

## DECENTRALIZATION AND LOCAL AUTONOMY - LOCAL PUBLIC MANAGEMENT DEFINING PRINCIPLES

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*ABSTRACT: In the context of multiplication and diversification of the requirements and social needs, public administration, together with its authorities needs to operate through its entire activity to meet and resolve, under the best conditions, the public requirements and issues. Only by implementing the principles and the rules governing this matter and under the conditions in which the government deals with public affairs in an immediate and operational manner, efficiency will be ensured in meeting all interests, be they central or local.*

*Constitutional principles, decentralization and local autonomy govern and underlie the formation, organization and functioning of local government, ensuring the interests and meet local needs, in concordance with the specifics of each administrative-territorial unit.*

*Recognizing the legal personality of the administrative-territorial units and their right to self administrate in order to satisfy their own needs, the principle of decentralization and local autonomy gives the local government the mission to identify and to implement the optimal solutions for solving specific local administrative problems, and on behalf of the local interests which they represent.*

*On the background of those exposed in the paper, analyzing the principles of decentralization and local autonomy, we can say that the exercise of this latter principle is possible only in the presence of the former, the basis for decentralization being the idea of local autonomy.*

*Keywords: local public management, public administration, decentralization, local autonomy, administrative-territorial units*

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### **Introduction**

Starting from the principle expressed in the French doctrine that "one can govern better from far, but can administer better when closer", in this paper we aim to treat the principles of the local government decentralization and that of the local autonomy through the implementation of their needs and solving the public problems occurring at the local level. Satisfying the public interests and the public needs of the local community cannot be entrusted only to the local government, autonomous, constituted and organized on the principle of decentralization.

Taking that into account, it is necessary for local authorities to manage resources within the community in order to comply effectively the administrative tasks transferred by the central

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government and to gather the citizens in making decisions for the community, recognizing their initiatives in the local administration process.

Moreover, it is not wrong to say that public administration is a big public business in which we all are involved in our quality of citizens, and therefore we should not remain passive in public, since we have the opportunity to influence decisions which we are our concern and to intervene to find solutions to the problems arising at the local level. In other words, we can say that decentralization, as well as local autonomy, involve an openness to the participation of citizens in solving their own problems (Cârciumaru, 2005), favoring the establishment of closer links between the local public administrations and the community, between those who govern and those governed.

### **Constitutional and legal regulation of the principles of local public administration**

The organizational and functioning principles of local government are of particular importance in setting the organizational structure and functioning of local authorities, and therefore they are regulated at both constitutional and legal level.

By the concept of principle of the local government we understand the general and compulsory requirements provided by the Constitution and laws, that improve the fundamental directions of the organization and functioning of public administration in territorial-administrative units, on the basis of which are formed, organized and operate local authorities, the relations between them are established and the control of the state on their activities is exercised. (Manda, 2008)

From the analysis of constitutional and legal provisions in this matter, we distinguish *rank constitutional principles* enshrined in the Basic Law of the State and *legal principles*, governed by Law of local government no. 215/2001 and also by the framework Law of decentralization no. 195/2006, Law on the election of local public administration no. 67/2004. (Vedinaș, 2007)

The Constitution of Romanian deals in art. 120 with the basic principles of local government, stating in paragraph 1 that “public administration in the territorial-administrative units is based on the principles of decentralization, on local autonomy and deconcentration of public services. We can therefore notice that the principles of our scientific research, i.e. decentralization and local autonomy, are proclaimed by the Constitution.

According to art. 2, paragraph 1 of Law on local government no. 215/2001, “public administration in territorial-administrative units is organized and operates under the principles of decentralization, local autonomy, deconcentration of public services, the eligibility of local public administration, law and consulting citizens in solving local problems of special interest”. We can notice that this legal regulation deals again with the principles of constitutional speech mentioned before, adding yet other three principles on which to organize and operate the local public administration.

Examining the laws in this area we can say that the application of the principles of local government cannot affect the status of national unity and indivisibility of the Romanian state, situation stated by paragraph 2 of art. 2 of the Law on local public administration.

It should also be noted that the field of application of these principles concerns the public administration of the administrative-territorial units, by the latter understanding distinct legal entities with their own legal status, conferred by the state. To be well led and administered, any state organizes its territory in administrative units, to which it recognizes their legal personality and also gives them both public law responsibilities and private law duties. Therefore, the component elements of the legal personality of the state – population (organized as a community with its own leadership), heritage (the territory and other movable and immovable property, which comprises public and private administrative-territorial units) and the purpose this heritage is meant for (achieving the interests of citizens of the administrative-territorial unit in question) – are encountered in each of the administrative units of the State territory.

In this respect, the Romanian Constitution states in art. 3 paragraph 3 that “the territory is administratively organized into villages, towns and counties. According to the law, some towns are declared municipalities”, and art. 21 paragraph 1 of Law on local government no. 215/2001 provides that “the administrative-territorial units are legal persons of public right with full legal capacity and their own heritage”. They have initiative in all matters of local public administration, exercising within the law the status of authority within the administrative-territorial limits.

In what follows we will treat in detail the meaning and content of the principles of decentralization and local autonomy, trying to emphasize the connection between these two, given that although the constitutional and legal establishment makes a distinction between these principles, they depend on each other in the sense that decentralization is the cause and the autonomy is the effect of decentralization (Brezoianu and Oprican, 2008).

### **The principle of decentralization of local public administration**

The regularization of the principle of decentralization can be found in the Romanian Constitution, in Law no. 215/2001 on local public administration, being the subject of study of the Law no. 195/2006 of decentralization.

According to art. 2 point 1) of Law no. 195/2006, decentralization is understood to be “*the transfer of administrative and financial powers from the central government to the local government or private sector*”.

The principle of decentralization involves the transmission of an important part of the decision-making power in administrative matters from the public authorities to the authorities of the local government, which enjoys autonomy, having power of decision on the collectivity they have been designated by, power which is not in juridical relationship with the central power. (Bălan, 2008)

The need to define the role of public administration in relation to local government, the establishment of administrative powers which will be delegated to the local government (Cocoşatu, 2005), as well as the necessary resource allocation to comply with the transferred responsibilities justifies the decentralization process. It is necessary that the delegation of administrative responsibilities from the centre to be done at the same time with ensuring the resources necessary for exercising them, since we cannot talk about a real administrative decentralization without fiscal decentralization. In other words, under the decentralized regime it is imperative to ensure appropriate resources to the skills transferred.

Regarded politically, decentralization is an expression of democracy, because it recognizes the possibility of the local collectivities to participate in leadership activities through local bodies elected by them. Analyzed from an administrative point of view, decentralization is the system in which the authorities chosen by the local communities are in the best position to know and perceive the local needs and therefore they are all in the best position to adopt the measures required to solve them. (Cârciumaru, 2005)

Decentralization is the administrative regime which is based on the wide autonomy of the local management of the administrative-territorial units. The decentralization principle implies the existence of several local people appointed by the territory (Iorgovan, 2005), which are entrusted to solve their specific problems, directly intervening in the management and administration of the public affairs of the community. Regarding the forms that decentralization may have, the literature in the field recognizes two forms, namely *territorial decentralization* (or administrative) and *technical decentralization* (or services).

The first form – *territorial decentralization* – implies the recognition of the autonomy of the administrative-territorial units of the state which, through the local administrative units designated by the local community and which enjoy local autonomy, administrate by themselves. In other words, territorial decentralization is related to the recognition of local communities and their right

to administrate themselves, implying the activity of solving the local problems by administrative authorities chosen by local collectivity.

In this sense of territorial decentralization, the two principles – decentralization and local autonomy – are used together, between them being a relationship of reciprocity, whereas on the one hand, local autonomy can be exercised only in a decentralized administrative and, on the other hand, autonomy is the effect of decentralization..

*Technical decentralization* consists in the recognition of a certain autonomy and in the granting of legal personality to several institutions or public services organized at the administrative-territorial level (Manda, 2008). The provisions of Law no. 215/2001 on local public administration readjust the principle of decentralization of public services, creating the concrete framework for the local public administration authorities to do the public services of local interest. Therefore, in accordance with the powers set out in art. 36 and art. 91 of the local public administration Law, local and county councils have attributions relating to the establishment of local institutions, autonomous or specialized services which are under their authority. From the category of public services expressly established by art. 36 and art. 91 of Law no. 215/2001 to be organized by the local public administration, we can mention: water, gas, sewerage, sanitation, energy, public lighting, local public transport, construction, maintenance and upgrading of county roads and social services, health culture, youth, environmental protection and restoration services, emergency, public roads and bridges, etc.

It is necessary to emphasize the distinction between the two forms of decentralization, meaning that if territorial decentralization is identified by the division of the territory into administrative-territorial units, which have autonomy from the centre, technical decentralization consists in creating decentralized public services in the administrative-territorial units, under the authority of local councils and counties.

With the aim of highlighting the link between the principles of decentralization and local autonomy, it is necessary to mention the prerequisites (Bălan, 2008) which indicate the fact that we find ourselves in the administrative decentralization, based on the principle of local autonomy. In this sense, the following are prerequisites of the administrative decentralization of local autonomy:

*The existence of a local territorial authority, with distinct specific general needs from those of the national community.* The state ceases to be the only recognized territorial collectivity, the administrative decentralization of local autonomy implying the existence of local, established administrative-territorial units of the state. These local collectivities located within the national community, have their own distinct needs different from the general needs of the state, such as water, energy, public lighting, sanitation, local transport, etc. To solve all these needs in an operational and effective way, the state decides which issues are the responsibility of public authorities and institutions and which fall within the competence of local authorities.

*The recognition of the legal personality and responsibility of local communities in managing their specific needs as well as the existence of their own resources.* To be in the presence of the administrative decentralization of local autonomy is essential that their local problems be solved by those authorities which have recognized legal personality. Solving problems requires the existence of specific local resources and material means through which they can meet local interests, such as the heritage of their own administrative-territorial units, distinct from the one of the state, a body of officials to manage public affairs, a given financial autonomy based on its own budget (Cocoşatu, 2005).

*The right of local communities to have their own administrative authorities, autonomous from the state.* Administrative decentralization is the system which requires local authorities to be the representatives of local collectivities and not the representatives of the state placed in the forefront of the community. In other words, at the basis of the establishment of local government is the principle of eligibility whose specific consecration can be found in the Basic Law which

provides in art. 121, paragraph 1 that “the public authorities, through which local autonomy is maintained are the local councils and local mayors elected according to the law”. The character of elected body is mainly provided by art. 122 paragraph 2 of the Constitution and for the county council. In this context, we have to keep in mind that the mission of the local councils, county councils and mayors is to achieve local autonomy in administrative-territorial units. It follows therefore that the power of these authorities of the local public administration is given by the voters’ power and not the central power. It is estimated that elections are the criterion of decentralization, which is based on the free exercise of rights and freedoms of citizens at the local level. Seen in this respect, decentralization is provided by citizens through their participation in solving local problems, a fact which emphasizes the spirit of initiative and sense of responsibility by choosing their representatives who will be the authorities of the local public administration. But the autonomous nature of these authorities should not be understood as meaning that their work is entirely independent of the state activity. Local authorities established by free elections does activities which must fall within the legal order of the state, to be recognized by it, ensuring the harmonization of the local territorial-administrative units interests with the general interests of the national community.

*The supervision of local community’s activity by the executive.* It is natural to have a way to ensure the manner in which local government operates. In this respect, the central public authorities have the right to exercise special control called administrative guardianship on their activities.

Administrative guardianship refers to the right of control of the Government or other authority of the state administration on the legality of general acts of local authorities chosen, which is organized and operates on the basis of local autonomy.

The control exercised by the executive office over the activities of the local government authorities is essential and inherent in the smooth functioning of local government. In administrative law, the concept of guardianship aims to protect both the interests of the local communities and especially the protection of the general interest, with which local authorities may come into conflict, in particular by the issue of documents inconsistent with the law.

Without question the relationship of reciprocity between the principle of decentralization and the one of local autonomy, for the correct understanding of the latter, we consider it necessary to analyze it separately, in a detailed manner as follows.

### **The principle of local autonomy**

Being the basis and foundation of the organization and functioning of public administration in territorial-administrative units, the principle of local autonomy is expressly formulated both by the art. 120 paragraph 1 of the Romanian Constitution and the provisions of art. 2, 3 and 4 of Law no. 215/2001 on local public administration. These regulations set the principles on which the local public administration is based, organized and operates, among which local autonomy has a special place, as the quintessential activity of all the activity of public administration in their territorial-administrative units (Preda, 2004).

From an etymological point of view, the term autonomy comes from the words of Latin origin *auto*, which means *independent*, and *nomos*, which has been translated by *law*. Starting from this linguistic signification, the idea that autonomy can be understood as freedom to govern according to its own rules or, in other words, the right to self-administration is emitted.

This statement is confirmed by art. 3 paragraph 1 itself of the Law of local government which has it that “*the local autonomy means the right and effective capacity of local government authorities to resolve and manage the public affairs, on behalf of and in the interest of local communities that they represent, according to the law*”. Further on, paragraph 2 of the same article provides that “this right is exercised by the local councils and mayors as well as the county councils and their presidents, authorities of the local government elected by universal, equal, direct, secret

and freely expressed vote". Therefore, the way to ensure local autonomy is done by means of the local authorities elected by the local electorate, according to the law.

In a similar way, this provision that defines local autonomy can be found in the European Charter of Local Autonomy adopted by the Council of Europe on 15 October 1985 in Strasbourg, ratified by Romania by Law no. 199 of 17 November 1997. Thus, according to art. 3 paragraphs 1 and 2 of the Charter, "local autonomy means the right and effective capacity of local government authorities to resolve and manage, within the law, in their own name and in the interest of the local population, an important part of the public affairs" and therefore "it is exercised by the councils or assemblies composed of members elected by open, secret, equal, direct and universal vote, which may have executive and deliberative bodies which are responsible in front of them".

Investigating the literature in this field, we found out that in trying to define this principle, the opinion according to which local autonomy is the ability of local legal authorities to decide, independently and under their own responsibility, within the law, on the problems of the local collectivities in which they operate, was outlined (Vedinaş, 2007). Regarded from this point of view, the principle of local autonomy involves determining the tasks of local public administration authorities through the establishment of competence in solving problems of local interest as well as exclusion of the intervention of other authorities in the local administration.

Receiving the correct content and meaning of the principle of local autonomy is essential both from the theoretical and especially from the practical point of view. Thus, its thorough understanding is legitimated by the need to neutralize the monopole of this principle, since local autonomy should not be understood as full local independency. In other words, local autonomy cannot be regarded as a regime of complete independence, as a separation of local government authorities from the central government. Rather than that, the principle of local autonomy can be conceived as a power of free decision on how to meet the interests of the local autonomous authorities. Local autonomy provides local public administration authorities sufficient freedom of action in managing local public affairs, at the same time releasing the central authorities of the problems closely related to local communities, leaving the task of solving them to the local authorities.

In addition, the local public administration Law states in art. 4 paragraphs 1 and 2 that "local autonomy is only administrative and financial, being exerted on and within the limits prescribed by law" and "this regards the organization, functioning, powers and responsibilities, and resource management which, by law, belong to the village city, town or county, as appropriate". From the interpretation of paragraph 1 of art. 4 of Law no. 215/2001 and in agreement with the views expressed in theory, the *exclusive administrative character* of the local administrative autonomy can be identified, given that it concerns only the organization and functioning of local government authorities and the local *financial autonomy*, which means that local authorities have financial, material and human resources needed to carry out their legal competence.

Starting from the definition of this legal principle and analyzing paragraph 2 of art. 4 of the Law on local public administration, we can notice that from a structural point of view, the principle of local autonomy is composed of three elements: *organizational*, *functional* and *managerial*.

Organizationally speaking, local autonomy manifests through the election of local government by the citizens entitled to vote who are resident in the administrative-territorial unit concerned, as well as through the recognized possibility of local councils and county councils to approve the status settlement, rules of organization and functioning of their organization, the functions of the specialized institutions and public services of local or county interest.

From a *functional* point of view, local autonomy aims at local authorities to solve the local issues without accepting the intervention of other authorities. In other words, the principle of local autonomy recognizes the freedom of the local government to decide, independently, on the

satisfaction of the needs and interests of the inhabitants of the administrative-territorial unit in question.

From a *managerial* point of view, local autonomy concerns the ability of the local government to use the local heritage in accordance with local interests. Thus, we must keep in mind that the principle of local autonomy is based on its own heritage, which is administered and managed by the freely elected local government. The heritage each community in the administrative-territorial units has is, in fact, the source of its prosperity and development, the resolution at higher levels, of the requirements and needs of people (Manda, 2008). In this sense, art. 27 of Law no. 215/2001 on local government provides that "in order to ensure local autonomy, local government authorities have the right to establish and collect local taxes and to establish and approve the budgets of local villages, cities, municipalities and counties according to the law". Therefore, local government must have its own resources different from those of the state administration, which they can freely dispose of in the exercise of its abilities.

Also, the European Charter of Local Autonomy disposes through art. 9 paragraphs 1 and 2 that, "within national economic policy, local public administration authorities have the right to own sufficient resources, which they may be freely dispose of in exercising their duties" and that "the financial resources of the local government must be proportional to the competencies provided by the Constitution or law".

In such a framework, the fact that without providing the necessary resolve and resources to effectively manage the public by local authorities, we cannot speak of genuine autonomy should be emphasized.

Of a particular importance to the principle of local autonomy is the provision of art. 11 of the European Charter of Local Autonomy which readjusts the legal protection of local autonomy, thus being understood that "the local government must have the right to address the courts, to ensure the free exercise of their powers and the respect of the principles of local autonomy that is provided by the Constitution or law". The Romanian law does not mention a provision similar to the above, in this explicit formula, but only regulated in an implicit way, as a dimension of free access to justice, guaranteed by art. 21 of the Constitution, and the right of an injured person by a public authority, provided by art. 52 of the Constitution (Vedinaş, 2007).

### **Conclusions**

In light of those presented in our paper, we can conclude that, although by law the distinction between decentralization and autonomy is made, however, between the principle of administrative decentralization and the one of local autonomy there are no notable differences in content, the two being in connection with each other in the sense that the former is the cause, and the second is the effect.

From the examination of the contents of these two principles we can infer, on the one hand, that the exercise of local autonomy by the local government is possible only in a decentralized administrative system, in which the autonomous authorities are chosen by community, and on the other hand, that decentralization is the one which provides the local government with a broad autonomy, understood as the right to decide on their local problems in which they are interested in directly.

Moreover, local autonomy is regarded as a modern way of expression of the principle of administrative decentralization, assigning to the local collectivities and the authorities which represent and act on behalf of them a distinct status in relation to state administration. When ensuring local autonomy administrative decentralization has to exist as well, the former representing in essence the transfer of powers from the central administrative authorities to the local authorities that operate autonomously in the territorial-administrative units where autonomy guarantees a high degree of democracy.

No matter how ample local autonomy and decentralization were, and no matter how expanded the competences of the local government were, the application of these principles "cannot affect the status of national, unitary and indivisible state of Romania" (art. 2 paragraph 2 of the local government Law). Moreover, the state is one that guarantees local autonomy, being directly interested in satisfying the interests of local territorial-administrative units which have to be harmonized with the general interests of the entire nation, maintaining a balance between local authorities and the state administration in order to ensure the smooth functioning of society as a whole. In other words, the Romanian state ensures local administration with the autonomy necessary to manage specific local issues only to the extent to which the law of the state is recognized by it.

Therefore, it is necessary to emphasize that administrative decentralization and local autonomy are defining principles of the public administration in territorial-administrative units which determine local representation with whose help local authorities administer and manage public affairs by themselves, without leading to full independence of the local collectivities, but to their coexistence within a unitary and indivisible state.

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