

LEGAL PERSONALITY AT LOCAL LEVEL:

ROMANIA Country Case



Centre of Expertise for Good Governance
Strasbourg, 13 September 2021
CEGG/PAD(2021)12

COUNCIL OF EUROPE



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Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present report was prepared by the Council of Europe's Centre of Expertise for Good Governance in the framework of the Programme "Enhancing decentralisation and public administration reform in Ukraine", based on contributions from its expert Mr Sorin Ionita. The document is structured in accordance with the questionnaire formulated by the Specialised Parliamentary Committee.

ROMANIA

1	Population	19.238 millions
2	Size	230 080 km ²
3	National Day	01 December
4	Form of state government	Semi-Presidential Republic
5	Administrative-territorial system, quantity of municipalities	Unitary 41 counties – 3187 municipalities – capital city of Bucharest
6	Parliament, quantity of Members of Parliament, term	Bicameral parliament: Senate 136 MPs (for 4 years); Chamber of Deputies 330 MPs (for 4 years)
7	GDP (USD)	247 695 millions ¹
8	Human Development Index	0.828

1. – 4.	<p><i>Who has legal personality (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country at local level, the community (or "administrative territorial unit") or the authority (council, executive...)?</i></p> <p><i>In case in your country local communities or "administrative territorial units" are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), does the State possess a similar legal status?</i></p> <p><i>In case in your country local communities or "administrative territorial units" are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, sub-region, county...)?</i></p> <p><i>In case intermediate-level communities (regions, sub-regions, counties...) are not granted legal entity status, which authority has such a status at these levels?</i></p> <p>The first post-Communist law on local public administration (organic law) was adopted in Romania in 1991 and created a firm legal status for the territorial administrative units ("unități administrativ-teritoriale", UAT). The first local democratic elections were organised under this framework in February 1992. The basis for this legal status was reinforced by the Constitution, also adopted in 1991, in the section about the local public administration.</p>
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¹ Source: <https://unctadstat.unctad.org/countryprofile/GeneralProfile/en-GB/642/index.html>

The Constitution defines separately the local authorities (*autorități locale*, AL) as public institutions organised in accordance with the principles of local autonomy and decentralisation (Art. 120-123). It took some years for the distinction between UAT and the public authority governing it, which was clear in law from the outset, to be fully understood by all practitioners and commentators. But by the end of 1990s, when all the new major laws on local functions, finance and local taxation were in place, things were already clear for everybody.

Details about the legal status of UAT are prescribed in the Administrative Code, adopted in 2019 and consolidating into a single act the numerous pre-existing laws governing local authorities, including those dealing with their attributions, relations with the central authorities or the regime of public property. The legal status is assigned to the local administrative unit (UAT), which according to the Constitution can be of four types: "*comuna*" (rural unit), "*oraș*" (small town), "*municipium*" (larger town) and "*județ*" (county / district).

The first three (*comuna, oraș, municipium*) form the 1st tier of UATs, namely what is called in English "municipalities"; they are 3187 in number and differ only by size. There is no subordination or territorial overlapping between them, and they are treated equally under the law, all exerting largely the same list of legal attributions. Each has a directly elected mayor and a local council. "*Județe*" form the 2nd tier of UATs (similar to *départements* in France or *province* in Italy) each having an elected president and a council. There are 41 counties in Romania. The capital city Bucharest has a slightly different structure, but overall is considered a municipality like all others.

There is no subordination or other form of interference in each other's activity between tier 1 (municipalities) and tier 2 (counties). Separate from all these, Prefects are appointed by the Government at the level of each *județ*: they are not part of the local government as such, but representatives of the central authorities. Their role is to check the legality of local authorities' decisions (on both tiers) without interfering in the substance of local affairs.

The "**State**" does have legal personality and the central institution exercising it is the Ministry of Finance.

In terms of public property, all the Romanian UATs (both tiers) and "the State" possess assets which are separated into two categories:

- "public domain of the UAT" (core property which cannot be sold, but only rented out or concessioned under restrictive conditions); and
- "private domain of the UAT" (which may eventually be sold under the law).

All the decisions affecting the property of UATs must be approved by local or *județ* councils with a special majority of votes: 50%+1 from all elected local councillors.

Note on terminology:

- a) In Romania normally "the State" is not used as opposed to local governments, but rather "central authorities" and "local authorities". This is for stressing the fact that elected local authorities are no less legitimate or important than the central ones. Together the local and central authorities form "the state", that is the public sector.

	<p>b) The notion “self-governing authority” used in the questionnaire formulated by the Ukrainian Specialised Parliamentary Committee is slightly misleading when read in the Romanian context: it is the local community (UAT) which is “self-governing”, through its elected organs (the authority). The “authority” does not govern itself, strictly speaking; it governs a community. Normally these small wording shortcuts are trivial and overlooked in discussions – but the discussion here is precisely about the distinction between a community and public authority, thus one should be rigorous.</p>
5.	<p><i>Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.</i></p> <p>The details on the content of legal acts is provided at points (1-4) above. The current Administrative Code has incorporated laws with organic character, covering aspects related to the system of local governance: the broad lines and principles of local autonomy; the territorial organisation; the regime of property; administrative litigation; the Statute of the Civil Service. The Code was adopted in 2019 as Government Emergency Ordinance 57 / 2019:</p> <p>http://legislatie.just.ro/Public/DetaliiDocumentAfis/215925</p>
6.	<p><i>In case in your country a notion “municipality” or its analogue is stipulated in the legislation, is this notion applied to a community or a territorial unit? Or does this notion apply only/also to a local self-government authority (councils or their executive bodies)?</i></p> <p>The official designations of the Romanian UATs are provided above at (1-4). “Municipalitate” is not a legal term as such, but it is used in common speech as a substitute for the “UAT/community”. Normally “<i>companie municipală</i>” (local public company) or “<i>serviciu municipal</i>” (municipal service) are used as generic terms.</p> <p>However, and very confusingly, the notion of “<i>municipium</i>” does exist in the Romanian administration, as indicated above at (1-4); it is not the same thing as “municipality” in English, i.e. is any first-level UAT. In Romania the term “<i>municipium</i>” was introduced by the former dictator Ceaușescu in the ‘60s as a name for the bigger cities, an anachronism meant to emphasise the connection with Ancient Rome. It is largely symbolic and makes no difference in practice, in any case not to the legal status of the UAT; it simply means “large city”. Today about 100 Romanian cities carry this label, out of a total number of 3187 UATs. It is important to point this out because often documents translated from / into English perpetuate this confusion.</p>
7.	<p><i>May bankruptcy proceedings be instituted against a local community or “administrative territorial unit” in your country? (yes or no)</i></p> <p>In theory bankruptcy does exist, but the “municipal bankruptcy” has special rules (see 8 below) which differ substantially from those applicable to commercial companies, being more protective with the assets and the elected organs of the community. Even so, they have been extremely rarely applied in reality, in a few cases of small municipalities, and the conclusion of the procedure was swift: governments intervened with “emergency transfers” from the local budget to help the municipality in question and avoid an uncomfortable coverage by the media.</p>

8. – 10. ***If you answered “yes” to question No.7, please answer the following question. Do general bankruptcy proceedings applicable to other legal entities apply to local communities or “administrative territorial units” in your country? If any special proceedings are in place, what are key criteria of bankruptcy of a local community or “administrative territorial unit” and three to four special aspects that make bankruptcy proceedings against local communities or “administrative territorial units” different from bankruptcy proceedings against other legal entities?***

Do the laws of your country provide for suspension of local self-government authorities of a local community or “administrative territorial unit” (local councillors or executive bodies) from the management of affairs when the local community or “administrative territorial unit” enters into voluntary administration? (yes or no)

If you answered “yes” to question No. 9, please elaborate what are conditions for introduction of the voluntary administration, what government authority is responsible for the voluntary administration, and what is the period of voluntary administration?

Regular corporate bankruptcy rules do not apply to the local public administration. Instead, there are special provisions in the Local Public Finance Law (273/2006), Art. 74 - 75, called “Financial Crisis and Insolvency of UATs”:

<https://lege5.ro/gratuit/ha3tgnjw/criza-financiara-si-insolventa-unitatilor-administrativ-teritoriale-lege-273-2006?dp=gi4tinzwgmyts>

There are two situations described in the law: “financial crisis”, which is less serious and is declared by the local authorities, when local councils and mayors remain in charge and must approve a re-balancing plan for the budget, which is then implemented under the supervision of the Court of Accounts (national audit authority).

The other situation, more serious, is “insolvency”, when salaries are not paid for more than 120 days, or arrears of payments older than 120 days reach up to 50% of the annual local budget. When this procedure is launched, the court of law appoints a special administrator who, together with the local official authorizing disbursements (mayor) devises and implements a financial rebalancing plan. Under insolvency procedure the mayor’s right to approve financial disbursements is suspended, and temporarily ceded to a special administrator. However, the legal status of both UAT and local administration remains unchanged, a mayor and council continue to represent a community and perform their duties (other than committing to new expenditure) and the regime of public property is not affected by the insolvency. However, as explained above at (7), there were very few and marginal such cases in reality, hence a consistent body of practice of municipal insolvency does not exist yet in Romania.

11. ***Do claimants, both legal entities and individuals, lodge their claims with a local community or “administrative territorial unit” in regard to any and all local issues? Do the laws of your country allow that a person may file a lawsuit directly with a local self-government authority or its official, but not with a local community?***

Any individual can submit complains before a court of law, under the section for administrative disputes, against a decision of a local public authority representing an UAT, if s/he can prove that that specific decision violated the individual rights. All the process is governed by the provisions of the law on administrative disputes (“*contencios administrativ*”).

12.	<p><i>Does your country hold officials of local self-government authorities disciplinarily or financially (civilly) liable for ineffective or unlawful decisions (where such decision results from a political position, error or incompetence, but is not a criminal offence)? If so, may damages be recovered from the property of the official at fault rather than from the property of the local community or “administrative territorial unit” (for example, joint and several liability of the local community/“administrative territorial unit” and the official or recovery from the official by recourse)?</i></p> <p>The Romanian local officials are financially liable for unlawful decisions, if this is determined by an inspection from the Court of Accounts (RCA, the national audit authority). Normally RCA carries out controls on the legality of local authority decisions, actions and spending: every year in urban UATs and county councils; and every 2-3 years in rural UATs. If during such a control mission the RCA team (they have territorial offices with specialised staff) identifies decisions or actions which are against the law, they can forward the file to a corresponding prosecutor office (if there are signs of criminal offence), or otherwise issue a mandate to recovery the financial damages / losses to the UAT budgets. The sums so determined must be recovered or paid out of their own pockets by the officials who took the decisions. RCA's decisions can be challenged in court by respective officials. Until the beginning of the 2000s RCA had its own jurisdictional structures; after that date these structures were integrated in the regular system of justice courts.</p>
13.	<p><i>What legal status do the local self-government authorities have if the local community or “administrative territorial unit” is a legal entity and hence recognised as subject of legal rights and responsibility? How is the scope of the legal personality of local self-government authorities defined in this case?</i></p> <p>A UAT as a legal entity is represented in court by elected councils and a local executive authority: a mayor for the first tier UATs; a county council president for the second tier UATs. Normally mayors / presidents get an explicit mandate from their respective councils to initiate actions in court, on a case-by-case basis, on behalf of their municipality. A local council, office of a mayor or the staff of city hall do not possess legal status separate from that of their UAT.</p>
14.	<p><i>Who can act on behalf of a local community or “administrative territorial unit” directly in court? On what grounds? Do the laws of your country allow that a local community or “administrative territorial unit” is represented in external relations (in court, for example) by the State or a government authority?</i></p> <p>A mayor or a president of county represent their UATs before courts through the specialised legal services in the institution. Alternatively, a local council may decide to contract external legal services with private practitioners. The grounds for all these arrangements can be found in the Administrative Code mentioned.</p> <p>A local council cannot “hire” an expert from a central authority for legal representation of the UAT in court abroad, in the same way they may do with a private legal practice. The situation may theoretically happen when a central authority is associated in a specific case/file with the UAT, but no such examples have been recorded so far. A special situation is the European law, when in theory the Government represents the whole country on issues which fall under the remit of the EU according to the Treaties, and which sometimes may involve the responsibility of the local authorities.</p>

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| 15. | <p><i>If in your country the State or a local community “administrative territorial unit” has changed their legal personality over the past thirty years, please indicate how long did the transformation take and what were the milestones of the transformation?</i></p> <p>Question relevant for the early 1990s, see explanations at points (1-4) above.</p> |
| 16. | <p><i>If in your country the State or a local community/“administrative territorial unit” changed their legal personality amid external or internal armed conflicts, were any risks identified for the territorial integrity or national security as a result of this change? If so, what preventative actions were taken to avoid these risks?</i></p> <p>Not the case.</p> |

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