

**THEORETICAL AND PRACTICAL CONSIDERATIONS
REGARDING THE INSOLVENCY OF THE
ADMINISTRATIVE-TERRITORIAL UNIT ANINOASA
PART I**

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ABSTRACT: *Our research presents a study case of the Aninoasa town, from Hunedoara county, the first Romanian town declared insolvent. We presented the context of the insolvency declaration and the way Romanian authorities handled this situation. In this context, we considered necessarily to present the economic and social context and the analysis of this insolvency situation causes, too. For technical considerations we split our study into two parts. On the first part we present you some general considerations regarding the insolvency of administrative-territorial units regulated by the Romanian law and what were the premises for declaring the town of Aninoasa insolvent. Our study ends with some conclusions. Shortly, we consider that our government solution represents a palliative result and it can be accepted as a singular solution, motivated by the unique and unprecedented situation. The solution is that the Government should continue its work and find a way to solve the present-day Local Governments financial problems.*

KEY WORDS: *Romanian Local Government, austerity, fiscal stress, insolvency, municipal bankruptcy, council bankruptcy, local budget.*

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1. GENERAL CONSIDERATIONS REGARDING INSOLVENCY OF ADMINISTRATIVE-TERRITORIAL UNITS

Local authorities of all European states have gone through difficult financial moments in recent years, and this situation has been admitted even in a study partially funded by the Council of Europe (Kenneth, 2011, p. 9). One of the conclusions of the study points out that, at present, the local government is in need of improvement in

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terms of public expenditure management, in order to succeed in streamlining the functioning of the public sector.

In the same direction, we can say that one of the last challenges the Romanian local public administration has been put through, especially in the years after the current global economic crisis got underway, is the efficient management of local financial resources, more specifically administrative-territorial units were to avoid financial crisis or insolvency.

The concept of financial crisis and insolvency of administrative-territorial units from Romania was regulated for the first time in 2006, by the post-war legislation, by the post-revolutionary Law 273/2006 on local public finances, article 74 and 75, stating that art. 85, of the same law established that within 6 months after the entry into force of the law (i.e. by the end of January 2007), the Ministry of Administration and Interior and the Ministry of Public Finances ought to have drafted a special law on the procedures for the application of the provisions of art. 74 and 75.

The two articles relating to financial crisis and insolvency of administrative-territorial units could not be applied because the special law on the procedure in case of financial crisis and insolvency of administrative-territorial units, which should have been drawn up within six months, was enacted only in 2013.

Thus, seven years later, on May 21st, 2013 the Romanian Government passed the Emergency Ordinance no. 46 regarding the financial crisis and insolvency of administrative-territorial units which would establish the general framework and collective procedures needed to cover the liabilities of administrative-territorial units that are in financial crisis or insolvency.

In explaining the special case that called for this emergency ordinance relating to financial crisis and insolvency of administrative-territorial units, emphasis has been laid on the need to find a solution to the high volume of arrears registered by administrative-territorial units, also bringing up the stand-by agreement between Romania and the International Monetary Fund with regard to committing the country to reduce arrears of administrative territorial units.

Under the provisions of O.U.G. 46/2013 on financial crisis and insolvency relating to administrative-territorial units, in conjunction with article 75 of the Law no. 273/2006 on local public finances, an administrative-territorial unit is considered to be in a state of insolvency in the following situations:

- a) failure to pay undisputed outstanding obligations that have been due for more than 120 days, if such obligations represent 50% of the annual budget, without taking into account those in commercial litigation;
- b) failure to pay the salaries contained in the budget of income and expenditure over a period of more than 120 days after the due date.

As regards the general presentation of Romanian administrative-territorial units undergoing financial crisis and opening insolvency proceedings we shall not go into further details as these topics have already been the subject of previous studies (Cenuse, 2013, pp. 45-56).

In this article we intend to analyze the situation of the town of Aninoasa, located in Hunedoara County, the first Romanian town to have opened insolvency proceedings.

2. PREMISES FOR DECLARING THE TOWN OF ANINOASA INSOLVENT

On January 30th, 2013 the O.U.G. No. 3/2013 was adopted to regulate measures for the reduction of economic arrears and other financial measures, as well as to modify some legislative acts, which stated in article 1 the obligation to reduce the volume of arrears of administrative-territorial units, by at least 85% until March 31st, 2013.

In the case of non-compliance with this obligation the local budget of administrative-territorial units would not be credited anymore with amounts broken down by shares from income tax, and amounts broken down from some of the State budget incomes for balancing local budgets.

The administrative-territorial unit of Aninoasa from Hunedoara County was faced with exactly the same situation of not being able to reduce the volume of arrears during the period established by the law.

Aninoasa is located in the Jiu Valley, alongside other 5 administrative units (Petroșani, Petrila, Vulcan, Lupeni and Uricani) and it is the smallest town in the county in terms of the number of inhabitants, with a population of 4,876 inhabitants .

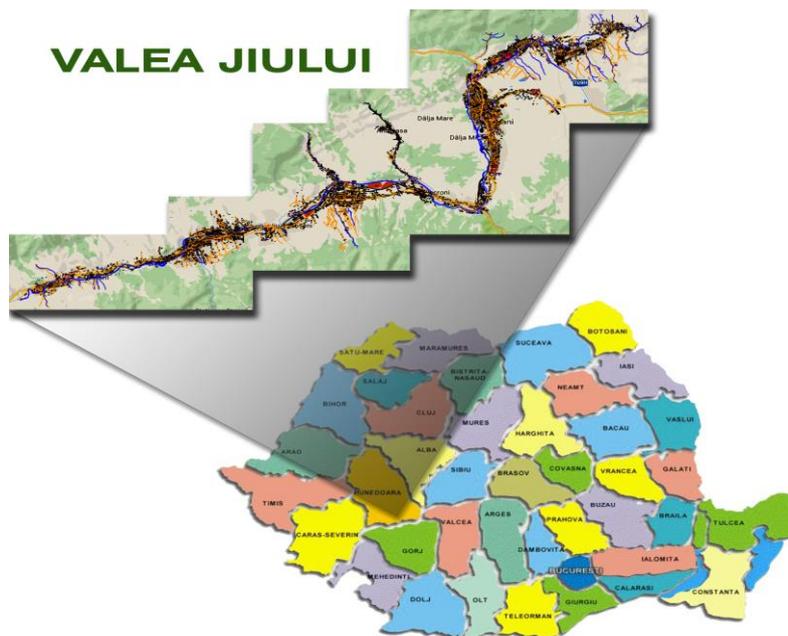


Figure 1. Geographic location of the Jiu Valley at national level

According to national collective perception, coal mining is associated with the Jiu Valley. The proliferation of mining activities have contributed to the shaping of the economic profile of the region, so that in the long run it has become a mono-industrial region where coal extraction and processing had an overwhelming share in terms of employed population (Schmidt & Andrioni, 2011, pp.235-244).

Thus, if at a given stage, the appearance or the expansion of the mining industry has been a beneficial factor for the economic and social evolution of the Jiu Valley cities, contributing directly to the level of development of the area, as soon as the reorganization of the extractive industry has started - manifested through layoffs and the closure of mining establishments including Aninoasa Mine – the disadvantages of mono-industrial character could be felt. The Jiu Valley has turned into the Grievance Valley with defining characteristics such as the rate of unemployment and the standard of living.

The decline of mining activities has caused a cascading effect on the evolution of the economy at regional level (Niță 2008, p. 188). Alongside coal mines, there was a number of enterprises the main activity of which was closely linked to the level and evolution of the activity of such mines and, hence, they were dramatically influenced by the process of mine restructuring (for example, in 1997, IPSRUEEMP – Enterprise for Spare Parts and Repairs on Electrical Machines and Mining Equipment Petroșani, having as main activity the production of individual support for mining, spare parts for mining equipment and repair works on these machines, as well as on electro-technical mining equipment as part of a service contract; UACCVJ - Managing Unit of Dormitories and Canteens in the Jiu Valley, set up to prepare hot meals and to accommodate miners, and examples may continue).

Further to the chain of interdependencies among consumption - income - investments, the collapse of activity throughout the regions affected by a reduction in income and, hence, a decrease in consumption is highly predictable; even economic agents have begun to encounter difficulties and even though their activities are not directly linked to mining, the level of demand, and thus profits are threatened. On the other hand, for potential investors, the pauperization of the area is likely to encourage them to start a new business.

Unfortunately, the involvement of central authorities has been limited to supporting the process of mine restructuring without creating alternatives for developing the area and for retraining the manpower released from mining in other economic activities.

From administrative point of view, this meant that local public authorities had to deal with issues of increasing expenditure (social protection and welfare for a growing number of people, as their status shifted from being an employee to unemployed or socially assisted), in parallel with the reduction of revenue collected (as a result of a reduction in contributions to local budgets following the restructuring or even the closing down of a number of economic operators, among which the most important in terms of amounts due were mining units).

We can ascertain that, through such measures as listed above, the restructuring of the national economy in general and of the mining industry in particular, operated with the aim to eliminate 'black holes' within the national economy, the problem has been moved from national to local level, leaving local administrations to efficiently manage smaller budgets, largely unbalanced in terms of relations between revenue and expenditure but also, in some cases with low degrees of collection and insufficient income.

It is not surprising that, over time, small local authorities, such as the case of Aninoasa have accumulated major debt amid increasing budget deficit and dependence on the amounts funded by the County Council or the State budget in the form of money arising from broken shares from income tax and amounts from some of the State budget incomes for balancing local budgets.

Thus, in 2011 the debts of the city of Aninoasa reached about 9 million lei; before opening insolvency proceedings it had registered arrears of 5,595,944.49 lei, while at the time of drawing up the final table of claims, the volume of arrears reached 5,488,791.98 lei.

Local budget revenues for an entire year slightly went higher than 4 million lei so that local authorities of the city of Aninoasa has found it impossible to reduce the volume of arrears by 85% in such a short period of time, i.e. three months as stated by O.U.G. No. 3/2013. Disregarding the obligation imposed by the Emergency Ordinance mentioned above, the General Board of Public Finances of Hunedoara County has ordered the interruption of funding of this administrative – territorial unit with broken down amounts.

In this respect, on 7 February 2014, City Hall authorities in Aninoasa were informed by representatives of the Ministry of Public Finance, about the fact that, in order to pay wages, they will no longer be supported with money from income tax and with amounts taken from some of the State budget incomes.

Consequences have occurred in very short time, primarily due to a lack of resources for the payment of wages. The level of own income being very low, there were no resources to cover them. Moreover, the payment of public electricity and water supply was not covered. Failure to pay for apparently common services, such as the maintenance and repair of internal networks and photocopiers, resulted in bizarre situations, such as the impossibility to make copies or print out documents for the citizens.

From January 30th through to March 31st, 2013, the city of Aninoasa was in insolvency, as regulated by art. 75 of the Act 273/2006 on local public finances, but failure on the part of the Ministry of Administration and Interior and the Ministry of Public Finance to draw up a draft special act on the procedure for application of the provisions of art. 74 and 75, resulted in a delay in opening of insolvency proceedings due to the lack of legal framework.

It was not until after May 21st 2013, that Aninoasa could file for insolvency, as a result of the Romanian Government having adopted Ordinance No. 46 relating to the financial crisis and to the insolvency of administrative-territorial units, establishing insolvency procedures for administrative-territorial units.

Under the provisions of O.U.G. 46/2013 relating to the financial crisis and the insolvency of administrative-territorial units, the failure of an administrative-territorial unit to pay undisputed outstanding obligations that have been due for more than 120 days, if such obligations represent 50% of the annual budget, without taking into account those in commercial litigation, and the failure to pay the salaries contained within the budget of income and expenditure over a period of more than 120 days after the due date was considered a state of insolvency of that certain respective administrative-territorial unit.

From the data presented above one can easily notice that the insolvency of the town of Aninoasa was indisputable, whereas the value of arrears exceeded by about 120% the amount of income and wages had not been paid for at least 120 days, as a result of cutting off funds in the form of shares from income tax and from the State budget so that the state of insolvency needed only to be confirmed by the competent court, as its existence was obvious.

Enacting OUG 46/2013 represented salvation for local authorities, which is why on June 6th 2013 a request to open insolvency proceedings had been filed with the Court of Hunedoara.

On June 17th, 2013, the Court of Hunedoara upheld the request of the administrative territorial unit to open insolvency proceedings of Aninoasa in file no. 4869/97/13, granting proceedings against the administrative-territorial unit of Aninoasa by civil declaration no. 868/F/213. Thus, the town of Aninoasa officially became the first town in Romania to ever enter insolvency.

One can confirm that the OUG 46/2013 represented salvation for the local authority because according to this regulation, the declaration of insolvency of the territorial-administrative unit brings some advantages to the state in which is found, as follows:

- the administrative-territorial unit no longer accrues interests, surcharges or penalties on unpaid debts, according to art. 68 and 94;
- the debt can no longer be enforced, according to art. 21;
- under certain conditions some contracts, currently in progress, may be unilaterally denounced, in accordance with art. 77;
- utility providers cannot refuse service throughout insolvency, although the unit has outstanding obligations, in accordance with art. 105.

To be more specific at the level of the city of Aninoasa, the provisions previously mentioned had the following effects:

- ✓ under the restoration plan carried out by the judicial administrator together with the Chief authorizing officer and approved by the syndic judge, they have managed to reduce the value of claims by 30%, from 5,488,791 to 3,908,239 after negotiations with the majority of creditors and based on the provisions of art. 94 of the OUG 46/2013;
- ✓ following the approval of the request to open insolvency proceedings by the Court of Hunedoara, within the shortest possible period the Mayor's Office notified the General Directorate of Hunedoara County Public Finances in order to release the deducted quotas so that salaries could be paid;
- ✓ at the same time energy, water and telecommunication suppliers were notified, in accordance with article 105 of the OUG. 46/13, not to interrupt the supply of such services, even if sometimes payment would not be made at maturity.

Most service providers have complied, except for the water supplier that has interrupted the water supply to the Town Hall after they had pre-registered receivables.

As a consequence on September 10th 2013, the town of Aninoasa made a request with the Court to compel the water provider to supply water, according to art 996C of the presiding judge's order, until a final court decision, according to art. 105 of the OUG 46/2013. As expected, both after the presiding judge's order and the court's decision, the Syndic judge ruled in favour of the Town Hall of Aninoasa; thus, water supply to the City Hall had to be resumed.

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