

WITHDRAWAL OF POLITICAL SUPPORT AND VALIDATION OF LOCAL COUNCILS' MEMBERS

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ABSTRACT: *The role of political parties is important in the functioning of public authorities and at a first glance it is positioned above the citizens will expressed through voting. This paper describes such an interference of politics in the functioning of public authorities, in this case the Local Council. We intend to highlight the legislative deficiencies and to seek solutions for their remedial.*

KEYWORDS: *withdrawal of political support, validation in a position, local council, the functioning of public authorities;*

JEL CLASIFICATION: *K23, K49*

This article aims to present the situation of the Local Council¹ as a deliberative body of the administrative-territorial units in the context in which the political factor influences its component and also the way in which the local councilors right to be validated in the vacant position is affected by the duration of the appointment process and the inefficiency of judicial means to protect this right.

The issue we intend to analyze concerns a constituted and validated local council but which will suffer modifications due to resignations, exclusions from a party etc.

The legal framework relevant to this issue is represented by:

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¹ About the role of this collegial organ, the way of setting, responsibilities, functioning and responsibility see Vedinaș V., *Drept administrative și instituții politico administrative*, 2002, Lumina Lex, Bucharest, pp. 373-386; Coman-Kund, F., Ciobanu, A.S., *Drept administrativ* 2009, IInd Edition, Universul Juridic, Bucharest, pp. 222-233; Podaru, O., *Drept administrativ Vol. I Actul administrativ (I) Repere pentru o teorie altfel*, 2010, Hamangiu, Bucharest pp.200-212; Alexandru, I., Cărăușan, M., Bucur, S., *Drept administrativ* 2009, III^d Edition, Universul Juridic, Bucharest, pp. 228-235.

1.1. Law no. 393/2004² concerning the statute of local elected which in its article 9 states:

- (1) *The local or county councilor quality ceases on the date the newly elected board is declared as legally constituted.*
- (2) *The local or county councilor quality ceases de jure before the normal expiry of the term of office, in the following cases:*

- a) *resignation;*
 - b) *incompatibility;*
 - c) *change of domicile in another administrative-territorial unit, including as a result of its reorganization;*
 - d) *absence from more than three consecutive ordinary council sessions;*
 - e) *inability to exercise their office for a period greater than 6 consecutive months, except for other cases provided by law;*
 - f) *conviction by a final court decision to a sentence consisting in deprivation of liberty;*
 - g) *placing under judicial prohibition;*
 - h) *loss of electoral rights;*
 - h¹) *loss of membership of the political party or national minority organization on whose list he was elected *);*
 - i) *death.*
- (2¹) *The case referred to in para. (2). h¹) also applies to the vice-mayor *).*

Also, according to paragraph 3 and 4 of the same article: *The de jure cessation of a councilor's term of office is recorded by the local council, or respectively by the county council at the proposal of the mayor, or by case of the president of the county council, or any councilor by the means of a decision.*

(4) *In the cases provided for in paragraph 2 letters c) – e) and h¹) the council's decision may be contested at the administrative court within 10 days from its communication. The court shall decide in no more than 30 days. In this case the preliminary procedure is not required and the decision of the first instance court is final.*

Likewise article 12 of the same legal text states that (1) *In all situations in which the term of office ceases before the expiry of its normal duration the local council or by case the county council adopt a decision in the first ordinary session at the proposal of the mayor or of the president of the county council; decision by which it will take act of the situation that has occurred and will declare vacant that councilor's seat.*

(2) *In all cases the decision will be founded on an ascertaining report signed by the mayor and by the secretary of the commune or of the town or respectively by the president of the county council and by the secretary general of the county. The report will be accompanied by justificatory documents.*

1.2. Another legal ground applicable in this case is Law no. 67 of 2004³ concerning the election of the authorities of the local public administrations. Thus according to article 96 paragraph 9:

² Law no. 393 was published in the Official Journal of Romania no. 912 of October 7th 2004 and has suffered numerous modifications through: Law no. 216 of 2005, Law no. 249 of 2006, Law no. 289 of 2006, Decision no. 61 of 2007 of the Constitutional Court of Romania, Law no. 144 of 2007, Law no. 35 of 2008, Decision no. 273 of 2009 of the Constitutional Court of Romania and Law no. 58 of 2009.

³ Law no. 67 of 2004 was initially published in the Official Journal of Romania no. 271 of March 29th 2004 and has suffered numerous modifications which lead to its republication in the Official Journal of Romania no. 333 of

The candidates registered on the lists which were not elected are declared substitutes in those lists. In case of seat vacancy of councilors elected by candidates lists the substitutes will occupy the vacant seats in the order in which they are registered on the lists if up to the validation of the office for the vacant seat the political parties or by case the political alliances or electoral alliances on whose lists the substitutes ran for office confirm in writing and by signature to the county leadership of the political parties respectively those political parties that have constituted political alliances or electoral alliances that the substitutes are members of that political party or of one of the political parties that have constituted political alliances or by case electoral alliances.

1.3. Furthermore Law no. 215 of 2001, the law concerning the local public administration - republished⁴ and modified – states in its article 33:

When the local councilor declared elected renounces at his term of office before the validation or refuses to take an oath the term of office of the first substitute registered on the political party, political alliance or electoral alliance's list will be subjected to validation if by the time of the validation of the term of office the parties and political alliances confirm in writing the membership to the party. In case the remaining vacant seats cannot be filled in by substitutes as provided by the law and the number of local councilors is reduced under half plus one partial elections for completion will be organized within 90 days.

A. *Hypothetical case which denotes the inefficiency of the legal texts*

In the situation in which a local councilor, member of a political party resigns from the Local Council or loses his membership to the party on whose lists he was elected (situations of *de jure* cessation of the term of office) the solution established by law includes two phases:

- The ascertainment by the Local Council at the proposition of the mayor of the situation of *de jure* cessation of the councilor's term of office and declaring the vacancy of the councilor seat;

- The validation of a new local councilor registered on the substitutes list of the party whose member was the local councilor whose term of office ceased with the written approval (confirmation) that these substitutes are members of those political parties. The written confirmation must come from the party's county leadership.

The solution seems simple at a first glance but in practice it generated numerous legal conflicts. Law no. 393/2004 tried to eliminate the transition to other parties of some local councilors who won the elections on the lists of a certain party following various personal or group interests. The elimination of "political transition"⁵ was a measure saluted by the entire political class even if in fact the legal provisions created new abuses.

may7 17 2007. After this republication the Law was modified through: Decision no. 1219 of 2007 of the Constitutional Court of Romania, Government's Emergency Ordinance no. 20 of. 2008, Law no. 35 of 2008, Government's Emergency Ordinance no. 32 of 2008, Law no. 4 of 2009 and Law no. 129 of. 2011.

⁴ The law regarding the local public administration was republished in the Official Journal of Romania no. 273 of February 20th 2007

⁵ The Constitutional Court stated in its Decision no. 273 of 2009 that the provision in the legal text regarding the *de jure* cessation of a councilor term of office subsequent to the loss of his membership to the party is constitutional, and it assures the respect the political configuration resulted from the election

"The criticized texts are aiming to prevent the political migration of the local elected form a party to another, political transit that is used according to the opportunities offered by a party or the other, the assurance of

A first situation that has occurred in practice is determined by the refusal of the local authorities, mayor or (and) Local Council to ascertain the situation of *de jure* cessation of the local councilor's term of office. In this case the substitute situated on the first position in the list of substitute members or the political formation is entitled to file a complaint at the administrative court against the unjustified refusal to issue a local council decision in order to ascertain the situation of *de jure* cessation of the term of office. In this situation the procedure before the court follows the rules established by Law no. 554 of 2004, both in the first instance court and in appeal. On the other hand if the local council decision had existed and the local councilor in question had considered it as illegal contesting it in court would follow the provisions of art. 9 paragraph 4 of Law no. 393/2004, that provides for a shorter procedure: *In the cases provided for in paragraph 2 letters c) – e) and h¹) the council's decision may be contested at the administrative court within 10 days from its communication. The court shall decide in no more than 30 days. In this case the preliminary procedure is not required and the decision of the first instance court is final.*

A second situation is represented by the validation of a new councilor registered on the substitute member's list of the party that has "lost" its local councilor. The law expressly provides for a certain order in the appointment of the new councilor in that it will be validated as local councilor the person situated on a superior position. Relatively recent practice revealed methods to elude that legal provision by appointing a substitute councilor selected by the party and not by the order from the list. How can the order on the substitute member list be ignored? The answers offered in practice were different, the most common method being *the withdrawal of political support for a certain number of substitute members up to the person desired by the party.*

By analyzing the statutes⁶ of the various political formations from Romania it results that the withdrawal of political support does not equal with the loss of membership to the political party and thus we ask ourselves how can a local authority take into consideration such a measure in the validation of a councilor "proposed" by the party. The answer cannot be but negative because the legal text expressly establishes that a person will be validated as a councilor if it meets two conditions:

- He is situated on a superior position in the list of substitute members;
- He is a party member.

In these conditions we consider that the local authority cannot prevail itself by the answer of a political party that would take the measure of withdrawing the political for a councilor registered on the list of substitute members in order to validate another councilor. For the measure of withdrawing the political support to have the desired effects it is necessary for political parties to consider in the future that such a measure equals the loss of membership to the party.

stability among the local public administration that expresses the political configuration as it resulted from the electorate's will".

⁶ <http://www.pnl.ro/Upload/7308e975-32aa-4ac7-9c5d-40f4a06ca9de.pdf> visited on 25.11.2011 at 14:15; <http://www.psd.ro/STATUTPSD.pdf> visited on 25.11.2011 at 14:15; <http://www.pdl.org.ro/Date/statut.pdf> visited on 25.11.2011 at 14:15; http://www.rmdsz.ro/file/ALL_1305551577_Statut_UDMR_2011.pdf visited on 25.11.2011 at 14:15.