

REGULATIONS ON THE LOCAL LEVEL ON THE MINORITIES' RIGHTS

-Case study on the rights of Romani minority-

Professor **Lucretia Dogaru**, PhD. *

Antonia Diana Dogaru

Abstract

At present, more and more problems involving human rights' protection in the case of Roma minority have occurred, mainly related to racial discrimination, based on the ethnic considerations, as well as social and economic problems.

As regards the situation of Roma's in Romania, this paper approaches several aspects. Thus, examples are given for almost stereotypical causes involving inter-ethnic incidents, mainly caused by rising tensions on the local level, tensions that could have been decreased if certain measures on the local public administration level had been implemented.

Keywords: *human rights, racial discrimination, roma minority in Romania*

Jel classification: *K00*

*Professor Ph.D, "Petru Maior" University of Tîrgu Mureş, Faculty of Economics, Law and Administrative Sciences, Romania.

**"Babeş-Bolyai" University of Cluj Napoca, Faculty of Law, Romania

1. Legal framework

Before debating the Decision no.107/2008¹ of Tîrgu Mureş Municipal Council, we consider that it is important to present the legal framework based on which the mentioned decision was adopted.

According to art. 121, para.1 of the Constitution of Romania, revised and republished in 2003, the “public administration authorities, by means of which local autonomy in rural and urban areas is assured, are the local councils and the mayors that are elected according to the law.”

The local council is a local public administration body; the members of the council are elected by universal vote, which is also equal, direct and independently expressed, according to Law no. 67/2004 on the election of local public administration, republished and amended.²

The total number of the local council’s members is established by the Prefect’s order and is related to the number of the inhabitants of the territorial administrative unit as indicated by the Statistics National Commission on January 1st, the respective year, or, if required on July 1st in the year that precedes elections.³ Thus, according to art. 29, paragraph 1 of Law no. 215/2001 regarding local public administration,⁴ 23 local councilors are allotted for the cities with 200.001 up to 300.000 inhabitants- a category that Tg. Mures is part of. By means of the law that amended and completed the public administration law, the number of local councilors has been significantly reduced. For instance, within Bucharest Local Council the number of councilors has been drastically reduced from 55 to 31, a number still valid at present.⁵

The organization and the functioning of local public administration is governed by the principles of local autonomy and decentralization of public services.⁶ Local autonomy means “the right and the capacity of local public administration authorities

¹ Available on <http://www.tirgumures.ro/hot/2008/107.pdf>

² Republished in the Official Gazette, Part I, No. 333/17 May 2007, last modified by the Government Emergency Ordinance no. 32/ 2008, published in the Official Gazette, Part I, no. 217/ 21 March 2008

³ See **Rodica Narcisa Petrescu**, *Administrative Law, Revised and Completed*, ed. Cordial Lex, Cluj Napoca 2001, pg.114

⁴ Republished in M. Of., Part I, no. 123/ 20 Febr. 2007

⁵ **Virginia Vedinaş, Daniela Bakîrci**, *The Main Amendments Made by Law no.286/2006 for modifying and completing the law of local public administration no.215/2001*, Revista Dreptul, Series III, no.11/2006, Universul Juridic Printing Press.

⁶ Art. 120 The Constitution of Romania, republished in 2003

to solve and manage, in the name and for the benefit of local communities that they represent, the public affairs according to the law.”⁷

The meeting for forming the local council is held within 25 days from the date of elections. At this meeting, the prefect or a representative of the prefect and the mayor can participate, even if the validation procedure hasn't been made yet. The meeting can be legally constituted if the majority of the elected councilors take part.⁸ Mures Local Council was constituted through the Decision of 18 June 2008.⁹

2. The procedure for passing the Decisions of the Local Council

The decisions of the Local Councils are by excellence one-sided and enforceable administrative acts.¹⁰ The decisions of the local councils include juridical rules by means of which local affairs are managed, thus manifesting their authority in rural and urban areas. The basic law-making autonomy, as well as the decision-making character of the activity performed in this law-pertaining way are evidenced by passing such decisions, the local councils solving the problems of local interest that fall under their competence. The decisions of the local councils can be individual and normative. The normative decisions are relevant to the situation this paper analyzes.¹¹ Thus, the decisions of the local councils have to fulfill the content and form conditions to produce valid effects. It is also necessary for them to be adopted according to the rules regarding meetings' calling, organizing and running.

The primary condition for validity is the legal summoning of the councilors to the meeting. The Local Council has ordinary meetings once a month, at the request of the mayor, or extraordinary ones at the request of the mayor or of one third of council's members. The secretary of the territorial administrative unit makes the

⁷ Art. 3 para. 1. Law no. 215/2001 on local public administration, published in M.Of., Part I., no. 204/ 23 April 2001; see **Eugen Popa**, *Local Autonomy in Romania*, Editura All Beck, Bucharest, 1999, p. 37-38; **Corneliu-Liviu Popescu**, *Local Autonomy and European Integration*, Editura All Beck, 1999, p. 32

⁸ See **Ioan Alexandru, Mihaela Cărăușan, Sorin Bucur**, *Administrative Law*, 2nd edition, revised and completed, Lumina Lex Printing Press, Bucharest, 2007, p. 257

⁹ Available on <http://www.tirgumures.ro/hot/2008/nou/3.pdf>

¹⁰ See **Rodica Narcisa Petrescu**, *Administrative Law*, revised and completed, ed. Cordial Lex, Cluj Napoca 2001, pg.131

¹¹ The normative decisions usually regard the local budget, the establishment of local taxes, the administration of the public or private property of the territorial administrative unit, urban planning and development of the area, etc....; see **Preda Mircea**, *Basic Treatise on Romanian Administrative Law*. Revised and updated edition for the respective case law, Lumina Lex Printing Press 1996 Bucharest, p.494

summoning, at least 5 days before the meeting for ordinary meetings, and 3 days for the extraordinary ones.¹²

The meetings' agenda is proposed by the one that convened the assembly of the local council and is approved by the council. The change of the agenda can be made if the majority of the present councilors vote accordingly, yet only for issues which justify an emergency.

The second condition regards the organization and the running of the meetings according to the law. When exercising its attributes, the Local Council passes decisions by the vote of the majority of present councilors, except the cases when the law or the council' statutes stipulate for another majority.¹³ A majority of two thirds is required for the decisions that regard making loan, public and private property's management, urban and rural planning and development, the association and cooperation with other public authorities, with non-governmental organizations, with Romanian or foreign legal persons.¹⁴

The Local Council's meetings are run by a meeting chairman, elected from the members of the councilors by the vote of the majority of the councilors that hold office. This chairman, elected for maximum 3 months, is the person that signs the decisions of the Local Council, along with the secretary, this being a condition to consider the decision lawful.

It is also important to mention the fact that the drafting of the local public administration rules is governed by Chapter IX of Law no. 24/ 2000 on the norms of legislative technique for drafting normative acts.¹⁵ According to these legal stipulations, the normative acts of local public administration are adopted for the regulation of local activities according to the law and for exercising the attributes established by the law. These acts have to comply with the rules that have a legally

¹²See **Preda Mircea**, *Basic Treatise on Romanian Administrative Law*. Revised and updated edition for the respective case law, Lumina Lex Printing Press 1996 Bucharest, p.495

¹³See **Preda Mircea**, *Public Administration Authorities*, 2nd edition, revised and updated according to the laws in force, Lumina Lex Printing Press, Bucharest, 2002, p. 504

¹⁴ **Iorgovan Antonie**, *Administrative Law Treatise. 3rd Edition, revised and completed, Vol I. Introduction into Administrative Law. Public Administration Bodies. The Public Service Position*, All Beck Printing Press, Bucharest 2001, p.505

¹⁵ Published in M. Of., Part I., no. 139/ 31 March 2000, republished in M. Of. No. 777/ 25 August 2004. For details on decision making process and procedure see **Ioan Santoi**, *Administrative Law and the Science of Administration*, Vol. II, Risoprint Printing Press, Cluj-Napoca, 2005, pg.95 et seq.

biding effect upon them. As regards the entering into force of the normative acts of the local public administration, the law stipulates that they are made public according to the local administration law, by means of notices in authorized places and by publishing in a large circulation local newspaper.

As regards the form, because they are acts issued by an authority made up of members, the written form is a prerequisite for their existence. The signature, representing “the name of an administrative authority” has as main purpose to establish the origin of the act and the certification of its content. Without this, the written paper will be considered as a simple project, without the necessary legal power to produce intended effects.¹⁶

The countersignature is also necessary to certify this signature and to signal the collaboration of the signatory authorities. The attribute of countersigning the act for its enforcement is a character of its authors that willingly created this act, and without their contribution the act lacks the executory character.¹⁷ It is also imperative to indicate the date when the meeting was held, as well as the number on the agenda.

Any issue on the agenda, cannot be debated unless it is accompanied by the report of the respective department within the specialized area of the local public administration authority. In this respect, H.C.L. no. 107/2008, as indicated in the preamble to the decision, was adopted considering the *presentation of the reasons no. 13 din 21.04.2008 of the Department for Romanies' Support within the Division of Communication, International Funded Projects and Human Resources for Tg. Mures Local Council's support of the local action plan for the Romani community*.¹⁸ It is also worth mentioning that confusion is frequently made as regards the affiliation of the specialized body. The interpretation of the old legal text reveals that the local public administration authorities, local councils and the mayor, each have their own specialized body or both resort to the same specialized body. If we consider the

¹⁶See **Ovidiu Podaru**, *The Administrative Act – form and elements of form*
<http://studia.law.ubbcluj.ro/articol.php?articolId=263>, p.3

¹⁷See **Ovidiu Podaru**, *In search of the author of the administrative act (I) – an essay on the competencies of the administrative bodies*, RDP 2/2008, p. 30

¹⁸See **Preda Mircea**, *Basic Treaties on Romanian Administrative Law*, Revised and updated edition for the respective case law, Lumina Lex Printing Press 1996 Bucharest, p.492

regulations included in the new Law on local public administration, especially the new way of defining the institution of mayoralty, it results that the specialized body belongs to the local council and that it carries out the decisions of the local council by solving the actual problems of the community.¹⁹

At the same time, the decision making process on the level of the local public administration has to comply with the principles established by Law no. 52/2003 on the decision transparency in public administration.²⁰

3. The actual situation:

3.1. The situation of the Romanies in Romania. Presentation. Problems of racial nature.

Both international governmental and non-governmental organizations draw the attention upon the situation of the Romanies within the Romanian society. In this respect, problems mainly related to the protection of human rights are signaled, especially as regards the issue of racial discrimination, namely based on ethnic criteria, as well as social and economic problems with serious troubles regarding the crime rate, the living standard, the education level, etc.

These “external observations” represent objective landmarks related to the ways Romania has fulfilled its international obligations and offer an objective indicator in this area.

We consider as appropriate to present these landmarks because they provide with the general context within which the action plan was adopted by means of H.C.L. no. 107/2008 and because they underline the necessity of regulating these social relations on the level of local public administration, where these social necessities are meeting with the competencies that the law assigns to the local public authorities.

One important landmark is represented by the case law of the ECHR. Functioning on the basis of the European Convention of Human Rights, the Court represents a

¹⁹See **Rodica Narcisa Petrescu**, *Some observations on the new Law of local public administration no.215/2001*, Revista Dreptul no.4/2002, pp.109-110.

²⁰Published in M.Of., Part I., no. 70/ 3 February 2003; according to art. 2 of the law these principles are the following: the principle of informing, the principle of consulting the citizens, the principle of the active participation of the citizens

unique mechanism for the protection of human rights and whose efficiency is proved by its long-term activity and by the changes its jurisprudence has generated into the internal order of the European member states.

As regards the situation of the Romanies in Romania, several important aspects have to be mentioned. Thus there are several almost stereotypical causes involving inter-ethnic incidents especially caused by the increase of tensions on the local level, tensions that could have been lessened by the implementation of measures on the level of local public administration. In the ruling for *Cobzaru v. Romania*,²¹ the Court has recorded the breaking of art. 3 and 6 and ruled that in this case the criminal investigation of the petitioner was performed on racial grounds, thus violating the provisions of the European Convention. In another case, a child aged 14, of Romani origin, was beaten by the local public authority agents, although he was mentally handicapped.²²

In another category of causes, the problems that raised the issue of the protection of human rights that are guaranteed by the Convention, these problems occurred within the context of social tensions that could not be handled. There are certain similar decisions where the population "riots" against the Romanies against the background of rising tensions and resorts to mass violence against them. The Court found under such circumstances violations of the Convention mainly motivated by the lack of action of the local public authorities. Such cases are *Moldovan and Others v. Romania* (case 1 and 2)²³, *Kalanyos v. Romania*²⁴ and *Gergely and Others v. Romania*.²⁵ Of all these cases, except *Moldovan and Others* no. 2, all have been amicably settled, namely by parties' agreement. In the cases of *Gergely* and

²¹The case of **COBZARU versus ROMANIA**, ruling from 26.10.2007, application no. 48254/99, for a case summary in the Romanian language see:

<http://iusiuventutis.blogspot.com/2008/08/cobzaru-mpotriva-romniei-hot-din.html> and **Chiriță Radu**, *European Convention of Human Rights. Comments and Details*, 2nd edition, C.H.Beck Printing Press, Bucharest 2008, pp.626-627

²² The case of **STOICA v. ROMANIA**, ruling from 4 March 2008, application no. 42722/02, for a case summary in the Romanian language see:

<http://iusiuventutis.blogspot.com/2008/08/cauza-stoica-mpotriva-romniei-hot-din-4.html>

²³ The case of **MOLDOVAN and Others v. ROMANIA** (applications no. 41138/98; 64320/01) ruling from 5 July 2005; **MOLDOVAN and Others v. ROMANIA** (applications no. 41138/98; 64320/01), ruling 12 July 2005; see **Chiriță Radu**, *European Convention of Human Rights. Comments and Details*, 2nd edition, C.H.Beck Printing Press, Bucharest 2008, pp p.618, 625

²⁴The case of **KALANYOS and Others v. ROMANIA** (application no. 57884/00), ruling from 26 April 2007

²⁵ The case of **GERGELY v. ROMANIA** (application no. 57885/00), ruling from 26 April 2007; see **Chiriță Radu**, *European Convention of Human Rights. Comments and Details*, 2nd edition, C.H.Beck Printing Press, Bucharest 2008, p.625

Kalanyos, the Romanian state has obliged to implement social measures in the places where claims have been made, for the purpose of solving and avoiding in the future the problems that generated the conflicts.

3.2. Situation of the Roma in Târgu Mureş. Social problems. The situation that caused the initiative.

From the point of view of fundamental rights, Romania has an incomplete legal system, due to the lack of implication from local authorities. Realizing the implications of such local issues, local authorities have sought to implement an action plan to correct the shortcomings raised at social level in what regards the Roma minority in Targu Mures and to provide the premises for training good citizens premises, regardless of nationality. One of the main problems was found to be lack of communication between representatives of local authorities and the representatives of Romanian citizens of Roma origin.

The Members of the Roma community in Tirgu Mures, as a result of failure to live in improper buildings and on restituted land, the do not have hygienic conditions. These problem triggers problems in other social areas such as education and training. Their negative attitude towards education and school is characterized by an extremely low level of learning that is one of the main causes of unemployment and poverty. Roma children are unable to do homework at home, due to the lack of necessary conditions (water, gas, sewerage, electricity, etc. ...). Due to the negligence of parents, the rate of children abandoning school is increasing. These things affect the social behavior of those individuals, frequently leading to the emergence of tensions likely to generate violence. Furthermore, regarding the distribution of the number of Roma is officially declared 3660, but unofficially there are 14000 Roma which highlights the need to update the database in the Targu Mures in the department of census.

In these circumstances, and considering the facts as a whole, local authorities considered necessary to implement an action plan is focusing on improving living conditions of Roma community in Targu Mures.

4. Municipal Council Decision no. 107/2008. Presentation.

Municipal Council Decision no. 107/2008 at art. 1 approves the local action plan for Roma. The action plan is annexed to the decision and establishes, structured by chapters, and regulates the important aspects that reveal the necessity of measures, by the implication of local authorities²⁶. Art. 2 of the Decisions establishes the department empowered with the execution of the action plan. This is the Directorate of Communication, International Project and Human Resources by the Roma Compartment. Thus, the action plan establishes the measure that is to be implemented, provides a term for its realization for each action, designates the responsible entities for the achievement of purposes, establishes the indicators that will stand at the basis of evaluation and provides the financial source for the action. The decision establishes 55 measures, grouped in 8 chapters representing segments of social life, where there is need for improving the situation of Roma.

The action plan establishes a system of measures, under the coordination of the Local Council, in cooperation with other authorities with attributions in relation with the social relations and in cooperation with NGO's.

The non-governmental organizations belong to the area of civil society which have as purpose to find solutions for the society's problems, thus supporting the making of a democratic society. Their main characteristic is that they are independent from the state. Their role is to assure the welfare of the society and their main function is to offer services. These have a pioneering and innovating effect in various areas both on the local as on the international level. They also assure the protection of civil interests or of social groups, mainly the fight against the discrimination of the Roma minority.

In the case of more complex or long-term missions, or when the partners are structures of a different type, as it is the present case (structures of the public administration) the partnership tends to be formal. The action plan supported by Târgu Mureş Local Council includes a well-defined social program, namely a set of activities or projects oriented towards a group of objectives where human, material

²⁶ The annexes are external parts of the normative act having a legal power that is equal to that of the normative act to which it is attached; see **Ioan Vida**, *Manual de legistică formală*, Lumina Lex Printing Press, Bucharest, 2000, p. 105

and financial resources are coherently organized to produce goods, services or changes of the environment as a response to certain needs. The structural elements of this program are purposes and objectives, activities, resources, the estimated period (2 years in this case) and beneficiaries (target population). The life cycle of this program includes several stages gradually developed: initiation, development and consolidation or planning, implementation, monitoring and evaluation.

The action plan has as objective to identify the problems that the referred population is faced with, the giving of answers to these problems and the implementation of solutions. At the same time practical supporting measures are taken into consideration as presented by the normative act.

BIBLIOGRAPHY

1. Alexandru Ioan, Cărăușan Mihaela, Bucur Sorin, *Drept administrativ*, ediția a II-a, revizuită și adăugită, Editura Lumina Lex, București 2007
2. Chiriță, Radu, *Convenția europeană a drepturilor omului. Comentarii și explicații*, Ediția a II-a, Editura C.H.Beck, București 2008
3. Iorgovan, Antonie, *Tratat de drept administrative. Ediția a III a restructurată, revizuită și adăugită, Vol I. Introducere în drept administrative. Organele Administrației Publice. Funcția publică* Editura All Beck, București 2001
4. Petrescu, Rodica Narcisa, *Drept administrativ. Revizuită și adăugită*, ed. Cordial Lex, Cluj Napoca 2001
5. Popa, Eugen, *Autonomia locală în România*, Editura All Beck, București, 1999
6. Popescu, Corneliu-Liviu, *Autonomia locală și integrarea europeană*, Editura All Beck, București 1999
7. Preda Mircea, *Tratat elementar de drept administrativ român*. Ediție revizuită și reactualizată cu practica judiciară de profil, Editura Lumina Lex, București 1996
8. Preda Mircea, *Autoritățile administrației publice*, Ediția a II-a, revăzută și actualizată pe baza legislației în vigoare, Editura Lumina Lex, București, 2002
9. Santoi, Ioan, *Drept administrative și Știința administrației*, Vol. II, Editura Risoprint, Cluj-Napoca, 2005
10. Vida, Ioan, *Manual de legistică formală*, Editura Lumina Lex, București 2000

Journals :

1. Ovidiu Podaru, *În căutarea autorului actului administrative (I) – eseu asupra competenței organelor administrative*, RDP 2/2008, pag. 30
2. Ovidiu Podaru , *Actul administrativ – formă și elemente de formă*, <http://studia.law.ubbcluj.ro/articol.php?articolId=263>

3. Rodica Narcisa Petrescu, *Unele observații cu privire la noua Lege a administrației publice locale nr.215/2001*, Revista Dreptul nr.4/2002
4. Virginia Vedinaș, Daniela Bakîrci, *Principalele modificări aduse prin legea nr.286/2006 pentru modificarea și completarea legii administrației publice locale nr.215/2001*, Revista Dreptul, Seria III, nr.11/2006, Editura Universul Juridic.

Other sources:

<http://iusiuventutis.blogspot.com/2008/08/cobzaru-mpotriva-romniei-hot-din.html>

<http://iusiuventutis.blogspot.com/2008/08/cauza-stoica-mpotriva-romniei-hot-din-4.html>