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Crossing the Floor in the Name of Intergovernmental Coordination: The Legislative Response to Party Switching in Romania*

Zmiana przynależności partyjnej w imię koordynacji między jednostkami władzy publicznej. Ustawodawcza reakcja na zjawisko przechodzenia z partii do partii w Rumunii

ABSTRACT

Political parties play a vital part in the democratic governance of any state. At the same time, it is equally true that the politicization of public institutions may frequently appear as a destabilising factor in their activity, especially in the context of party switching among elected officials, arguably distorting

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the essence of representative democracy. While change of party allegiance stirs captivating political debates, Romanian legal literature is yet to conceptualize or operationalize it. This paper examines the legal rules concerning the mandate of elected officials at the local and central level, focusing on the freedom to change political affiliation. The authors argue that the ill-informed legislative response to party switching has a negative impact on intergovernmental relations at all levels and ultimately affects the activity of public authorities. While discouraged in an attempt to ensure the imperative mandate, party switching has, in practice, taken forms contrary to the legislative intent, especially at the local level. The authors conclude that party switching affects public trust in political parties, even if, at least declaratively, one of its root causes is the interinstitutional collaboration itself, as providing quality public services and solving complex issues in the public sector involve constant negotiation.

Keywords: intergovernmental coordination; local government; local governance; party switching; Constitution of Romania; Administrative Code of Romania

INTRODUCTION

When discussing public policies, we find that there are multiple parties involved in their construction, implementation and coordination, originating from two major areas: structures of state power and the civil sector.

Among state institutions, by far the most important role belongs to the executive power (the Government, with all its branches), which is primarily responsible for their implementation and enforcement, ensuring, through concrete activities, their cohesion and efficiency.

The identification of social needs and their transformation into public policy proposals largely comes from the civil sector, including NGOs or other organizations involved in public life, which act as genuine incubators of analysis and research on various and pressing societal issues, such as human rights, environmental protection or social welfare. Within this non-political sphere, various interest groups (not organized into specific structures) are also active, attempting to influence political decisions through lobbying or public advocacy activities, and often collaborating with political parties and the Government to develop policies that benefit their members.

Between these two levels – state structures and civil society – political parties, organized into formal structures, are the ones that propose policies and give them a normative character, striving, despite differing opinions and ideologies, to find common ground for the effective coordination of policies.

In this framework, the political affiliation of an elected official seems to be less important – when they prioritize the interests of those, they represent over the political party to which they belong. On the other hand, without party affiliation, it is often the case that obtaining a mandate and, implicitly, representativeness would not have been possible. Membership in an organization implies a certain discipline regarding the rules, objectives and actions undertaken. However, the party's expec-

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tations (whether it's about forming majorities or radically changing the approach to certain situations) can sometimes put the elected official in conflicting situations with the citizens whose votes they sought and whom they came to represent. Resolving these conflicts is by no means simple, as there are valid arguments for each option. A party switch by an elected official does not always lead to voter loyalty to the party they migrate to; the "betrayed" voter may choose to remain loyal or opt for a punitive stance through abstention or a change in support.

Existing studies on why legislators switch parties show mixed results regarding the motivations behind such switches, such as office benefits, ideology and votes. We view these motivations as interchangeable and suggest that many of the inconsistencies can be clarified by considering the interactions between them. For instance, researchers disagree on whether electoral considerations are a key factor in party switching.[1] The divergent findings on the role of electoral considerations are clarified here by showing that their impact depends on the level of office benefits a legislator receives and the ideological gap between the legislator and their party. Overall, the empirical analysis strongly supports the hypothesis of the substitution effect. Therefore, incorporating interactive effects enhances our understanding of party switching. Most importantly, unlike what previous research suggested and in contrast to abstainers, party switchers cannot be described as frustrated with politics.[2]

Legislators' strategic behaviour is believed to be influenced by electoral institutions if they prioritize re-election. However, the empirical evidence connecting legislators' actions to these institutions is minimal. We think that the impact of electoral institutions on constituency efforts varies with legislators' electoral insecurity. Many studies show that, in party-centred systems, the negative effect of district magnitude diminishes for those most.[3] Conversely, in candidate-centred systems, the positive effect of district magnitude intensifies for the most vulnerable. Some results indicate a need to re-examine studies that focus solely on the effects of institutions on legislators' constituency-focused behaviour.[4]

Party switching has been analysed from various perspectives – political, social and in relation to the motivations of legislators, institutional arrangements and the

[1] J.H. Aldrich, *Why Parties? The Original and Transformation of Political Parties in America*, Chicago 1995.

[2] R. Dassonneville, A. Blais, Y. Dejaeghere, *Staying with the Party, Switching or Exiting? A Comparative Analysis of Determinants of Party Switching and Abstaining*, "Journal of Election Public Opinion and Parties" 2015, vol. 25(3).

[3] A. André, S. Depauw, S. Martin, *Electoral Systems and Legislators' Constituency Effort: The Mediating Effect of Electoral Vulnerability*, "Comparative Political Studies" 2015, vol. 48(4); J. Hamzawi, *Policy Preferences and Party Switching: Evidence from the 2012 Japanese Election*, "Party Politics" 2020, vol. 27(6).

[4] W.B. Heller, C. Mershon (eds.), *Political Parties and Legislative Party Switching*, New York 2009.

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phenomenon of switching.[5] When considering all these aspects, it is evident that motivational explanations are closely correlated with interparty movement, while institutional arrangements show only a limited direct influence on switching.[6]

ROMANIAN REGULATION

1. Central mandate

In our analysis, we aim to identify the existing legal framework in Romania regarding the effects of a party switch by an official elected on the list of a party. We approach this by starting from a premise that has been highlighted in public discourse, suggesting that current legislation treats differently the elected representatives at the central and local levels, even though similar arguments – such as representativeness, public interest, constitutional principles and local autonomy – are invoked in both cases.

The various meanings of the term "mandate" found in different dictionaries generally define it as an authorization given to someone to perform a specific task on behalf of another person or a mission assigned to someone by a group to act on their behalf. The reference to authorization and representation has made the mandate a legal institution, which has found its place in both public and private law, albeit in different circumstances and with different interpretations, leading to a divergent development of the concept within these two branches of law.[7]

The Constitution of Romania provides a clear framework for the functioning of the parliamentary mandate, emphasizing the principle of representativeness, parliamentary immunity and incompatibilities, as well as the bicameral structure and role of Parliament. These regulations, essential for ensuring a democratic and transparent process in the drafting and adoption of laws, are complemented by the specific stipulation of the imperative nature of the parliamentary mandate (Article 69 of the Romanian Constitution), rooted in the concept of national sovereignty, under which voters entrust a mandate to individuals called to represent them and who are expected to fully adhere to the will of the electorate.[8] In other words,

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[5] See C. Mershon, *Legislative Party Switching*, [in:] *The Oxford Handbook of Legislative Studies*, eds. S. Martin, T. Saalfeld, K.W. Strøm, Oxford 2014; A. Yoshinaka, *Crossing the Aisle: Party Switching by U.S. Legislators in the Postwar Era*, Cambridge 2015; E. Klein, *The Personal Vote and Legislative Party Switching*, "Party Politics" 2018, vol. 24(5).

[6] D.Z. O'brien, Y. Shomer, *A Cross-National Analysis of Party Switching*, "Legislative Studies Quarterly" 2013, vol. 38(1).

[7] F.L. Ghencea, [in:] *Codul administrativ comentat. Explicații. Jurisprudență. Doctrină*, ed. V. Vedinaș, Bucharest 2022, p. 258.

[8] I. Muraru, R. Popescu, [in:] *Constituția României. Comentariu pe articole*, eds. I. Muraru, E.S. Tănăsescu, Bucharest 2018.

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a senator or deputy elected on the lists of a political party can, throughout their mandate, switch to any other political formation or become independent, without in any way affecting their parliamentary mandate.

Obviously, the rationale for the imperative mandate stems from the social nature of the function exercised, implementing the general will of the people,[9] as well as the concepts regarding the accountability of elected officials to the voters, in whose name they exercise power.[10] The imperative mandate considers the direct responsibility of the elected official to the voter who invests them with full powers through their vote, requiring them to act according to the desires of their constituents and on their behalf.

The theory of the imperative mandate has been and continues to be used in many countries – in all former socialist states, constitutions explicitly provided for the possibility of citizens revoking deputies and senators (under certain concretely determined conditions), a situation that, in practice, occurred when these officials no longer enjoyed the trust of the official ruling party.[11]

The constitutional combination in Romania's fundamental law regarding the dual character of the mandate[12] – both representative and imperative – grants elected officials a high degree of autonomy, which also manifests in their relationships with the parties on whose lists they were elected. The representative mandate allows parliamentary assemblies to conduct their activities without requiring the consent of the electorate on all matters subject to a vote. However, affiliation with the party on whose list the parliamentarian was elected also imposes a certain behavioural discipline in relation to the political formation that supported them.[13] The relationship between party discipline and the freedom to express opinions in the exercise of the mandate has sparked heated debates, often representing the "Achilles' heel" in the relationship between citizen-elected official-party, where arising contradictions can lead to frictions with often unfortunate consequences.

The Constitutional Court itself has ruled on this aspect,[14] stating that parliamentarians enjoy full freedom of expression and that affiliation with a particular party cannot automatically compel a parliamentarian to follow the party's stance.

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[9] C. Ionescu, *Principiul suveranității poporului – factor structurant al democrației constituționale*, "Revista de Drept Public" 1996, no. 1–2.

[10] J.J. Rousseau, *Contractul social*, Bucharest 2001f, p. 161.

[11] See M. Popescu, M. Chiru, R. Toma, *Parlamentarii migrează. Cauze, consecințe și explicații comparative*, 2022, http://openpolitics.ro/wp-content/uploads/explicatie_migratia_artw_txt2e.pdf (access: 30.8.2024).

[12] See T. Drăganu, *Drept constituțional și instituții politice – tratat elementar*, vol. 2, Bucharest 2000.

[13] R.M. Ogaru, *Natura mandatului parlamentarului – între mandatul reprezentativ și mandatul imperativ*, "Revista Română de Studii Electorale" 2018, no. 1.

[14] D.C. Dănișor, M. Nica, *Cu privire la Decizia Curții Constituționale nr. 61 din 18 ianuarie 2007*, "Noua Revistă Română de Drepturile Omului" 2007, no. 2.

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The parliamentarian has the right to express themselves and vote freely, to accept or reject government initiatives, to propose amendments or to exercise control over the government through the means provided by the fundamental law. Thus, the Constitutional Court (DCC no. 55/2001) asserts that parties cannot demand the revocation of their members, whether deputies or senators, who violate party discipline or do not follow the party's directives in their parliamentary activities.

In the same vein, the independence of parliamentarians has been repeatedly reinforced by decisions of the Constitutional Court (DCC 44/1993, DCC 45/1994), which validated the transition from one party to another, deeming that any prohibition in this regard constitutes a restriction of the mandate, contradicting constitutional provisions.

The rationale behind this regulation allows the use of a parliamentarian's independence to represent citizens as closely as possible to their interests, which is extremely useful for promoting policies that, at some point, may no longer be on the party's agenda or may no longer be a priority for it.[15]

Nicely outlined by the legislator, the independence and imperative nature of the parliamentary mandate do not, in practice, produce the intended effects. The phenomenon of political migration exists – and is quite frequent in the Romanian Parliament and in all democratic states – and it introduces distortions in the representation of voters' options on the one hand, and in the functioning of majorities that establish the stability of governance on the other.[16] It is a problematic situation from a normative standpoint because the citizen is represented by the same politician but not under the same political program for which the mandate was received.

The number of parliamentarians who make these changes varies greatly between countries,[17] but there are always short-term or long-term consequences, from the change of a governmental majority to the enactment of anti-defection laws.

2. Local mandate

While there is an explicit constitutional regulation for national elected officials that leaves no doubt regarding the legal regime of their mandate, for local elected officials – whose mandate is undoubtedly also a public law mandate – Romanian legislation does not provide a similar principle norm.[18] This is also true for the imperative nature of the mandate.

[15] C. Ionescu, *op. cit*.

[16] E.L. Cătană, *Drept administrativ*, Bucharest 2023.

[17] M. Popescu, M. Chiru, R. Toma, *op. cit*.

[18] C.F. Stoica, *Mandatul aleşilor locali – mandat de drept public. Consecinţe juridice*, "Revista Transilvană de Ştiinţe Administrativ" 2011, no. 2.

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After a complex journey of a dedicated legislative act (Law No. 393/2004 on the Statute of Local Elected Officials), the regulation is now found within the Administrative Code, which specifies at the beginning the functions that fall into this category: mayor, deputy mayor, local and county councillors, and the president of the county council. It also states that in exercising their duties, they hold a public dignity function, closely tied to obtaining the mandate through a direct electoral process (mayor, deputy mayor, councillors, president of the county council) or indirect (deputy mayor and vice president of the county council; see Article 5 of the Administrative Code).[19]

Remnants of the centralized state were followed by a long period of lack of regulation, during which party structures and decision-makers in the central administration were strongly affected by the absence of control mechanisms over the representatives of local public administration. It was not until 2004 that the Statute of Local Elected Officials was adopted, in which the legislator made the first, we might say, attempt to limit political defection – the termination of the mandate of a local elected official in the event of their exclusion from the party; Article 9 (2) (h1): "the position of local councillor or county councillor shall automatically cease, before the normal expiration of the mandate, in the case of losing membership in the political party or national minority organization on whose list they were elected", and Article 15 (2) (g1): "the position of mayor and, respectively, of president of the county council shall automatically cease, before the normal expiration of the mandate, in the event of losing, through resignation, membership in the political party or national minority organization on whose list they were elected".

Conflict situations continued to arise, especially since the regulation referred only to local councillors, not to mayors and county council presidents. The texts frequently became subjects of constitutional exceptions, repeatedly rejected by the Constitutional Court (decision no. 915/2007, decision no. 613/2011, etc.), with the court justifying its decisions by interpreting the law in a way that ensures stability within local public administration, reflecting the political configuration as determined by the electorate's will.[20] Later, the argument was nuanced,[21] invoking the constitutional principle of local autonomy and the different types of elections through which they are chosen.

Currently, the regulation in the Administrative Code is included in Article 204 (2) (j): "the mandate of the local councillor ceases upon losing the membership of the political party or the minority organization on whose list they were elected" for members of deliberative bodies, and in Article 160 (1) (h) for single-person bodies:

[19] E.M. Nica, *Despre încetarea mandatului de ales local, raportat la fuziunea partidelor politice*, "Revista Universul Juridic" 2022, no. 7.

[20] C.F. Stoica, *op. cit*.

[21] E.M. Nica, *op. cit*.

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"the mandate ceases upon losing, by resignation, the membership of the political party or the minority organization on whose list they were elected". The legislator continues to differentiate between the two categories of differently composed but similarly elected authorities.

Moreover, elected councillors seem to be almost compelled to subordinate themselves to the party on whose lists they were elected. Even though they are representatives of the citizens and were voted in by them, the imperative nature of the councillor's mandate (whether local or county) keeps the councillor tied to the party on whose lists they were elected. Any differing stance they take could be considered an act of indiscipline, which may result in their expulsion from the party, with the immediate consequence of losing their mandate. An important remark about Romanian legislation: you can be a local councillor and express your own opinion, but to avoid repercussions, you must be sure of strong support from public opinion. Any potential battle can only be won on this front. Appealing to the courts in the case of expulsion will lead to an analysis solely of the procedural aspects contained in the party's founding documents and regulations, without consideration of the substance of the issue.

A final remark on the situation in Romania. For the year 2024, a major electoral year with elections for all political levels, the executive used its normative prerogative and, in organizing the elections – combined elections for the European and local levels – adopted a transitional norm allowing currently serving elected officials to run for another political formation than the one they represent at the time of election. This long-negotiated regulation, although the institution of lobbying is not regulated by Romanian legislation,[22] was justified by the *de jure* conclusion of the mandate 5 months after the election date, which naturally caused a stir in the social, political and administrative life.

INFLUENCE ON INTERGOVERNMENTAL COORDINATION

Next, we examine the extent to which party switching significantly influences the activities of public authorities and, more importantly, the fulfilment of public interest, given that the legislator is evidently concerned with this aspect. Since this is an undeniable reality, we present both pros and cons. The argumentation refers to intergovernmental policies and the influence on institutional cooperation, which is absolutely necessary for the realization of public policies by any authorities.

[22] A.J. Niță, *Lobby în România – cu sau fără lege. Unele considerații privitoare la eșecul consacrării normative a activității de lobby*, "Revista Universul Juridic" 2022, no. 3.

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1. Advantages

Local elected officials switching parties can have significant advantages on intergovernmental policies in Romania, contributing to political dynamism and the adaptability of administrative structures, the formation of strategic alliances, stimulation of political competition or the promotion of ideological diversity. Although this practice is often viewed with scepticism, it can offer essential benefits for local and national governance. In a dynamic political context, the ability to navigate these changes competently and with integrity is essential for effective and responsive governance.

First, political migration allows for rapid adaptation to changes in the political and economic context.[23] Local elected officials who join a new party can bring new perspectives and innovative solutions, contributing to the development of more effective policies tailored to the community's needs. This flexibility can speed up decision-making processes and facilitate the implementation of important projects.

Second, switching parties can facilitate the formation of coalitions and strategic alliances, which are essential for promoting local interests at the national level.[24] Local elected officials who affiliate with a ruling party can gain access to resources and political support, potentially leading to significant investments in infrastructure, education and healthcare. Thus, political migration can create opportunities for improving public services and regional economic development.

In fact, this is the primary argument when making such a decision. Given that Romanian public administration is highly politicized, positions with coordination potential often end up being filled "by delegation", theoretically for a limited period, by individuals appointed (or at least approved) by the central level. In these circumstances, to continue or complete ongoing projects or to ensure the certainty of receiving funding from the centre (according to Romanian legislation, the financial distribution structure of local budgets is heavily influenced by the margin allocated by the central level).

Local councillors, appointed by local council resolution, are empowered to represent the interests of the administrative-territorial unit in companies or other cooperation or partnership bodies, and they strive to maintain this position in the context of fluid local governing alliances.

Moreover, political migration can stimulate political competition and lead to greater accountability of local elected officials. They are aware that party switching is closely monitored by the electorate and the media, which can motivate them to perform better and be more responsive to the community's needs. In this way, local elected officials can become more responsible and dedicated to their mandate.

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[23] E. Klein, *Explaining Legislative Party Switching in Advanced and New Democracies*, "Party Politics" 2012, vol. 27(2).

[24] N. Bolleyer, *The Influence of Political Parties in Policy Coordination*, "Governance" 2011, vol. 24(3).

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In addition, switching parties can promote ideological diversity and encourage healthy political debate. Local elected officials who move to another party can introduce new ideas and perspectives, stimulating discussions and challenging the *status quo*. This can lead to the formulation of more inclusive and well-founded policies.

2. Constraints

We believe that more than just arguments, constraints have been highlighted on this subject. On the one hand, when an elected official switches parties, it can disrupt the balance of power and existing political alliances, potentially leading to difficulties in cooperation with other institutions or local authorities. On the other hand, party switching by local officials can lead to fragmentation and instability in local political alliances, which may have different priorities or ideologies. In a political system where parties have divergent interests and agendas, political migration can undermine efforts to create consistent and effective intergovernmental policies,[25] resulting in delays in project implementation and inefficient resource allocation.

Political migration influences the relationships between the central government and local administrations. Local officials who switch parties may do so to gain access to additional resources or secure political support from the central government. This can create a dynamic where decisions regarding the distribution of funds and other resources are made based on political criteria rather than the actual needs of local communities.[26]

Furthermore, party switching by local officials can affect public perception of the integrity and accountability of politicians. Voters may perceive political migration as a betrayal of their trust and a departure from the principles and electoral promises. This can lead to a decline in trust in democratic institutions and an increase in cynicism towards the political process. The tensions that arise between the migrating official and other members of the administration can negatively impact the ability to collaborate effectively within the administrative-territorial unit.

So, party switching by local officials in Romania has profound implications for intergovernmental policies. It can generate political instability, influence the distribution of resources based on political criteria and affect public trust in the integrity of the democratic process. To ensure efficient and transparent governance, it is essential to address these challenges through reforms that promote political stability and accountability among local officials.

[25] C.M. Knott, *The Cross-National Determinants of Legislative Party Switching*, LSU Master's Theses 2017.

[26] M. Radean, *Sometimes You Cannot Have It All: Party Switching and Affiliation Motivations as Substitutes*, "Party Politics" 2017, vol. 25(2).

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CONCLUSIONS

We observe that party switching by local elected officials in Romania may have profound implications on intergovernmental policies. It can generate political instability, influence resource distribution based on political criteria and affect public trust in the integrity of the democratic process. To ensure effective and transparent governance, it is essential to address these challenges through reforms that promote political stability and the accountability of local elected officials. Effective coordination also helps to build trust between parties and promote cooperation in future policymaking initiatives. But this is available despite political ideology and, more than that, it can function only with citizen participation.

Challenges in the coordination process include conflicting priorities and goals among party members, mistrust between parties, communication barriers, differing opinions on policy issues, and variations in political ideologies.

Effective coordination helps to build trust between parties and promote cooperation in future policymaking initiatives. But this is available despite political ideology and, more than that, it can function only with citizen participation.

Moreover, coordinating policies across multiple parties is difficult owing to the differing levels of power and influence within each party, as well as the varying degrees of representation for different interests and stakeholders. This can lead to disputes over who should have the final decision-making authority and how those decisions are to be made. Additionally, coordination efforts may encounter obstacles related to resource constraints or limited expertise within certain parties. Last but not least, it must be said that party dynamics and, implicitly, incentives for their members' migration may also be informed by government – as seen in semi-presidential republics such as Portugal,[27] or state structure – as observed in unitary states such as Chile[28] or Romania.[29]

[27] T. Ruel, N. Bessa Vilela, N. Jesus Silva, Z.Y. Oplotnik, *Intergovernmental Coordination in Portugal*, "Studia Iuridica Lublinensia" 2023, vol. 32(5).

[28] E. Szmulewicz Ramírez, *The COVID-19 Pandemic in Chile: Challenges of Intergovernmental Relations and Coordination in a Decentralized Unitary State*, "Studia Iuridica Lublinensia" 2024, vol. 33(2).

[29] A.M.D. Murphy, F. Ghencea, *The Legal Framework for Local Government Coordination in Romania*, "Studia Iuridica Lublinensia" 2023, vol. 32(5).

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ABSTRAKT

Partie polityczne odgrywają istotną rolę w demokratycznym ustroju w każdym państwie. Jednocześnie równie prawdziwe jest stwierdzenie, że upolitycznienie instytucji publicznych może się często pojawiać jako czynnik destabilizujący ich działalność, zwłaszcza w kontekście zmiany przynależności partyjnej przez wybieralnych urzędników, co może zniekształcać istotę demokracji przedstawicielskiej. O ile zmiana przynależności partyjnej jest przedmiotem żywych debat politycznych, o tyle rumuńska literatura prawnicza jeszcze nie dokonała konceptualizacji ani operacjonalizacji tego problemu. Autorzy artykułu analizują przepisy prawne dotyczące mandatu urzędników wybieranych na poziomie lokalnym i centralnym, ze szczególnym uwzględnieniem swobody zmiany afiliacji politycznej. Wskazują, że odpowiedź legislacyjna na zmianę partii oparta na niedostatecznej wiedzy ma negatywny wpływ na relacje między jednostkami władzy publicznej na wszystkich poziomach

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i ostatecznie wpływa na działalność organów publicznych. Przy zniechęceniu próbami zapewnienia mandatu związanego, przechodzenie z partii do partii w praktyce przyjęło formy sprzeczne z zamiarem ustawodawcy, zwłaszcza na poziomie lokalnym. Autorzy wysuwają wniosek, że zmiana przynależności partyjnej niekorzystnie wpływa na zaufanie społeczne do partii politycznych, nawet gdy jedną z jej przyczyn, przynajmniej deklaratywnie, jest sama współpraca międzyinstytucjonalna, gdyż świadczenie usług publicznych wysokiej jakości i rozwiązywanie złożonych problemów w sektorze publicznym wiąże się z ciągłymi negocjacjami.

Słowa kluczowe: koordynacja między jednostkami władzy publicznej; samorząd terytorialny; zarządzanie samorządem terytorialnym; zmiana przynależności partyjnej; Konstytucja Rumunii; Kodeks administracyjny Rumunii

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