors, the position they hold should be that of *Deputy General Mayor.* The solution can be easily transposed by the law approving the ordinance, thus ensuring a unitary character of the functions at the level of the capital: General Mayor, deputy mayor general, general councilor.

Following the elections for the position of General Mayor, the validation of the mandate of the General Mayor of Bucharest will be done by the president of the Bucharest Tribunal. We notice that the law refers directly to the president of the tribunal, and not to the judicial authority which is the Bucharest Tribunal. The proposed correct solution, which we also agree on, will have to be provided in the Administrative Code, by amending para. (2), for reasons of similarity both with the county council and with the president of the county council, both mandates being validated by the court, the municipality of Bucharest having, under some aspects, a similar status to the county [5].

In the content of art. 164 para. (3), the Code stipulates that at the level of the capital there are, as deliberative authorities, the General Council of the Municipality of Bucharest and the sector councils, as administrative-territorial subdivisions.

The deliberative authorities at the level of the capital, the General Council of Bucharest, and the sector councils, are authorities resulting from local elections, made up of local councilors elected by universal, equal, secret and freely expressed vote, in electoral districts according to the list vote, based on the principle of proportional

representation, under the conditions provided by Law no. 115/2015 on the election of local public administration authorities.

The number of councilors shall be determined by Order of the prefect, depending on the number of inhabitants of the administrative-territorial unit, except for Bucharest, where the number of members of the General Council of Bucharest is established by the Administrative Code in art. 112 para. (2), it being composed of 55 general councilors, and the local councils of the 6 sectors, according to the Order of the prefect of Bucharest no. 461 of July 24, 2020, have 27 councilors each, less sector 3, which has a number of 31 councilors.

Regarding the validation of sector councilors, we note that the law makes no reference to the competent court, conditions in which, applying the provisions regarding the election of local councils, it results that the mandate of councilors is validated by the court in whose territorial area the constituency place of elections, which revealed the situation of the General Council of Bucharest. In practice, the situation was resolved at the level of the sector 1 Court, after, initially notified, the Bucharest Tribunal declined its jurisdiction in its favor [6].

**Establishment and functioning of local councils of the sectors and of the General Council of Bucharest**

The establishment of local councils at the level of the municipality and sectors shall be made, within 60 days from the date of the elections, following the procedure of validation of the mandates of the elected councilors, by the court in whose territorial area the electoral district is located.

Because the law make no express reference regarding the court competent to validate the mandates of the general councilors of Bucharest or of the sector councilors, there are only the general provisions regarding the competence of the court in the territorial area where the constituency is located, applying the provisions the election of the local councils, it appears that the mandate of the sector councilors is validated by the court of the sector in whose territorial radius the constituency in which the elections took place is located. Things could not be applied similarly in the case of the General Council of Bucharest.

In 2020 elections, the first to be held under the regulations contained in the Administrative Code, this issue arose when the Court was asked to validate the mandates of general counsel. The Bucharest Tribunal, in applying the non-contentious procedure provided by the Administrative Code for the validation of mandates and verifying, ex officio, its competence, considered that it was not legally vested and declined the competence to resolve to the District 1 Court, arguing correctly that a court can only resolve disputes that are expressly provided for by law in its jurisdiction. As such an operation was not provided for the Bucharest Tribunal, it declined jurisdiction in favor of the District 1 Court; Considering that the Code stipulates the competence of validation of local councilors by the court in the competent territorial district and taking into account the fact that in the General Council of Bucharest its members may belong to any of the six sectors, the Bucharest Tribunal established the jurisdiction of the Court Sector 1, which finally validated the election of general counsel [7].

Both the General Council of the Municipality of Bucharest and the sector councils organize specialized commissions on the main areas of competence and / or joint commissions, within the term established by the regulation of organization and functioning of the council - for example, the Local Council of Sector 6 has a within 30 days from the establishment (Decision of the Local Council of Sector 6 no. 152 of August 24, 2021). The local councils meet in ordinary or extraordinary meetings, the rule being the monthly meeting, in ordinary session, at the convocation of the mayor [8].

If until the appeareance of the Administrative Code there was in force O.G. no. 35/2002 for the approval of the Framework Regulation for the organization and functioning of local councils (published in the Official Gazette no. 90 of February 2, 2002) with its repeal, the remaining rules are insufficient for an organization and functioning unitary at the level of administrative subdivisions. There are different working procedures, each team implementing according to its own assessment the regulations in force.

**Dissolution of local sector councils and General Council of the Municipality of Bucharest**

The local sector Councils and the General Council of the Municipality of Bucharest may be dissolved under the conditions provided in Section V of Chapter III of Title V, Part

III of the Code, by law or by referendum organized following the request addressed to the prefect by at least 25% of the number of citizens with the right to vote registered in the electoral register, with their domicile or residence in the administrative-territorial unit - for the referendum organized at the municipal level or, at the sector level, for the local sector council. We understand from the norm of reference to the conditions for organizing the dissolution referendum that a referendum for dismissal of the local sector council will be supported from the budget of the respective sector, even if the regulations of art. 144 C. adm. refer to the budget of the administrative-territorial unit.

The referendum will be held under the conditions provided by Law no. 3/2000 on the organization and conduct of the referendum and will be valid if at least 30% of the total number of voters registered in the Electoral Register are present at the polls, the activity of the Council ceasing if at least ½ plus one of the total number of votes validly expressed on the election.

The local sector council or the General Council of the Municipality of Bucharest may be dissolved by right if it does not meet in at least one ordinary or extraordinary meeting, convened according to the legal provisions, for four consecutive months, or if it does not adopt any decision in 3 ordinary meetings. or extraordinary within four consecutive months or if the number of directors in office is less than half the number of members and could not be supplemented by alternates.

The law refers to the observance of the legal conditions for convening councilors, an issue on which the Constitutional Court ruled that regulating the condition of a legal convocation of the local council is a realization of the principle of local autonomy, because the activity of local councils must be limited the legal framework for their operation, as regulated by the legislator by establishing the rules of operation [9]

The court will be notified of the dissolution situation by the mayor, deputy mayor, secretary general, prefect or any other interested person and will rule by a final decision, which will be communicated to the prefect, who finds, by order, the dissolution of the local council.

**Atributions of the General Council of Bucharest**

The legislator chose to build the Regulation by keeping the manner used for local councils, but did not choose to differentiate these categories of institutions. Thus, if for the General Council reference is made to the basic rules regarding the local council, in the case of sector councils, the attributions are not presented in relation to those of local councils, but are treated separately. The vision of the legislator in the formulation of the norm considered, we consider, the relation to the character of administrative-territorial unit, and not of similar deliberative structure existing both at the level of the administrative-territorial unit and at the level of the administrative subdivision.

In keeping largely with the previous regulations contained in Law no. 215/2001 of the local public administration, the legislator establishes for the General Council of Bucharest a legal status similar to that of the local councils, providing that it is constituted, functions and performs the duties provided by the law for local councils [10].

The General Council approves the general budget of the capital and even for this reason alone is the holder of the power in the management activity. Bucharest is the capital of the country, Romania's richest city, which accounts for more than 20% of the country's GDP. Under these circumstances it can be appreciated that the local elected representatives of the capital are small "deities", whose political influence and power over the economic environment is considerable.

**Powers of sector councils**

In the case of sectors, the legislator has not made a general reference to the powers of local councils, which should also be exercised by local sector councils, It has expressly and limitatively specified their powers, considering their specific place and role in the local public administration and their relations with the public administration at the level of Bucharest [11].

Unlike the Regulation of the powers of local councils, the powers of sector councils are not expressed in a classified manner, depending on the field they are concerned. However, we identify two categories of attributions determined according to the conditioning of their exercise on the existence of an approval or empowerment from the General Council of Bucharest. On the one hand, for the most part, the attributions are exercised directly, based on the law – the appointment of deputy mayors, the approval

of the budget, the approval of urban planning documentation, attributions in relation to the management of goods and the optimal functioning of public services, etc. on the other hand, We identify a number of tasks for which a form of intervention from the General Council is required. We note, however, that the text has not used a uniform manner of Regulation in this respect. Thus, there is the condition of a prior agreement for cooperation or association with Romanian or foreign legal entities, non-governmental organizations and other social partners, in order to jointly finance and implement actions, works, services or projects of local public interest. Also with the prior agreement of the General Council, sector councils may decide on cooperation or association with local public administration authorities in the country or abroad, as well as the accession to national and international associations of local public administration authorities, in order to promote common interests.

The General Council intervenes by a subsequent approval in case of final approval of studies, forecasts and programs of development, spatial planning and urbanism approved in advance at the level of the sector council.

The reason for the intervention of the General Council on the powers of the bodies at the level of the sectors has in view an overall vision and a coherent and harmonious development for the entire administrative-territorial unit.

In terms of the form of the Regulation, it would be noted the overlaps in paragraph (2) letters c), R), s) and the provision contained in paragraph (3) regarding the express empowerment given by the General Council of Bucharest. Or, as a distinguished author notes, it is known that, etymologically, “to empower” means “to give someone the authorization to do something”, and since the General Council of Bucharest has given its express authorization for the fulfillment of these duties by the local sector councils, we wonder whether the further agreement is necessary [12].

**Excepted tasks of sectoral authorities**

As an exception to the similarity of legal status between the sector council and the local council in terms of the powers conferred on them, the law restricts a number of powers for sector councils.

Thus, they cannot organize consultations of the population through a referendum in order to solve local problems of special interest and cannot take the measures provided by law for holding public meetings, which are exercised only by the General Mayor of Bucharest.

We understand that the exception provided by the legislator comes from the subdivision character of the sector, although, according to the law, issues of special interest in administrative-territorial units and administrative-territorial subdivisions of municipalities can be submitted for approval by local referendum (Law no. 3 / 2000 on the organization and conduct of the referendum).

We appreciate that the regulation could be complemented with the possibility of organizing consultations at the sectoral level, given that, on the one hand, from the point of view of representation, the mayor of the sector could have the competence to organize consultations on local issues. of particular interest and, on the other hand, the level of the sectors is the closest to the citizens, and the authorities at this level have the greatest knowledge of the particular situations existing here. Moreover, from the perspective of applying the principle of subsidiarity so often invoked at European level, we consider that it would be appropriate to regulate the possibility of consultation by referendum at sector level.

The referendum is consultative, so its result does not produce direct legal effects and does not oblige state authorities to take decisions in accordance with the will of the population resulting from the referendum, which does not mean that the authorities must remain passive to the wishes of citizens and not lead to carry out the opinions expressed during the consultation [13].

Moreover, the practice of citizen consultation, as a way of directly representing citizens' opinions, is considered, by the new administrative models, a method of participation that complements the role of representative democracy in considering the rank of European norm of the principle of citizen consultation, as mentioned in the European Charter of Local Self-Government.

It is true that in our country the consultation of citizens about special issues existing at the local community level is not very used, the regulations of the local referendum referring to distinct cases of their organization, respectively the referendum organized for

the dismissal of the local public authority - mayor, local council, council county or the president of the county council -, referendum organized as a result of the existence of a legislative proposal regarding the modification of the territorial limits of the administrative-territorial unit or of modification of the rank of an administrative-territorial unit.

We appreciate that it can be introduced in the law, the possibility for sector mayors to organize consultations on issues of special local interest, meaning that, on the occasion of the adoption law, the exception contained in the Code can be removed.

**Secretary General of Bucharest**

The regulation regarding the general secretary of the municipality of Bucharest and the general secretaries of the sector, refers to the general rules applicable to the general secretary of the administrative-territorial unit / subdivision. Without resuming the analysis of the previous regulations, we consider that the present text is insufficient for the particularities contained in the relationship between subdivision and capital level and does not justify the reference, in a separate article, in this way, under the title "Secretary General of Bucharest and secretaries generals of the sectors". The simple reference to the phrase "are properly applicable to them", a phrase preferred by the legislator for regulating institutions in the capital and sectors through similarity to local authorities, allows profoundly different analyzes of situations in practice, given that each subdivision operates according to its own regulations.

As long as the General Council of Bucharest and the General Mayor, on the one hand, and the sector councils and sector mayors, on the other hand, have different attributions from each other, implicitly, the attributions of the general secretaries from the two levels. they will be different, which the legislator did not understand to include separately.

The general framework of the status of the secretary general of administrative-territorial unit is found, as previously mentioned, in art. 242-243, Title VII, Chapter I of the Administrative Code, but its powers are supplemented by a series of regulations contained in special legislation, with reference, for example, to the field of urban planning, child protection or local elections. Once again, in the situation of completing the attributions by those contained in special laws, there is a significant difference of

attributions at the level of the general secretaries of the sector and the general secretary of the capital.

Moreover, in addition to the attributions expressly provided by the Administrative Code, the general secretary of the capital and the general secretaries of the sectors fulfill a series of attributions given to them by special laws or tasks given by administrative acts by the deliberative or executive authorities at the level of the administrative-territorial unit. or of the administrative subdivision, which are substantially different at the level of the administration of the capital and the sectors. We refer to the attributions regarding child protection and social assistance, regulated by Law no. 292/2011 on social assistance, an area in which the Secretary-General is the chairman of the Commission for the Protection of the Child and has several responsibilities in the field of protection and promotion of children's rights.

In the field of urbanism, the general secretary signs, together with the mayor and the chief architect, the urbanism certificates and building permits, answering, together with them, regarding the issuance of documents, according to the regulations in the field of constructions (Order of the Minister of Regional Development and Housing no. 839/2009).

The General Secretary is part of the commission for establishing the right of private property over the lands, the model and the way of assigning the titles of property, as well as the possession of the owners (H.G. no. 890/2005). In this field, it was possible to notice in practice many major differences of attributions between the attributions of the Secretary General of the capital and the sector, in the conditions of constant change of attributions between the local public administration authorities at the municipal level and those at the sector level, over time, numerous transfers from sector to municipal authorities and vice versa [14].

**Acts of the local authorities of the municipality of Bucharest**

The content of Article 169 C. adm. Enshrines the different legal force of the acts adopted or issued by the public administration authorities at the level of the capital, stating the imperative character of both acts adopted by the General Council of Bucharest, as well as the normative provisions of the General Mayor for the authorities organized at the

level of the sectors. However, this provision must not be interpreted as a subordination of the authorities at sector level, in view of the fact that both authorities are autonomous public authorities, which excludes subordination to one another. Nor can the Regulation that recognizes the possibility of the General Council to delegate some tasks to local sector councils to lead to the birth of subordination relationships, proving only the specific administrative structure that the capital has and, implicitly, the need for equally specific regulations. The capital shall constitute a distinct administrative-territorial unit, the sectors being subdivisions thereof, this structure obliging the existence of relations in which the authorities at the level of the administrative-territorial unit shall have full competence in deciding, organizing, and controlling the manner in which, through its own administrative structures or those existing at the level of the sectors, and administration is carried out that has a coherence, a vision and a purpose that corresponds to the expectations of the citizens of the whole municipality [15].

The citizens of Bucharest thus benefit from a double administration, on the one hand, from the sectoral authorities – the sector council and the district mayor – and, on the other hand, from the authorities at the level of the capital – the General Council and the General Mayor.

**Collaboration of the local administration authorities of Bucharest**

Through the regulations contained in art. 169, the Administrative Code institutionalizes forms of collaboration between the two categories of local public administration authorities in the capital.

Thus, the General Mayor together with the sector mayors meet at least once a month, at the request of either the General Mayor or at least three sector mayors. During these meetings, analyzes and information take place, the main purpose being the development in good conditions of the public administration activity at the level of the entire administrative-territorial unit.

Another form of collaboration highlighted refers to the legal participation of the mayors of the sector in the meetings of the General Council of the Municipality of Bucharest, with the possibility to have interventions on the existing issues on the agenda. As it has been appreciated in the doctrine, even if the text does not expressly provide, the

interventions can be justified by the interests of the represented sector with those of the municipality [16]. Also, the chairs of the specialized commissions of the sector councils participate by right in the meetings of the similar commissions held within the General Council. The legislator aimed at the continuous granting between the activities of the two categories of authorities at the level of the capital and at the level of the sectors. In practice, however, the concrete effects of the regulations lead to different results, the actual relationship between the sectors and the capital following the similarities or differences of political color between the elected citizens.

**Conclusions**

Romanian Constitution considered necessary to specify in its content the capital of Romania, providing, in art. 14: "The capital of Romania is the city of Bucharest". Although in the discussions on the revision of the Constitution it was proposed to delete this article, arguing that it would not be at the level of the constitutional norm, it was kept in the previous version, remaining, as an arc over time, the link with the Act of Union of Principalities. which began the modern era of the country [17].

At least for this reason, of the importance that the constituent understood to give to the capital, we consider necessary the elaboration and adoption of a distinct normative act that would amply regulate the entire metropolitan area of the capital. We thus join the opinions already existing in the doctrine [18].

We appreciate that a future law of the capital should include, first of all, a new territorial vision on Bucharest, as the current variant, of division into 6 “slice” sectors, in which each sector has a component part of the central area and the territorial limit in the middle of the boulevard, leads, on the one hand, to the existence of all kinds of problems in all areas and, implicitly, to the congestion of the administration and, on the other hand, perhaps more importantly, to a series of absolutely strange situations, such as: half of the boulevard is cleaned of garbage, half is not, or the architecture of the buildings is different on both sides of the boulevard.

In view of the opinions already expressed regarding the need to adopt a special law regulating the legal regime of the capital, we appreciate that the general secretary of the municipality / sector will have his place well determined in the new formula. The

different nature of the legal regime of the subdivision from the administrative-territorial unit will lead, in the future regulation, to a differentiated treatment of the secretaries general, regarding, first of all, the difference of attributions established at the level of the local authorities thought in a different way. of the current one, one that would increase the level of performance of the public administration.

We agree with experts who argue that a law of the capital should take into account many aspects: the relationship with the regional and metropolitan territory, identifying the most appropriate territorial division, clearly defining the competencies of the specific territorial level, how to plan spatial development, taxation and redistribution of revenues to create territorial cohesion, relations with regional and national structures, but also with local communities.

Certainly, Bucharest needs a new legal framework, the existing one not being a favorable one, but the necessary change is fundamental and on multiple territorial levels. At the same time, the administration and development of a capital must have coherence, vision and efficiency, aspects that can only be achieved through complex and coherent interventions, and development perspectives require the possibility of concrete interventions at primary level but addressed throughout the administrative unit. At the moment, the fragmentation, on the one hand, and the overlapping of the attributions between the sectors and the capital, on the other hand, constitute a brake both for the big infrastructure projects, at the level of the capital, in an integrative vision. The opinion is embraced by both specialists and politicians, but the finality does not seem to materialize very soon. Studies and analyzes exist, also from specialists in law, administration, or architecture, but the road to an implemented normative act remains at the beginning.

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