

# **The relevance of the European regulations regarding the improvement of transparency and integrity in local public administration. Analysis of the implications on the legislation<sup>1</sup>**

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## **Abstract**

*The national legislation in the field of local public administration has steadily improved following the onset of the process of adapting to the European requirements. The increase of public confidence in the institutions of public administration in general, and in those of local public administration in particular, can be ensured solely through the transparency of the decisional act at local level and through a conduct of integrity of the local administration staff and of the local officials. Decisional transparency and integrity in local public administration are concepts that have become concrete in the Romanian administrative system through several national legislative instruments inspired by European regulations. The article analyzes these legislative instruments and proposes an improvement of the legislative solutions contained, in order to increase transparency and integrity in local public administration and to avoid blockages in their implementation in administrative practice.*

**Keywords:** *transparency, integrity, legislation, European regulations, local public administration.*

**JEL Classification:** K23

## **1. Preamble**

In the reform process of public administration in Romania, the improvement of transparency and integrity in the administrative activity has represented a permanent objective of political decision makers. The programs of various governments that succeeded at ruling this country have identified the need to find legislative solutions which lead to an improved transparency and integrity in public administration. As an essential component of the public administration system in Romania, the local public administration was also concerned with this process of legislative reform; the normative acts adopted have comprised norms applying to the entire system of public administration, hence to local public administration as well. It is worth noting that, in the twenty-five years of democratic regime, the reform of public administration has gone through a period of confusion and uncertainty<sup>3</sup>, a period of acceleration<sup>4</sup>, driven by the need to

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<sup>3</sup> The period 1990-2000.

<sup>4</sup> The period 2000-2007.

harmonize the legislation and administrative practice with the European requirements, and a period of slowdown<sup>5</sup>. Basically, during the pre-accession period, our country has significantly improved the legislation, adopting the most important regulations directed towards increasing transparency and integrity in public administration.

Thus, during this period, there have been adopted: Law no. 544/2001 on the free access to information of public interest; Law no. 215/2001 on local public administration which includes norms on the transparency and integrity of local elected officials and of the administrative activity; Law no. 182/2002 on the protection of classified information; Law no. 52/2003 on the decisional transparency in public administration; Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignities, public office and in the business environment, the prevention and punishment of corruption; Government Ordinance no. 27/2002 on regulating the resolution of petitions; Law no. 393/2004 on the status of local elected officials; Law no. 7/2004 on the Code of Conduct for civil servants; Law no. 571/2004 regarding the protection of personnel from public authorities, institutions and other units that signal violations of the law; Law no. 477/2004 on the Code of Conduct for contractual staff from public authorities and institutions. In the post-accession period, two directives were meant to strengthen the regulatory framework concerning transparency and integrity, established during the pre-accession, namely Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, and Law no. 176/2010 on the integrity in the exercise of public office and dignities, amending and supplementing Law no. 144/2007 regarding the establishment, organization and functioning of the National Integrity Agency, as well as for amending and supplementing other normative acts. As stated in the literature, during the post-accession period, the normative production in the matter analyzed has decreased considerably and the legislative changes failed “to confer a unitary character to the reforms initiated in the previous period”<sup>6</sup>.

As seen, all the normative acts mentioned aimed to increase citizens' confidence in public administration, organizational ethics, public communication facility, citizens' participation in the decisional process, integrity in public life and diminution of corruption. It has been rightly argued in the literature<sup>7</sup> that “the European Union legislation represents a promoter for the modernization of national legislation, the role of the European Union being to act as a means of inspiration and confidence, working as an accelerating factor for the changes in the Member States”. To this are added the regulations from the Council of Europe, which in turn have represented a landmark for the modernization of national legislation.

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<sup>5</sup> The period 2007-present.

<sup>6</sup> Irina Marina Lazăr, *Despre transparența administrației publice din România la împlinirea a opt ani de la adoptarea Legii nr. 52/2003*, „Romanian Pandects”, issue 4/2011, p. 107

<sup>7</sup> Mihaela Victorița Căraușan. *Structuri, mecanisme și instituții administrative în Uniunea Europeană*, Tritonic Publishing, Bucharest, 2012, p. 217

## 2. The national legal framework on transparency and integrity and the influence of European regulations

The process of transformation and modernization of national legislation regarding local public administration has been particularly generated by the need to assume the European standards so that national legislation become compatible with the norms comprised in different European regulations. An important role in this process was played by the country reports of the European Commission, in which the European officials have pointed annually the progresses of our country on its path towards European integration, together with the difficulties faced by certain sectors of the Romanian society. After joining the European Union, the findings resulting from the monitoring work have had, and still have, the merit of maintaining the pace of reforms and determining national and local public decision makers to respect the obligations under the accession treaty and to adopt decisions that do not affect the rule of law and the Romanian democratic regime.

Transparency and integrity are the dimensions of a good administration, a concept that has developed and imposed at European level as the product of two distinct but converging<sup>8</sup> legal orders, that of the European Union<sup>9</sup> and that of the Council of Europe.

The laws adopted especially in the pre-accession period created the legislative framework for transparency and integrity in public administration. Through Law no. 544/2001 on the free access to information of public interest<sup>10</sup> and, subsequently, by adopting the Government Decision no. 123/2002<sup>11</sup> laying down the detailed methodological norms for the application of this law, enshrined the free and unrestricted access to any kind of public information, a first step towards opening up the public administration. The communication of the administration with the exterior represents an important requirement for its modernization, being considered an essential component of the duties or administrative action<sup>12</sup>. The manner in which the access to public information is done is also a criterion for assessing the state of democracy in a country. The legislative framework has been strengthened by the adoption of the Government Ordinance no. 27/2002 regulating the resolution of petitions and Law no. 52/2003 on decisional transparency in public administration. These regulations, adopted in

<sup>8</sup> Cosmin Radu Vlaicu, *Birocrație și procedură în administrația publică*, Universul Juridic Publishing, Bucharest, 2012, p. 422

<sup>9</sup> With regard to transparency and integrity in the public institutions of the European Union see Cătălin-Silviu Săraru, *Considerații cu privire la principiile spațiului administrativ european și la necesitatea includerii lor în proiectul Codului administrativ român*, „Caietul Științific ISAR” no. 7/2005, pp. 30-36; Cătălin-Silviu Săraru in Ioan Alexandru, Cătălin-Silviu Săraru ș.a., *Drept administrativ european*, Lumina Lex Publishing House, Bucharest, 2005, pp. 165-172.

<sup>10</sup> Published in the Official Gazette of Romania, Part I, issue 663 of 23 October 2001.

<sup>11</sup> Published in the Official Gazette of Romania, Part I, issue 167 of 8 March 2002.

<sup>12</sup> Ana Elena Ranta, *Accesul la informațiile de interes public - obligație legală în sarcina autorităților administrației publice. Studiu de caz privind gradul de accesibilitate al informațiilor de interes public comunicate din oficiu*, „Transylvanian Journal of Administrative Sciences”, 2(35)2014, p. 99.

line with the European requirements, facilitate the communication between the public administration and the natural or legal persons, while providing the possibility of the latter to get involved in the decision-making process. As emphasized in the literature, the essence of democracy is the participation of citizens in public life and implies concern for the problems of the community, responsibility, interest in the major social events, political and civic participation<sup>13</sup>. Equally true is the fact that “the harmony and cohesion of a society emerge from the attachment of its citizens to a common goal, from their participation in finding and setting these objectives”<sup>14</sup>.

On the topic of ethics and integrity in public administration, the legislator passed a series of normative acts, some inspired by recommendations of the Council of Europe, other by regulations from the European Union legal order. With respect to the regulations concerning integrity in the public sector, the Constitutional Court ruled<sup>15</sup> that they represent “the response to a real need of the Romanian society and a basic component of Romania’s dialogue with its European partners within the process of assessing the performance of obligations as a member state of the European Union”. Among these regulations we mention Law no. 7/2004 regarding the Code of Conduct for civil servants<sup>16</sup>, a normative act that followed the line drawn by Recommendation R (2000) 10 on the Code of Conduct for public agents<sup>17</sup> and Law no. 477 on the Code of Conduct for the contractual staff from public authorities and institutions. The point of reference for this latter normative act was the code of conduct for civil servants, an important impetus<sup>18</sup> in the development and adoption of ethical norms for the contractual staff within central and local public administration.

The two normative acts aimed, among other things, at the elimination of corruption in public administration. In order to materialize this important objective new regulations have been imagined and adopted to diversify the tools and methods to combat institutional corruption and increase integrity in public administration. Law no. 571/2004 on the protection of the personnel of public authorities, public institutions and other units that signal violations of the law<sup>19</sup>, which enshrined the right and, at the same time, the obligation of civil servants and contractual staff to refer any violations of which they are aware or in which they are directly or indirectly involved. This normative act materializes some of the

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<sup>13</sup> Mihai Cristian Apostolache, *Primarul în România și Uniunea Europeană*, Universul Juridic Publishing, Bucharest, 2012, p. 358

<sup>14</sup> Mihaela Victorița Cărăușan, *Structuri, mecanisme și instituții administrative în Uniunea Europeană*, Tritonic Publishing, Bucharest, 2012, p. 232.

<sup>15</sup> Decision of the Constitutional Court of Romania no. 418/2014, Published in the Official Gazette of Romania, Part I, issue 563 of 30 April 2014

<sup>16</sup> Published in the Official Gazette of Romania, Part I, issue 157 of 23 February 2004, republished in the Official Gazette issue 525 of 2 August 2007

<sup>17</sup> Adopted by the Committee of Ministers on 11 May 2000, at the 106<sup>th</sup> Reunion of the Ministers’ Deputies, available at <http://www.coe.int>

<sup>18</sup> Mihai Cristian Apostolache, Mihaela Adina Apostolache, *Deontologia funcționarului public*, University Publishing, Bucharest, 2014, pp. 138-139

<sup>19</sup> Published in the Official Gazette of Romania, Part I, issue 1214 of 17 December 2004.

measures set out in the United Nations Convention against Corruption, an international document ratified by Romania through Law no. 365/2004<sup>20</sup>. Another normative act adopted in the pre-accession period, more presently felt in the post-accession period, and which aimed at increasing transparency and integrity in public administration is Law no. 161/2003 regarding certain measures to ensure transparency in the exercise of public dignities, public office and the business environment, to prevent and sanction corruption. This normative act regulates the incompatibilities and conflicts of interest including for local elected officials and it is supplemented by Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency and Law no. 176/2010 on integrity in the exercise of public office and dignities, amending and supplementing Law no. 144/2007 regarding the establishment, organization and functioning of the National Integrity Agency, amending and supplementing other normative acts. Government Emergency Ordinance no. 5/2013 has to be added to these regulations, amending and supplementing Law no. 144/2007<sup>21</sup> approved by Law no. 132/2013.

In the literature<sup>22</sup> it was stated that incompatibilities are meant to defend public authorities and institutions from the suspicion of dishonesty and the risk-taking decisions lacking impartiality, objectivity or violating the principle of an equal and non-discriminative treatment. The regime of incompatibilities of local elected officials was originally covered by Law no. 215/2001 on local public administration, and, subsequently, the respective norms were assumed and developed in Law no. 161/2003. As for the conflict of interest, the Constitutional Court held<sup>23</sup> that the purpose of settling the conflict of interest by Law no. 161/2003 is that of eliminating subjectivity and the particular or group interest at the level of local, county or national decision-making forums. Compared to incompatibility, the conflict of interest has received a legal definition from the legislator; conflict of interest, within the meaning of Law no. 161/2003, represents the situation when the person exercising a public office or a public dignity has a personal interest of patrimonial nature that could influence the objective fulfilment of its duties under the Constitution and other laws.

Another aspect emphasized in the literature<sup>24</sup> is that of the necessity of correlating norms amongst the different normative acts governing the matter of incompatibilities of local elected officials, the elimination of conflicting rules, and

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<sup>20</sup> Published in the Official Gazette of Romania, Part I, issue 903 of 5 October 2004

<sup>21</sup> Published in the Official Gazette of Romania, Part I, issue 72 of 4 February 2013

<sup>22</sup> Mihaela Adina Apostolache, Mihai Cristian Apostolache, *Unele observații și propuneri în legătură cu încetarea de drept a mandatului primarului intervenită ca urmare a apariției unei stări de incompatibilitate*, „Transylvanian Journal of Administrative Sciences”, issue 1(32)/2013, p. 5

<sup>23</sup> Decision of the Constitutional Court of Romania no. 418 of 3 July 2014, Published in the Official Gazette of Romania, Part I, issue 563 of 30 July 2014

<sup>24</sup> Mihai Cristian Apostolache, *Unele aspecte privitoare la momentul apariției stării de incompatibilitate a primarului și calculul termenului prevăzut de Legea nr. 161/2003*, „Judicial Courier”, issue 4/2014, p. 215; Mihai Cristian Apostolache, *Examen critic privind starea de incompatibilitate dintre calitatea de primar și cea de membru în consiliul de administrație al unei unități de învățământ preuniversitar*, „Journal of Public Law”, issue 2/2013, p. 85

also the clear and precise regulation of incompatibilities, in order to avoid subjective interpretations or the limitation of certain rights. The diversification of the normative framework regulating the incompatibilities of local elected officials allowed to cover a high number of cases from administrative practice, but also opened the way for a double regulation, largely contradictory<sup>25</sup>. Such a situation is encountered when finding an incompatibility of the mayor, the legislator establishing two different procedures of Law no. 161/2003, respectively Law no. 176/2010.

As shown in the literature<sup>26</sup>, the existence of two different, contradictory and inaccurate procedures to find the incompatibility state violates the principles of the European Court of Human Rights, especially the principle of unity of regulation. The two procedures should thus merge and there should be a clear regulation of the moment when the incompatibility intervenes, of the body finding the incompatibility, of the term when the local elected may renounce without being penalized for the office or quality that determines the incompatibility, and the applicable sanction when the local elected violates the incompatibility regime.

Regarding the moment the incompatibility intervenes, we appreciate that the incompatibility of the mayor should intervene starting with the moment of the oath and not with the moment the mayor election is validated, as it is currently regulated, since the mayor enters full exercise of his term with the moment of the oath.

Beyond these regulatory issues, which will hopefully be resolved expeditiously, we can say without fear of being mistaken, that Romania has built a solid legal foundation concerning transparency and integrity in local public administration. This foundation must, however, be defended from the temptation of political decision makers to fracture it through the initiation of legislative proposals that seek to diminish the role of the authority empowered to declare incompatibilities and conflicts of interest, to bring out certain activities from the scope of incompatibilities or to eliminate certain legislative instruments that encourage citizens' participation in public decision and the exercise of social control. The access of citizens to public information and their participation in administrative decision-making contributes, as appreciated by an author<sup>27</sup>, to "a radical change in the collective mentality, generating, on the one hand, an increase in the transparency and openness of public administration towards citizens and social services, and on the other hand, forming a coherent civic culture, based on a better understanding of citizens' rights, aiming at their participation in public affairs, to a general benefit".

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<sup>25</sup> Mihaela Adina Apostolache, Mihai Cristian Apostolache, *Unele observații și propuneri în legătură cu încetarea de drept a mandatului primarului intervenită ca urmare a apariției unei stări de incompatibilitate*, „Transylvanian Journal of Administrative Sciences”, issue 1(32)/2013, p. 8

<sup>26</sup> *Idem*, p. 14

<sup>27</sup> Cosmin Radu Vlaicu, *Birocrație și procedură în administrația publică*, Universul Juridic Publishing, Bucharest, 2012, p. 94

We appreciate that on the subject of the integrity of local elected officials it is appropriate to develop a code of conduct according to the model of the code of conduct for civil servants or contractual staff, and also inspired by the European Code of Conduct on the political integrity of local and regional elected officials<sup>28</sup>. Moreover, such an initiative was present on the agenda of a nongovernmental organization<sup>29</sup> that conducted the Project “Code of Conduct for local officials - an instrument against corruption” which has not resulted in regulatory action. Also, in 2001 a legislative initiative was submitted to the Parliament that sought to assume the principles and rules from the European code in the national legislation but this initiative did not result in a normative act. It is noted, however, that a number of rules contained in this European Code of Conduct specific to local elected officials were included in Law no. 393/2004 regarding the status of local elected officials and in Law no. 67/2004 regarding the election of local public administration authorities.

The rules and principles contained in the European Code of Conduct concerning the political integrity of local and regional representatives were appreciated by European citizens and were the subject of a proposal for a directive applicable to European Union member states. This results from an information<sup>30</sup> of the Committee on Petitions of the European Parliament, which states that this internal structure of the European Parliament was notified with a petition by an Italian citizen, who asked the European institutions to adopt through a Directive the content of the Recommendation 60(1999)1 of the Congress of Local and Regional Authorities of the Council of Europe, and, thus, to confer this document a legally binding force within the European Union. In response to the request made by the European Parliament on this issue, the European Commission correctly states that the European institutions are not empowered to adopt regulations on matters of the political integrity of elected officials, this attribute belonging to each Member State. However, the European executive acknowledges that the integrity of local and regional elected representatives is a major issue within the general anti-corruption policies.

### 3. Conclusions

The European regulations contained in the two legal systems, the European Union and the Council of Europe, have represented important stimuli for the modernization of national legislation on local public administration. Equally important have been the country reports drawn up by the European Commission before the accession, the monitoring reports which highlight the progress made by

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<sup>28</sup> Approved by Recommendation 60(1999)1 of the Congress of Local and Regional Authorities of the Council of Europe.

<sup>29</sup> Association ALMA-RO supported by the Association of Municipalities of Romania.

<sup>30</sup> The European Parliament, The Commission for Petitions, Information towards the members dated 30.05.2012 regarding petition no. 1158/2011 addressed by an Italian citizen. [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/peti/cm/903/903865/903865ro.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/cm/903/903865/903865ro.pdf), accessed on 05 May 2015

Romania, and the problems which still await resolution. The principle of transparency and that of integrity are regulated both in the primary legislation, as well as in that derived from the European Union. Furthermore, many European documents from the bodies of the Council of Europe promote the idea of an administration opened towards the external environment and insist on an improved integrity in the public sector.

In terms of the legal framework, local public administration benefits from all the legal instruments necessary to ensure transparency and integrity in the administrative activity. Even if certain improvements highlighted in our analysis are still needed, the regulations regarding transparency and integrity are compatible with the European requirements in the field.

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