

TRANSPARENCY IN PUBLIC ADMINISTRATION, CONSIDERATIONS ON THE TEXT OF LAW

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Abstract

The law of transparency obliges the central and local public administration to bring to the public's notice all the draft regulations, before their adoption. Natural and legal persons have the possibility to address to the central or local public administration, recommendations and suggestions regarding these draft regulations. These suggestions and recommendations are recorded and analyzed by the authority that initiated them and it will decide, following the analysis, whether it is necessary to include them in the final text of the regulations. The public may also participate in the meetings in which these draft regulations are debated and may express themselves through points of view in those meetings.

Keywords: *public administration, citizen, transparency, decision*

1. Introduction

The law of transparency ensures the public participation in the process of elaboration of regulations and in the decision-making process by opening the activity of the public administration, central and local, to the citizens. The law of transparency should not be confused with the law on access to information of public interest. In order to ensure access to information of public interest, the law on free access to information of public interest provides for the obligation of public authorities and institutions to communicate information of public interest ex officio and to update it annually. The law of transparency offers the possibility to any citizen to actively participate in decision-making and elaboration of regulations. Citizens can make suggestions, they can help to adjust some documents. However, the law of transparency does not give citizens the right to make the final decision on the act adopted. Not every suggestion to the authorities will be found in the final act.

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2. The need for regulation

The need to adopt such a law ¹ arose from the following reasons:

- Lack of coherence, consistency of public consultation, involvement of civil society in the decision-making process and in the process of adopting normative acts
- Lack of decision-making transparency even if in some cases public institutions cooperated with non-governmental organizations
- Some public institutions kept some secrecy around decision-making
- The initiative of participation of non-governmental organizations in decision-making belonged to non-governmental organizations and some public institutions have shown openness in this regard. Occasionally, there have been initiatives for decision-making transparency and management by public institutions
- The dialogue between the authorities and society became more concrete through the acceptance of certain principles and concrete actions
- The public consultation was hesitant, without the use of various techniques, adapted to reality and the public contribution is not reflected in the final versions of the documents
- There is no unity of requirement in all public institutions, in connection with decision-making transparency

This law “addresses both the public administration and those who must apply and comply with the regulations provided by it: citizens, business associations, non-governmental organizations, etc.”²

The Law of Transparency brings benefits to both public administration and citizens. The public administration "can gather information on the impact that future regulations will have, can provide more detailed explanations to civil society, can suspect and remove any problems of implementing regulations caused by their ignorance by those for whom they will be intended and not Lastly, the public administration is

¹ Law no. 52 of January 21, 2003, republished, regarding the decisional transparency in the public administration, published in the Official Gazette of Romania no. 749 of December 3, 2013.

² Antonio, Sandu, *Etică și transparență decizională în administrația publică*, Didactic and Pedagogical Publishing House, Bucharest, 2015, p. 22.

gaining the trust of the public”³. The Law of Transparency brings benefits to both public administration and citizens. The public administration "can gather information on the impact that future regulations will have, can provide more detailed explanations to civil society, can suspect and remove any problems of implementing regulations caused by their ignorance by those for whom they will be intended and not Lastly, the public administration is gaining the trust of the public.

Article 1 of the Transparency Law sets out the minimum procedural rules applicable to ensure decision-making transparency within the elected and appointed central and local government authorities, as well as other public institutions using public financial resources. The law establishes the minimum standards imposed on public administration and public institutions regarding their relationship with civil society. Public authorities that want to implement higher transparency standards can do so without contradicting this law. Minimum standards on transparency are generally valid for any public authority, but exceeding these minimum standards is desirable. The purpose of the law is to increase the level of responsibility of the public administration in relation to the citizens, to increase the participation of the citizens in the decision-making process as well as to increase the degree of transparency of the public administration activity in the decision-making field.

3. Principles

In order to achieve the above-mentioned goals, the law requires the observance of principles that refer to:

- prior information, ex officio, of the persons on the issues of public interest to be debated by the central and local public administration authorities, as well as on the draft normative acts;
- consulting the citizens and the legally constituted associations, at the initiative of the public authorities, in the process of elaborating the draft normative acts;
- active participation of citizens in administrative decision-making and in the process of drafting normative acts. This participation can be

³ Sandu, Frunză, *Publicitatea și administrația publică sub presiunea eticii*, Lumen Publishing House, Iași, 2015, p. 28.

ensured by the fact that the meetings of the public authorities and institutions that are the subject of the law are public, the debates are recorded and made public and the minutes of the meetings are recorded, archived and made public in accordance with the law.

The public administration authorities obliged to comply with the provisions of this law are:

- a) central public administration authorities: ministries, other central bodies of public administration subordinated to the Government or ministries, their decentralized public services, as well as autonomous administrative authorities;
- b) local public administration authorities: county councils, local councils, town halls, institutions and public services of local or county interest.

As can be seen, the Government is not mentioned among the public administration authorities obliged to comply with the provisions of the transparency law but any normative act adopted by the Government is the consequence of a ministry's initiative and the obligation of transparency belongs to the initiating ministry of that normative act.

Regarding decentralized public services, I would note that they cannot adopt normative acts (therefore the appointment of these institutions in the list of those with obligations of transparency of activity seems excessive). The reference to autonomous authorities is appropriate given that they adopt regulations that have an impact on individuals and legal entities.

Local public administrations (county councils, local councils, town halls, public institutions of local or county interest) are part of the category of public institutions that have the obligation to make the activity transparent⁴. The decisions of a local council, for example, “become law for that community”⁵ (for example, the decision approving the general urban plan and the general urban regulation establishing the urban regulations at the level of the territorial administrative unit becomes local law and represents the legal basis for issuing urban certificates for buildings located on the territory of the respective administrative-territorial unit).

⁴ Miruna Tudorașcu, *Etică și deontologie în administrația publică*, Risoprint Publishing House, Cluj-Napoca, 2017, p. 34

⁵ Cristian, Dumitrescu, Haida Sărăcăcianu, *Centralizarea și descentralizarea în administrația publică*, Sitech Publishing House, Craiova, 2011, p. 84.