LIABILITY OF LOCAL ELECTED OFFICIALS ACCORDING TO THE 2019 ADMINISTRATIVE CODE

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ABSTRACT: *The liability of local elected officials is regulated, starting from 2019, by the Administrative Code. The chapter dedicated to this liability in the Code, although it took over many of the provisions of Law no. 393/2004 on the Statute of local elected officials, contains many new elements.*
The Code regulates the types of liability of local elected officials, as well as the disciplinary sanctions that occur in case of violation of the rules governing the disciplinary liability of local elected officials.
An important place belongs to the liability related to administrative acts, establishing the conditions in which the responsibility of the local elected officials can be combined with that of the issuing authorities of the administrative acts.
Last but not least, the law regulates the cases in which the contraventional liability of local elected officials may intervene.

KEYWORDS: *liability; local elected; sanction; administrative code.*
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1. INTRODUCTORY CONSIDERATIONS.

The Administrative Code, adopted in 2019 in the form of Government Emergency Ordinance no. 57/2019 regulates the liability of local elected officials in articles 231-239 of the Code[1].

These legal provisions are nothing more than almost literal takeovers of art. 55-72 of the Statute of local elected officials, respectively former Law no. 393/2004[2].

As such, all the doctrinal and jurisprudential aspects that these legal texts had in mind keep their relevance even under the rule of the Administrative Code (A. Iorgovan, 2005).

It should also be noted here that texts regulating the liability of local elected officials, especially administrative liability, can also be found in other chapters of Part III of the

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[1] This material was developed based on the comments made by the author to articles 231-239 of the Administrative Code in the collective work coordinated by Verginia Vedinaș "Codul administrativ comentat. Explicatii, jurisprudenta, doctrina. Volume I and Volume II", which, at the time this material was prepared, was being published by Universul Juridic Publishing House.

[2] Published in the Official Bulletin no. 912 of October 7, 2004.

Administrative Code, entitled "Local public administration". For example, rules governing the suspension or termination of the mayor's mandate can be found in articles 159-163 of the Administrative Code, and, in the case of the president of the County Council, in art. 193 of the Administrative Code, to refer to only two examples.

On the other hand, there is also a labor law liability, which characterizes the relations between mayors and vice-mayors, on the one hand, and the administrative-territorial unit, on the other. According to the Decision of the High Court of Cassation and Justice (RIL) no. 16/2016[3]: „In the interpretation and uniform application of the provisions of article 1, article 231 and article 278 paragraph (2) from Law no. 53/2003 – Labor Code, republished, with subsequent amendments and additions, article 55 of Law no. 393/2004 regarding the Statute of local elected officials, with subsequent amendments and additions, article 2 paragraph (1) letter f) from the Contentious Administrative Law no. 554/2004, with subsequent amendments and additions, and article 109 of Law no. 188/1999 on the Statute of Civil Servants, republished, with subsequent amendments and additions: the provisions of the Labor Code apply to legal relations between the mayor/deputy mayor and the administrative-territorial unit, if special laws do not contain specific provisions, including after the termination of mandates".

2. FORMS OF LIABILITY OF LOCAL ELECTED OFFICIALS

According to the provisions of article 231 of the Administrative Code: "The local elected officials are responsible, as the case may be, administratively, civilly or criminally for the acts committed in the exercise of their duties, under the conditions of the law and this code".

We appreciate that the text is not very happily formulated, for the simple reason that, in accordance with the conception of the Code, the "civil" liability of local elected officials for damage caused in the exercise of their mandate is nothing more than a patrimonial liability, a form of administrative liability, according to articles 573-579 of the Administrative Code.

That is why, regarding the commission of a deed that would attract civil liability, manifested in the exercise of locally elected attributions, it is difficult for us to imagine such a situation in practice.

On the one hand, the commission of a deed directly related to the locally elected attributions that causes damage will, as a rule, attract the administrative-patrimonial liability (Lazar, 2022) of its author, and, on the other hand, the commission of a purely civil offense, from fault, it can't really be related to the exercise of official duties.

In any situation, however, this liability is not relevant from the perspective of administrative law, because the employment of civil liability will take place according to civil legislation (Lazar, 2022). Moreover, paragraph (2) of article 564 of the Administrative Code provides that civil liability is engaged according to "specific legislation".

As such, the provisions of article 231 of the Administrative Code are irrelevant from the point of view of engaging the civil liability of the local elected official in question. For example, the commission of a minor traffic accident by a local, county councillor or even

[3] Published in Official Bulletin no. 110 of February 9, 2017.

by a mayor will attract its settlement according to the Civil Code, the Road Code and specific insurance legislation, regardless of whether this accident occurred in the exercise or outside the exercise of the respective person's locally elected powers.

Under the conditions of the existence of the old article 55 of Law no. 393/2004 regarding the Statute of local elected officials, it was shown in the doctrine that the civil liability referred to is nothing more than "what we called administrative-patrimonial liability" (A. Iorgovan, 2005).

It follows, therefore, that the texts taken from Law no. 393/2004 was not corroborated with the provisions of articles 563-569 of the Administrative Code, which regulates administrative liability.

As far as criminal liability is concerned, it is obvious that it is committed under the terms of the substantive criminal law, respecting the rigors of the criminal procedure.

In the doctrine, it was proposed that, by law, contraventional liability should also be mentioned in this article, as a matter of principle, under the conditions that within Chapter V - ("Liability of local elected officials"), contraventions are also regulated[4].

We cannot share this proposal because, according to article 566 of the Administrative Code, "administrative-contraventional" liability is a form of administrative liability. Even if we do not at all agree with such a qualification, we cannot ignore the will of the legislator.

The formula at the end of article 231 is also debatable - "under the conditions of the law and this code" -, given that the Administrative Code is nothing more than an element of the objective law in force at a given time. We believe that the phrase "under the law" was more than enough.

3. LIABILITY OF LOCAL AND COUNTY COUNCILLORS AND APPLICABLE SANCTIONS

According to article 232 of the Administrative Code: "The local councillors, respectively the county councillors, are responsible on their own behalf, for the activity carried out in the exercise of the mandate, as well as jointly, for the activity of the Council they are a part of and for the decisions they voted for. (2) In the minutes of the meeting of the Local Council, respectively of the County Council, the result of the vote is recorded, and, at the request of the local councillor, respectively of the county councillor, her/his vote is expressly mentioned."

This article covers the responsibility of local councillors and county councillors from two perspectives:

- on one's own behalf, when the deed that is the source of a form of liability is committed without the involvement of the collegial body, but having a direct connection with the exercise of the locally elected mandate - for example, the situation of criminal liability or contraventional liability, which can always intervene only for one's own deed. Also, disciplinary liability involves committing an act "in one's own behalf".

- in the direct exercise of the duties within the collegial body gathered in session. In these cases, liability is, as a rule, patrimonial, solidarity being instituted, similar to the principles of civil law, for the benefit of the "victim" of the illegal act.

[4] V. Vedinaș, *Codul administrativ adnotat, op. cit.*, p. 253

Regarding the exoneration of the local elected official, similar to the provisions of article 56 paragraph (2) from the old Statute of local elected officials, paragraph (2) of article 232 of the Administrative Code establishes for the councillor who votes, as a rule, against a project that is subsequently adopted by the respective collegial body, the possibility to have her/his vote expressly recorded.

Assuming that the councillor in question is diligent and makes use of this legal provision, she/he will be able, in the case of a joint patrimonial liability action, to exonerate herself/himself from liability, proving in court that her/his vote was contrary to the majority vote.

As a rule, these provisions apply if a councillor votes against a draft decision, but we can also imagine the opposite situation. For example, a Local Council votes against a draft decision that "enforces" a court decision. Under these conditions, the "for" vote recorded in the minutes provided for in paragraph (2) of the commented article might save the diligent councillor from great inconvenience.

Article 233 of the Administrative Code provides for the sanctions that can be applied to local or county councillors, as well as vice-mayors and vice-presidents of County Councils, these being identical to those provided in article 57 of the former Law no. 393/2004 regarding the Statute of local elected officials. These are detailed in the following articles of the Administrative Code, respectively in articles 234-237.

Specifically, the sanctions are: a) warning; b) the call to order; c) withdrawal of the right to take the floor; d) removal from the meeting hall; e) temporary exclusion from the work of the Council and the specialized commission; f) reduction of the monthly allowance by 10% for a maximum of 6 months; g) withdrawal of the monthly allowance for one or two months.

The less serious sanctions, namely the warning, the call to order, the withdrawal of the right to take the floor and the removal from the meeting hall, are applied by the chairman of the meeting.

They can also be applied in the meetings of the specialized commissions, their presidents having the same rights as the president of the meeting, according to the provisions of article 238 paragraph (3) of the Administrative Code.

The more serious sanctions, i.e. temporary exclusion from the work of the council and the specialized commission, the reduction of the monthly allowance by 10% for a maximum of 6 months and the withdrawal of the monthly allowance for one or two months, are applied by decision of the Local Council, respectively of the County Council and they cannot be applied to the vice-mayors and vice-presidents of the County Councils. The decision in question is adopted by an absolute majority, under the conditions of article 238 paragraph (1) of the Administrative Code.

In case of temporary exclusion from the work of a specialized commission, a report is requested from this commission that will be drawn up based on the research carried out, including the explanations provided by the one in question.

The following articles of the code detail the penalties.

a) The warning

The warning is the lightest sanction that can be applied to a local or county councillor, being applied for minor disruptions of the meeting.

According to the legal text, which is a literal takeover of the provisions of article 58 of Law no. 393/2004 regarding the Statute of local elected officials, the warning consists only

in drawing the attention of the councillor in question, followed by an invitation to comply with the regulations of the meeting.

The warning is to be applied by the chairman of the meeting and, from the *per a contrario* interpretation of the provisions of article 235 paragraph (2) of the Administrative Code, which requires the entry of the call to order in the minutes of the meeting, results that the warning does not have to be recorded in writing.

This means that the warning is simply an admonition, which the chairman of the meeting addresses to a more "recalcitrant" councillor and, consequently, it cannot cause other legal consequences than that, in the absence of compliance, the procedure for calls to order will be applied.

b) Call to order

The call to order is the second disciplinary sanction applicable to local or county councillors and the first to be recorded in writing.

The legal text, identical to that of article 60 of the old Law no. 393/2004 regarding the Statute of local elected officials, states that it is not mandatory to apply the warning in advance, but the call to order can operate directly for those who seriously violate, even for the first time, the provisions of the regulation.

The call to order is a sanction that is recorded in the minutes of the meeting and may attract, in case of non-compliance in the future, the application of more serious sanctions, such as the withdrawal of the right to take the floor or removal from the hall, under the conditions of article 236 of the Administrative Code.

The chairman of the meeting is the competent person to apply the call to order, either directly, in case of serious violation, even for the first time, of the provisions of the regulation, or in the situation where, after the application of the warning, the local councillor does not comply.

The call to order is entered in the minutes of the meeting.

However, before ordering the call to order, the chairman of the meeting has the obligation to invite the councillor directly involved to retract or explain the word or expressions that generated the incident and that would attract the application of the sanction.

Depending on her/his attitude, there can be several situations:

- if she/he refuses, the call to order is applied;
- if she/he withdraws the expression used, the sanction is no longer applied;
- if she/he gives explanations, the sanction may or may not be applied, depending on the assessments of the chairman of the meeting regarding the satisfactory or unsatisfactory nature of the explanations provided by the councillor involved.

c) Withdrawal of the right to take the floor and removal from the hall

Article 236 of the Administrative Code regulates the last two sanctions that can be applied by the chairman of the meeting in situations where a local or county councillor disrupts the smooth running of these meetings, the legal text being identical with that of article 61 of the Law no. 393/2004 regarding the Statute of local elected officials.

Thus, immediately after the call to order, if the respective councillor persists in his attitude, the chairman of the meeting will withdraw his right to speak for the entire course of the meeting.

If he continues to speak or disrupts the meeting in any way, the chairman of the meeting may order his removal from the hall, in which case the respective councillor will appear absent without reason at the meeting in question.

The two sanctions must be applied in the order provided by law, not being able to order the removal from the hall before the sanction of withdrawing the right to take the floor is applied.

Both sanctions are recorded in the minutes of the meeting, and the application of the sanction of removal from the hall produces another consequence, namely the fact that it will also attract an unjustified absence from the respective meeting for the councillor in question.

d) Temporary exclusion from the work of the Council and the Specialized Committee

Temporary exclusion from the work of the Council and the Specialized Commitee of which the local or county councillor involved is a member should be a serious sanction and, as such, should be defined as precisely as possible.

Unfortunately, however, the text of article 237 of the Administrative Code[5] which reproduces in a single article, but *ad litteram*, the provisions of articles 62-65 of the old Law no. 393/2004 regarding the Statute of local elected officials does not excel in clarity.

More specifically, according to the legal text, the sanction of temporary exclusion from the works of the Council and the Specialized Committee of which the local councillor is a part may be given in two situations:

- for serious violations committed repeatedly
- for particularly serious violations.

However, the law does not define what "serious misconduct" means, respectively "particularly serious misconduct", on the one hand, and, on the other hand, it is not very clear in establishing what the repeated character of a serious misconduct means.

Even if paragraph (2) stipulates that it is the attribute of the Specialized Committee to determine the seriousness of the violation, this text does not help us in the interpretation either.

First of all, we do not understand whether that Committe can say whether the offense is serious or very serious or only serious, because the law does not distinguish, and secondly, the text presents obvious defects of unconstitutionality due to lack of clarity, reported to the provisions of article 1 paragraph (5) of the Romanian Constitution, as they were interpreted in the constant jurisprudence of the Constitutional Court.

Based on the above, we can conclude that:

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[5] According to article 237 of the Administrative code: (1) In case of serious violations, committed repeatedly, or particularly serious violations, the Local Council, respectively the County Council can apply the sanction of temporary exclusion of the local councillor, respectively the county councillor from the work of the Local Council or of the County Council, as the case may be, and of the Specialized Committee.
(2) The seriousness of the violation is established by the Specialized Committee whose activity includes legal aspects, within 10 days at most from the notification.
(3) The temporary exclusion from the works of the Local Council, respectively of the County Council and of the Specialized Committee cannot exceed two consecutive meetings.
(4) Exclusion from the works of the Local Council, respectively of the County Council and of the Specialized Committees has the consequence of not granting the monthly allowance.
(5) In case of opposition, the ban on participation in the meetings is enforced with the help of the personnel who ensure local public order.

- in case of serious misconduct, this must be repeated in order to apply the sanction of exclusion from meetings;
- if the violation is "very serious", the sanction can be applied directly;
- the legal text that allows the "concrete" assessment of the seriousness of the offense without the existence of clear legal criteria is clearly unconstitutional.

The sanction of temporary exclusion from the work of the Council and the Specialized Committee of which the local councillor is a member is applied by the Local Council, respectively the County Council of which the councillor involved is a member.

The immediately following article, respectively article 238 paragraph (1) of the Administrative Code, stipulates that an absolute majority is needed for the application of the sanction, unlike the old law, respectively Law no. 393/2004 regarding the Statute of local elected officials, which required a 2/3 majority for such a decision.

It is important to specify that, according to article 238 paragraph (2) of the Administrative Code, during the execution of the sanction, the local or county councillors in question will not be counted in the quorum for the meeting.

The patrimonial consequence of the application of this sanction is the non-granting of the monthly allowance for the councillor involved, and the duration of this sanction is a maximum of two consecutive meetings, without the law specifying whether they can be ordinary and/or extraordinary.

Finally, in case of opposition to the execution of the sanction, the law provides that the prohibition of participation in the meetings is executed with the help of the personnel who ensure local public order.

4. PROCEDURAL ASPECTS SPECIFIC TO THE ENGAGEMENT OF THE LIABILITY OF LOCAL AND COUNTY COUNCILLORS

Article 238 of the Administrative Code provides for some procedural particularities specific to the engagement of the responsibility of local and county councillors.

According to paragraph (1) of this article, the sanctions of temporary exclusion from the works of the Council and the Specialized Committee and the reduction of the monthly allowance by 10% for a maximum of 6 months are applied by a decision adopted by the Local Council, respectively by the County Council, with an absolute majority.

We notice a change in the text from the old article 66 paragraph (1) of Law no. 393/2004, which provided for a qualified majority of 2/3 for the application of the same disciplinary sanctions.

As such, under the current legislation, the application of sanctions would be easier than under the old legislation, although an absolute majority would be required.

We remind here that the first four sanctions, namely the warning, the call to order, the withdrawal of the right to take the floor and the removal from the meeting hall, are ordered by the chairman of the meeting, according to the provisions of article 233 paragraph (2) of the Administrative Code.

Paragraph (3) of article 238 provides for the competence of committee presidents for the application of these sanctions in the meetings of Specialized Committees to preserve order, but we believe that the legislative technique would require that this paragraph be found in article 233 of the Administrative Code.

Regarding the passive subjects of specific disciplinary liability, paragraph (4) of article 238 of the Administrative Code provides that the sanctions provided for in article 233 paragraph (1) may be applied accordingly to the vice-mayors, presidents and vice-presidents of the County Councils, for the violations committed in their capacity as a local councillor, respectively a county councillor, contradicting the provisions of article 233 paragraph (3) of the Administrative Code, which provides that only the sanctions from letters a)-e) are applicable to the vice-mayors and vice-presidents of the County Council, therefore excluding, the penalty of reducing the monthly allowance by 10% for a maximum of 6 months, provided by article 233 paragraph (1) letter f).

It should also be mentioned here that the text from paragraph (3) of article 233 of the Administrative Code does not exist in article 57 of Law no. 393/2004 regarding the Statute of local elected officials, which was taken over, along with other articles, almost literally in the Administrative Code.

On the other hand, neither this article nor another in Chapter V ("Liability of local elected officials") regulates the procedure for applying the sanction provided for in article 233 paragraph (1) letter g) of the Administrative Code, respectively the penalty of withdrawing the monthly allowance for one or two months.

These "errors" should be corrected by *lege ferenda*, the interpretation techniques of the legal norm being insufficient for the interpreter to discern the "will of the legislator".

Regarding the actual procedure for applying the sanctions, the two more serious sanctions are applied by the Local Council, respectively the County Council, with an absolute majority, and the direct consequence of the application of the sanctions is that, during their application, the local or county councillors concerned will not be counted in the quorum for the meeting.

Although the legal text does not provide, it is obvious that, against any disciplinary sanction applied to a local or county councillor, she/he has open the way to administrative litigation.

Since there is no exception to the formulation of the preliminary procedure, as in the case of the procedure provided for by article 239 of the Administrative Code, this procedure must be carried out by the sanctioned councillor.

In the end, the sanctioned councillor has every right to challenge the sanction applied through an act whose administrative quality cannot be challenged.

5. LIABILITY OF VICE-MAYORS AND VICE-PRESIDENTS OF COUNTY COUNCILS

Article 239 of the Administrative Code regulates a disciplinary liability of the vice-mayors and vice-presidents of the County Council for the violations committed in the exercise of these positions .

Since the vice-mayors and vice-presidents of the County Councils are, at the same time, also local or county councillors, they will answer in a double capacity - for the violations committed, as the vice-mayor or vice-president of the County Council, they will be responsible under the terms of this article, and for the violations committed as local or county councillor they will be responsible under the conditions of articles 233-238 of the Administrative Code.

As for the violations that would attract liability, the legal text is formulated unclearly, showing that the vice mayor or the vice president of the County Council will be responsible for serious and/or repeated violations.

As such, the legal text refers to either serious misconduct or repeated misconduct, without clarifying what each of these means and whether serious ones must be repeated or only those that are not considered serious need to be repeated.

To make the uncertainty even greater, we remind you that article 237 of the Administrative Code, which regulates the sanction of exclusion from the meeting and which is also applicable to the vice-mayor and the vice-president of the County Council for misconduct committed as a counselor, uses a completely different terminology: serious misconduct and very serious misconduct. Bonus: serious violations must be repeated, and very serious ones, it seems, must not.

As such, we propose, *de lege ferenda*, a reevaluation of both this article (239) and article. 237 of the Administrative Code and establishing at least a unified terminology.

Regarding the sanctions that can be applied, according to paragraph (1) of article 239 of the Administrative Code, these are: a) reprimand; b) warning; c) reduction of the allowance by 5-10% for 1-3 months; d) release from office.

In the doctrine, it was rightly argued that there is no justification for the existence of two moral sanctions, namely the reprimand and the warning, and, as a consequence, one should be eliminated, proposing the elimination of the warning[6].

In full agreement with this opinion, we also wonder what would be the difference between a reprimand and a warning, especially since, in theory, a reprimand would be a lighter sanction than a warning?

Until the necessary legislative change, we must remember that, unlike the warning applicable to local or county councillors under the conditions of article 234 of the Administrative Code, both the reprimand and the warning apply to the vice-mayor or the vice-president of the County Council only in writing.

In the case of the release from office of the vice-mayor or the vice-president of the County Council, the application of this sanction has no effect on the local or county councillor mandate of the person in question, a mandate that continues to be exercised, an aspect welcomed in the doctrine[7].

For the application of any sanction, the mayor or the president of the County Council will draw up a sanctioning proposal that will be brought to the attention of the local or county councillors at least 5 days before the meeting in which it is to be discussed.

The first three sanctions, namely the reprimand, the warning and the reduction of the allowance by 5-10% for 1-3 months, are applied by the Local or County Council in question with a qualified majority of 2/3 of the total number of councillors, the vote being secret.

In the case of the dismissal of the vice-mayor, this is done under the terms of article 152 paragraph (5) of the Administrative Code, legal text which provides that: "The release of the deputy mayor from office can be done by the Local Council, by a decision adopted, by secret vote, with a two-thirds majority of the number of councillors in office, upon a thoroughly motivated proposal of the mayor or one third of the number of local councillors

[6] V. Vedinaș, *Codul administrativ adnotat, op. cit.*, p. 255.
[7] *ibidem.*

in office. The vice mayor cannot be dismissed from office during the last 6 months of the Local Council's mandate".

Also, the dismissal of the vice president of the County Council is done according to article 188 paragraph (4) of the Administrative Code: "The release from office of the vice-presidents of the County Council can be done by the County Council, by secret vote, with the majority of two thirds of the number of councillors in office, upon the thoroughly motivated proposal of at least one third of their number. The dismissal of the vice-presidents of the County Council cannot be done during the last 6 months of the County Council's mandate".

Against acts of application of more serious sanctions, namely the reduction of the allowance by 5-10% for 1-3 months or dismissal from office, the sanctioned vice mayor or the sanctioned vice president of the County Council can address the Contentious administrative court, without going through the prior procedure.

We agree with the opinion expressed in the doctrine that the ban on challenging the first two sanctions in court is unconstitutional[8].

6. LIABILITY RELATED TO ADMINISTRATIVE ACTS

Article 240 of the Administrative code[9] regulates the liability of local elected officials related to administrative acts.

This article covers the liability of local elected officials for illegal administrative acts of local authorities, the general text of administrative-patrimonial liability for damages caused by illegal administrative acts can be found in article 575 of the Administrative Code.

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[8] *ibidem.*

[9] Article 240 of the Administrative Code provides that: (1) The mayor, the president of the County Council, respectively the president of the Local Council meeting, as the case may be, by signing, vests with a form of authority the execution of administrative acts issued or adopted in the exercise of their powers according to the law.

(2) Appreciation of the necessity and opportunity of adopting and issuing administrative acts belongs exclusively to the deliberative, respectively executive authorities. The preparation of reports or other substantiating documents provided by law, the countersignature or approval for legality and the signing of substantiating documents engages the administrative, civil or criminal liability, as the case may be, of the signatories, in case of violation of the law, in relation to the specific attributions.

(3) Acts of the local public administration authorities engage, under the law, the administrative, civil or criminal liability, as the case may be, of civil servants and contractual staff from the specialized apparatus of the mayor, respectively of the County Council who, in violation of the legal provisions, substantiate from a technical and legal point of view, their issuance or adoption or countersigns or endorses, as the case may be, these documents for legality.

(4) In the event that through an administrative act of the local public administration authorities issued or adopted without being substantiated, countersigned or approved from a technical or legal point of view, harmful consequences have occurred, the legal liability of the executive authority or the deliberative authority is engaged, as the case may be, under the conditions of the law and this code.

(5) Public officials or contractual staff, as the case may be, responsible for the operations provided for in paragraph (3) can formulate objections or refuse to carry them out under the conditions of article 490, respectively article 553.

(6) The provisions of paragraphs (1) -(5) also apply in the case of other administrative acts or acts assimilated to these under the conditions of the law, issued, respectively adopted by the local public administration authorities.

The administrative acts issued by the mayor and the president of the County Council are signed by them, acquiring enforceable power[10]. Also, the president of the County Council signs the decisions of the County Council, and the president of the meeting signs those of the Local Council.

From another perspective, those who prepare the reports or other supporting documents are directly responsible for the documents prepared.

The same situation also applies to persons who countersign the administrative documents of the local authorities or approve the drafts of these acts, the principles regulated in this article governing all local administration acts, according to those established in paragraph (6).

Regarding the forms of this liability, according to the law, the liability of local elected officials or officials involved in the procedure of adopting illegal administrative acts can be "administrative, civil or criminal, as the case may be".

The liability of the persons involved is regulated in the provisions of articles 563-579 of the Administrative Code.

It is important to specify that the patrimonial liability of the local public authority can be engaged, under the law, regardless of whether the liability of the persons directly involved in issuing/adopting the illegal administrative act is also engaged.

In the end, in contentious administrative litigation, the plaintiff has the choice regarding the subject of patrimonial liability, not being obliged to sue the guilty official, a situation in which the authority will decide whether or not to exercise the legal remedy action, in the hypothesis that the action for damages would be admitted.

On the other hand, paragraph (4) of article 240 regulates a patrimonial liability of the two local deliberative authorities (the Local Council and the County Council) for the situation where through an administrative act of the local public administration authorities issued or adopted without being substantiated, countersigned or approved from a technical or legality point of view had harmful consequences.

Criminal liability is engaged, under the terms of the criminal law, as an *ultima ratio*.

Also, we do not believe that in practice a civil liability of these persons can be encountered, for the arguments shown above, in section 3 of this article.

Local elected officials can exonerate themselves from liability under the terms of article 232 paragraph (2) of the Administrative Code, which provides that: "In the minutes of the meeting of the Local Council, respectively of the County Council, the result of the vote is recorded, and, at the request of the local councillor, respectively of the county councillor, his vote is expressly mentioned ".

Finally, an extremely important provision is the one found in paragraph (2) of article 240, according to which *the assessment of the necessity and opportunity of adopting and issuing administrative acts belongs exclusively to the deliberative, respectively executive authorities*.

As such, both the local authorities and the staff involved will only be liable for illegality vices or excess of power, respectively for the "misappropriation" of the opportunity[11].

7. Contraventional liability

[10] See, for a critical opinion of these provisions, V. Vedinaș, *Codul administrativ adnotat, op. cit.*, 2021, p. 257
[11] *ibidem.*

Article 241 of the Administrative Code establishes certain conducts of local elected officials that are considered contraventions[12].

a) The first contravention concerns the mayor's conduct of not enforcing the decisions of the Local Council.

For this contravention, it is worth noting that the existence of intent is required, by using the expression "in bad faith", through a derogatory rule from G.O. (Government's Ordinance) no. 2/2001, which allows the sanctioning of contraventions even if they are committed through negligence.

b) The second contravention concerns the conduct of the County Council president - not to enforce the decisions of the County Council.

And here we note the requirement of intention, being in the presence of a derogation from the general regime of contraventions, provided by G.O. (Government's Ordinance) no. 2/2001.

c) The third contravention concerns omissions of the mayor, respectively of the president of the County Council, consisting in not presenting the budget to the deliberative bodies.

It is an omission offense, which is punishable even if it is committed through negligence, although it is hard to believe that such an obligation can be omitted through negligence.

d) The fourth offense concerns the non-presentation of reports by local elected officials. Again, it is a contravention of omission, and here the fault is expressly mentioned.

e) The fifth contravention concerns the omissions of the mayor or the president of the County Council, in their capacity as representatives of the state.

They may be sanctioned for any negligent conduct, contrary to legal obligations imposed on them in their strict capacity as representatives of the state in the administrative-territorial units they lead.

f) Finally, the *sixth contravention* concerns the general secretary of the administrative-territorial unit or the person delegated by her/him pursuant to article 243 paragraph (5) of the Administrative Code.

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[12] According to article 241 of the Administrative Code: (1) There will be considered as contraventions according to the provisions of this section, acts that are not committed under such conditions as to be considered, according to the criminal law, crimes:
a) non-implementation, in bad faith, of the decisions of the Local Council by the mayor;
b) failure to implement, in bad faith, the decisions of the County Council by the president of the County Council;
c) non-presentation, within the term provided by the legislation regulating local public finances, of the draft budget of the administrative-territorial unit by the mayor, respectively the president of the County Council, due to their fault;
d) non-presentation by local elected officials of the reports required by law, due to their fault;
e) failure to take the necessary measures, established by law, by the mayor or the president of the County Council, in their capacity as representatives of the state in the administrative-territorial units;
f) failure to transmit within the term provided for in article 243 paragraph (3) to the Chamber of public notaries of notification for the opening of the succession/inheritance procedure.
(2) The contraventions provided for in paragraph (1) is sanctioned with a fine from 1,000 lei to 5,000 lei.
(3) Finding contraventions, establishing remedial measures, monitoring the fulfilment of remedial measures and applying fines are done by the Prefect, in her/his capacity as a public authority, representative of the Government at the local level, under the law.
(4) The provisions of this article are duly supplemented with the provisions of the legislation regarding the legal regime of contraventions.

The person in question will be sanctioned *if she/he does not notify the Chamber of Public Notaries within 30 days of the death of a person, under the terms of article 243 paragraph (3) of the Administrative Code.*

All contraventions are sanctioned with a fine between 1,000 and 5,000 lei, and only the Prefect can be the investigating agent.

The procedural provisions are those of G.O. (Government's Ordinance) no. 2/2001. Thus, the Prefect will draw up a report by which she/he will individualize the concrete fine, and the sanctioned person will be able to file a contravention complaint at the competent court - the court at the place where the alleged contravention was committed.

Also, the establishment of remedial measures and the monitoring of the fulfillment of remedial measures are done by the Prefect.

8. CONCLUSIONS

The regulation of the liability of local elected officials presents, as I pointed out, many ambiguities or even highly questionable legal provisions. That's why with the law approving the GEO (Government Emergency Ordinance) no. 57/2019 which seems to be still pending, it would be good if these problems were corrected in the parliamentary procedure.

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