

THE RESPONSIBILITY OF THE LOCAL CHOSEN - BETWEEN THEORY AND PRACTICE

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Abstract

Although, in practice, disciplinary offenses are quite common, in particular, the absence of counselors from meetings, however, their sanctioning, including by non-payment of sitting allowance, occurs very rarely. Moreover, although there are disciplinary sanctions applicable to local councilors if they leave the local council meeting without reason, this phenomenon is quite common in the activity of local councils and prevents timely and efficient decision-making. In fact, the legislation in force only provides for the rights of the president during the meeting of the local council, namely: to call to order; to withdraw the word; to order the elimination of the councilors from the hall, which prevents the development of the works. Compared to the councilors who in the exercise of the mandate committed deviations from the provisions of the legislation or of the regulation, although the law provides sanctions, these, for political reasons, we believe, do not apply.

Keywords: *locally elected, meeting, president, mayor, responsibility.*

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According to article 231 of the Administrative Code, the local elected officials are responsible, as the case may be, administratively, civilly or criminally for the deeds committed in the exercise of their attributions, in accordance with the law. Responsibility of local councilors and county councilors.

The local councilors, respectively the county councilors are responsible in their own name, for the activity carried out in the exercise of the mandate, as well as in solidarity, for the activity of the council of which they are part and for the decisions they voted.

The minutes of the meeting of the local council, respectively of the county council shall record the result of the vote, and, at the request of the local councilor, respectively of the county councilor, its vote shall be expressly mentioned.

Disciplinary sanctions applicable to local councilors and county councilors

For the violation by the local councilors, respectively by the county councilors of the provisions of this code, of the legal provisions regarding the conflict of interests and of the provisions of the organization and functioning regulation of the local council or of the county council, as the case may be, the local council or county council may apply the following disciplinary sanctions:

- a) the warning;
- b) the call to order;
- c) withdrawal of the word;
- d) removal from the meeting room;
- e) temporary exclusion from the works of the council and of the specialized commission;
- f) reduction of the monthly allowance by 10% for a maximum of 6 months;
- g) withdrawal of the monthly allowance for one or two months.

The sanctions that are applied by the chairman of the meeting are: warning, summons, withdrawal of the word, removal from the meeting room, and the others are applied by the local council, respectively by the county council, by decision.

All sanctions except for the reduction of the monthly allowance by 10% for a maximum of 6 months and the sanction of withdrawal of the monthly allowance for one or two months are also applicable to the deputy mayors and vice-presidents of the county councils, as the case may be.

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In order to apply the sanction of temporary exclusion from the work of the council and the specialized commission, the case is sent to the specialized commission that has in its object of activity also the legal aspects, this presenting a report .

Regarding the sanction of the warning, this is the easiest of the sanctions that can be applied to local elected officials and, assuming that the act committed has reached a low degree of social danger.

Thus, at the first deviation, the chairman of the meeting draws the attention of the local councilor, respectively of the guilty county councilor and invites him to respect the regulation; therefore the warning is verbal and is inserted only in the content of the minutes of the hearing in which it is applied, even if the law does not explicitly mention this aspect.

The summons procedure presupposes that the local councilors, respectively the county councilors who disregard the warning and the invitation of the chairman of the meeting and continue to deviate from the regulation, as well as those who seriously violate, even for the first time, the provisions of the regulation are called to order . The summons shall also be entered in the minutes of the meeting.

Before being called to order, the local councilor, respectively the county councilor is invited by the chairman of the meeting to withdraw or explain the word or expressions that generated the incident and that would attract the application of the sanction.

If the expression used has been withdrawn or if the explanations given are assessed by the chairman as satisfactory, the sanction shall no longer apply.

Withdrawal of the floor and removal from the courtroom is the sanction that implies that, if, after the call to order, a local councilor or county councilor, as the case may be, continues to deviate from the regulations, the chairman of the meeting will take the floor during the council meeting. In the event that a councilor persists to deviate from the rules, the chairman of the meeting will remove him from the room. Elimination from the room is equivalent to an unjustified absence from the meeting.

The sanction of temporary exclusion from the works of the council and of the specialized commission presupposes that, in case of serious, repeated violations, or of particularly serious deviations, the local council, respectively the county council can apply the sanction of temporary exclusion of the local councilor, respectively of the county councilor from the works of the local council or of the county council, as the case may be, and of the specialized commissions.

The gravity of the deviation is established by the specialized commission which has in its object of activity legal aspects, within 10 days from the notification.

The temporary exclusion from the works of the local council, respectively of the county council and of the specialized commissions cannot exceed two consecutive meetings.

The exclusion from the works of the local council, respectively of the county council and of the specialized commissions has as a consequence the non-granting of the monthly allowance.

In case of opposition, the prohibition of participation in the meetings is executed with the help of the personnel that ensures the local public order.

The application of the sanctions regarding the temporary exclusion from the works of the council and of the specialized commission and the diminution of the monthly allowance by 10% for maximum 6 months is carried out by decision adopted by the local council, respectively by the county council with absolute majority. During the application of these sanctions, the local or county councilors in question will not be counted in the quorum for the meeting.

In order to maintain order in the meetings of the specialized commissions, their chairmen have the same rights as the chairman of the meeting, in the sense that they can apply the sanctions applied by the chairman of the meeting.

All the sanctions listed above can be applied accordingly to the vice-mayors, presidents and vice-presidents of the county councils, for the violations committed in their capacity of local councilor, respectively of county councilor.

However, for serious and / or repeated violations, committed in the exercise of the mandate of vice-mayor or vice-president of the county council, the following sanctions may be applied to the persons concerned:

- a) reprimand;
- b) warning;
- c) reduction of the allowance by 5-10% for 1-3 months;
- d) dismissal.

The first three sanctions are applied, by decision of the local council, respectively of the county council, to the motivated proposal of the mayor, respectively of the president of the county council. The reasons justifying the sanctioning proposal shall be notified to the local councilors or to the county councilors, as the case may be, at least 5 days before the meeting.

In this case, the decision is adopted by secret ballot by a qualified majority of two thirds of the number of local councilors or county councilors in office, as the case may be.

According to art. 152 paragraph (5) of the Administrative Code, the dismissal of the deputy mayor may be made by the local council, by decision adopted by secret ballot, by a two-thirds majority of the councilors in office, at the duly motivated proposal of the mayor or a one third of the number of local councilors in office. The dismissal of the deputy mayor cannot be done in the last 6 months of the mandate of the local council.

The local councilor who is running for the position of deputy mayor, respectively the deputy mayor in whose position the proposed change is proposed, participates and votes in the deliberation and adoption of the decisions regarding the election or dismissal of the deputy mayor.

According to art. 188 paragraphs (4) and (5) of the Administrative Code, the dismissal of the vice-presidents of the county council may be made by the county council, by secret ballot, by a two-thirds majority of the number of councilors in office, at the duly motivated proposal of at least one third of their number. The dismissal of the vice-presidents of the county council cannot be done in the last 6 months of the mandate of the county council.

The county councilor who is running for the position of vice-president of the county council, respectively the vice-president of the county council whose dismissal is proposed, participates and votes in the deliberation and adoption of the decisions regarding the election or dismissal of the vice-president of the county council.

The application of these sanctions has no effect on the mandate of local or county councilor, as the case may be, of the deputy mayor or of the vice-president of the county council.

The mayor, the president of the county council, respectively the chairman of the meeting of the local council, as the case may be, by signing, invests with authority formula the execution of the administrative acts issued or adopted in the exercise of his attributions according to the law.

The assessment of the necessity and the opportunity to adopt and issue administrative acts belongs exclusively to the deliberative and executive authorities, respectively. The preparation of reports or other substantiation documents provided by law, countersigning or endorsement for legality and signing of substantiation documents commits the administrative, civil or criminal liability, as appropriate, of the signatories, in case of violation of the law, in relation to specific responsibilities.

The acts of the local public administration authorities engage, in accordance with the law, the administrative, civil or criminal liability, as the case may be, of the civil servants and the contractual staff from the specialized apparatus of the mayor, respectively of the county council which, in violation of legal provisions, substantiates technically and legally their issuance or adoption or countersign or approve, as the case may be, for legality these acts.

In case of which by an administrative act of the local public administration authorities issued or adopted without being substantiated, countersigned or endorsed from a technical point of view or of legality, harmful consequences have occurred, the legal responsibility of the executive authority or the deliberative authority is engaged, as the case may be. .

The law also establishes an exception; thus, according to art. 490 paragraph (3) of the Code, the civil servant or the contractual staff has the right to refuse the signing, respectively the countersigning or the endorsement of the acts and documents given by law in its competence, if it considers them illegal.

The refusal to sign, respectively to countersign or endorse the acts and documents is made in writing and motivated within 5 working days from the date of receipt of the documents, except for the situations in which other normative acts provide special terms, and register in a special register intended for this purpose.

Civil servants who refuse to sign, respectively to countersign or approve or who object to the legality of acts and documents, without indicating legal grounds, in writing, in compliance with the term of 5 working days, are liable under the law.

These legal provisions also apply in the case of other administrative acts or assimilated to them under the conditions of the issued law, respectively adopted by the local public administration authorities.

According to art. 241 paragraph (1), constitute contraventions, if they are not committed in such conditions as to be considered, according to the criminal law, offenses:

- a) non-implementation, in bad faith, of the decisions of the local council by the mayor;
- b) the non-implementation, in bad faith, of the decisions of the county council by the president of the county council;
- c) the non-presentation, within the term provided by the legislation regulating the local public finances, of the draft budget of the administrative-territorial unit by the mayor, respectively the president of the county council, through their fault;
- d) the non-presentation by the local elected officials of the reports provided by law, due to their fault;
- e) failure to take the necessary measures, established by law, by the mayor or the president of the county council, in their capacity as representatives of the state in the administrative-territorial units;
- f) the non-transmission by the general secretary of the administrative-territorial unit within 30 days to the chamber of notaries public of the notification for the opening of the succession procedure.

These contraventions are sanctioned with a fine from 1,000 lei to 5,000 lei, and the finding of contraventions, the establishment of remedial measures, the pursuit of remedial measures and the application of fines are made by the prefect, in his capacity as public authority, representative of the Government , according to the law.

At the same time, the administrative-disciplinary responsibility of the local councilors, mayors, deputy mayors, presidents and vice-presidents of county councils is provided in the legislation and in the Regulation of functioning of the local council.

Thus, in Section 3 of the Regulation on the organization and functioning of the local council, the same sanctions are established, as well as the procedure for their application.

Thus, the violation by the councilors of the provisions of the Regulation of Organization and functioning of the council, attracts the application of the following sanctions:

- warning;
- call to order;
- withdrawal of the word;
- elimination from the meeting room;

-temporary exclusion from the works of the council and of the specialized commission;

- withdrawal of the meeting allowance for 1-2 sessions.

The first four sanctions are applied by the chairman of the meeting during the meeting in which the deed was ascertained, and the other two are applied by the local council by decision. For the application of the sanction the temporary exclusion from the works of the council and of the specialized commission, the case will be sent to the specialized commission that has in object of activity and the legal aspects, these presenting a report drawn up on the basis of the researches . If it is the first offense, the chairman of the meeting draws the attention of the guilty counselor and invites him to comply with the rules.

Advisers who disregard the President's warning and invitation and continue to deviate from the rules, as well as those who seriously violate, even for the first time, the provisions of the rules, will be called to order. The summons shall be entered in the minutes of the meeting. Before being called to order, the counselor is called by the president to withdraw or explain the word or expressions that generated the incident and that would withdraw the application of the sanction.

If the expression used has been withdrawn or if the explanations given are assessed by the President as satisfactory, the sanction shall no longer apply. If, after the call to order, a councilor continues to deviate from the regulations, the president will withdraw his word, and if he persists, he will remove him from the room. Elimination from the room is equivalent to the unmotivated absence from the meeting. In case of serious, repeatedly committed violations, or of particularly serious violations, the sanction of temporary exclusion from the works of the council and of the specialized commissions may be applied to the council. The gravity of the violation will be established by the specialized commission which has in its object of activity legal aspects within maximum 10 days from the notification.

The temporary exclusion from the works of the council and of the specialized commissions cannot exceed two consecutive meetings. The exclusion from the works of the council and of the specialized commissions, has as a consequence the non-granting of the sitting allowance during the respective period.

In case of opposition, the prohibition to participate in the meetings is executed with the help of the public force made available to the president.

A form of termination of the local elected office before the expiration of the normal term of office is found in practice in the event that it is registered in a party other than the one for which it ran and was voted.

If the normative regulation is updated by the entry into force of the Administrative Code, regarding its application it is not found in the administrative practice almost at all.

Thus, these sanctions, although coherently regulated and pertinently elaborated, are not applied in the activity of the local elected officials only in the hypothesis in which they conflict with interests; for the other deeds incriminated by law, the sanctions are not found in practice, except in a completely isolated manner.

The literature mentions that local elected officials, as representatives of power, should be established and applied clear measures of responsibility for non-execution or incorrect execution of competencies. Of course, they can be held legally liable only according to concrete legal acts and / or based on a final court decision to prove the guilt of the local elected official in committing illegal acts (SaitarII. N., 2018).

Although, in practice, disciplinary offenses are quite common, in particular, the absence of counselors from meetings, however, their sanctioning, including by non-payment of sitting allowance, occurs very rarely.

Moreover, although disciplinary sanctions are provided for local councilors if they leave the local council meeting without reason, this phenomenon that is quite common in the

activity of local councils and prevents decision-making on time and efficiently, in practice it is not sanctioned. In fact, the legislation in force only provides for the rights of the president during the meeting of the local council, namely: to call to order; to withdraw the word; to order the elimination of the councilors from the hall, which prevents the development of the works. Compared to the councilors who in the exercise of the mandate committed deviations from the provisions of the legislation or the regulation, although the law provides sanctions, they, for political reasons, we believe, do not apply (SaitarI. N., 2018).

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