CONSIDERATIONS REGARDING THE GOVERNMENT EMERGENCY ORDINANCE NO. 55/2014 FOR REGULATING CERTAIN MEASURES CONCERNING THE LOCAL PUBLIC ADMINISTRATION

Elena Mihaela FODOR[*]

ABSTRACT: *The Government Emergency Ordinance no. 55/2014 suspended for 45 days the dispositions of art. art. 9 par. (2) letter h[1]) and art. 15 par. (2) letter g[1]) from the Law No. 393/2004 that sanction the migration between parties with termination of the mandate for elected local officials. Starting with the relation between politics, public administration and law, the study points out that regulations concerning migration of elected local officials, from one political party to another after election time, is a moral and politic issue, not necessarily a legal one. Some decisions of the Constitutional Court of Romania on the subject are analysed. The reasoning of the EOG refers to situations of „political separations", reorganisation of political parties and political alliances, the need to surpass gridlocks in order to insure a good administration. The paper analyses different possible outcomes of such situations that are not regulated by law. Regarding the legal effects of the ordinance, the main questions concerns the legal situation of the councillors that have already gave course to its dispositions, in the case such an ordinance will be rejected or adopted by the Parliament, or in case it will be found unconstitutional.*

KEY WORDS: *Politics and public administration, elected local officials, migration between political parties, law and morals*
JEL CODE: *K 19, K 39*

1. POLITICS AND ADMINISTRATION.

The relation between „policy-making" and „policy-implementation" has known different phases during history. In the scientific approach, there was no distinction in the beginning between political science and the science of administration, as they were seen as an ensemble (Guy, 2003). In the XX[th] century values like equity, ethics responsiveness, participation, become important, with the consequence of a different approach stating that

[*] Ph. D, Associated Professor, Faculty of law Cluj-Napoca , "Dimitrie Cantemir" Christian University, ROMANIA.

administration should be kept afar from the political control (Tahmasebi & Musavi, 2011). The tendency has imposed itself in the '80s and the '90s, by introduction of the distinction between politics and management: policy-makers should delegate its implementation to the managers who should be held responsible through a management contract. The separation of the two elements considered the fact that the interference of politics would result in a decrease of the competence in administration, concomitant with an increase of corruption. On the other hand, it was argued that having an increased autonomy the public authorities could start to action according to their own goals, and not for the public interest. A new model gained shape, suggesting a complementarity between politics and administration. According to this model civil servants give substance to politics in the process of its implementation. The elected representatives are supervising the implementation and supervise the implementation and the maintenance of performance, applying corrections whenever they find it necessary (Tahmasebi & Musavi, 2011)

The relation between administration and the political power includes not only the connection between administration and the political parties, but a connection between administration and the legislative power too. The legislative power, given the political representativeness, has the direct and indirect means to control the activity of the public administration. Legislative power is the one that determines the proximity or the separation between politics and public administration.

The legal norms regulating the relation between politics and the public administration are specific for every state, revealing the trust given by the population to the politicians, the perception about the level of corruption, the tradition. We can say that legal ruling also follows moral criteria. In regulating the organisation and functioning of the public administration, like in other sectors ruled by law, the final goal can be reached following different paths. The desired result is often established considering that moral principles and their justification are connected more with the natural law than with the rational law (Bergel, 2003). In order for the legal norm to lead to the desired goal following the moral criteria, it is justified through reasoning. Thus, the reasoning will lead to legal legitimacy of the selected path for reaching a moral desired solution.

Politics is also regulated, to some extent by law. Organising the political life by political parties, their recognition and registration, their rights in the life of society are subjected to law. Other aspects, escape legal regulation, at the choice of the legislator. The Constitutional Court of Romania considered, in several decisions, that the norms from the political parties' statutes do not have a legal nature, but are internal behavioural rules, rules of political ethics and deontology. That was considered the reason why the courts are not competent to censure the decisions of the internal jurisdiction of the parties, as such decisions have the nature of political acts, issued in accordance to internal norms of their statutes.[1] However, the Constitutional Court of Romania reconsidered its point of view

[1] Such were the conclusions of Decision No. 197 from March 4th 2010, published in the Official Gazette of Romania, Part I, No. 209 from Aprilie 2nd 2010, Decision No. 1.461 from November 8th 2011, published in the Official Gazette of Romania, Part I, No. 81 from February 1st 2012, or Decision No. 283 from March 27th 2012, published in the Official Gazette of Romania, Part I, No. 366 from May 30th 2012.

through Decision no. 530/2013[2] and established that a distinction has to be made between the statutory norms of the parties that refer to deontological requirements and the norms imposing rights and obligations, sanctions and sanctioning procedures, the latest ones having a legal nature. Being defined as legal acts, sanctioning acts issued by political parties have to be subjected to the control of legal courts, concluded the Constitutional Court.

In our opinion this are not convincing reasons that should lead to a change of heart. There are other situations where the courts are not competent to control the sanctioning acts of particular associations. For example, in three decisions of the Constitutional Court of Romania it has been found that the existence of internal jurisdiction inside a religious cult and the impossibility to contest to court the decisions of the internal jurisdiction is restraining the right to justice, but this restrain is justified by the autonomous functioning of the religious cult. The Constitutional Court considered that only in case a criminal charge was brought to a member of the cult the access to court was guaranteed. The idea is also sustained in the case of *Sindicatul „Păstorul cel Bun" v. Romania* by the European Court of Human Rights, paragraphs 136 and 137.

We also agree with the dissident opinion from the Decision no. 530/2013 of the Constitutional Court pointing out that the courts are controlling in an indirect way the relationship between the party and its members by validating the legality of the constitutive acts and the statute. We also agree to the conclusion that the option to subject only to internal jurisdiction the decisions of the party regarding the gain or loss of the membership is fully justified by the philosophy behind the existence of political parties. These are associative structures bonded by an attachment to the same ideology. This is a psychological driven option motivated by the belief in the same values. This way, the extent of the attachment or any other appreciations of the matter cannot be the object of the courts.

In the philosophy of political law we can talk about the legitimacy of a legal norm. The idea of legitimacy is not purely legal, nor historical and political, but a synthesis standing out as a foundation for the legal principles of politics (Goyard-Fabre, 1997). As justice is the legitimacy of the legal norm, while the validity of the norm leads to its legality, legitimation is the justice of power, while legality is its validity (Bobbio, 1967).

Turning back to public administration, we can see that different states have regulated differently the criteria for the selection of civil servants – a selection for a specific office, a selection based on career system, on political criteria, on personal trust or on professional competence. The influence of the political factor upon some offices inside the public administration is also regulated differently. For example, in the current Romanian law, starting with the year 2006, the Prefect is a high ranked leading (senior) civil servant that has to be politically neutral, but before 2006 the Prefect was designated on political criteria. In the French law the Prefect is a political position. There is nothing illegal in any of the situations, but merely a question of political option regarding legislation (Fodor, 2013), and the solutions adopted by one state may be different from the solutions adopted by another, as they are the result of traditions, legal principles of the

[2] Decision No. 530 from December 12th 2013, published in the Official Gazette of Romania, Part I, No. 23 from January 13 2014.

system, the public perception on the existence and level of corruption inside public administration or other factors.

2. ARGUMENTS FOR SANCTIONING BETWEEN-PARTIES MIGRATION OF THE LOCAL ELECTED OFFICIALS

According to Romanian legislation, public administration may not be regarded as a having a coherent and uniform relation with the political factor.

Regarding the civil servant, Law no. 188/1999 consecrates the principle of stability as a protection against political influence[3]. Things are different in respect with elected officials of the autonomous local public administration. Deliberative authorities of the local public administration have a political origin and political-administrative tasks. They implement the general politics at a local level under the law, government ordinances and government decisions. At the same time, these authorities create the local politics through their decisions that have a normative or individual character; they put into practice the political programmes of the parties the local councillors belong to at the local level.

The legal norms aiming to regulate the relation between the political factor and the public administration considered both objective matters, such as creating a performant public administration, and subjective or moral matters. Looking back at the Prefect, transforming this office from one influenced by politics into a political independent one, the stated reasons were objective – professionalism, continuity of the office leading to the continuity of the administrative activity. But, when the texts of article 9, par. (2), letter h^1) and article 15, par. (2), letter g^1) were introduced in the Law no. 393/2004[4], the reasons were more of moral origin. Starting from the fact that according to Law no. 67/2003, the election of the local and county councillors is done on the ballot list, compliance with the voters' option involves keeping the political configuration of the council as it resulted after the validation of mandates.

In the statement of reasons of the Project of the law for amending Law no. 393/2004 of the Status of the local elected officials, it was shown that the goal of the amendments was "ensuring the functioning of the local council in accordance with the reality expressed by the local community on the occasion of the elections and respecting the will of the electorate" (Project of law no. Pl-x 377/2005 Chamber of Deputies).[5]

This originally moral idea received later a legal legitimacy, through a legal reasoning. Thus, the decisions of the Constitutional Court of Romania that analysed the constitutionality of article 9, par. (2), letter h^1) from the Law no. 393/2004, stated that they respond to article 8 par. (2) of the Romanian Constitution, according to which political

[3] In real life, actions of political interference upon the public offices were revealed by the Constitutional Court of Romania in the reasoning of Decision no. 1257/2009, stating that „*the Court notices that, through the dispositions of Emergency Government Ordinance no. 37/2009, a clear tendency of politicization of government structures from the county levels is observed, endangering the actual constitutional and legal regime of the public function*".

[4] These legal texts sanction the migration of local and county councillors to another party with termination of the mandate before time.

[5] The statement of reasons of the project of law for amending Law no. 393/2004 of the Status of the local elected officials, in the form laid at the Chamber of Deputies with no. Pl-x 377/2005, http://www.cdep.ro/proiecte/2005/300/70/7/em377.pdf, last consultation 10.11.2014.

parties contribute to the definition and expression of the political will of the citizens. The electorate gives his vote to a person to perform a function at the level of local government, in consideration of the political program of the party at the time of selection, and that the person is going to promote it for the duration of their mandate. Once the person is no longer a member of the party whose list has been chosen, it means that it no longer meets the conditions of legitimacy and representativeness necessary for attaining the political programme for which voters have chosen. The court also presented the moral arguments, such as stability in public administration, showing in the Decision no. 915/2007[6] that the same provisions have as purpose to prevent the migration of local elected officials from one political party to another, to ensure stability in the local public administration to express political configuration, as it resulted from the will of the electorate. The Constitutional Court examined the provisions of the Law no. 393/2004 in parallel with those relating to members of Parliament and parliamentary elections[7], pointing out that in the latter case the uninominal vote is expressing the option for a candidate, in consideration of its merits or qualities and of promises for which he has no reserves to make during the election campaigns. The Court also noted that, although they are supported by a political party during elections, members of the parliament are representatives of the whole nation through which it exercises sovereignty, according to art. 2 par. (1) of the Constitution, and they are acting pursuant to a mandate given by the entire nation, in accordance with article 69 of the Constitution.

The Constitutional Court also considered that although art. 20 par. (2) of Law no. 393/2004 guarantees freedom of thought and action in the exercise of the mandate of a local elected official, his representativeness being also established by article 3 paragraph (2) of the law providing that "the local elected officials are serving the local community," the difference relating to the consequence of migrating to another political party is justified by the fact that members of the parliament belong to a Legislative Assembly, while the councillors are members of the executive authority. As to the difference of regulation regarding the consequences of exclusion from the party suffered by the councillors, as opposed to the consequences suffered by mayors and presidents of county councils (in the last two cases the persons maintain their mandate in case they are excluded from the political party they belonged to at the election time), the Constitutional Court stated the difference is justified as councillors are members of deliberative authorities, but mayors and the presidents of county councils are executive authorities.

3. COMMENTS AND UNREGULATED SITUATIONS

Some comments can be made in respect to the assertions of the Constitutional Court.

A. Regarding the option of the electorate for a political program of a party that proposes a list of candidates for local/county councillors, it can be mentioned that respecting the program after the elections is not a legal obligation neither for the parties

[6] Decision no. 915/2997 of the Constitutional Court was published in the Official Gazette of Romania, Part I, no. 773 from November 14th, 2007.

[7] Decision no. 273/2009 of the Constitutional Court of Romania, published in in the Official Gazette of Romania, Part I, no. 243 from Aprilie 13th 2009.

nor for councillors, but a moral one at the most. It follows that there is no guarantee of fulfilment for the proposed political program.

Further on, the political program may be very precise or vary vague, in the latest situation the desired actions of the councillors not being really known. Not least, the reality of the last years proves that there is not a great difference between the programs of different political parties in respect with local development. So, if theoretically the arguments of the Constitutional Court regarding the implementation of political programs may seem justified, in real life they are not.

B. Regarding the uninominal elections, it is difficult to establish the weight of personal qualities and merits of the candidate in casting a vote, especially in towns with a large population or at a county level. The same observation is valid in case of the members of Parliament. In both cases the predominant aspect is the affinity of the voter with the party that sustains the candidate, or even the fact that a candidate is politically independent – for some of the voters this being appreciated as a merit.

C. It is true that, according to constitutional dispositions, members of the Parliament are members of a nationally representative forum. This national representativeness is more real for those who were not elected with absolute majority, but ended up in Parliament by the distribution operated by a computer programme, as Law no. 35/2008 regarding national elections does not lead to a result based on voters' options in the circumscriptions where no candidate obtained an absolute majority (Iancu, 2012). It cannot be denied the fact that a candidate in the national elections is elected in consideration of the affiliation to a certain political party too. The fact that he will be a member of the Legislative Assembly gives the candidate the force to implement the program of a certain political party, through the legal acts adopted during his mandate. Furthermore, one of the most important activities of the Parliament is the casting of the confidence vote to the Prime-minister and his cabinet. This way, the vote given to a certain candidate comprises a vote for the political composition and leadership of the Government. The possibility of migrating to another party given to a member of the Parliament leads to a lack of finality of the vote in this respect.

D. In respect with ensuring a stability of the local public administration, that will reflect the option of the electorate, we can argue that in case neither party obtains a majority in the council, there is no stability. In order to reach stability, alliances are formed in each local/county council after the elections, which are not necessarily maintained throughout the duration of the council's mandate and do not always mirror the alliances inside Parliament.

E. Constitutional Court is not consistent in defining the nature of the local/county councils. As opposed to Parliament they are seen as executive authorities, but as opposed to mayors or presidents of the county councils they are seen as deliberative authorities. As we have shown before, they are both, because although they are subjected to law, they have the liberty of political choices in adopting decisions regarding the life of the local community. So, the argument used in relation with the members of Parliament is not convincing. At the same time, the fact that local elections are organised based on political programs, in a system with proportional representativeness, was found to lead to a fracture between the voter and candidates and the necessity of forming alliances that will lead to incoherent policies (Iancu, 2012).

On the other hand, even if Mayors or Presidents of County Councils are executive authorities, and are subjected to the decisions of the Local Councils respective County Councils which they are call to implement, the fact that these authorities have important prerogatives of a political nature cannot be ignored. Mayors and Presidents of County Councils are drafting the budget, projects for strategies for developing the area economically and socially. They also draft the environmental policy of the area, the local urban planning, they set the agenda of the council meetings. All this prerogatives gives the executive authority the power to direct the management of the administrative-territorial unit. Perhaps this is the reason behind the sanction of ending the mandate in case the mayor or the President of the County Council leave on their own free will the party they belonged to at the election time.

All the arguments of the Constitutional Court are based on the statements of Law no. 393/2004 regarding the connection between the local elected officials and the parties they belonged to at the election time. But, according to Law no. 67/2004, candidates for local councils and county councils, as well as those for mayor ore president of the county council are proposed not only by political parties but also by political alliances, formed under the law of political parties no. 14/2003, republished, with subsequent amendments. Electoral alliances can also propose candidates.

According to article 45 from the same law, in the case of political parties and political alliances the proposals for candidates shall be made in writing, in 4 copies, signed by the leaders of the county-level organisations of the party or political alliance. In the case of an electoral alliance the lists containing proposals for candidates have to be signed by the leaders of the county-level organisations of each party of the alliance. According to article 96, par. (9), candidates enrolled in the lists, which have not reached a place in the council, are declared alternates in the respective lists. In the case of a vacancy in the council, alternates from the same list with the councillor that created the vacancy will occupy the place that has become vacant, in the order in which they are enrolled in the lists. The signature of the leader of county-level organisation of the party, or of the parties is needed, both in the case of an electoral alliance and of a political one. It can be seen that in the case of proposing a list there is a difference between the political alliances and electoral alliances, because in the case of political alliances the list does not have to be signed by the leader of the county-level organisation of each party, but by the leader of the local organisation of the political alliance. In case of filling the vacancies in the local or county councils this difference disappears, as the signatures of the leaders of local organisations of each party inside the alliance is needed, no matter that it is an electoral or a political alliance.

Questions that may be raised in case of the alliances are:

- What happens in case some misunderstandings occur in the political alliance due to the fact that one of the political parties is turning towards another political programme? Are the consequences similar in the case of a political alliance as in the case of an electoral alliance?
- What happens in case a councillor is moving from a political party to another, inside the same political alliance? Should he be sanctioned with termination of the mandate or not?

The answer to the first set of questions seems simple. The political alliance has the legal regime of a political party. This status imposes a unique program of the alliance,

similar to the case of a political party that has the obligation to elaborate such a programme according to article 9 of the Law no. 14/2003. Such a requirement does not exist for an electoral alliance. So in case of fracture of an electoral alliance after the elections moment, the representativeness and legitimacy of the vote will be preserved, as long as the political programmes of the voted parties remain unchanged.

In the case of political alliances however, things are more complicated. In case the legal existence of the alliance is ended, would it be justified to maintain the mandate of the councillors elected on its list? Law no. 393/2004 has no provisions regarding the situation of the councillor elected on the list of a political party that ceases to exist after the elections, though such a situation is possible.

But, supposing the political alliance is preserving its legal existence, but the parties inside it do not work with each other anymore, can one argue that the chosen ones on the list of the alliance are working to implement the electoral program voted? Can one argue that the political configuration resulting from the election is preserved? Who will be able to find the proportion of voters drawn by each of the parties that formed the alliance?

Further on, what will happen in case a place in the local/county council becomes vacant because the mandate of one of the councillors belonging to the political alliance is terminated before time? In order to be subjected to validation process, the alternate from the list proposed by the alliance has to obtain only the signature from the leader of the local organisation of the party he belongs to, or the signature of all leaders of the local organisations of the parties that form the political alliance? Being a list of a political alliance, it does not specify the party where the candidate comes from. It would be only normal, according to article 96 par. (9) of the Law 67/2003 that the leaders of the local organisations of all the parties forming the alliance to sign. But then, what happens if one of the parties that form the alliance does not want to sustain the political programme of the alliance anymore, and refuses to sign the document attesting the membership of the alternate to the political alliance? Can the alternate be subjected to validation or not? If not, can the stability of the public authority be preserved? To answer this final question we must bear in mind that if an absolute or higher majority is needed for the decision to be adopted by the local or county council, the result of the vote does not depend only on the number of favourable votes, but on the total number of members of the council too. In the absence of signatures required by law a new councillor will not be able to be validated, and the number of councillors will remain less than that established through the order of the prefect before the elections, according to law. It is thus possible to change the political majority in such a way that it will not reflect anymore the will of the electorate at the moment of local elections.

In searching of an answer to the second set of questions, we are limited to the provisions of article 9 par. (2), letter h^1) of the Law no. 393/2004 that should be applied *stricto sensu*. Leaving the party, even if the councillor remains a member of another party inside the political alliance should bring him the sanction of the termination of his mandate. But, this legal text is referring to the quality of "member of a party", when in reality the councillor was elected on the list of a political alliance. Being elected on a list proposed by the political alliance, it should be given no importance to the fact that he migrated inside the alliance. But, in order to be subjected to validation, he will require the signatures mentioned in the law. But, what will be the answer if the councillor who is

migrating from a political party inside the alliance towards another that is also inside the alliance but no longer sustains the political programme of the alliance in a manifest way, although the alliance still stands formally? If one will follow the logic of the decisions of the Constitutional Court, one should admit that only those councillors may maintain the mandate that are members of the political parties who still sustain the political programme of the alliance (in case the alliance was formed between more than two parties). But, as long as no manifest legal manifestation of the will to brake the alliance are made, the legality of the sanction of terminating the mandate will be doubtful.

4. EMERGENCY GOVERNMENT ORDINANCE NO. 55/2004

It is possible that some of the questions rose above and the existence of situations unsolved by the law to be the reason for adopting the Emergency Government Ordinance no. 55/2004. The preamble of this legal act mentions that it was adopted due to the fact that no law offered legal solutions for "political fractures" that occurred in the exercise of the mandate of local administrative authorities, and for finding a remedy to of their negative effect on the continuity and stability of their activity, endangering the possibility of meeting the needs of local communities. It further mentions, more concrete this time, the current socio-political context, changes/modifications produced mainly at the level of political majority that resulted following the local elections in 2012, that generated negative effects on the functioning of the local public authorities, as well as the reorganisation of some of the political parties, political alliances or electoral alliances, all of which have generated of blockages regarding the fulfilment of conditions for the validation of decisions to ensure political stability. In the same concrete manner, the blockage in the exercise of the right of the elected alternates from the lists of the political alliances that have been reorganized or ceased, due to the lack of rules for these situations, is mentioned.

We can observe that the preamble is conceived in a general manner, without nominating a specific situation. One might have expected that the normative act would propose an amendment or an add-in of the existing laws, in connection with the existing situations that might repeat themselves. The existence of the emergency would justify adopting an Emergency Ordinance, the organic laws regulating the field (Law no. 393/2004, Law no. 215/2001 and Law no. 67/2003) allowing the amendments voted with the majority required by article 115 par. (5), final thesis, from the Romanian constitution, namely the majority required for adopting an organic law.

The Government did not choose however the option of an amendment or add-ins of the laws, but the option of a temporary derogation from the provisions of the Law no. 393, regarding the consequences of the migration from one party to another of the local elected officials, together with a temporary regulation for filling in the vacant seats inside the deliberative local autonomous authorities with alternates.

According to its competences, the Legislative Council endorsed the draft of the Ordinance, with some comments, related to the specification of the provisional character of the effects of the Ordinance and the correlation of the derogation with article 69 par. (9) of the Law no. 67/2003. These observations were solved in the form adopted by the Government.

Since the Ordinance has created a vivid debate in civil society, a request for the waiver of an exception of unconstitutionality has been forwarded to the Ombudsman. This

authority considered that the settlement of the problem reported is within the competence of the Parliament and the Government, because in reality it concerns the constitutional relations between the Parliament, the President of Romania and the Government, and that the appellate jurisdiction of the institution exceed the competences of the Ombudsman, whose role is to protect the rights and freedoms of natural persons, as defined by article 58 of the fundamental law. In addition, it was noted that the problem lies with Parliament, as article 115 par. (5) of the Constitution lays down that "the Emergency Ordinance shall enter into force only after submission to the procedure of urgency debate to the competent Chamber to be notified, and after its publication in the Official Gazette of Romania", constitutional provisions governing the procedure for the adoption or rejection of the Ordinance by law and effects of the vote of the Parliament being at hand.

We consider that the position expressed by the Ombudsman was right. Considering that prior to the entry into force of the provisions of article 9 par (2), letter h^1) and article 15 par. (2), letter g^1) one could not say that the provisions of article 8 par. (2) of the Constitution would be violated in case of political migration, one can appreciate that the new rules introduced by law no. 249/2006 into the Law 393/2004 have been caused by a moral interpretation of legislation.

Thus, it is up to Parliament to determine the operating mode of legal sanctions in the case of political migration at the level of local elected officials, as a legitimisation of a principle of political equity through legal norms. We emphasize, however, that the adoption of the Ordinance would only provide a point solution for a period of time for a problem that might arise again at another time.

As regards the settlement of the rights for the alternates who are on the lists of the electoral alliance, as well as for the parties to whom they belong, in fact, the solution seems in intellectual assent to the Constitutional Court's considerations. Since it is not possible to identify the percentage of the vote given to a party that is a member in political alliance that submitted a joint list of candidates, the only moral or equitable solution is to validate the alternates in the order on the list, considering only the agreement of the party to which they belonged at the time of the election. This solution, however, does not appear to require the consecration of exceptions from the application of the sanction on migration policy, since one cannot speak of a true migration.

It than occurs as less justified the temporary suspension of the sanctions applied for migration to another party, especially for mayors/presidents of the county councils and councillors in office. The possibility of migration, from a political party to any other political party, without any relation to the election on the list of a political alliance that experiences difficulties, without any relation to the implementation of the programme of the same alliance, appears as impossible to be justified and unplugged from the reasons expressed in the preamble. On the other hand, the suspension or even the disappearance of the sanctions applied to the migrants may not be considered as unconstitutional, as the repeal of a text which is in accordance with the Constitution cannot be necessarily regarded as an unconstitutional act.

The Ordinance offers only a partial solution to a specific problem, leaving unresolved the issues previously outlined, for the future. We are thus in the presence of a regulatory act limited in time. Once the time limit has been reached (the fulfilment of the 45 days from the date of entry into force of the Ordinance), its effects will be consumed. In this

case, that would be the effects of the law passed by Parliament? Clearly, in the case of adoption of the Ordinance by the Parliament, its effects would be validated by the law, even if they have occurred previously. If the Ordinance would be rejected, according to article 115 of the Constitution, the rejection law shall regulate, where appropriate, the necessary measures relating to the legal effects produced during the period the Ordinance was into force. If the rejection law would abolish the effects produced by the Ordinance, this would amount to a retroactive application of the law, contrary to the provisions of article 15 par. (2) of the Constitution, which may result into a "Pandora's box" (Deleanu, 2006).

Considering the possibility of a control of constitutionality of the law of adoption, one can observe that it might be exerted, before or after enactment. If the Constitutional Court finds that the law is not constitutional[8], it will be returned to the Parliament. Generally, this presents no problem, as no effects of the law are produced before promulgation. But in the case of a law that adopts a Government Emergency Ordinance, the problem is different, as the ordinance has already entered into force. We agree with the opinion that one cannot apply the same rules in the case of laws ratifying an ordinance as in the case of any other law, due to the fact that in the first case the normative act has already entered into force (Deleanu, 2006), though the Constitutional Court of Romania stated otherwise.

According to article 11, par. (3) of the Law no. 47/1992, however, the Constitutional Court's Decisions take effect only for the future. As the 45 days provided for the effects of the Emergency Ordinance have passed, a possible admission of a waiver of unconstitutionality should not affect the status of those who have used it. We find ourselves in a situation that appears legally consolidated through the expiry of the period when the Ordinance could produce legal effects.

A waiver of unconstitutionality may be discussed on procedure grounds or considering that the ordinance has regulated in forbidden areas of law. However, in this last case, the Constitutional Court will pass a subjective value judgement. But, if the merits of the Ordinance are considered, the bottom line is that the regulation of the consequences for the local elected official that has migrated from the political party he belonged to at the election time, to another political party, remains a problem of a political and not legal nature.

REFERENCES

Bergel, J., 2003. *Théorie générale du droit.* Paris: PUF.

Bobbio, N., 1967. *Sur le principe de la légitimité.* Paris: PUF.

Deleanu, I., 2006. *Instituţii şi procedure constituţionale.* Bucharest: C.H. Beck.

Fodor, E., 2013. Stability of Public Office, A Current Principle?. *Curentul Juridic*, 3, pp. 13-20.

Goyard-Fabre, S., 1997. *Les principes philosophiques du droit politique modern.* Paris: PUF.

[8] In fact, the Constitutional Court of Romania fount the Law ratifying the Government Emergency Ordinance no. 55/2014 to be unconstitutional, on the December 17th 2014. Up to the date the present article was ready for publishing, the reasoning of the Constitutional Court's decision was not published.

Guy, M., 2003. Ties that Bind: The Link between Public Administration and Political Sciences. *Journal of Politics*, 3, pp. 641-655.

Iancu, G., 2012. *Drept electoral.* Bucharest: C.H. Beck.

Tahmasebi R. & Musavi, S., 2011. *Politics-Administration Dichotomy: A Century Debate*. [Online] Available at: http://www.ramp.ase.ro/en/_data/files/articole/2011/17-09.pdf [Accessed 14 12 2014].