

**CONSIDERATIONS REGARDING THE APPLICATION AND
INTERPRETATION OF ARTICLE 9, PARAGRAPH 2, LETTER F)
OF THE LAW NO. 393/2004 ON THE STATUS OF LOCAL
ELECTED REPRESENTATIVES**

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ABSTRACT: *According to the provisions of the Article 9, Paragraph 2 from the Law number 393/2004, "the status of local or county councilor ceases lawfully, before the termination of the normal term of the mandate, in the following cases: Letter f) in the case of the conviction by a final court decision of a custodial sentence."*

And the text of Article 15, Paragraph 2 of the same normative act has the same wording: "the position of Mayor and, the one of the president of the County Council, respectively, ceases before the termination of the normal term of the mandate in the following cases: Letter e): in the case of the conviction by a final court decision of a custodial sentence."

Taking into account that in the doctrine until now the opinions on the application and interpretation of the provisions of the Article 9, Paragraph 2 of the Law number 393/2004 are not valorized, I chose this jurisprudential study, which valorize also the opinion of the author of the paper, mainly based on the application of Decision no. 18 of the High Court of Cassation and Justice, which makes the analysis of the provisions of the Article 15, Paragraph 2 of the same law and from which results that the law only refers to the type of punishment applied respectively, deprivation of liberty, without the distinction of the way of individualization of the execution of the deprivation of liberty punishment.

In the opinion of the author of the paper, this reasoning is applicable to the provisions of the Article 15, Paragraph 2, Letter e) from the Law number 393/2004 and the provisions of Article 9, Paragraph 2, Letter f) of the Law number 393/2004, the conclusion being that, through the decision of the local council, is established the lawfully cessation, before the termination of the normal term of the counselor's mandate, in the situation of the conviction, by a final judgment, to a penalty of deprivation of liberty, even if the legislator did not consider it and did not expressly assume the termination of the mandate of local councilor, in the case of imprisonment punishment under supervision.

On the basis of the same legal considerations, the Prefect finds, by order the lawful cessation, the Mayor's mandate before the termination of the normal term of the mandate, in the case of the conviction through the final judgment, to a custodial penalty.

In particular, the analysis of the provisions of the Article 9, Paragraph 2, Letter f) of the Law no. 393/2004, entitled us to conclude that the law refers only to the type of punishment applied, namely deprivation of liberty, without the distinction of the way of individualization of the execution of the deprivation of liberty punishment.

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KEYWORDS: *local status; termination of mandate; administrative act; imprisonment; jurisprudence*

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