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The influence of European regulations on the Constitution and of certain infraconstitutional regulations regarding local public administration*

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Abstract:

Choosing the European path allowed Romania to modernize its legislation by adapting to the European requirements. These requirements, which take the form of standards contained in various European regulations, are the result of the experience of EU bodies or the Council of Europe, as well as other international bodies. Taking into consideration all these regulations and driven by the desire to become part of the European family as soon as possible, national policy makers have modernized the legislation, thereby bringing substantial improvements to regulations regarding local public administration. The article presents the main legal and political instruments at European and international level that have positively influenced the legislation on local public administration in Romania and the internal normative acts resulting from this influence.

Keywords: *European regulations, local public administration, norms, jurisprudence, European standards.*

Preamble

The evolution of post-revolutionary legislation was decisively influenced by European or international regulations coming from entities within or outside the European Union, as well as from international bodies whose role is to promote peace, solidarity, strengthening of democracy and protection of human rights, and promotion of the idea of closeness between nations.

The way in which the national legislation on public administration was developed and adopted has been influenced by primary norms, derived norms, by reports or standards reflected by the jurisprudence of the European Court of Human Rights or the European Court of Justice, by regulations or opinions which take the form of resolutions and recommendations from the Council of Europe, by opinions and advice from the Venice Commission (the Commission for Democracy through Law) or of other consultative bodies within the Council of Europe or the European Union.

Even if the state is the only legal subject competent to generate legal standards mandatory for the public administration domain, the organization and functioning of public administration is an area reserved for the national legislator; legislative

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developments in this area and the national administrative practice have known the positive influence of European regulations.

As a subsystem of public administration, local public administration, established to meet the interests of local collectivities within the administrative-territorial units, is currently regarded as an important pillar of the European construction and has undergone many changes initially determined by the national desire of European integration¹⁷, leading to harmonization of the legislation with the standards set by European regulations and to the adaptation of administrative practice to the requirements of modern public service, which is centered on the rights and interests of citizens. Moreover, the commitment to respect human rights is fully stated in the preamble to the Treaty on the European Union, the consolidated version, and also in Article 2 of the Treaty, which states that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”.

It is common knowledge that one of the criteria for the accession to the European Union was the political one. Next to it was the criterion of administrative capacity and the economic one. An analysis can show that the political criterion envisages: the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of national minorities. This criterion is doubled by the administrative capacity criterion, expressed through the existence of an optimal and efficient administrative system, which includes a flexible and specialized institutional architecture that enables the taking over of the European Acquis and continual implementation of European regulations. But to achieve these demands requires professionalism, competence, neutrality, a certain degree of functional autonomy familiar to some of the administration structures, and also the improvement of public management.[1]

Romania has made notable progress with the modernization of legislation regarding public administration in general, local public administration in particular, by signing and ratifying the most important international legal instruments, most of them

¹⁷ Integration implies both Romania's accession to the European Union and, subsequently, the country's participation in the supranational organization as a full member state – Elena Simina Tănăsescu in Ioan Muraru et al., *The Constitution of Romania. Comment on articles*, C.H.Beck Publishing, Bucharest, 2008, p. 1430

coming from the Council of Europe, and also as a result of the takeover of European standards contained in other legal, political or jurisprudential instruments from the European Union, as well as by accepting the suggestions contained in the country reports of the European Commission. Moreover, both the EU institutions and the Council of Europe are pillars of the European construction.[2]

Thus there occurred significant changes both in the formal-organizational and the material-functional areas for the local public administration in Romania.

The main legal and political instruments at European level with an impact on legislation regarding local public administration

The international legal instrument that had a decisive influence[3] on the legislation on local public administration, even the fundamental act, was the European Charter of Local Autonomy.[4] The European Charter of Local Autonomy is the first and most important legal instrument for the protection and assertion of local autonomy, being a product of the Congress of Local and Regional Authorities of the Council of Europe.[5]

Another international legal instrument whose norms have influenced national regulations on local public administration is the European Framework Convention on the cross-border cooperation of collectivities or territorial authorities, adopted in Madrid on 21 May 1980, which entered the internal legal order by its ratification by Romania in 1998, through Government Ordinance no. 120/1998, published in the Official Gazette of Romania, Part I, issue 329 of 31 August 1998.

To respond to the European imperatives regarding the protection of the rights of national minorities, Romania ratified, by Law no. 33/1995, published in the Official Gazette of Romania, Part I, issue 82 of 4 May 1995, the Framework Convention on the protection of national minorities, adopted on 1 February 1995 at Strasbourg. To this we add the European Charter for regional or minority languages, adopted at Strasbourg in 1992, signed by Romania in 1995 and ratified by Law no. 282/2007, published in the Official Gazette of Romania, Part I, issue 752/2007. The Charter entered into force in 2008.

Other documents from the Council of Europe that have influenced the legislation on local public administration are: the Convention on the Participation of Foreigners in

Public Life at Local Level (1992), the Charter on youth participation in municipal and regional life (1992), the European Code of Conduct on the political integrity of locally elected officials (1999), the monitoring reports of the Congress of Local and Regional Authorities of Europe. However, Recommendation no. 201 (1993) of the Parliamentary Assembly of the Council of Europe represents a source of national and international law, being included in the basic treaties [6] of Romania with Hungary and Ukraine.

An extremely important document is the United Nations Convention against Corruption, which entered into force in 2005. Romania signed the Convention on 9 December 2003 and ratified it by Law no. 365/2004, a law adopted in New York on 31 October 2003, published in the Official Gazette of Romania, Part I, issue 903 of 5 October 2004.

The national desideratum of integration in the European Union and the effects on the legislation regarding local public administration

The real reform of local public administration in Romania has begun with the start of the negotiations for accession to the European Union in 1999. With its regular reports, the European Commission has boosted the Romanian public administration reform, prompting national deciders to develop and promote normative acts enabling the Romanian administration to adapt to an ever changing social environment and to European demands claiming the decentralization of decision, the opening of the administration towards the needs and interests of citizens, the fight against corruption and other disturbing factors, the protection of persons' rights and interests violated by acts of administration. The documents from the European Commission had the merit of a radiograph of the Romanian administrative reality, thus allowing the detection of deficiencies and their correction by the empowered political actors. The views expressed by the European Commission through its representatives, who constantly monitored Romania on its path to the Union, have oriented public deciders towards the adoption of measures and normative acts which included norms compatible with the European vision in managing local affairs.

Starting from the need of highlighting the principles of local autonomy, subsidiarity, proportionality, the national legislator adopted a series of regulations that

covered the field of civil service, the fight against corruption, the status of local elected officials, decentralization, local public finance, public services of local interest, local elections, administrative courts etc.

Among the first normative acts adopted after the submission of the European Commission report in 1999 was the Law on the status of civil servants, a normative act required by the Romanian administrative reality, and the European officials, who emphasized through their positions the need to cover the legislative gap on the matter of civil service and civil servants, calling for the adoption of regulations that allow the depoliticization of the civil service by guaranteeing a status of the official that ensures the professional independence of civil servants. The initiative for adopting this normative act belonged to the Government who assumed responsibility before the Parliament, and the bill promoted by this exceptional way of passing legislation became Law no. 188/1999 regarding the status of civil servants.

Also, to respond to the European imperatives on decentralization, there was adopted the Local Public Finance Law. This allowed an increase in the financial autonomy of local public administration authorities, which is mentioned in the same report from 1999.

The time period after 2000 was characterized by an intense process of modernization of the legal framework of local public administration. A new law on local public administration was adopted (Law no. 215/2001), the local referendum institution was regulated by adopting Law no. 3/2000 on the organization and conduct of the referendum, the framework law on decentralization was adopted and a legislative response was given to the issue of administration transparency through the adoption of three important laws such as: Law no. 544/2001 on the free access to information of public interest, Law no. 52/2003 on decisional transparency in public administration, Government Ordinance no. 27/2002 on the regulation of resolution of complaints.

In 2003 there was the first revision of the Romanian Constitution^[7] from December 1991, which allowed the completion and amendment of constitutional norms so as to be compatible with European requirements in terms of principles of organization and functioning of local public administration, of rights for national minorities and political rights. Thus, the fundamental act was completed in matters of local public administration

with a new principle, that of deconcentration of public services, thereby clarifying the concepts of deconcentration and decentralization. It was also recognized, at constitutional level, the right of national minorities with a significant share within administrative-territorial units to use the respective minority language in written and oral communication in the relations with local public administration authorities, and the decentralized services, but only under the law provided by the organic law. Through the provisions of Law no. 215/2001 constitutional norms were developed in a manner that places Romania among the countries with a high level of protection of the rights of national minorities. [8]

The category of political rights includes the right of European citizens to vote and to run for office at local level (local or county councilor only), if they meet the legal requirements [9], as a right that results from Romania's quality of European Union Member State, as a result of the accession, as stipulated in Title VI of the Constitution, entitled Euro-Atlantic Integration and in article 16, paragraph 4.

In line with the European requirements, regulations were adopted in the field of conflict of interests and incompatibilities of locally elected; in this respect the legislator adopted Law no. 161/2003. This law is part of a legislative package which aims to reduce corruption in public administration and leads to greater transparency of the status of local elected officials. Law 161/2003 is supplemented by Law no. 144/2007 on the organization and functioning of the National Integrity Agency, and by the Law no. 176/2010.

Amid pressure from European officials, national authorities have changed the status of the prefect, transforming it from a political agent into a high official, a status that is incompatible with quality of party membership. To strengthen the legal status of civil servants, Law no. 7/2004 on the Code of Conduct for Civil Servants was adopted in 2004, a normative act inspired by Recommendation R(2000)10 of the Committee of Ministers of the Council of Europe referring to codes of conduct for public officials, adopted on 11 May 2000. The consequence for adopting of the code of conduct for public officials was the adoption of a similar normative act for the contract staff of public authorities and institutions (Law no. 477/2004). Also in 2004 Law no. 393/2004 on the status of local elected officials was adopted.

The process of accession to the European Union and the requirements imposed by the various documents in electoral matters coming from the bodies of the Council of Europe have determined Romanian policy makers to adopt a new law on local elections, thus appearing Law no. 67/2004 on the election of local public administration authorities.

After closing all negotiation chapters with the European Union, Romania signed the Treaty of Accession¹⁸ and adopted Law no. 157/2005 concerning the ratification by the Romanian Parliament of the Treaty between the European Union Member States and the Republic of Bulgaria and Romania on the accession of Bulgaria and Romania to the European Union, signed by Romania in Luxembourg on 25 April 2005; Law no.157 / 2005 was published in the Official Gazette of Romania, Part I, issue 465 of 1 June 2005.

By adhering to the European space, the public administration in general, the local public administration in particular, is called to implement not only national regulations, but also European standards. Local public administration, through its authorities, should effectively participate in the process of European integration, fully consciously assuming its obligations as part of the state, concretely applying the specific European standards. Failure or misapplication of EU law by any public authority, and therefore by local public administration authorities, draws the responsibility of the state, as results from the jurisprudence [10] of the European Union Court of Justice.

Important changes in legislation occurred in 2006, when a new framework law on decentralization was adopted, Law no. 195/2006, taking on new regulations in the field of local finance as well (Law no. 273/2006) and public utilities community services (Law no. 51/2006).

Romania, since joining, has become the receiving party of both the rights and benefits of the European Union, and of the obligations, contributions and joint efforts to ensure the development and sustainability of the European construction.[11]

In terms of legislative production on local public administration, the post-accession phase is characterized by a slowdown in regulation, a sign that some politicians have not understood that European integration has not ended with January

¹⁸ Legal operation by which a state negotiates with other members of the organization the conditions in which it can manifest as a member of that organization, in the opinion of Prof. PhD Elena Simina Tănăsescu included in Ioan Muraru et al., *The Constitution of Romania. Comment on articles*, C.H.Beck Publishing, Bucharest, 2008, p. 1431.

2007. European integration means a continuation of the reform process in local public administration by adopting legislative, strategic and managerial measures. It is not enough just to correct some normative acts through others with the same or higher legal force; it is required to constantly bring into the legislation norms whose effectiveness has been experienced in the more developed states, or norms which have become European standards in the field.

The European normative heritage is permanently enriched with new regulations stemming either from national or European administrative practice, or from the experience of bodies involved in protecting democracy, civil rights, diversity of interests, such as the Venice Commission, the ECHR, the Congress of Local and Regional Authorities within the Council of Europe, or the Committee of the Regions of the European Union.

The Romanian legislator is required to keep pace with changes in Europe and to adapt the legislation on local public administration to the new European requirements. For example, the 12 principles of good governance at local level, promoted by the Council of Europe, may be subject to a legislative approach and can be included in national legislation. Also, there can be considered as landmarks of procedural regulation the norms contained in the Code of Good Administrative Behaviour existing in the European Union, or those contained in the Code of Good Administration, a production of the Council of Ministers of the Council of Europe. Recently the focus has been placed increasingly more on partnership, on multilevel governance, on much closer cooperation between the European, national and local levels, which triggers a rethinking of local action, and also of administrative-territorial organization of the country.

Finally, the requirements imposed by the ECHR jurisprudence must be considered so that local public administration regulations contain accessible and predictable norms as requested by the European Court of Human Rights.

The jurisprudence of the European Court of Human Rights, relating to the concepts of accessibility and predictability of the law, states that “a norm is predictable only when it is formulated with sufficient precision so as to allow any person who, in need, can call on specialist advice to correct their conduct”, and the Sunday Times case against the United Kingdom, from 1979, decided that “citizens must have sufficient

information on the legal rules applicable in a given case and be able to foresee, to a reasonable extent, the consequences that may arise from a determined act. In short, the law must simultaneously be accessible and predictable". This vision is completed by that contained in the Wingrove Case against Great Britain from 1996, which stipulates that "the internal law must be formulated with sufficient precision in order to enable those concerned, who may use, if necessary, expert advice, to predict, to a reasonable extent, in those circumstances, the consequences which may result from a determined act". Should these requirements be met, norms such as those governing the incompatibility regime of local elected, the lawful termination of their mandate, the validation of the mandate, the operation of local collegiate bodies or the relationships of local authorities with the state ought to be urgently improved to cease the manifestation of misinterpretations or institutional blocks.

Conclusions

The analysis allowed us to identify the main legal and political instruments at European and international level which have represented landmarks for the modernization of the legislation on local public administration. Learning the European requirements in the legislation governing local public administration has led to a reconsideration of the role and behavior of local actors. After 25 years from the revolution of 1989, and almost 8 years after joining the European Union, the local public administration in Romania currently benefits from legislation in line with European standards. However, social changes, the emergence of new problems that require solving, disruptions at economic level, political shifts require permanent settlement of social relations by finding an optimal legislative response. The dynamics of local public life and the foundation role of the European construction of local collectivities, call for the insurance of all constitutional and legal guarantees for local public administration so that local democracy can flourish.

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[6] The Treaty of understanding, cooperation and good neighborly relations between Romania and Hungary was signed by Decree no. 479/1996 and ratified by Law no. 113/1996, published in the Official Gazette of Romania, Part I, issue 250 of 16 October 1996; The Treaty regarding good neighborly relations and cooperation between Romania and Ukraine was signed by Decree no. 215/1997 and ratified by Law no. 129/1997 published in the Official Gazette of Romania, Part I, no. 157 of 16 July 1997.

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[10] C.6/90 and 9/90 - Andrea Francovich and Danila Bonifaci c. Italia; Case Kobler v. Austria, 2004.

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