

AUTONOMOUS CENTRAL SPECIALIZED AUTHORITIES

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Abstract

Within public administration organization system, a special place is given to the autonomous specialized central authorities, regulated by the Constitution. Such a constitutional rank authority is the Economic and Social Council. In view of the fact that, according to the Constitution, the Economic and Social Council is an advisory body of Parliament and the Government, without detailing the areas of expertise in which it is consulted, there is a question in what concerns the way in which it fulfills its role established by the legislator. Therefore, the scope of this study is to know the legal regime of this autonomous central specialized authority, according to the legislation and specialized doctrine. Furthermore, the analysis will place the Economic and Social Council in an international context, in the sense that we will research in comparative law what is provided for in the constitutions of other European countries regarding this authority. From this point of view, we consider the topic to be of interest to legal specialists as it provides information about a public authority of constitutional rank. In this respect, by means of law-specific researched methods, such as documentary method, comparative method and logical-deductive method, we will underline the conclusion of our paperwork, that, among other duties, the Economic and Social Council, being involved in the broad legislative process, according to its organic law, issues opinions and carries out an activity in the public interest.

Keywords: *Administrative Code, Economic and Social Council, autonomous central public authority, Law no. 248/2013 on the organization and functioning of the Economic and Social Council, opinion.*

1. Introduction

Considering the complexity of the daily activity carried out in public administration, combined with the fact that, according to the law, there are certain public advisory authorities, curiosity urged us to document the subject in order to be able to know as much as possible about the activity of the various public authorities, in this respect. According to the doctrine, *“the dynamism of modern life does not in many cases allow the conduct of social life to be shackled to certain fixed patterns,*

*predetermined by law”*¹. Therefore, we consider that the legislator has regulated the possibility for certain advisory bodies to operate at public administration level. In this respect, one of the public authorities involved in the legislative process is the Economic and Social Council.

Among autonomous administrative authorities of constitutional nature, being provided for first by the Constitution, their organization and functioning being performed by means of organic law, we hereby list the following: *“the Ombudsman, Court of Audit, Supreme Council,*

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¹ T. Drăganu, *Introducere în teoria și practica statului de drept*, Dacia Publishing House, Cluj - Napoca, 1992, p. 184.

*Legislative Council, Economic and Social Council, public radio and television services, intelligence services with duties in the field of national security*². According to the doctrine, the organization in our country of such authorities, with control or coordination powers, independent of the Government, “are part of the general trend that characterizes Western legislation in recent years, namely the numerical increase of independent administrative authorities, created at the central level, autonomous towards the Government and sometimes towards the Head of State³”.

Therefore, this paper aims to provide as much information as possible on the legal regime of the Economic and Social Council by answering questions such as: “What are the areas of expertise of the Economic and Social Council?” or “What is the role of the Economic and Social Council in the pyramid of public authorities?”. In this respect, a structure organized on two levels is proposed, the national and the comparative law, and the content of the study will analyze the relevant legislation and doctrine in order to formulate a conclusion.

2. Legal regime of the Economic and Social

2.1. Legal nature and role of the Economic and Social Council

According to art. 141 of the Constitution, “the Economic and Social Council shall be an advisory body of the

Parliament and Government, in the areas of expertise stated by the organic law for its establishment, organization, and functioning”. The organic law referred to in the Constitution⁴ is currently Law no. 248/2013 on the organization and functioning of the Economic and Social Council⁵. Prior to 2013, Law no. 107/1997 on the organization and functioning of the Economic and Social Council was in force⁶.

Art.1 of previous Law no. 107/1997 provided the following: “the Economic and Social Council, a tripartite, autonomous body of public interest, shall be set up for the purposes of the social dialogue between the Government, trade unions and employers and a climate of social peace”. Currently, according to art. 1 para. (1) of organic law no. 248/2013, the Economic and Social Council, abbreviated as ESC “is a consultative body of the Parliament and of the Government of Romania within the areas of expertise established by means of this law”.

Furthermore, the Economic and Social Council is a “public institution of national interest, tripartite, autonomous, set up for the purpose of conducting dialogue between employers' organizations, trade union organizations and representatives of non-governmental civil society associations and foundations” [art. 1 para.(2)]. Moreover, the Economic and Social Council has legal

² C. S. Săraaru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C. H. Beck Publishing House, Bucharest, 2016, pp.648-649. Also see E. Anghel, *Involvement of the Ombudsman institution of Ombudsman in the mechanism of constitutional justice*, in the proceedings CKS-eBook 2021, pp.559-563.

³ R. N. Petrescu, *Drept administrativ*, Hamangiu Publishing House, Bucharest, 2019, p.127.

⁴ For more about the constitutionalism, see C.G.B. Ene-Dinu, *A century of constitutionalism*, in “LESIJ - Lex ET Scientia International Journal”, no. XXX, vol. 2/2023, p. 129-138, online at https://lexetscientia.univnt.ro/download/2023_XXX_2_10_LESIJ.pdf, visited on 07.03.2024.

⁵ Published in Official Gazette of Romania, no. 456 of 24 July 2013, as further amended and supplemented.

⁶ Published in Official Gazette of Romania, no. 141 of 7 July 1997.

personality and registered office in Bucharest⁷.

The administrative law literature discusses the Economic and Social Council in a separate chapter devoted to the autonomous authorities of the specialized central public administration. In this respect, there is an author that states that “being autonomous authorities, but exercising administrative duties, they are not subject to public guardianship regime, such as the autonomous authorities of the local government (county councils, local councils, city halls, etc.)”⁸. In the same context, the doctrine states that the autonomous administrative authorities, “whether or not expressly provided in the Constitution, are organized and function based on certain organic laws⁹”. Therefore, “the legal regulation requires acceptance of and compliance with the prescribed conduct¹⁰”.

According to the Administrative Code, art. 2 para.(1) “the central public administration authorities are: the Government, ministries, other specialized bodies subordinated to the Government or ministries, autonomous administrative authorities”. The Administrative Code regulates the structure of the specialized central public administration in art.51 para. (1) as consisting of “ministries, other structure in the subordination or

coordination of the Government or of the ministries and autonomous administrative authorities”. Furthermore, “in accordance with the current body of law, whether constitutional or infra-constitutional, two categories of administrative law relationships can be distinguished: subordination relationships and collaboration relationships.”¹¹

In what concerns the administrative law relationships arisen between the Government and the autonomous administrative authorities, the Administrative Code establishes them as being collaboration relationships¹² (art.27). Furthermore, the doctrine states that “public administration comprises central public administration bodies and their deconcentrated services, as well as local public administration bodies¹³.”

Title III of the Administrative Code regulates the autonomous administrative authorities, in art. 69-74. With regard to the specific names of the authorities, it has been stated that “they differ from one authority to another: council, service, commission, court¹⁴”. The doctrine shows that these autonomous specialized central authorities “are the work of the constituent legislator, which means that they can only be abolished by means of a constitutional law amending the fundamental law by repealing the articles or changing their content¹⁵”.

⁷ Public information, available at <https://www.ces.ro/consiliul-economic-si-social/ro/1>, visited on 10.02.2024.

⁸ I. Corbeanu, *Drept administrativ*, Lumina Lex Publishing House, Bucharest, 2010, p. 291.

⁹ D. Apostol Tofan, *Drept administrativ, vol. I, 2nd edition*, C.H. Beck Publishing House, Bucharest, 2008, p. 246.

¹⁰ N.E. Hegheș, *The non - retroactivity of new legal norms-fundamental principle of law. Exceptions*, in “International Journal Of Legal And Social Order (1)”, p. 153, online at <https://ijlso.ccdsara.ro/index.php/international-journal-of-legal-a/article/view/74/60>, visited on 03.03.2024.

¹¹ M.C. Cliza, C.C. Ulariu, *Drept administrativ, Partea Generală*, C.H. Beck Publishing House, Bucharest, 2023, p. 300.

¹² See also N. Popa (coord.), E. Anghel, C.B.G.. Ene-Dinu, L. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar, 4th edition*, C.H. Beck Publishing House, Bucharest, 2023, p. 227.

¹³ M.C. Cliza, C.C. Ulariu, *op. cit.*, p. 154.

¹⁴ D. Apostol Tofan, *op. cit.*, p. 246.

¹⁵ V. Vedinaș, *Drept administrativ, 14th edition*, Universul Juridic Publishing House, Bucharest, 2023, p.189.

According to the doctrine, “the difference between autonomous central specialized authorities with constitutional status and those with legal status is not only in terms of the legal act by which they were created, but also in terms of their degree of dependence¹⁶”. Therefore, “the autonomous authorities of constitutional rank are subject to the Government only to the extent that it adopts ordinances or regulatory decisions which are binding on them like any other subject of law”¹⁷. On the other hand, “for the autonomous authorities created by organic law, the rule established by art. 102 para. (1) according to which the Government exercises the general management of public administration has a higher degree of extension and applicability¹⁸”.

With regard to ESC role, the Court noted the following in its case law: “art. 141 of the Constitution merely enshrines the role of the Economic and Social Council as an advisory body of the Parliament and the Government, and for details of the areas of expertise in which it is consulted, the text refers to its organic law of establishment, organization and functioning¹⁹”.

2.2. Areas of expertise – duties – management

According to its organic law, art. 2 para. (2), the areas of expertise of the Economic and Social Council are: “economic policies; financial and fiscal policies; labor relations, social protection, wage policies and equal opportunities and

treatment; agriculture, rural development, environmental protection and sustainable development; consumer protection and fair competition; cooperation, liberal professions and self-employment; citizens' rights and freedoms; health policies; education, youth, research, culture and sport policies”.

Furthermore, regarding ESC duties, the law provides the following:

a) “Approves draft normative acts of the areas of expertise referred to in art. 2 para. (2) initiated by the Government, as well as the legislative proposals of the deputies and senators, inviting the initiators to the debate of the normative acts;

b) Draws up at the request of the Government, the Parliament or on its own initiative, analyses and studies on economic and social realities;

c) Notifies the Government or the Parliament of the appearance of economic and social phenomena that require the appearance of new normative acts”.

According to art. 6, the types of opinions issued by the Economic and Social Council are: favorable opinions, opinions with observations and proposals, unfavorable opinions. From another perspective, in the administrative law doctrine, the opinions are analyzed as procedural operations prior to the issuance of administrative acts²⁰. Returning to the analysis carried out, annual activity reports can be found on the institution's website²¹, as well as information on the granted opinions²².

¹⁶ *Ibidem*.

¹⁷ I. Muraru, E.S. Tănăsescu (coord), *Constituția României. Comentariu pe articole, 3rd edition*, C.H. Beck Publishing House, Bucharest, 2022, p.1013 *apud* V. Vedinaș, *Drept administrativ, op. cit.*, p. 189-190.

¹⁸ V. Vedinaș, *Drept administrativ, op. cit.*, p. 190.

¹⁹ Decision no. 391/2021 of the Constitutional Court, published in Official Gazette of Romania no.719 of 22 July 2021.

²⁰ M. C. Cliza, *Drept administrativ, Part II*, Pro Universitaria Publishing House, Bucharest, 2010, pp.30-32.

²¹ Public information, available online at <https://www.ces.ro/rapoarte-de-activitate-ale-ces/ro/27>, visited on 19.02.2024.

²² For example: <https://www.ces.ro/avize-ces-2024/ro/276>, visited on 19.02.2024.

Regarding the personnel, the organic law provides information on how this public authority works. According to the doctrine, “like any state body, in general like any social body, public administration bodies consist of individuals who make up the personnel of the respective bodies²³”. The ESC management consists of the president and vice-presidents.

According to art.20 of the law, the plenary ensures the general management of the Economic and Social Council and, among other duties, approves draft normative acts. According to the organic law, ESC plenary consists of 45 members, each member being elected for a 4-year term which cannot be renewed, the law expressly establishing the cases of termination of the term of office.

In interpreting²⁴ the legal norm regulated by art. 17 para.1) letter e) of the organic law, the High Court of Cassation and Justice, in its case law, in a case concerning the revocation of members of the Economic and Social Council, has analyzed the legality of administrative acts revoking their membership of the Economic and Social Council.

Therefore, the High Court of Cassation and Justice noted the following: “the issue in the present case is not whether or not the applicants have performed the work for which they were appointed, but the legality

of the administrative acts revoking their membership of the Economic and Social Council, and if the decisions to revoke their membership are found to be unlawful, the applicants shall be entitled to receive the allowance even if they were prevented from performing their work (...)”²⁵.

The Constitutional Court points out the following²⁶: “Law no. 248/2013 does not provide for the revocation of members of the Economic and Social Council for failure to perform their duties or for conduct that violates legal or constitutional rules, but establishes the possibility for the Prime Minister to request the revocation, arbitrarily, of the member of the Economic and Social Council whom he has appointed, without specifying the public authority that could approve such revocation (par. 33)”²⁷. Furthermore, the Court noted that the “the legislative solution provided for in art. 17 para.1) letter e) which does not specify the cases and grounds for dismissal of members of the Economic and Social Council or the procedure for their dismissal, is unconstitutional. (par.38)”²⁸.

3. Economic and Social Council – comparative law patterns

The information in this section is based on a selection of European constitutions, by analyzing work Codex constituțional.

²³ D. Brezoianu, M. Oprican, *Administrația publică în România*, C.H. Beck Publishing House, Bucharest, 2008, p. 209.

²⁴ On the legal interpretation, see M. Bădescu, *Teoria generală a dreptului*, Sitech Publishing House, Craiova, 2018, pp.167-187 or I. Boghirnea, *The interpretation – obligation for the judge imposed by the application of the law*, in “Legal And Administrative Studies”, Year XVII, No. 2 (19)/ 2018, pp. 50-57.

²⁵ High Court of Cassation and Justice – Division of Contentious Administrative and Fiscal, Decision no. 81 of 13 January 2022, consulted online at

<https://www.universuljuridic.ro/jurisprudenta-prelucrata-consiliul-economic-si-social-revocare-membrii-legalitatea-actelor-administrative-de-revocare-a-acestora-din-calitatea-de-membri-ai-ces-plata-indemnizatiei/>, visited on 13.02.2024.

²⁶ C.B.G. Ene-Dinu, *Constitutionality and referral in the interests of the law*, in “LESIJ - Lex ET Scientia International Journal” nr. XXIX, vol. 1/2022, pp. 66-74, online at https://lexetscientia.univnt.ro/download/2022_XXIX_1_6_LESIJ.pdf, visited on 07.03.2024.

²⁷ Decision no. 69/2023 of the Constitutional Court, published in Official Journal no. 23 of 11 January 2024.

²⁸ *Idem*.

Constituțiile statelor membre ale Uniunii Europene (Constitutional Codex. Constitutions of the Member States of the European Union)²⁹. According to the administrative law doctrine, “European constitutions are formal laws that include the fundamental rules of the state (...)”³⁰. Furthermore, “the Constitution commands the whole of law, by its content and position in the legal system”³¹.

By reading the Constitution³² of the Republic of Austria, it appears that the legislator does not develop information about the Economic and Social Council but merely nominates it in relation to the Government. Therefore, according to art. 23 letter c) “The Austrian participation in the nomination of members of the Commission, the Court of Justice, the Court of First Instance, the Court of Accounts, the Administrative Council or the European Investment Bank, the Economic and Social Committee, as well as the Committee of the Regions within the framework of the European Union is incumbent upon the Federal Government (...)”.

In the Constitution of the Hellenic Republic³³ instead, the legislator refers to the law organizing the Economic and Social Council which it regulates under the name of Economic and Social Committee. In this respect, we indicate art.82 para. (3) which provides as follows: “Matters relating to the establishment, functioning and competences of the Economic and Social Committee whose mission is to conduct social dialogue for the overall policy of the Country and,

especially, for the orientations of the economic and social policy, as well as to formulate opinions on Bills and law proposals referred to it, shall be specified by law”.

In what concerns the Constitution of the French Republic³⁴, we note a difference from our Constitution, in that the legislator has regulated in Title XI – the Economic, Social and Environmental Council, art. 69-71. Therefore, according to art. 69 para. (1) of the Constitution “The Economic and Social Council, on a referral from the Government, shall give its opinion on such Government Bills, draft Ordinances, draft Decrees, and Private Members’ Bills as have been submitted to it”. Furthermore, according to art. 71 “The composition of the Economic, Social and Environmental Council, which shall not exceed two hundred and thirty-three members, and its rules of proceeding shall be determined by an Organic Law”. We note that although the legislator regulates this public authority, the name is more complex, by also including environmental issues.

Moreover, the Constitution of the Portuguese Republic³⁵ regulates the Economic and Social Council in art. 92. According to the constituent legislator, the Economic and Social Council is “the body with responsibility for consultation and concertation in the economic and social policy domain, shall take part in drafting the Major Options and the economic and social development plans, and shall exercise any other functions allocated to it by law”.

²⁹ Ș. Deaconu, I. Muraru, E. S. Tănăsescu, S. G. Barbu, *Codex constituțional. Constituțiile statelor membre ale Uniunii Europene*, Official Gazette Publishing House, Bucharest, 2015, pp. 23-748.

³⁰ D. Apostol Tofan, *Instituții administrative europene*, C.H. Beck Publishing House, Bucharest, 2006, p. 12.

³¹ I. Muraru (coord.), A. Muraru, V. Bărbățeanu, D. Big, *Drept constituțional și instituții politice. Caiet de Seminar*, C.H. Beck Publishing House, Bucharest, 2020, p. 60.

³² Public information, <https://constitutii.files.wordpress.com/2013/02/austria.pdf>, visited on 15.02.2024.

³³ Public information, <https://constitutii.files.wordpress.com/2013/01/grecia.pdf>, visited on 15.02.2024.

³⁴ Public information, <https://constitutii.files.wordpress.com/2013/02/franta.pdf>, visited on 15.02.2024.

³⁵ Public information, <https://constitutii.files.wordpress.com/2013/01/portugalia.pdf>, visited on 15.02.2024.

Furthermore, according to the constitutional provisions, “the law shall also define the way in which the Economic and Social Council is organized and its modus operandi, together with the status and role of its members.”

In the Constitution of the Republic of Slovenia³⁶, the Economic and Social Council is known under the name of the National Council. According to art. 96 of the Constitution: “The National Council is the representative body for social, economic, professional, and local interests. The National Council has forty members”. Furthermore, the law regulates the organization and functioning of this body.

Romania, like the other countries referred to above, by regulating ESC in the Constitution, has harmonized domestic law with European legislation. As the doctrine has revealed, regarding the application of European Union law in our country, “the provisions of article 148(4), according to which the Parliament, the President of Romania, the Government and the judicial authority guarantee the fulfilment of the obligations arising from the Act of Accession and the provisions of Article 148(4), are relevant³⁷”. At the same time, Romania has transposed European legislation in various fields of activity, as it is well known that failure to comply with European legislation entails Member State liability.

We note that the European Economic and Social Committee operates at the level of the European Union, a body which “advises the Council and the Commission and is actively involved in the decision-

making process³⁸”. According to art. 300 of the Treaty on the Functioning of the European Union - TFEU there are two consultative bodies of the Union: the Council of the Regions and the Economic and Social Committee - EESC.

According to art. 300 para. (2) TFEU, EESC shall consist of representatives of organizations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas. Furthermore, “EESC is a consultative body of the European Union, based in Brussels and composed of 329 members. Its opinions are required on the basis of a mandatory consultation in the fields established by the Treaties or a voluntary consultation by the Commission, the Council or Parliament, and the EESC may also issue opinions on its own initiative³⁹”. At the same time, an analysis of the legislation shows that EESC members exercise their functions with complete independence, in the general interest of the Union, by delivering opinions on European Union matters to the European Commission, the Council of the European Union and the European Parliament.⁴⁰

3. Conclusions

The Economic and Social Council - ESC, as a constitutional rank authority, was analyzed in this study in order to find out as much as possible about the applicable legal regime, in which sense the applicable legislation, doctrine and the institution's website were analyzed. The great number of

³⁶ Public information, <https://constitutii.files.wordpress.com/2013/01/slovenia.pdf>, visited on 15.02.2024.

³⁷ R. M. Popescu, *Drept internațional public*, Universul Juridic Publishing House, Bucharest, 2023, p. 34.

³⁸ A. Fuerea, *Manualul Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2010, p. 129.

³⁹ Public information, <https://www.europarl.europa.eu/factsheets/ro/sheet/15/comitetul-economic-si-social-european>, visited on 19.02.2024.

⁴⁰ Decision no. 679/2023 of the Constitutional Court, published in Official Gazette of Romania, no. 23 of 11 January 2024, par. 39.

public information revealed by means of the IT method⁴¹ increasingly underlines that “mankind is globally connected by high-speed digital data networks⁴²”. This has led the doctrine to rightly state that “the regulation of the digital domain entails the formation of new paradigms in the legal space⁴³”.

On this occasion, the analysis showed that the ESC is a consultative body of the Romanian Parliament and Government in the areas of expertise established by the organic law on the establishment, organization and functioning thereof, respectively Law no. 248/2013. At the same time, from the documentation of the legislation, it can be said that the ESC falls under the scope of the autonomous authorities of the specialized central public

administration and the activity carried out is a public service⁴⁴ in the public interest. With regard to draft normative acts of its areas of expertise, it appears that ESC issues several categories of opinions, as follows: favorable opinions, opinions with comments and proposals, unfavorable opinions.

At the European level, the documentation carried out revealed that this body is established in the Fundamental Law of several European countries, often with different names such as the Constitution of the French Republic (Economic, Social and Environmental Council) or the Constitution of the Republic of Slovenia (National Council). At the same time, our country is also represented at the Economic and Social Committee - EESC, an European advisory body.

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⁴¹ On quantitative research methods, see N. Popa (coord.), E. Anghel, C.B.G. Ene-Dinu and L. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar, 3rd edition*, C.H.Beck Publishing House, Bucharest, 2017, p. 29.

⁴² G. Manu, O. Predescu, *Dreptul public în fața provocărilor inteligenței artificiale*, in “Universul Juridic Magazine” no. 6/2023, p. 17, online at https://revista.universuljuridic.ro/wp-content/uploads/2023/08/01_Revista_Universul_Juridic_nr_6-2023_PAGINAT_BT_G_Manu.pdf, visited on 19.02.2024.

⁴³ A. Conea, *Politicile Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2020, p. 10.

⁴⁴ On public services in: V. Negruț, *Drept administrativ. Serviciul Public. Proprietatea publică*, C.H.Beck Publishing House, Bucharest, 2020, p. 1-18.

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