

MPRA

Munich Personal RePEc Archive

National Regulations on Local Public Administration

Apostolache, Mihai

Petroleum_gasUniversityofPloiesti

20 October 2014

Online at <https://mpra.ub.uni-muenchen.de/59547/>

MPRA Paper No. 59547, posted 30 Oct 2014 05:50 UTC

National Regulations on Local Public Administration*

Lecturer MIHAI CRISTIAN APOSTOLACHE, PhD
Petroleum-Gas University of Ploiești (Romania)
Postdoctoral Researcher
Titu Maiorescu University of Bucharest
mihaiapostolache5@yahoo.com

Abstract

The local public administration, like any other field of activity, knows a certain regulation determined by the specificity of this field and by its importance within the global social system. The norms governing local public administration are included in the fundamental act, as well as other legal acts inferior to the Constitution, that are meant to develop the rules as principles from the Constitution. Given its importance and complexity, local public administration has a vast regulation centered upon the Law of local public administration, a normative act that is compatible with the European regulations on the matter.

Keywords: local public administration, principles, regulation, national, constitution, law.

Preamble

The public administration in territorial-administrative units is regulated by various legal acts forming the legislation asset in this field, i.e. constitutional and statutory regulations. National regulations have been influenced over time by different legal or political instruments from the Council of Europe and from European Union bodies. The reception into national law of certain principles and rules established by European regulations has ensured the realization of a qualitative leap in the field of legislation on local public administration. Thus, a series of European standards were taken from the area of organization and functioning of local public administration, procurement, civil service and civil servants, the participation of citizens in public decision, increase in the transparency and integrity of local public life, in the control over local public administration authorities.

It should be noted that, the Constitution of Romania, since its adoption after the establishment of the democratic regime, has comprised regulations as principles in agreement with the European rules guiding the local public administration [1]. Despite

* This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013

the contradictory discussions within the Constituent Assembly [2] related to the provisions to regulate the field of local public administration, a legislative solution has been found that withstood time¹² and is compatible with the standards of a democratic state.

Overview of the National Regulations on Local Public Administration

The local public administration is regulated at the constitutional level mainly in Articles 120-123 which establish basic principles (Art. 120), communal and municipal authorities (Art. 121), county council (Art. 122) and the prefect (Art. 123).

In addition to these constitutional provisions, the fundamental law governs the local public administration in other parts of its content. Thus, Article 2 paragraph 1 establishes the principle of eligibility and of the consultation of citizens in a referendum; Article 3 paragraph 3 refers to the organization of the territory and states that the territory is administratively organized into communes, towns and counties, and, under the law, some cities may be declared municipalities; Article 16, entitled "Equal rights", states the principle of equality of citizens before the law and public authorities; Article 31 refers to a person's right to access public information and the obligation of public authorities to accurately inform citizens about public affairs and matters of personal interest; Articles 36, 37 and 40 regard the right to vote, the right to be elected and the right of association; Article 51 takes into account the right of petition; Article 52 concerns the right of a person aggrieved by a public authority to appeal the administrative court, in connection with Articles 21 and 126; Article 58 envisages the people's lawyer; Article 73 refers to the types of laws that may be adopted by the Parliament; Article 136 considers the property in conjunction with Article 44 entitled Ownership; Articles 137, 138, 139, 140 regulate the financial system, the national public budget, taxes and other contributions, also containing provisions relating to the Court of Auditors; Title V contains provisions on the Constitutional Court.

These constitutional provisions are taken and developed in different legal acts governing the organization and functioning of local public administration.

¹² Only slight changes have been brought in 2003 to the constitutional revision

Among these there are: Law no. 215/2001 local public administration, republished; Law no. 554/2004 on the administrative legal department; Law no. 52/2003 on transparency in public administration, republished; Law no. 273/2006 on local public finance; Law no. 24/2000 regarding the legislative technique; Law. 188/1999 on the status of civil servants, republished; Law No. 7/2004 on the code of conduct for civil servants; Law no. 47/1992 on the organization and functioning of the Constitutional Court, as subsequently amended; Law no. 213/1998 on publicly owned property, substantially amended by the current Civil Code and republished; GO no. 2/2001 on contraventions approved with amendments by Law no. 180/2002; Law no. 3/2000 on the organization and conduct of the referendum; Law no. 393/2004 on the status of the locally elected officials; Law no. 195/2006 – legal frame on decentralization; Law no. 199/1997 for the ratification of the European Charter of Local Autonomy; Law no. 67/2004 for the election of local public administration authorities, republished; Law no. 340/2004 regarding the prefect and the prefect institution; Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and punishment of corruption; Law no. 2/1968 on the administrative organization of the territory, republished; Law no. 351/2001 on the approval of the National Landscaping Plan; Law no. 178/2010 of the public-private partnership; Law no. 315/2004 on regional development in Romania; GEO no. 27/2003 on the tacit approval procedure; GO no. 27/2002 on regulating the settlement of complaints; GEO no. 34/2006 regarding the award of public procurement contracts, of public works concession contracts and services concession contracts, approved with amendments and completions by Law no. 337/2006, Emergency Ordinance no. 35/2002 for the approval of the Framework Regulation for the organization and functioning of local councils, etc.

As observed, the regulations related to local public administration are complex and varied, determined by the place and role of this subsystem within the global social system and by the diversity and complexity of the components of local life. The fundamental act has institutionalized local communities together with the national community. These local communities are grouped into territorial-administrative units (commune, town, city, county), with their dual character of local territorial communities

and regional districts for the management of certain services of the state [3]. Assuming that the development and strengthening of local democracy ensures the stability of the democratic regime within a State, the responsible public authorities, with regulating duties, have built a legislative framework to allow the emergence of institutions and local public authorities, have regulated the relations between them and other organizational structures at county and central level, have provided, at local administrative level, material and financial resources, and also human resources for the effective exercise of their work and for provision of public services to citizens. However, given that local authorities operate within the administrative-territorial units of the unitary state, there have also been imposed a number of rules that have established a control of the state over the activity of autonomous local authorities, which is exercised solely under the conditions and limitations imposed by law. As highlighted in the literature [4], *“strengthening local powers must not jeopardize national unity, its intangible nature...”*. It is certain that this framework is not a perfect one, but it has ensured, despite some of its flaws - revealed by the administrative practice, the emergence and development of local public administration, whose guiding light is the principle of local autonomy. With the development of the legislative framework, this principle has seen a multiplication and diversification of its meanings [5]. Certainly, a genuine local democracy, according to citizens' legitimate rights and freedoms, would not be possible without the existence of two basic principles, the principle of local autonomy and the principle of decentralization [6], the latter allowing the territorial decentralization of public power without affecting the unitary character of the state. [7]

The Law of Local Public Administration – a framework law on the matter

One of the most important national legal instruments of local public administration is the Law of local public administration. Also called in the literature “the legislative driving force” [8], the Law of local public administration represents the infraconstitutional regulation underlying institutional and material aspects of the local public administration, ruling also the administrative relations between the national and local communities [9].

Before treating the normative content of this regulation, we believe it is necessary to take a historical journey and see, in short, the development of this legislation.

After the revolution of December 1989, which allowed fundamental changes in the Romanian society and the legal system implicitly, several legal acts were adopted to govern public administration in the territorial-administrative units. The first legal act is the Decree-Law no. 8/1990 regarding the organization and functioning of local bodies in the state administration. After the local elections in 1990, in the absence of an adequate constitutional framework [10], there was adopted Law no. 5/1990 on the management of the counties, cities, towns and communes which was soon replaced by Law No.69/1991 on local public administration. The adoption of the 1991 Constitution and the evolution of social relations, but also some problems in the implementation of some provisions of Law no. 69/1991, have determined its amendment by Law no. 24/1996 and it was republished. The republished Law experienced an amendment and a substantial completion by GEO no. 22/1997, a legal act declared unconstitutional in 1998 by the Constitutional Court Decision no. 83/1998, a situation that prompted a return to the previous form, republished in 1996.

In 2001, the Romanian Parliament adopted Law no. 215/2001 of local public administration, which replaced Law no. 69/1991, republished. Since its adoption until now, Law no. 215/2001 has suffered, in its turn, a number of amendments and additions, the most numerous being brought by Law no. 286/2006, which imposed its republication in 2007. The current law of local public administration experienced a final legislative amendment by the Government Emergency Ordinance no. 18/2014 [11].

Law no. 215/2001 regulates the general regime of local autonomy and the organization and functioning of public administration authorities in territorial-administrative units. According to Article 73 paragraph 3 letter o) of the Constitution, the organic law governs the organization of local public administration, of the territory, and the general regime of local autonomy. Therefore, the local public administration law is an organic one providing extension and development on the infraconstitutional plan for the constitutional provisions regarding local public administration.

Within the law we meet the general arrangements for the regime of local autonomy and the legal status of local public administration authorities, special provisions which establish the organization and functioning of local public administration, and other topics. The general provisions on the local autonomy regime define a series of

legal institutions with which the legal act operates, establish the principles upon which local authorities are organized and operate, with a particular emphasis on the principle of local autonomy, understood as *“the effective right and capacity of the authorities of local public administration to address and manage, on behalf and in the interest of the local communities they represent, public affairs, according to the law”*, governing the nature of the relations established between local authorities in communes, towns and municipalities and public administration authorities at county level. Also, these provisions stipulate the right to manage and dispose of financial resources and public or private property assets of communes, towns, municipalities and counties of the local public administration authorities, as exercised in accordance with the principle of local autonomy. Finally, issues connected to the representation of territorial-administrative units are regulated, their right of association and cooperation is stated, the legal status of territorial-administrative units is regulated together with their territorial delimitation procedure, as well as forms in which the activity of control over local authorities is carried out.

The general provisions on local authorities are contained in section 2 of Chapter I. These provisions nominate local authorities (mayor, local council, chairman of county council, county council), define the notion of the locally elected, governing also the term of office for local authorities, and the right of authorities to establish and toll local taxes and dues, to develop and approve local budgets for communes, towns, municipalities and counties, according to the law.

In order to materialize the principles and general rules, the Law of local public administration contains detailed provisions regarding the organization and functioning of the local council, mayor, county council and county council chairman, regarding their tasks, as well as the manner in which the mandate of government ceases, permanently or temporarily, for the authorities of public administration or the mandate of their members (in the case of collegial bodies). Even though Article 1 of the law states that it governs only the general regime of local autonomy and the organization and functioning of local public administration, the legal act also focuses on other matters that exceed the organization and functioning of local public administration authorities, fact noticed in the literature as well [12]. These matters refer to the citizens' initiative on public goods and

works, as well as public institutions and services of local interest. If we related to the title of the law, we would appreciate that these rules are natural, given the fact that local public administration is not limited to its authorities or the general regime of local autonomy, but includes other organizational structures, also having material, human, financial, resources whose management, administration, capitalization involve a set of rules to determine concrete ways for its manifestation within the system and in relation with the external environment for the local public administration.

But if we reflect on the subject of the regulatory law, we observe that it is justified, envisioning only the general regime of local autonomy and the organization and functioning of local public administration.

Any way it is considered, Law no. 215/2001 represents the central legal act of local public administration from which other special normative acts derive, whose regulatory object is formed by different components of local public administration. The Law of local public administration best reflects the European standards contained in the European Charter of Local Autonomy and other European regulations, in some cases exceeding these standards.

Conclusions

The review of the provisions governing local public administration certifies that this subsystem belonging to the administrative one has a constitutional and legal consecration. By the way it addresses the issue of local public administration at legislative level, Romania falls into the category of countries that place an emphasis on the development of local autonomy, ensuring an increase in the role and importance of local administrative level, considered by public European decision-makers a pillar of the European construction. In agreement with the provisions [13] of the local public administration Law and the doctrinal approaches [14], local autonomy concerns two aspects: the first aspect aims at *the organization and functioning of local public administration*, when local autonomy is manifested by endorsing municipality or city status, by approval of the functioning rules of the local council, by the establishment of institutions and economic agents and the organization of local public services; the second aspect takes into account *the management of the resources for the commune*,

town or county, where local autonomy is manifested through the development and approval of the local budget, the right to establish local taxes and dues, the administration of public and private domain of local interest. Whatever form it manifests, local autonomy is purely administrative and financial, and specific to the decentralized public administration [15].

We can state, therefore, that the local public administration has in the legal order in Romania an extremely rich legal framework which, generally, gave results in its implementation, but which has also revealed a series of legislative ambiguities.

References:

- [1] Dana Apostol Tofan, *Administrative Law*, Vol. I, 2nd Edition, C.H.Beck Publishing, Bucharest, 2008, p. 252.
- [2] For details see Antonie Iorgovan, *The Odyssey of the Elaboration of the Constitution*, Vatra Românească Union Publishing House, Târgu Mureş, 1998, pp. 242-243; 520-522.
- [3] For developments see Corneliu-Liviu Popescu *Local Autonomy and European Integration*, All Beck Publishing, Bucharest, 1999, pp. 32-35.
- [4] Ioan Alexandru, *Politics, Administration, Justice*, All Beck Publishing, Bucharest, 2004, p. 103.
- [5] Corneliu Manda, Cezar C. Manda, *The Local Collectivities Law*, 4th Edition, revised and enlarged, Universul Juridic Publishing, Bucharest, 2008.
- [6] Idem, p. 108.
- [7] Anton Trăilescu, *Acts of the Local Public Administration*, All Beck Publishing, Bucharest, 2002, p. 2.
- [8] Corneliu Manda, Cezar C. Manda, *The Local Collectivities Law*, 4th Edition, revised and enlarged, Universul Juridic Publishing, Bucharest, 2008, p.118.
- [9] Idem, p.119.
- [10] Dana Apostol Tofan, *Administrative Law*, Vol. I, 2nd Edition, C.H.Beck Publishing, Bucharest, 2008, p. 251.
- [11] Published in the Official Gazette of Romania, Part I, Issue 305 of April 24th 2014.
- [12] Mircea Preda, *Law no. 215/2001 of local public administration. Comment on articles*, Wolters Kluwer Publishing, Bucharest, 2007, p. 16; Ovidiu Podaru, *Law 215/2001 of local public administration commented*, Sfera Publishing, Cluj-Napoca, 2004, p. 5.
- [13] Article 4 paragraph 2 from Law no. 215/2001 of local public administration, republished.
- [14] Anton Trăilescu, *Acts of the Local Public Administration*, All Beck Publishing, Bucharest, 2002, p. 4.
- [15] Idem, p.4.