Local Autonomy without Elected Body. Or How to Live (Administratively) without Breath (of the Local Council)

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Abstract

Local autonomy is a principle of organisation and operation of the public administration, mainly regulated at the constitutional level. It represents a supreme recognition of its indispensable character in the state's legal, political, and administrative architecture. Thus, the development of the life of a community in the absence of bodies democratically elected directly by the citizens appears completely outside the possibility of a natural administrative life. From this perspective, our study presents a specific case in which a territorial administrative unit functioned for three years (and will continue, most likely until the end of the mandate) without a local Council – the body democratically elected by the citizens to regulate life at the level of the fortress. The presentation will go through all the legal stages of the situation, starting from the first meeting of the legally established Local Council, following the 2020 elections, and ending up to now. The analysis of the incident regulations and the monitoring of the actual situation will highlight the weakness of the law from the perspective of its concrete efficiency and the danger it can constitute for democracy. Moreover, we try to raise an alarm signal on some interpretations that can lead to the illusion of the lack of absolute necessity of such institutions, with the argument that it is possible to live without them; often, the economic-financial factor (the costs of the elections) taking precedence over the democratic debate, especially for a young democracy that still has a long way to go before reaching democratic maturity.

Keywords: *local autonomy, local elected body, public administration, local council.*

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1. Introduction

The elements that compose the architecture of a state must be in a state of perfect functional equilibrium for the entire institutional mechanism to function properly. To be effective, each component must be able to fulfil the role assigned to it by the legislator at its inception. The trajectory of an institution cannot be smooth and uniform; social dynamics require a high degree of adaptation of the mechanism to the constant changes in real life. Institutions, especially those of public administration, are created to serve the public interest and the needs identified in society at a given time. In this context, the continuous verification of the alignment between social reality and the 'wear and tear' of an organ is absolutely necessary, and the legislator's task – the architect of the entire social system – is of major importance.

Without constant care in regulating all the component elements of the whole, but especially the connections between them, and without active and interventionist monitoring at the moment of identifying 'deviations', the entire edifice deteriorates. It may not collapse at the first 'breakdown', but leaving it 'unattended' produces long-term effects that significantly alter the structure of society.

To ensure that a mechanism functions efficiently and fulfils the purpose for which it was created, several distinct phases must be followed: the establishment of the institution, and the implementation and control of its activities. The last stage represents a continuous activity throughout the institution's operation. In the architecture of a politico-administrative system, we find two categories of institutions: on the one hand, those that implement fundamental principles provided by the constitution and laws (local autonomy, equality before the law, the right to vote, administrative decentralisation, etc.), and on the other hand, institutions, authorities, or administrative bodies established following the identification of a need within the community (society) that must be met (a context in which the administrative doctrine interferes with the opportunity of the founding act or the acts through which the activities of the respective authorities are carried out). However, all are established to serve, through their activity, the public interest of the community and will be 'viable' as long as the purpose for which they were created is achieved. The manner in which they function and the concrete effects they produce in society determine both the necessity of the institutions and the quality of the administration and the life it provides to citizens.

The control instrument, the balancing mechanism for this entire construction, is represented normatively by the regulation of the responsibility of the aforementioned institutions.

A special situation arises in the case of deliberative authorities, established as an expression of the constitutional principle of local autonomy, where regulating their responsibility is more challenging in the final register, that of quantifying the concrete effects that the regulation manages to bring in situations

where the norm is violated by the collegial body of public administration.

In our analysis, we will observe the intervention, in the content of the regulation concerning the legal effects produced by the behaviour of authorities contrary to the legal norm, of two terms – liability and responsibility.

2. Liability and responsibility – conceptual determinations

Liability and responsibility are two fundamental concepts that, although distinct, complement each other. The Latin etymology of liability has largely preserved the sense in which it is used today – to answer for, to pay, the obligation of a person to account for their actions.

In contemporary society, the concepts of liability and responsibility are fundamental for the harmonious and sustainable functioning of communities. These concepts transcend the individual sphere, extending to the institutional, governmental, and even global levels. Liability and responsibility represent essential pillars in building a society where each individual and organisation assumes the consequences of their actions.

Responsibility is connected to morality. Dimitrie Gusti stated that it represents a moral and emotional attitude of a person towards their actions. It can manifest when two conditions are met: the freedom of personality and its capacity to make decisions. Only a free person can internalise the values from social norms, adhere to them, and commit to respecting them, thus becoming a responsible individual.

In legal and sociological literature, the terms '*liability*' and '*responsibility*' are frequently used with identical or similar meanings. Semantically, the term 'liability' is used as a general category only in languages of Latin origin, deriving from the Latin verb '*respondere*,' which means '*to answer*' or '*to pay*[2]'. Thus, any subject of law, whether it is an individual before their peers or the state, the state before its subjects, or the state before other states, must answer for its actions, assuming the consequences of the commitments made or the disregard of legal obligations.

Thus, in common parlance, the notion of liability is understood as the obligation of a person to account for their actions as a result of society's repressive reaction[3]. At the same time, some voices argue that the term liability can also signify that a person meets the conditions, for example, psychological, to be held accountable.

Although often used interchangeably (this can be observed especially in the regulation of the administrative code), the two concepts have distinct nuances and implications. Responsibility, through its preventive and ethical nature, ensures appropriate and conscious behaviour of individuals, thereby reducing the

[2] Vocabulaire juridique. Paris, PUF, 1936, p. 429.

[3] Victor Micu, „Răspunderea și responsabilitatea ca fenomen social", *Legea și viața* no. 6/2017, p. 38.

incidence of liability cases, which intervene to correct and sanction non-compliant actions. In a balanced society, an emphasis on moral and professional responsibility can significantly reduce the need to apply legal liability measures.

Without being linguistics specialists, but interested in the etymology of the terms and their usage in the legal doctrine and legislation of other countries, we examined how these notions are used by foreign legislators and made a few observations from this perspective: In the English language, different terms are used, with specific references to distinct legal notions and categories. Thus, in constitutional and international contexts, '*responsibility*' and '*accountability*' are used, while in civil law, expressions like '*liability*' or '*law of torts*' are utilised. As noted in a study on this subject, among the myriad explanations given to this notion, researchers observe that there are differences in meaning between the first two concepts, with '*accountability*' relating to the public, while '*responsibility*' relates to an individualised subject, specifically the one who is in the position of having a duty to someone or who can be blamed for a specific violation[4].

The German language[5] also has two different terms – one specific to the language of morality (*Verantwortlichkeit*) and another, more narrowly used in legal language (*Haftung*). In the beautiful French language, we find '*responsabilité*,' a single notion used both for situations leading to specific effects of behaviour contrary to a legal norm and for the moral assumption of a decision[6].

In the Romanian language, we use two different terms, '*răspundere*' (liability) and '*responsabilitate*' (responsibility), each with distinct meanings, although there is a common reference point between them. We would say that the main differentiation is related to social structures and the objectives they refer to. Thus, responsibility is of a value-based nature, while liability is of a normative nature.

Both are necessary: liability directly aims at conserving the social system, while responsibility primarily aims at improving and developing the social system through the perfection of the human being. How society seeks to achieve these objectives are also different. The functioning of liability is stimulated through the regulation of a coercive system based on sanctions, whereas in the case of responsibility, society acts through incentives[7]. Therefore, liability pertains to any individual because it involves subjection to a normative system, while responsibility is specific to individuals with a certain cultural level, implying

[4] R. D. Popescu, *Răspunderea Parlamentului în dreptul constituțional,* C.H. Beck Publishing House, Bucharest, 2011, p. 19.

[5] Dănişor D.C., Dogaru I., Dănişor GH. *Teoria generală a dreptului,* C.H. Beck Publishing House, Bucharest, 2006, p. 458.

[6] See the Larousse Dictionary where we find multiple meanings for 'responsabilité': (I) the obligation to compensate for damages caused to others; (II) the obligation to bear the punishment provided for the committed offence; (III) the capacity to make a decision.

[7] Hart D., „Organisational responsibility versus individual responsibility: safety culture? About the relationship between patient safety and medical malpractice law", *in Zeitschrift fur evidenz fortbildung und qualitaet im gesundheitswesen* no 8/2009, DOI: 10.1016/j.zefq.2009.08.006.

knowledge and the ability to make judgments, as well as an active attitude and commitment.

Responsibility involves a relationship between the individual and society, while liability involves a relationship between the individual and the authority of a community. Responsibility is developed and maintained by society because it is closely linked to the system of values institutionalised by the community, with the aim of conserving and promoting these values, realised through various actions designed to maintain social order and public good. In fact, it is a human activity that a person undertakes on their own initiative, based on choosing objectives to follow from several possible ones. A person feels (or is) responsible for their actions that are not regulated by norms as restrictions or obligations. Thus, responsibility should be viewed in relation to personality, as a set of intellectual and moral traits that transform an individual into a unique person.

The path of responsibility starts from individual virtues[8], rooted in education, personal experiences, or ethical principles, and evolves into a social value, in a complex and interconnected journey that reflects how individual actions and attitudes can influence and shape society as a whole.

In the concrete realm of action, liability intervenes as a relationship between the individual and society. While responsibility is formed based on individual development and the capacity to internalise certain values and incorporate them into behaviour, liability always demands the dimension of action.

An interesting and ever-relevant discussion is: 'The absence of responsibility does not automatically imply the absence of liability; however, the absence of liability automatically implies the absence of responsibility.' It is considered that the path of forming the human individual in the direction of liability and responsibility is intrinsically linked to the formation of self-awareness, a phenomenon through which a person reflects their own existence in relation to others, society, nature, and God[9].

3. Local autonomy – a constitutional principle underpinning the organisation and functioning of local public administration

The Romanian constitution has adopted a dual system of executive-deliberative bodies within the politico-administrative structure, intending to maintain a legislative-executive separation and thus give expression to the principle of separation of powers, both at the central and local levels.

From this perspective, at the central level, the legislative power is represented by the Parliament, while the executive power is vested in the Government.

[8] Grecu G., *Political Responsibility – my Responsibility, maybe not my Fault, in Meta-research in hermeneutics phenomenology and practical philosophy*, 1/2012.

[9] Jensen M.H., „Complicity and the responsibility dilemma", in *Philosophical studies*, no. 1/2020, DOI:10.1007/s11098-018-1182-8.

At the intermediary level – the county – there is the county council as the deliberative authority and the president of the county council as the executive authority. At the basic level (commune, town), the local council serves as the deliberative authority and the Mayor as the executive authority.

The intermediary and basic levels, representing public administration in administrative-territorial units[10], are based on the principles of decentralisation, local autonomy, and deconcentration of public services. The public administration authorities through which local autonomy is realised in communes and towns are the elected local councils and the elected mayors, in accordance with the law.

We observe that the constituent legislator was very clear in regulating the structure of the public authorities system, giving particular importance to the concrete manifestation of the principle of local autonomy. The importance of this principle is significant, as demonstrated by the special attention of the legislator, both constitutionally and legally, in its regulation and operationalisation.

Local autonomy represents the ability of local authorities to exercise power within the limits of the legislation and to manage their own public affairs independently of central authority intervention. This is a vital concept for the efficient and sustainable long-term development of local communities.

The right to make decisions regarding local matters is essential for ensuring the economic development and prosperity of the community. Local autonomy allows local authorities to manage their local finances, invest in infrastructure, promote quality education, and provide adequate health services.

By empowering local authorities to make decisions that directly affect their communities[11], local autonomy fosters a responsive and adaptive governance model that can better address the specific needs and challenges of local populations. This, in turn, promotes a more engaged and active citizenry, which is crucial for the overall health and vitality of democratic governance[12].

Through local autonomy, communities have the opportunity to define their own cultural identity and to promote and support local art and culture. This contributes to the formation of culturally diverse and dynamic communities, where diversity is promoted, and local values are respected. Moreover, implementing local autonomy creates a premise for greater citizen involvement in community life and the decision-making process. Through local institutions and participation mechanisms, citizens will have the opportunity to express their opinions and actively contribute to local development.

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[10] According to Article 4 para. (2) of the Romanian Constitution, the territory is administratively organised into communes, towns, and counties, under the law, with some towns being designated as municipalities.

[11] Strebel, M. A., Kubler D., „Citizens' attitudes towards local autonomy and interlocal cooperation – evidence from Western Europe", in *Comparative European Politics*, no. 2/2021, DOI: 10.1057/ s41295-020-00232-3, p. 198.

[12] Vasqez, I. M., „Land Use Planning Determinants as Limits to Local Autonomy in Matters of Urban Planning", in *Revista Digital de Derecho Administrativo*, no. 22/2019, pp 255–295, DOI: 10.18 601/21452946.n22.11.

Local autonomy thus entails the determination of local authorities' responsibilities by enshrining full competence in solving local interest issues and excludes the involvement of other authorities in making these decisions[13]. As a legal reality, local autonomy has been and continues to be influenced by several factors, including historical tradition, geographical framework, economic resources, the degree of civic and political education, and, not least, national and international regulations. It must be analysed as ensuring a high degree of democracy because it represents a counterbalance to centralise governance, which at least theoretically ignores community requirements and interests and is one of the most efficient forms of administrative self-management.[14]

To measuring and operationalise this principle[15], it is necessary to concretely organise the institutions outlined by law, focusing on their organisation and, especially, their efficient functioning. And why not, their effectiveness. Because, in the example we will present, we will observe with surprise that it is indeed possible to conduct administrative life without a deliberative institution.

4. Responsibility and accountability of collegial authorities: provisions of the Administrative Code

We propose an analysis of two concepts that are particularly important for our study due to their role as essential control mechanisms for the existence and effective functioning of public authorities. These concepts are responsibility and accountability, a binomial often used together with sometimes different, sometimes similar meanings.

In Romanian legislation, the accountability of deliberative/collegial authorities – Parliament, Government, local councils, or county councils – is regulated within a complex framework that includes both constitutional and legal provisions, as well as general principles of the rule of law.

The general principles of the rule of law, included in the Romanian Constitution, establish the basis for the responsibility of deliberative authorities. Article 1 of the Constitution enshrines the principles of the rule of law, while Article 44 stipulates that public functions are exercised under the conditions of the law and the oath.

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[13] F. L. Ghencea, „Descentralizarea şi deconcentrarea administrativă- principii de organizare a administraţiei publice locale", study published in: *Reformele administrative şi judiciare în perspectiva integrării europene*, *Section for juridical and administrative sciences, Caietul Ştiinţific* nr. 6/2004, Institutul de Ştiinţe Administrative « Paul Negulescu », p. 273.

[14] D. A. Tofan, *Drept administrativ*, vol. I, V edition, C.H. Beck Publishing House, Bucharest, 2020, p. 228.

[15] Fleurke F. Willemse R., „Measuring local autonomy: A decision-making approach", in *Local Government Studies*, 1/2006, pp. 71–87, DOI: 10.1080/03003930500453542, Ladner A., Keufler N., Bastianen A., „Local autonomy around the world: the updated and extended Local Autonomy Index (LAI 2.0)", in *Regional and Federal Studies*, oct/2023, DOI: 10.1080/13597566.2023.2267990.

Following legal regulations, it is clear that for each of the collegial authorities at all levels, the legislator has instituted a form of accountability, concretised through the dissolution of these bodies.

For the unique legislative authority, Parliament, constitutional regulation makes the sanction of dissolution an exceptional measure, with the conditions set by the fundamental law being almost impossible to meet[16]. Article 89 of the Constitution assigns this prerogative to the President, who can dissolve Parliament after consulting the presidents of the two chambers and the leaders of the parliamentary groups if it has not granted a vote of confidence for forming the Government within 60 days from the first request and only after at least two requests have been rejected. The rationale for granting dissolution prerogatives to the President lies in his constitutional duties to ensure the proper functioning of state authorities[17].

In the case of Parliament, the regulation of dissolution is constructed exclusively in the context of a political crisis related to the inability to form a new Government. The legislator limits the possibility of this situation occurring with the argument of institutional stability. Dissolution would mean early elections, which, along with the entire election campaign period, would lead to institutional instability.

The accountability of the Government[18] is regulated both in the Constitution and in the Administrative Code through the prerogative granted to Parliament, which can withdraw its vote of confidence via a motion of censure. If the motion is adopted, the Government is dismissed, and until a new cabinet is appointed, it continues to perform only the acts necessary for administering public affairs until the new Government members take their oath[19].

The constitutionally established necessity for the continuity of executive activity ensures that there is no gap during the transition from one cabinet to another, preventing the country from being ungoverned during this period.

Continuing to the local level, we examine how the deliberative authority can be subject to accountability and under what conditions the sanction of dissolution can intervene. The legislator's thinking, as we will see, was somewhat different in this context.

Local autonomy enjoys constitutional regulation, being exercised

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[16] V. Vedinaș, G. Condurache, „The financial independence of Romanian Parliament", in *Juridical Tribune - Tribuna Juridica*, Volume 9, Issue 2, June 2019, p. 392-401.

[17] Șt. Deaconu in I. Muraru, E. S. Tănăsescu, *Constituția României, comentariu pe articole*, 2nd edition, C.H. Beck, Publishing House, Bucharest, 2018, p. 778.

[18] According to Article 110, para. (2), and Article 113, para. (1) of the Romanian Constitution: 'The Government is dismissed upon the withdrawal of the confidence granted…' and 'The Chamber of Deputies and the Senate, in joint session, may withdraw their confidence in the Government by adopting a motion of no confidence, with the majority vote of the deputies and senators,' as well as the provisions contained in the Administrative Code in a dedicated chapter (Chapter 5 of Title II), Articles 48–50.

[19] According to the Art. 110, para. (4) from the Romanian Constitution.

through local authorities that represent the will of local communities, expressed through universal, equal, direct, secret, and freely expressed vote. This represents the legal ability of the mentioned authorities to decide independently, based on and within the limits of the law, on behalf of the local communities they represent.

At the sub-constitutional level, the Administrative Code[20] represents the main legislative framework concerning deliberative authorities at the local level. This code establishes the competencies, duties, and responsibilities of local councils. The analysis of these regulations highlights both positive aspects and areas where institutional efficiency often encounters difficulties.

5. Deliberative authority: local council accountability

The deliberative authority, the local council, is also subject to accountability through dissolution, in cases explicitly provided by law. In Part III, Chapter 3, there is a section titled: Dissolution of the Local Council, within which Article 143 provides:

'(1). The local council is dissolved by law or by local referendum. The local council is dissolved by law:

a) if it does not meet in at least one ordinary or extraordinary session over a consecutive four-month calendar period;

b) if it has not adopted any decisions in three ordinary or extraordinary meetings held over a consecutive four-month calendar period;

c) if the number of sitting local councillors is less than half the total number of council members and it cannot be supplemented with substitutes under the conditions of Article 122.

(2) The mayor, deputy mayor, general secretary of the administrative-territorial unit/subdivision, the prefect, or any other interested person may refer the matter to the administrative court regarding the cases provided in paragraph (1). The court examines the factual situation and rules on the dissolution of the local council. The court's decision is final and is communicated to the Prefect.'

From the provisions of Article 143 paragraph (1) letter a) of the Administrative Code, three cumulative conditions imposed by the law for the automatic dissolution of the local council can be inferred:

- There must be a legally compliant convening over a consecutive four-month calendar period;
- The four months must be consecutive;
- The local council must not meet in at least one ordinary or extraordinary session within the reference period.
- These stringent requirements ensure that the dissolution of a local council is not taken lightly and only occurs under specific and severe conditions of

[20] Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, published in Official Gazette no. 555 from 5.06.2019.

inactivity or incapacity.

We must mention that the current form of the regulation is also the result of the Constitutional Court's decisions, which were made prior to the adoption of the Administrative Code. The Court ruled that the regulation of the condition for a legal convening of the local council represents a concretisation of the principle of local autonomy, ensuring that the council's activity adheres to the legal framework for its operation[21]. The legislator aimed to prevent the paralysis of the public administration authorities' activities in communes and cities. The provision regarding the consecutive nature of the counted months was clarified to apply to months counted within the same mandate and not across two consecutive mandates. These provisions offer means through which they become effective. The dissolution of the local council, in the Constitutional Court's opinion[22], is a sanction imposed on the public administration authority for its inactivity, a situation that requires prompt intervention and resolution.

Interesting for our study is, on the one hand, the legislator's choice regarding the solution chosen to ensure continuity in managing the activities of local public authorities, specifically the person who takes over the responsibilities of the local council after it is dissolved, and, on the other hand, the manner in which this option is effective and comprehensive for the concrete situations arising in administrative life.

The Romanian legislator established – both in Law no. 215 on local public administration and in the initial form of the Administrative Code[23] – that until the new local council is constituted, the mayor or, in their absence, the general secretary of the administrative-territorial unit, resolve the current issues of the locality, respecting the duties and competencies according to the law.

A major change occurred with Law no. 375/2022[24]. The current content no longer limits the mayor to resolving the locality's current issues but extends their duties to all the local council's duties provided by Article 120. In the event of the local council's dissolution, these duties are exercised by the mayor through the issuance of decrees, which are subject to the prefect's legality control. These decrees must be approved by the new local council within a maximum of 90 days from its constitution, under the penalty of their effects ceasing[25]. We observe that, in the event of the local council's dissolution, the mayor assumes all the local

[21] Constitutional Court Decision no. 708/2015, published in Official Gazette no. 885 from 25.11. 2015.

[22] Constitutional Court Decision no. 311/2019, published in Official Gazette no. 885 from 9.07. 2019.

[23] See Art. 55, para. (8) from Law no. 215/2001 of the local public administration, published in the Official Gazette No. 123 from 23.04.2007 and art. 147 from Administrative Code, effective as 23.12.2022.

[24] Law no. 375/2022 for the amendment of GEO no. 57/2019 regarding the Administrative Code, republished in Official Gazette no. 1255 from 27.12.2022.

[25] Article 147 paragraph (1) of the Administrative Code as amended by Point 5 of Article I of Law no. 375/2022.

council's duties, which are performed, according to the law, through the issuance of decrees. The legislator granted the mayor unlimited and, in our opinion, inexplicable discretionary power. We assert this considering the legislator's constant concern to identify regulatory balance mechanisms to prevent situations where abuse replaces arbitrariness.

Indeed, the Legislative Council, through the opinion granted to the legislative proposal initiated by the Government (favourable, but accompanied by observations and suggestions[26]), draws attention to the fact that the proposed solution could potentially violate the principle of legal relations security established by Article 1 paragraph (3) of the Constitution.

But what types of responsibilities assumed by the Mayor in case of the dissolution of the local council could jeopardise the principle of security of relations between institutions?

A first example would be the responsibilities in the field of urban planning. The local council at the level of the administrative-territorial unit (UAT) is responsible for urban planning activities throughout the locality and ensures compliance with the content of territorial planning and urban planning documentation, which serve as regulatory norms.

The Law on Territorial Planning and Urbanism[27], in Chapter 3 – Responsibilities of local public administration, assigns to the local council the coordination and responsibility for 'the entire urban planning activity carried out throughout the territory of the UAT[28]', stipulating that it ensures compliance with the provisions contained in approved territorial and urban planning documentation for the implementation of the urban development program of the component localities of the commune or city.

Another example where questions arise regarding the assumption of responsibilities of the dissolved local council by the Mayor is represented by the situation where a person initiates a real estate claim action involving agricultural land within urban areas – summons the dissolved local council to court;

If at the date of trial, the Administrative Code amendments introduced by Law no. 375/2022 – Article 147 paragraph (1) – expanded the Mayor's responsibilities in the event of local council dissolution – considering the provisions mentioned earlier, the question arises whether the Mayor can represent a dissolved council in court? In what capacity will the Mayor act? Can it be considered that, according to Article 147 paragraph (1), the dissolved deliberative body can be represented by the Mayor, since there is currently no local council, hence no representative body?

[26]Legislative Council Opinion, available on https://www.cdep.ro/proiecte/2022/500/40/5/cl667.pdf.

[27] Law no. 350/2001 on territorial development and urban planning, published in Official Gazette no. 373 from 10.07.2001.

[28] Art. 25 from Law No. 350/2001.

Examples could continue, stemming from the paradoxical situation created by the legislator through the regulation of the Administrative Code.

But let's see, next, a concrete situation developed in an administrative-territorial unit where the legal dissolution of the local council has occurred.

6. Case study – dissolution of the Agigea Local Council: the responsibility clock showing once and ringing another

Legal liability represents, as previously stated, a measure of constraints applied by the state in the event of committing an unlawful act and is expressed through the application of sanctions of a material, organisational, or personal nature. Legal liability also constitutes a complex of rights and obligations which, according to the law, arise following the commission of an unlawful act and form the framework for state constraints, aiming to ensure the stability of social relations and guide members of society in upholding the rule of law. While a form of personal liability may be more readily understood in its entirety, the same cannot be said when a collective body is held accountable. We assert this viewpoint, particularly through the example we will present next (the automatic dissolution of the Agigea Local Council), which will reveal how incomplete regulation can lead to a situation that is difficult to accept and once again prove the necessity of correlating all regulations in a coherent and effective manner. Following elections held on September 27, 2020, and the validation of local officials' mandates on October 27, 2020, the Agigea Local Council's inaugural session took place. The newly established deliberative body was convened for its first ordinary session by the Mayor on November 12, 2020, with two agenda items: the formation of specialised committees and the election of the deputy mayor. Although voting occurred for both the deputy mayor and the formation of specialised committees, the meeting chairman did not announce the results, and they were not recorded in the minutes, as the secretary general of the administrative-territorial unit (UAT) refused to record the voting results and draft the Local Council Decision (HCL). The situation was brought to the attention of the Prefect, who demanded that the UAT secretary general draft the HCL. The secretary general resigned, and the position was temporarily filled by several officials appointed by the Mayor (who subsequently resigned themselves!) In a tale worthy of a movie script, the Mayor informed newly hired secretaries that no decisions had been adopted, so three additional meetings were called for December 15, 2020, December 17, 2020, and January 15, 2020, respectively, each with the agenda item: Formation of specialised committees of the Local Council. At the first meeting (on December 15, 2020), most councillors requested a postponement until a viewpoint from the Prefect's office was received regarding the refusal to draft the HCL and sign the minutes of the first meeting. The second meeting, convened on December 17, 2020, ended without adopting any decisions. The third attempt succeeded – on

January 15, 2021, the council met in an ordinary session, attended by two representatives of the Prefect's office who supported the viewpoint requested by the councillors regarding the legality of the November 12, 2020, meeting, insisting that the secretary general draft decisions following the conducted vote. Some councillors withdrew for consultations and left the room without addressing any agenda items. It appears that the goal was to organise a number of legally convened meetings that would not lead to the adoption of any decisions, thereby increasing the likelihood of the local council's dissolution.

We are certainly witnessing a political drama, but it is deeply concerning that this reality (for that is what it is, indeed) cannot be balanced afterwards by regulation.

It must be noted that this entire administrative turmoil stemmed from the fact that the majority in the Local Council opposed the Mayor, and the vice-mayor elected in the first session came from a different political party[29].

And this is precisely what happened in reality. Despite efforts by some councillors to repeatedly convene the Local Council, it did not meet again, with neither the Mayor nor the secretary general responding in any way to the councillors' requests.

Therefore, on April 14, 2021, the secretary general of the Agigea UAT filed a petition to the Constanta Tribunal requesting the declaration of the automatic dissolution of the Local Council, citing the provisions of Article 143 (1)(b) of the Administrative Code: 'if it has not adopted any decision in three ordinary or extraordinary sessions held over the course of four consecutive calendar months'. The tribunal accepted the petition and ruled for the automatic dissolution of the council.[30]

Despite the support from some councillors involved in the case, arguing that this was a contentious issue rather than a complete council inactivity, and despite the fact that the secretary general of the UAT, the only one legally responsible for drafting and sending council acts for signing, refused to perform these duties, and especially since the dissolution of the Local Council would affect their mandates, these arguments could not be invoked to prevent the application of Article 143 of the Administrative Code.

The court ruled with finality in favour of the dissolution petition filed by the UAT's secretary general, based on Article 143 (1)(b) of the Administrative Code.

According to the law, partial elections for a new local council should have been organised within 90 days, during which time the current public affairs[31] of the locality would revert to the responsibility of the mayor.

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[29] For a detailed analysis, see on: F. L. Ghencea, „Relația primar-viceprimar — parteneriat real sau concubinaj de conjunctură", in *Revista de Drept Public* no. 3/2023.

[30] The Decision of the Constanța Tribunal no. 2071/22.11.2021, available on the website: https://www.rejust.ro/juris/ee454d788, accessed on September 9, 2023.

[31] Regulation in act at that moment.

However, due to an unfortunate series of events, we might say, this did not happen even up to this point. Despite declarative statements from all involved authorities – including the Prefect's Office, the Permanent Electoral Authority, and the Government (all vested with responsibilities in organising elections) – the executive branch did not organise elections for the Agigea Local Council. Thus, the community remained without a deliberative authority for an entire mandate.

Furthermore, even though the steps taken by authorities led to the court compelling the Government to adopt[32] a Government Decision to establish the date for organising local elections and initiating the procedures for these elections for the position of mayor and the local council, in the highlighted constituencies by the Permanent Electoral Authority, things, at least concerning the Agigea Local Council, remained unchanged. The Government seemed to experiment with legislative authority by 'enthroning' a person at Agigea with exorbitant prerogatives (both as mayor and the local council).

We cannot help but notice the complete lack of appetite on the part of the legislature to seriously analyse this situation. We argue this based on the intervention of Law 375/2022 – a moment when Agigea had been awaiting elections for a new local council for over a year – which expanded the mayor's prerogatives from handling current affairs to exercising all council duties through issuing decrees.

We conclude the presentation of the case with the assertion that another episode from this chapter will follow, with the beginning of the activities of the new collegial body (expected in the autumn of 2024), which according to the administrative code will need to approve all decrees issued by the current mayor during the period when he assumed the responsibilities of the local council.

7. Conclusions

In conclusion, we reiterate the importance of local autonomy, considered a fundamental pillar of democracy and efficient public administration at the local level. By providing a framework for local decision-making and directly involving the community in managing local resources and projects, local autonomy contributes to sustainable community development and improves the quality of life for citizens. Recognised at both European and national levels, it is crucial for central authorities to acknowledge and effectively support local autonomy, providing adequate financial resources and ensuring respect for the principles of subsidiarity and local autonomy as stipulated in national and international legislation. It should be treated holistically, in interaction with other principles outlined in constitutional or legal texts[33], but most importantly, efforts should be

[32] The civil judgment of the Bucharest Court of Appeal no. 516/2023 dated March 16, 2023, available at: https://rejust.ro/juris/623922624.

[33] N. A. Ceslea, „Recursul administrativ la granița principiilor autonomiei locale și bunei administrări", in *Revista de Drept Public*, Supplement 2023, p. 119.

made to achieve its effective implementation in administrative practice.

Legal liability refers to the obligation to answer if legal norms are disregarded, aiming to defend the social values of the community. On the other hand, legal liability entails bearing corresponding consequences for the guilty party, aiming to restore the violated rule of law. Can we speak of a restoration in the situation we have presented? The liability of a collegial body, in its most severe form, namely the dissolution of such a body, occurs following the procedures stipulated by law. However, the ultimate goal of restoring the rule of law is not achieved. The case presented leads us to the natural conclusion that the effectiveness of the norm leaves much to be desired, failing to cover such a situation (unfortunately not unique). We cannot speak of oversight because leaving a community without a deliberative authority for an entire mandate represents not only a violation of the constitutional principle of local autonomy or legal relationship security, but above all, deprives the community of its deliberative body, where debates on the community's main issues were held, the deliberative process representing the main pillar of constitutional democracy in a rule of law state.

A proposal for legislative reform, similar to withdrawing confidence in the Government, should be considered. Upon such an event, the Government is considered dismissed, yet until a new Government is appointed, the old one remains in office with limited duties. In the case of a local council, we observe that the regulation is by far insufficient. The mere assumption of duties by the Mayor effectively leads to the possibility of decisions to be made at discretion by a single person, completely against the constitutional principles of public administration organisation. Moreover, correlation with electoral legislation is necessary by effectively operationalising the obligation to conduct elections for the new body within the specified period. Pursuing the achievement of the intended goal of the legal norm to its conclusion is the only way to make it effective; otherwise, the entire structure remains devoid of substance.

Moreover, if in the case of the dismissal of the Government, according to Article 110, paragraph (4) of the Constitution, the interim cabinet performs only acts necessary for the administration of public affairs until the new Government takes the oath, in the case of the local council, its responsibilities are exercised by the Mayor through issuing decrees. Surely, the legislator did not anticipate the concrete occurrence of such a situation in reality, and it is evident that the outcome of the case presented was determined by several factors, distinct and diverse elements, and the unfolding of events that involved a series of authorities and individuals in an unfortunate manner. However, this represents a limit of the system, frightening for the legal structure of the Romanian state.

Equally true is that what happened in the case shown is by no means the norm in the functioning of local public administration authorities. However, this argument is of no significance here. A single example of this kind becomes extremely dangerous in the context of events unfolding in a manner that could in-

duce distrust in public figures, authorities, and even the judicial system, ultimately responsible for restoring legality and being the guardian of law enforcement.

Socrates stated that without respect for rules, the state cannot endure. This remains perfectly valid today. However, rules, even enshrined as principles, without adequate implementation mechanisms and without the possibility of balancing and controlling situations that the legislator could not anticipate, not only fail to achieve their purpose but can distort the legal order they intended to establish. In the case of the liability of the local council, regulation fails miserably in restoring the violated rule of law. The fact that the situation is not isolated further obliges immediate action, with local deliberative authorities representing the basic level where citizens can directly engage and participate in decision-making on their community's issues.

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