

Government Emergency Ordinance no. 55/2014 and its Implications on Local Public Administration

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Abstract: *The article analyzes the Government Emergency Ordinance no. 55/2014 for the regulation of some measures in the area of local public administration, a normative act that has generated numerous debates in the Romanian public space related to opportunity and the constitutionality of this legislative step of the Government. This normative act suspended, for 45 days, two articles of Law no. 393/2004 on the status of local elected officials, giving the local elected officials in office or the substitutes on lists the possibility to leave their political party and opt for another party, organization of national minorities or to become independent. By appealing to the emergency ordinance, the Government avoided a parliamentary debate and also the constitutional review of the Constitutional Court, which is contrary to European standards requiring that regulations of key areas for the existence and functioning of the rule of law be debated and adopted by the legislative forum of the country.*

Keywords: *emergency ordinance; local elected officials; legislative delegation; political migration; Government.*

Introduction

The use of the emergency ordinance as a way of regulating social relations of utter importance, for which the organic law is usually in charge, considered an extension of the constitutional provisions, has become a practice in the governmental activity in the post-revolutionary period. Defined as an *executive act* in terms of organic aspect and as a *legislative act* in terms of material aspect, the emergency ordinance represents the result of legislative delegation protected by Article 115 of the Romanian Constitution [1].

The legislative delegation is part of the scope of legal-executive relations, being one of the most controversial institutions in the constitutional system in Europe [2]. Article 115 of the Romanian Constitution should be read in conjunction with Article 108 regarding the Government documents, being in organic interference with it [3]. The emergency ordinance, as a *normative act*, adopted by the government, pursuant to the above-mentioned constitutional provisions, allows the government, under the strict control of the Parliament, to deal with extraordinary situations whose regulation can not be postponed [4].

Formed as an exception to the rule that the Parliament is the sole legislative authority and thus it may adopt primary normative acts, the Government Emergency Ordinance has begun to distance itself from its role as a regulator of social relations in exceptional circumstances, being increasingly used to regulate situations that do not constitute emergencies. An example, in this respect, is G.E.O. no. 55/2014 regarding the regulation of measures on local public administration [5], which suspended the legal consequences of a normative act regulating the components of the regime of fundamental institutions, namely Law no. 393/2004 on the status of local elected officials. Such government interventions in the legislative activity may jeopardize the constitutional role of the Parliament, the separation and balance between the state powers, as well as the stability of the legal system. It is true that the fundamental act has admitted the government to intervene, under certain conditions, in law, but, as pointed out by the Constitutional Court in its jurisprudence, the power of the Government to issue ordinances represents a delegated power, and not its own power.

Therefore, the Government should strictly abide by the constitutional rules governing the legal regime of the legislative delegation and intervene in the legislative realm only in exceptional circumstances or when the legislative power authorizes it, respecting, in this case as well, the limits and conditions imposed

for the operation. Disregarding these rules would lead to violation of the principle according to which a delegated power can not, in turn, delegate, because the one who delegates means to limit the exercise of delegated right only to the holder designated by him to exercise this right [6].

1. Government Emergency Ordinance no. 55/2014. Justification for its adoption, content and effects

On August 28th 2014, the Romanian Government adopted the Emergency Ordinance no. 55/2014 regulating some measures in the field of local public administration [7], a normative act that suspended, for 45 days, two articles of Law no. 393/2004 on the status of the elected local officials. We refer to Article 9 paragraph (2) letter h¹) and Article 15 paragraph (2) letter g¹) covering cases of legal termination for the mandate of local and county councilor, respectively mayor and chairman of the county council. The articles state: “*the loss of the status of member of a political party or organization of national minorities on whose list they were elected*”, respectively “*the loss, by resignation, of the membership of a political party or organization of national minorities on whose list they were elected*”.

1.1. Justification for the adoption of the normative act

To justify the legislative intervention by emergency ordinance, the Government argued that such legislation is necessary because, in the administrative practice of local authorities, there have appeared blockages with a negative impact on their effective functioning, arising from certain legislative gaps. In the view of the Government, this refers to the lack of regulation for situations resulting from dissolution or reorganization of political entities during their mandate, situations that aim at the general public interest and constitute emergency and extraordinary cases whose regulation can not be postponed. More specifically, it refers to the lack of clear regulation on the validation of the substitute office when it comes from the list of an electoral alliance which disbanded after the elections. However, the emergence of new majorities within local collegial authorities, resulted from the alliance of some political parties which were adversaries in local elections, has disrupted the operation of such local authorities and created problems in administrative decisions. These failures of the deliberative authorities rebound on the effective functioning of the activity of mayors, respectively, of presidents of county councils, in compliance with the program assumed before the citizens. Finally, it insists on the necessity for the harmonization of legislation specific to local public administration, which is a crucial prerequisite to establish governmental objectives and strategies and which leads to an efficient administrative act at the level closest to the citizen.

In the view of the Government, these are extraordinary situations which compelled the adoption of this legislative solution in order to avoid serious prejudice to the public interest.

The Constitutional Court, in its jurisprudence [8], determined that *the extraordinary situation* represents “the need and urgency to regulate a situation that, due to its exceptional circumstances, calls for the adoption of immediate solutions to avoid serious prejudice to the public interest”. Also, the Court held in another decision [9] that extraordinary situations express a high degree of deviation from the usual or common, aspect strengthened by adding the phrase “whose regulation can not be postponed”. But to fully comply with the requirements of Article 115 paragraph 4 [10] of the Constitution, as the Constitutional Court states, the Government must prove the fact that the measures in question could not have been postponed, basically, that there was no legal instrument that could have been used to rapidly avoid the considered negative consequences.

1.2. The content of the normative act

The Government Emergency Ordinance no. 55/2014 contains a single article with five paragraphs which suspends the provisions contained in Article 9 paragraph (2) letter h¹) and Article 15 paragraph (2) letter g¹) of Law no. 393/2004 on the Status of the local elected, for a period of 45 days from the entry into force of the emergency ordinance, a time span in which the mayors, presidents of county councils, local and

county councilors, and also candidates who have been declared substitutes “*can express in writing and only once the option for the political party, national minority organization they wish to join, or become independent, without losing the quality gained pursuant to the elections*”.

According to the normative act, the option shall be submitted by all local officials in office, and by the local or county council candidates who were declared substitutes to the local council or county council, through the secretary of the administrative-territorial unit. Their option for the political party or organization of national minorities must be accompanied by the acceptance of the organization of national minorities or party of choice.

After the expiry of the 45 days, the secretary of the administrative-territorial unit, in accordance with paragraph 4 of the sole Article of the Ordinance, is obliged to communicate the central situation of the local elected officials to the prefect institution.

Paragraph 5 of the ordinance Article, governs, in turn, the situation of the substitutes, stating that the substitutes will occupy the vacancies in the order of the lists, provided there is written confirmation issued by the county leadership of the party to which they belong, in case of vacancy of the mandates of local and county councilors elected on the lists of candidates. Under the ordinance, substitute means the candidates on lists who were not elected.

Even if the legal consequences of the Government Emergency Ordinance no. 55/2014 have ceased following the expiry of 45 days, this normative act has put a serious mark on the rule of law in Romania, producing changes in the composition of political parties and local public administration authorities.

1.3. Effects of the adoption of the emergency ordinance

The Emergency Ordinance no. 55/2014 has generated intense debate in the Romanian public space. Considered a controversial normative act that temporarily removed from force one of the cases of mandate termination of an local elected official, the ordinance allowed the passage of a local elected from one party to another or the embrace of an independent status, generating, this way, both legal and political effects.

The ordinance paved the way, during the period it was in force, to the transit of thousands of local elected officials from the party on the list of which they were elected in 2012, to another party they opted for under this act, or they became independent. This fact has led to a rearrangement of forces within local authorities, thus changing the political configuration resulting from the local elections. The ordinance has led to a significant increase in the number of elected officials in the case of the governing parties, and, implicitly, a decrease in case of the opposition parties. Also, the number of independent elected officials has increased.

It can be noticed that the normative act has caused major changes both in the sphere of political parties and in the local public administration. By its adoption, this normative act has caused mutations in law, has led to heated debates in public regarding its desirability or constitutionality and has brought renewed attention to the problem of relations between the Parliament and the Government concerning the legislative act and the role and place of the two authorities in the Romanian constitutional system.

After ceasing its effects following the end of the adoption period for, the provisions of Law no. 393/2004 on the status of local elected officials are back into force. This rule is required by the provisions of Law no. 24/2000 regarding the legislative technique for the drafting of normative acts which states that “*the expiry of the suspension of the normative act or provision affected by suspension lawfully re-enter into force*”.

2. Critical aspects regarding G.E.O. no. 55/2014 for the regulation of certain measures on local public administration, highlighted with reference to the jurisprudence of the Constitutional Court

The introduction by the legislator of the case of legal termination for the mandate due to the loss of party membership was a necessary measure in a democratic society, designed to ensure stability in local public administration, to prevent political migration of local elected officials and to express political configuration, as resulted from the will of the electorate, being, at the same time, a consequence of Article 8 paragraph (2) of the Constitution, according to which political parties contribute to defining and expressing the political will of the citizens. The highlighted issues are strengthened by the Constitutional Court that, in

its jurisprudence [11], held that these statutory provisions relating to termination of mandate of local elected due to the loss of membership of the party are aimed at preventing political migration from one party to another, suppressing political transits which are performed depending on the opportunities offered by one party or another, ensuring stability in local public administration, expressing political configuration, as resulted from the will of the electorate.

However, the adoption of the Government Ordinance no. 55/2014 is a step backwards in terms of regulation. We affirm this issue both in terms of substance and the form in which it materialized. In terms of substance, this legislative approach of the Government has encouraged political migration - a phenomenon severely criticized over the years by the public, and has changed the political configuration resulting from the local elections in 2012. The Ordinance also requires a differentiated legal treatment for the elected resulting from the local municipal elections in 2012, in the sense that some are allowed to migrate from one political party to another or to become independent, while others are not. Therefore, there are two categories of local elected in the same mandate. The first category includes those who have lost their mandate or are about to lose it as a result of the provisions of Article 9 paragraph (2) letter h¹) and Article 15 paragraph (2) letter g1) of Law no. 393/2004 on the Status of the local elected officials; the second category includes elected officials benefiting from the provisions of G.E.O. no. 55/2014 that suspended the mentioned provisions for a period of time. The principle of equality is defeated by the fact that the legislator has created a differentiated regime for local officials who are in the performance of the same mandate (2012-2016).

In terms of form, the solution of regulation by emergency ordinance raises both opportunity and constitutionality problems. Thus, if we were to analyze the context of this emergency ordinance, it can be seen that the adoption took place near the start of the campaign for the presidential elections in Romania, by a government whose leader is one of the candidates at this election ballot. For this reason, we can say that the adoption of the ordinance was meant to increase the chances of the candidate, who is also the prime minister. It is well known that local officials, especially the mayors and chairmen of county councils, play a vital role in the general or presidential elections, and if a party has more elected local officials, the chances of success in the elections increase. Given the present context, it would have been normal for such a regulation (if required to be adopted and without generating virulent reactions from the public) to be analyzed by the supreme deliberative forum which could be notified by a legislative initiative introduced in the emergency procedure. Even if it was not in parliamentary session when the Government adopted Emergency Ordinance no. 55/2014, it would have been preferable to wait for a few days until the Parliament began its autumn session and the legislative initiative could be introduced for debate and adoption in the emergency procedure. Our claims are reinforced by the conduct of the Government subsequent to the adoption of this normative act; even if it adopted the emergency ordinance on August 28th 2014, it did not send the respective normative act for publication in the Official Gazette of Romania until September 2nd 2014. However, an emergency ordinance is adopted to regulate exceptional circumstances whose regulation can not be postponed.

Regarding the urgency of a regulation, the Constitutional Court held in its jurisprudence [12] that the urgency of the regulation is not equivalent to the existence of an extraordinary situation, as the operative regulation can be achieved following the way of ordinary legislative procedure.

The introduction in the Parliamentary debate of such legislative initiative enabled all political forces represented in the Parliament the possibility to express their opinion, supporting or, conversely, rejecting, with arguments the initiative, and also allowed the notification of the Constitutional Court to verify the compliance of the provisions of the normative act resulting from the parliamentary debate with the text of the Constitution.

Recourse to the emergency ordinance solution has led to the elusion of the Parliament and has avoided the analysis of the constitutional court, which is unacceptable for a member state of the European Union, whose Constitution clearly stipulates, in Article 61 paragraph 1, that the Parliament is the sole legislative authority in the country, and, in Article 1 paragraph 5, that abiding by the Constitution, its supremacy and the laws is mandatory. Especially since the Constitutional Court considered [13] that in

crucial areas of rule of law it is required for the normative act to be debated in Parliament, and not adopted by way of a procedure with exceptional character, by which the Parliament is avoided.

Conclusions

The adoption of Government Emergency Ordinance no. 35/2014 has led to the temporary removal of the force of the provisions of Article 9 paragraph (2) letter h¹) and Article 15 paragraph (2) letter g¹) of Law no. 393/2004 on the Status of the local elected officials, for a period of 45 days from the entry into force of the emergency ordinance.

This legislative approach has had direct implications on the structure and activity of the local public administration authorities, and also on the political parties and rule of law in Romania.

In our view, the initiative of the Government represents a step backwards in terms of regulation, violating, at the same time, the European standards requiring the regulation of key areas of rule of law through acts resulted from the will of the Parliament as the supreme representative body and unique legislative authority.

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