

THE CONTENT OF THE MANDATE OF LOCAL ELECTED OFFICIALS

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ABSTRACT

Correlative to their rights, local elected officials have obligations. As representatives of the local community, they are duty-bound to participate in the exercise of the functions of the local public administration authorities to which they belong or which they represent.

KEYWORDS: *rights, obligations, local elected officials, content, mandate, entirety, duty*

JEL CLASIFICATIONS: K10, K11, K16

1. INTRODUCTION

According to art. 5, lit. f) of the Administrative Code, local elected officials are: the mayor, the deputy mayor, local councilors, the president of the county council, the vice-presidents of the county council, and county councilors.

It should be noted that the village delegate is also considered a local elected official.

The content of the mandate of local elected officials (Manda Corneliu, 2008, p. 296) represents the entirety of the rights and obligations that belong to the elected officials throughout the duration of their mandate.

Analyzing the specialized literature, Ana Vasile (2000, pp. 74-75) only lists the rights and obligations of local elected officials according to the provisions of the Administrative Code. In contrast, other authors such as Gabriel Manu (2021), Ghencea Flavia Lucia (2021), and Ștefan Elena Emilia (2023) omit the content of the mandate of local elected officials from their works.

Thus, a detailed analysis of the rights and obligations of local elected officials is necessary, according to the relevant legislation, doctrine, and jurisprudence.

The rights and obligations of local elected officials are found in the Administrative Code, specifically Government Emergency Ordinance No. 57/2019, Chapter III, from art. 206 to art. 226. Additionally, provisions can be found in other legislative acts such as: Law No. 176/2010 on integrity in the exercise of public functions and dignities, for amending and supplementing Law No. 144/2007 on the establishment, organization, and operation of the National Integrity Agency, as well as for amending and supplementing other normative acts; Law No. 161/2003 on certain measures to ensure transparency in the exercise of public dignities, public functions, and in the business environment, prevention, and sanctioning of corruption; or Government Ordinance No. 27/2002 regarding the regulation of the activity of solving petitions.

2. RIGHTS OF LOCAL ELECTED OFFICIALS

The Administrative Code, in Articles 206-219, provides the following rights for local elected officials:

- The right to an ID card and a distinctive sign as local elected officials;
- Guarantee of freedom of opinion in the exercise of their mandate for resolving and managing public affairs in the interest of the local community they represent;

- The right to form groups based on the parties or political alliances on whose lists they were elected;
- Suspension of their employment relationship or work contract within a public institution or authority, or within autonomous administrations or companies with full or majority state capital or administrative-territorial units, during the period of exercising the mandate of mayor, deputy mayor, president of the county council, or vice president of the county council;
- Retirement indemnity for the mayor, deputy mayor, president of the county council, and vice president of the county council;
- The right to a retirement indemnity for the mayor, deputy mayor, president of the county council, and vice president of the county council;
- The right of initiative in promoting administrative acts;
- The right to a monthly indemnity. The first to introduce remuneration for exercising various functions, a kind of salary, was Pericles in Ancient Greece (Boboș Gheorghe, 2006, p. 77). This allowed less wealthy individuals to hold certain state functions;
- The right to annual leave, medical leave, unpaid leave, and other types of leave for the presidents and vice presidents of county councils, mayors, and deputy mayors;
- Reimbursement of transportation costs for local elected officials who use their personal car or public transportation to travel from their place of residence to the location where the meetings of the local council, county council, or specialized committees are held;
- The right to training, education, and professional development;
- The right to access any public information of interest;
- The right to associate in political parties and other forms of association, according to the law.

3. OBLIGATIONS OF LOCAL ELECTED OFFICIALS

Correlative to their rights, local elected officials have obligations. As representatives of the local community, they have the duty to participate in the functions of the local public administration authorities to which they belong or which they represent (Manda Corneliu, 2008, p.297).

According to the provisions of Articles 220-226 of the Administrative Code, local elected officials have the following obligations:

- Compliance with the law;
- Participation in the meetings of the local council or county council and specialized committees;
- The duty to participate, during their mandate, in exercising the competencies of the local public administration authorities to which they belong or which they represent, as applicable, with good faith and loyalty to the country and the community that elected them;
- Professional integrity and discretion;
- Honesty and fairness;
- Organizing meetings with citizens, holding audiences, and presenting in the local or county council information regarding the issues raised;
- The obligation to present an annual activity report, which is made public through the care of the general secretary of the administrative-territorial unit/subdivision;
- The obligation to present at the first ordinary meeting of the deliberative authority, but no later than 45 days from the date of the conclusion of an overseas trip, a report regarding the trip undertaken;
- The obligation of the mayor or the president of the county council, through the general secretary of the administrative-territorial unit/subdivision and the specialized apparatus, to provide local or county councilors, upon their request, within no more than 10 working days, the necessary information for fulfilling their mandate in accordance with the law.

The Administrative Code further stipulates in Article 226, paragraphs (2-4), the possibility for local and county councilors to address questions and interpellations to the mayor, deputy mayor, or president of the county council, vice presidents of the county council, as applicable, with the corresponding obligation for them to respond in writing or orally, as applicable, by the next council meeting at the latest.

In our analysis, we will focus only on those rights and obligations that pose significant issues, following the principle "where the law is silent, doctrine and jurisprudence come in" to clarify these matters.

4. RIGHT TO RETIREMENT INDEMNITY FOR MAYOR, DEPUTY MAYOR, PRESIDENT OF THE COUNTY COUNCIL, AND VICE PRESIDENT OF THE COUNTY COUNCIL

According to Article 210 of the Administrative Code, individuals who have held the positions of mayor, deputy mayor, president, or vice president of the county council since 1992 and meet the conditions for standard retirement age, reduced standard retirement age as provided by public pension legislation, or other special laws are entitled, upon the termination of their mandate, to a monthly retirement indemnity.

The retirement indemnity represents the sum of money granted monthly to individuals who have held the positions of mayor, deputy mayor, president, or vice president of the county council.

Mayors, deputy mayors, presidents, and vice presidents of county councils are entitled to the retirement indemnity from the date they are granted retirement pension rights but not earlier than the date of termination of the current mandate.

The amount of the retirement indemnity is granted for up to three mandates, provided that the individuals mentioned in Article 210, paragraph (1) of the aforementioned normative act, have served at least one complete mandate as mayor, deputy mayor, president, or vice president of the county council.

The amount of the retirement indemnity is calculated as the product of the number of months of mandate by 0.40% of the gross monthly indemnity in payment.

If these individuals have served more than three different mandates, they may choose any of these mandates to be considered in determining the retirement indemnity, within the aforementioned limit.

In the case of serving different mandates under the conditions provided in Article 210, paragraph (4) of the Administrative Code, the monthly retirement indemnity will be calculated based on the gross monthly indemnities in payment corresponding to each function.

For different mandates, the calculation of the retirement indemnity will proceed as follows: a) for each type of mandate served, the calculation method provided in Article 210, paragraph (5) of the same normative act will apply; b) the amount of the retirement indemnity to which these individuals are entitled represents the sum of the values obtained by applying the provisions of letter a).

If the person benefiting from the retirement indemnity under the provisions of Article 210, paragraph (1) of the same law, starts serving a new mandate, the indemnity payment is suspended and resumed after the mandate ends, with the amount recalculated by valuing the period of the mandate served, at the request of the interested person, under the conditions provided in Article 210, paragraphs (4) and (5) of the Administrative Code.

The retirement indemnity can be combined with any type of pension established in the public pension system or in another pension system not integrated into the public system.

The retirement indemnity is subject to income tax and health insurance contributions.

The amount of the retirement indemnity is covered from the state budget and is provided for each administrative-territorial unit/subdivision through a distinct annex to the annual law approving the state budget.

The application for the retirement indemnity is submitted to the administrative-territorial unit/subdivision where the applicant served their mandate. The centralized situation for each administrative-territorial unit/subdivision is sent to the county public finance administrations or the regional general directorate of Bucharest, as applicable, which centralize them by county or Bucharest municipality and send them to the Ministry of Public Finance to substantiate the annex to the state budget law for each administrative-territorial unit/subdivision.

The procedure and methodology for applying the provisions of Article 210 of the Administrative Code are approved by Government decision.

It is important to mention the legal provision, specifically Article 210, paragraph (15) of the Administrative Code, which states that the retirement indemnity provided in Article 210, paragraph (1) of the same normative act, does not benefit mayors, deputy mayors, presidents, and vice presidents of county councils who have been definitively convicted of committing a corruption offense in their capacity as mayor, deputy mayor, president, or vice president of county councils.

Unspent amounts at the end of the year are returned to the state budget, under the conditions of the law.

It should be noted that by Emergency Ordinance No. 115/2023, the application deadline of the provisions of Article 210 of Government Emergency Ordinance No. 57/2019 regarding the Administrative Code, with subsequent amendments and completions, has been extended, thus suspending the payment of these indemnities until January 1, 2025.

5. PROTECTION OF LOCAL ELECTED OFFICIALS

According to Article 207, paragraph (4) of the Administrative Code, throughout the duration of their mandate, local elected officials are considered to be exercising public authority and enjoy the protection provided by law, specifically:

- The freedom of opinion in the exercise of the local elected official's mandate for the resolution and management of public affairs in the interest of the local community they represent is guaranteed.
- Local elected officials cannot be held legally responsible for political opinions expressed in the exercise of their mandate.
- The detention, imposition of preventive arrest measures, house arrest, or criminal prosecution of local elected officials, as well as the acts committed that led to these measures, must be communicated to both the public administration authority they belong to and the prefect within no more than 24 hours by the authorities that ordered these measures.

According to the adage *contra non valentem agere non currit praescriptio* – prescription does not run against one who is unable to act – regarding the detention or prosecution of local elected officials, it must be emphasized that protection does not remove responsibility nor delay the moment of criminal prosecution or judicial inquiry, as happens with parliamentarians, because notifying the local public authority is only a formal procedure and does not imply the inviolability of local elected officials (Muraru Ioan, Constantinescu Mihai, 2005, p. 333).

It should be noted that the same protection provided in Article 207, paragraph (4) of the Administrative Code also applies to the family members of the local elected official – spouse and children – if the aggression against them is directly aimed at exerting pressure on the local elected official regarding the exercise of their mandate.

Additionally, the protection of the mandate of local elected officials is also ensured through interest registers, considered legal means by which the law provides a certain legal protection, in the sense of delineating conflicts of interest (Apostolache Mihai, 2012, p. 118). This refers to a situation where a person holding a public office or a public function has a personal patrimonial interest that could influence the objective fulfillment of their duties according to the Constitution and other normative acts, specifically Article 70 of Law No. 161/2003 on certain measures to ensure

transparency in the exercise of public dignities, public functions, and in the business environment, preventing and sanctioning corruption.

We concur with the viewpoint expressed in the specialized literature (Preda Mircea, 2007, p. 389) that the protection of local elected officials cannot exist in cases of insults, slander, defamation, and other such offenses, regardless of the context and form in which they are committed, as they cannot be considered as arising from the "nature of the mandate."

6. ORGANIZATION OF PERIODIC MEETINGS WITH CITIZENS AND HOLDING AUDIENCES BY COUNCILORS, AS WELL AS THE OBLIGATION TO PRESENT AN ANNUAL ACTIVITY REPORT

The law, specifically Article 225, paragraph (1) of the Administrative Code, stipulates that local elected officials are obligated, in the exercise of their mandate, to organize periodic meetings with citizens at least once a quarter, hold audiences, and present to the local council or county council a report on the issues raised during these meetings with citizens.

Doctrine (Podaru Ovidiu, 2004, p. 170) notes that local elected officials, as holders of public power entrusted by the community that elected them, are obligated to respect the Constitution and laws, protect the interests of their respective communities while respecting the national interest, support voters in resolving issues, and care for the prosperity of the community from which they come and to which they have been entrusted with a mandate.

We note that the legislation details these obligations of local elected officials by specifying what it means to organize periodic meetings with citizens once a quarter and the obligation to present the local council with a report on the issues raised at the citizen meetings but does not specify the frequency of audiences, practically leaving this obligation without content.

Consequently, we propose that organized audiences include inviting applicants to commission meetings that address their issues, with a bi-monthly frequency.

Regarding the annual obligation to present an activity report, we agree with the proposal expressed in the specialized literature (Podaru Ovidiu, 2004, p. 115) that this report should first be presented to the council and then made available to the interested public.

Thus, there are three obligations imposed by law on local elected officials: to organize periodic meetings with citizens, hold audiences, and present an annual activity report, the non-fulfillment of which is not legally sanctioned.

But what could be the sanction for failing to fulfill these legal duties considering that in Romania, the imperative mandate is null? Logically, it can only be a political sanction (Rotaru Dragoș, 2003, p. 250) applied by the electorate to the respective political parties, political alliances, electoral alliances, or independent candidates, consisting of not granting votes for obtaining a new mandate.

7. PROFESSIONAL DEVELOPMENT IN THE FIELD OF LOCAL PUBLIC ADMINISTRATION

The status of local elected officials, according to Article 41, paragraph (1) and Article 51, paragraph (1) of Law No. 393/2004, provided both the right and the duty for local elected officials to attend training, education, and professional development courses organized by specialized institutions during their mandate, in accordance with the decision of the local or county council.

In this regard, I initiated Local Council Decision No. 241/31.10.2006 in Turda, approving the participation of local elected officials of the municipality of Turda in training, education, and professional development courses during their mandate. Several local elected officials benefited from this decision during the 2004-2008 mandate, including the incumbent mayor, who, due to his own fault, did not complete his master's studies.

For these reasons, I proposed *de lege ferenda* (Roș Nicolae, 2015, p. 120), considering that these courses are funded from the budgets of administrative-territorial units, to amend Article 41 of

the Status of Local Elected Officials with a provision inspired by Article 51, paragraph (6) of the Status of Civil Servants. According to this provision, if a local elected official who has attended a professional development course fails to complete it due to their own fault, they should be obliged to reimburse the institution or public authority for the costs incurred for the training, as well as the salary received during the training period, calculated according to the law, if these were covered by the authority or public institution, to ensure the same legal treatment as civil servants.

Hereby, I reiterate this proposal, especially since the sanction is provided in the new Administrative Code, specifically Article 458, paragraph (8). Individuals who have attended a training and professional development program but did not complete it due to their own fault are obliged to reimburse the institution or public authority for the costs incurred from its own budget, as well as the salary received during the training period, calculated according to the law, if these were covered by the authority or public institution.

Furthermore, we observe a regression in the applicable legislation, argued by the fact that in the Status of Local Elected Officials, they had both the right and the duty to improve their professional training as is currently the case in Article 458 of the Administrative Code as a right and obligation for civil servants, while in the current provision, specifically Article 217, paragraph (1), elected officials only have the right to training, education, and professional development without a corresponding obligation.

It should be noted that for occupying public leadership positions, in the case of civil servants, the Administrative Code, in Article 465, paragraph (3) stipulates the mandatory condition for candidates to be graduates with a master's degree in public administration, management, or in the specialty of studies necessary for the public position or with an equivalent diploma according to Article 57, paragraph (2) of Law No. 199/2023, except for public leadership positions at the level of local public administration authorities organized at the level of communes and counties.

The obligation to participate in at least one training course in public administration provided by the Status of Local Elected Officials was welcome, as many people elected to local or county leadership positions had no connection with local public administration issues (Apostolache Mihai, 2012, p. 104).

We also consider that as long as the Administrative Code requires individuals aspiring to public leadership positions to complete master's studies, it is even more essential for mayors who lead the commune, city, municipality, or county to be obliged to focus on professional development in the field.

Consequently, professional training should not only be a right but also an obligation for local elected officials.

Furthermore, we view the local council as the best political school for those interested in a career in this field, built on honesty, hard work, and continuous preparation in stages. Thus, we consider the local council as elementary school, the county council as high school, and the Parliament as university.

One cannot reach university (Parliament – the most representative legislative body in the country) directly from kindergarten by skipping stages; it would be like trying to climb multiple steps on a ladder with the risk of breaking a rung because the ladder is not only for ascending but also for descending.

8. ACCESS TO INFORMATION AND TRANSPARENCY OF ACTIVITIES

Access to information for local elected officials is provided in Article 218 of the Administrative Code. According to its provisions, the right of local elected officials to access any public information cannot be restricted.

Central and local public administration authorities, institutions, public services, and private legal entities are obligated to ensure the correct informing of local elected officials, according to their respective competencies, about public affairs and local interest issues.

Doctrine recommends (Preda Mircea, 2007, pp. 171-172) that the request be made in writing by the councilor, clearly specifying the issues they wish to be informed about, so that the information provided by the mayor can be as complete as possible.

Regarding the transparency of activities, according to Article 226 of the Administrative Code: the mayor or the president of the county council is obligated, through the general secretary of the administrative-territorial unit/subdivision and the specialized apparatus, to provide local councilors or county councilors, upon their request, within no more than 10 working days, with the necessary information to fulfill their mandate in accordance with the law.

Local councilors and county councilors can address questions and interpellations to the mayor, deputy mayor, or president of the county council, vice presidents of the county council, as applicable.

The requested response, in accordance with the above provisions, is generally provided immediately or, if not possible, at the next meeting of the local council or county council.

The individual being interpellated has the obligation to respond in writing or, as applicable, orally by the next meeting of the local council or county council at the latest.

We believe that the legal definitions of questions and interpellations should have been retained in the Administrative Code to help local elected officials distinguish between these instruments in exercising their mandate.

Thus, according to Article 60, paragraph (1) of Government Ordinance No. 35/2002 for the approval of the Framework Regulation on the organization and functioning of local councils, a question was defined as a request for information about an unknown fact, while Article 61 of the same normative act defined interpellation as a request for information about a known fact.

9. THE ACTIVITY OF RESOLVING PETITIONS

Citizens have a constitutionally recognized right to address public authorities through petitions. These petitions can only be formulated in the name of the signatories; any other form of address is considered a notification, not a request. Similarly, legally constituted organizations have the right to address petitions exclusively in the name of the collectives they represent (Criste Mircea, 2004, pp. 193-194).

The normative act regulating the manner in which citizens exercise their right to address public authorities and institutions through petitions in their own name or on behalf of the collectives they represent, as well as the manner of resolving these petitions, is Government Ordinance No. 27/2002 regarding the regulation of the activity of resolving petitions.

For the purposes of this ordinance, a petition is understood to be a request, complaint, notification, or proposal formulated in writing or by electronic mail, which a citizen or a legally constituted organization can address to central and local public authorities and institutions, decentralized public services of ministries and other central bodies, national companies and societies, commercial companies of county or local interest, as well as autonomous administrations, hereinafter referred to as public authorities and institutions.

The heads of public authorities and institutions are directly responsible for the proper organization and conduct of the activities of receiving, recording, and resolving petitions addressed to them, as well as for the legality of the solutions and their communication within the legal term.

Misaddressed petitions will be forwarded within 5 days from the date of registration by the public relations department to the public authorities or institutions responsible for resolving the issues raised, and the petitioner will be notified accordingly.

Anonymous petitions or those without the petitioner's identifying information will not be considered and will be archived.

The addressed public authorities and institutions are obligated to communicate to the petitioner, within 30 days from the date of registration of the petition, a response, whether the solution is favorable or unfavorable.

If the issues raised in the petition require a more thorough investigation, the head of the public authority or institution may extend the 30-day term by a maximum of 15 days.

If a petition raises certain issues regarding the activities of a person, it cannot be resolved by the person in question or by a subordinate.

If a petitioner addresses multiple petitions to the same public authority or institution regarding the same issue, they will be consolidated, and the petitioner will receive a single response that addresses all received petitions.

If, after sending the response, a new petition with the same content is received from the same petitioner or from a misaddressed public authority or institution, it will be archived, with a note on the initial number indicating that a response has been given.

The response must be signed by the head of the public authority or institution or by an authorized person, as well as by the head of the department that resolved the petition. The response must obligatorily indicate the legal basis for the adopted solution.

According to Article 14 of Emergency Ordinance No. 27/2002 regarding the regulation of the activity of resolving petitions, Romanian public administration authorities are obligated to periodically, specifically semi-annually, analyze their own activity of resolving petitions, based on the report prepared by the public relations department. This applies to public authorities and institutions, particularly the Local Council or County Council.

10. CONCLUSIONS

1. Analyzing the specialized literature, Ana Vasile (2000, pp. 74-75) merely lists the rights and obligations of local elected officials according to the provisions of the Administrative Code, while other authors such as Gabriel Manu (2021), Ghencea Flavia Lucia (2021), and Ștefan Elena Emilia (2023) omit the content of the mandate of local elected officials from their works. Thus, a detailed analysis of the rights and obligations of local elected officials according to the relevant legislation, doctrine, and jurisprudence is necessary.
2. There are at least three obligations, namely: to organize periodic meetings with citizens, to hold audiences, and to present an annual activity report, which are imposed by law on local elected officials, and the non-fulfillment of which is not legally sanctioned. Consequently, we propose that the organized audiences should include inviting applicants to commission meetings addressing their raised issues, with a bi-monthly frequency.
3. There should be a legal financial sanction for the non-publication of the annual activity report, as there is currently only a political sanction every four years.
4. Regarding the annual obligation to present an activity report, we agree with the proposal expressed in the specialized literature (Podaru Ovidiu, 2004, p. 115) that this report should first be presented to the council and then made available to the interested public.
5. For these reasons, I proposed *de lege ferenda* (Roș Nicolae, 2015, p. 120) that Article 41 of the Status of Local Elected Officials be supplemented with a provision inspired by Article 51, paragraph (6) of the Status of Civil Servants. According to this provision, if a local elected official who has attended a professional development course fails to complete it due to their own fault, they should be obliged to reimburse the institution or public authority for the expenses incurred for the training, as well as the salary received during the training period, calculated according to the law, if these were covered by the authority or public institution. Hereby, I reiterate this proposal, especially since the sanction is provided in the new Administrative Code, specifically Article 458, paragraph (8), where individuals who have attended a training and professional development program but failed to complete it due to their own fault are obliged to reimburse the institution or public authority for the costs incurred from their own budget, as well as the salary received during the training period, calculated according to the law, if these were covered by the authority or public institution.

6. Consequently, professional training should be not only a right but also an obligation for local elected officials.
7. Analyzing the legislative provisions regarding the professional training of local elected officials, we consider the current legislation, specifically the Administrative Code, a regression compared to the provisions of the Status of Local Elected Officials, now repealed, where professional training was provided as both a right and an obligation (see Article 41, paragraph (1) and Article 51, paragraph (1) of Law No. 393/2004 regarding the Status of Local Elected Officials, now repealed).
8. We believe that the legal definitions of questions and interpellations should have been retained in the Administrative Code from the old legislation, specifically Government Ordinance No. 35/2002 for the approval of the Framework Regulation on the organization and functioning of local councils, so that local elected officials can distinguish between these instruments in exercising their mandate.
9. It is noteworthy that the retirement indemnity for mayors, deputy mayors, presidents of county councils, and vice presidents of county councils, although provided in the Administrative Code since 2019, is still not applied because Article 210 of the Administrative Code, with subsequent amendments and completions, is suspended until January 1, 2025, according to Government Emergency Ordinance No. 115/2023.
10. The main activity indicator of a local elected official is the drafting, initiation, and promotion of administrative acts, including monitoring their implementation. This aspect leaves much to be desired for many local elected officials because it requires extensive documentation and a corresponding level of complexity. As a result, many embellish their activity reports with quantitative indicators regarding the number of participations in protocol actions, avoiding the primary task from the job description of a local elected official in a legislative body. This can be observed through a simple reading and qualitative assessment of the activities of those who have been willing to publish their annual activity reports.

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