LIABILITY AND RESPONSIBILITY OF LOCAL PUBLIC ADMINISTRATION AUTHORITIES IN THE FIELD OF WASTE MANAGEMENT. THEORETICAL AND PRACTICAL STUDY

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ABSTRACT: *Through the Accesion Treaty to the European Union, Romania has made a series of commitments in its new capacity of EU member-state, one of which being that of alignment with the European standards set by the primary and secondary European legislation in the field of collecting and managing solid waste. The intercommunitary development associations have represented, in this context, an institutional frame-work established by law, for the common administration of the services operating integrated waste management systems and of the related infrastructure. In the present article, having as starting point a case-study, we shall try to identify the coordinates of the liability or responsibility that local public administration authorities hold for the administrative decisions taken in this matter.*

KEYWORDS: *liability; responsibility; waste management; local public administration; administrative decision*
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Through the Accesion Treaty to the European Union, Romania has made a series of commitments in its new capacity of EU member-state, one of which being that of alignment with the European standards set by the primary and secondary European legislation in the field of collecting and managing solid waste. More specifically, by signing this Treaty, Romania has assumed the following main obligations: to cease the activity of non-compliant landfills by 2017 and rehabilite these (Council Directive 1999/31/EC on the landfill of waste), to reduce the quantities of municipal biodegradable waste stored by 2016 (Council Directive 1999/31/EC on the landfill of waste), to recycle and recover packaging waste (European Parliament and Council Directive 94/62/EC on packaging and packaging waste) as well as to prepare for the reuse and recycling of municipal waste (European Parliament and Council Directive 2008/98/CE on waste).

The failure of the Romanian State to meet the deadlines imposed by the provisions of the above-mentioned directives by did not remain unobserved by the European Commission, which, by Application C-301/17, asked the Court of Justice of the European Union to decide whether Romania has failed to fulfil its obligations under Directive 1999/31/EC on the landfill of waste. In particular, the action brought by the

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European Commission against Romania aimed at proving the failure of Romania to fulfil its obligations under article 14 (b) in conjunction with article 13 of Directive 1999/31/EC, with regard to 68 landfills, landfills which, in accordance with article 8, did not received a permit allowing them to continue to operate, and which should therefore be closed in accordance with article 7 (g) and article 13 of the same directive. The deadline for transposing the directive into national law expired on 16 July 2009, but Romania, prior to the initiation of the proceedings by the European Commission, did not provide any data allowing the Commission to verify whether if, in addition to ceasing the operation of these landfills, the closure process has actually been completed in accordance with the requirements of Directive 1999/31/EC. The Commission itself emphasised that Romania cannot invoke purely internal situations in order to justify the failure to fulfil the obligations under the directive, such as the need to carry out administrative procedures or the responsibility of local authorities. The CJEU found that the action was founded and, by its judgment of 18 October 2018, obliged Romania to pay judgment costs. However, no pecuniary sanctions were set through the judgment. The Court's judgment of 2018 demonstrates, for those Romanian authorities at central or local level that needed such additional evidence, additional to the existing provisions at both European and national level, the seriousness with which the EU addresses the issue of waste management, commitment that should therefore characterize the process that Romania is currently undergoing in order to comply with European standards. And, of course, uncompliance with environmental standards could trigger a form of international liability for Romania (Miron, 2019), in the light of existing international instruments, but this exceeds the purpose of our present paper.

Restricting our analysis to the level of Mures county, we firstly want to underline that in order to support Member States in complying with these obligations, the EU has made European funds available to Member States in order to carry out projects focusing on integrated waste management systems and local public authorities did fund from European sources the implementation of major projects dealing with waste management. The inter-community development associations (IDAs) represented, in this context, an institutional framework established by law, in the present case by Law no. 215/2001 of local public administration, and more recently by the provisions of the GEO no. 57/2019 on the administrative Code, for the joint operation of integrated waste management systems services and management of the related infrastructure. At the level of Mureş county, in the year 2008, the so called ECOLECT MURES inter-community development association was set up, a legal person recognised through the effect of the law as being of public utility, as the collaborative structure and inter-community cooperation of administrative-territorial units from Mureş county, with the declared aim: to improve the quality of the waste management public service, in the condition of tariffs/charges complying with the tolerability limits of the population and „the polluter pays principle”; to achieve and comply with European standards on environmental protection; to develope the capacity to attract funds to finance the necessary investments in the technical-edilitary infrastructures required by the sanitation service. The members of the inter-community development association „ECOLECT MURES” are represented by the 102 territorial administrative units from Mureş County and the Mureş County Council.

In the year 2019, all 103 territorial administrative units in Mureş County became part of an association agreement for the purpose of implementing the investment project "Integrated Solid Waste Management System in Mureş County" (ISWMS) funded by the European Union through the European Regional Development Fund (ERDF). The aim of the project is to address and manage waste problems in Mureş County in a unified and integrated manner, namely to solve environmental problems and to provide specific public services for the inhabitants of Mureş County, in accordance with EU standards in this field. In this respect, prior to the association between the administrative units – territorial through an association agreement, each of the units involved approved by means of an authority act, respectively by local council decision, all aspects related to the implementation of the project, i.e. the feasibility study "Integrated Waste Management System in Mureş County", the association with the other administrative units from Mureş County, the co-financing of the roject "Integrated Waste Management System in Mureş County" , even including the evolution plan of the tariffs payable by the population.

Even from the moment the association agreement was concluded, namely since 2009, the administrative-territorial units in the county understood that, in order to ensure the integrated management of waste sorting/transfer stations, carried out under other Projects (Phare Ces, GEO no. 7/2006), the territorial administrative units in Mureş County associated with the purpose of implementing ISWMS, must integrate these sorting stations into the project, expressly regulating thus in art. 13, para. (3) of the association agreement that *upon termination of the obligations assumed by the local public administration authorities, they will be integrated into the project, the delegation of their management being entrusted by local councils to the Ecolect Mureș Association of inter-Community development*. Given that the waste sorting/transfer stations on the radius of Mureş County financed through other projects (Phare Ces, GEO no 7/2006), each in part serve several administrative-territorial units in Mureş County, divided in the ISWMS Mureş project in 7 collection areas set by the Master Plan of the project, it is obvious that these must be integrated into the project under the terms of the association agreement. In other words, one of the objectives to be achieved under the project "Integrated Solid Waste Management System in Mureş County" was precisely this: the waste sorting/trasfer stations would move from the management of local administrations in the management of the association established at the level of the county - ECOLECT.

If theoretically and on paper things are clear, and the local public administration authorities understood (at least we believe), in 2009, clearly what obligations they assumed and what these impliy in terms of how to provide this public service, in reality things have been completely different. On 26 November 2015, after some of the objectives of the project had been met (such as the closure of non-compliant landfills in Mureş County, the purchase of special waste bins for all territorial administrative units, the realisation of an ecological landfill that would serve the entire county), Mureş County Council adopted Decision no. 153 for the initiation of steps for the implementation of the project Integrated Solid Waste Management System in Mureş County[1]. According to the provisions of this administrative act, a number of 7 administrative-territorial units are required to pass the buildings representing the transfer stations and waste sorting stations, from their public property in the public domain of Mures County.

[1] http://www.cjmures.ro/Hotariri/Hot2015/hot153_2015.pdf.

On that date, 2015, the provisions of Law no. 213/1998 on public property and its legal regime were aplicable, which established at art. 9 para. (4) that "*The transfer of a good from the public domain of an administrative-territorial unit on the territorial radius of a county in the public domain of that county shall be made at the request of the county council, by decision of the local council, changing the status of that good from local public interest good to county public interest good.*" These provisions were taken over and introduced in the new administrative Code which establishes at aart. 294, para. (3) that "*The transfer of a good from the public domain of an administrative-territorial unit on the territorial radius of a county in the public domain of that county shall be made at the request of the county council, by decision of the local council of the commune, city or municipality.*" As such, it was imperative that each of the administrative-territorial units that owned waste sorting and transfer stations would adopt an administrative act to this effect. Or, taking into consideration the attributions of the local public administration authorities (local council and mayor), the responsibility lied with the local council that had to adopt a local council decision in order for these goods to become part of the public property of Mureş County Council.

If some of the administrative-territorial units adopted such decisions, understanding essentially the obligations they had assumed in 2009 (even though there may have been major changes in the composition of local councils from a political perspective and even if perhaps the mayors came from other political parties) 3 administrative-territorial units did not understand to do the same. Specifically, in the case of these 3 localities (Sighişoara, Reghin, Rîciu), the adoption of such a council decision was delayed. Although such a draft decision was repeatedly entered on the agenda of the sessions of these three local councils, it was either taken off the agenda for further clarifications or postponed. The reasons behind these decisions not to adopt a local council decision transfering waste sort/transfer stations were either of opportunity (local councilors no longer considered the project to be appropriate), although we appreciate that the project's opportunity had already been established in 2009, or present local councilors did not recognise the validity of the decisions the council adopted in 2009, decisions which had been the basis of the association agreement, since certain councilors had not been part of the local council at that date in time.

The arguments invoked by local councilors cannot, of course, be upheld. Thus, as regards the legal and binding nature of local council decisions, these are administrative acts of the local public administration, which are therefore binding. If administrative acts are binding, it therefore means that no one can escape from the legal effects they produce, otherwise state coercion can intervene in the form of legal sanctions (Moldovan, 2018). The mandatory nature of administrative act shows that the administrative act is compulsory including for the issuing authority as long as it has not been cancelled, revoked or repealed (Chiriac, 2011). The obligation derives from the fact that the issuing authority, from the succession of acts it adopts, is obliged to comply with its own acts, and the fact that the collegial administrative body in question has a different composition is in no way legally relevant . On the issue of the opportunity of the administrative act, is had been definied by the scholarly literature as the adequacy of an administrative act to the requirements of the public interest in a particular social, economic, political context (Trăilescu, 2010). The opportunity of an administrative act correlates with the right of appreciation the administration enjoys or the so-called

discretionary power of the public administration, as the freedom of the administration to choose between several possible solutions for solving a problem of public general interest. However, reffering to the situation analyzed, we consider that the moment when the issue of the opportunity of the administrative act and of the discretionary power of the local public administration could be manifested was that of 2009, at which time the local public authorities in Mureş County adopted the administrative acts that were associated with the implementation of the waste management project and at which point they understood to assume a number of obligations. Changes in the composition of the local public deliberative authority, collegial administrative body, cannot have as a consequence the reconsideration of the opportunity of administrative acts previously adopted by the same body, it is true in another political composition, as they have produced legal effects already.

The fact is that the failure to adopt the administrative decision having the effect of passing these buildings into the public ownership of the county implied that one of the objectives of the project is not reached. In the event that the objectives of the project "Integrated Management System for Solid Waste in Mureş County" were not fully achieved, there was the possibility of losing funding and the following step would have been the restitution of the amounts already granted in the project, amounts estimated at around 40 million euros.

In the light of these aspects, the three administrative-territorial units, through the association made under the terms of the agreement, together and jointly with the Mureş County Council, were responsible for implementing the project and achieving the objectives set out in the project. In other words, the repayment of the sums received in the project would ultimately have fallen to them, since failure to fulfil all the objectives of the project would have been directly the result of the inaction materialized in the non-adoption of the administrative act provided by the law. Reported at the value of the project, about 40 million euros, and at the local budgets of these administrative-territorial units, we believe that that would have meant their insolvency.

Examining the special law in this field, namely Law no. 51/2006 concerning community utilities services, we find the following provision at art. 51^1, para. (1): "*Administrative-territorial units, based on their exclusive competences in the field of organising public utilities services, are responsible for failing to fulfil the commitments undertaken for the use bank credits, non-refundable funds, funds transferred from the state budget, as participation quota in the co-financing of investment programmes carried out with external financing, (...), in order to insure compliance with the targets assumed by Romania through the Treaty of Accession to the European Union and/or imposed by the European regulations and directives transposed into national law*." If, however, administrative-territorial units do not fulfill this commitment, the particular ministry having the role of management authority shall notify, on the basis of the financing contracts, the administrative-territorial units regarding these commitments and shall request these that, within 30 calendar days, to take the necessary measures to remedy the situation created. If this option provided by the law does not put an end to the situation created, the text of the law further provides that the ministry having the role of management authority can request the restitution of the damage created. Finally, as last resort, the law provides that the ministry having the role of management authority can request, in writing, the Ministry of Public Finances to cease supply of both allowances

originating from income tax and amounts originating from certain revenues to the state budget used for balancing. We can thus find a form of liability, of material nature, in the provisions of the special law dealing with public utilities, instituted exactly for situations like the one described in our paper. The solution provided by the legislative act, introduced only in 2016 through law no. 225 of 17 November 2016 for the modification and completion of the law no. 51/2006 of community public utilities services, has not yet been put into practice by the state authorities at central level until this date, from the information at our disposal.

Certainly, the situation described could have also made applicable the provisions of the general law applicable to public administration in matters of liability, namely the provisions of art. 128 of law no. 215/2001 of local public administration, according to which „Local or county councilors, mayors, vice-mayors, (...), county council presidents and vice-presidents, secretaries of administrative-territorial units and staff from the specialized apparatus of the mayor, respectively of the county council can be held liable for contraventions, administrative illict deeds, civil or criminal offences committed in the exercise of their duties, in the conditions set by law.", provisions taken also in the administrative Code, in articles 231 and following.

The outcome of the situation has been one with happy-end, since the authorities of the three administrative-territorial units ultimately understood the implications, primarily financial, for their communities, of their decision not to take a decision. Hence, it did not become necessary to establish a form of liability. However, it is evident, from our point of view, that we can identify both a form of accountability and responsibility. Liability exists from the perspective of the previously indicated legal provisions, that make it possible to establish and to find the liability of all the deciding factors in such situations, even if in practice such a process would have an inherent high degree of difficulty. Responsibility exists in the form of assuming liability for a certain conduct that local elected officials have, as mindfullness for the values protected by law.

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