

THE DISTINCTION BETWEEN DECENTRALIZATION AND DECONCENTRATION OF PUBLIC SERVICES

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Abstract:

Given the variety and diversity of social needs coming from the whole human community, public administration aims to ensure the achievement of these needs and requirements of general interest by providing direct public services. Seen as a way of meeting the practical needs of the public, we can appreciate that public service is the foundation of government activity, in fact the rationale of the organization and functioning of administrative authorities and public institutions. Moreover, as the degree of satisfaction of the needs of public interest is reflected in the quality of services available to the community, it is undoubtedly necessary to give special attention to the way in which public services are organized either decentralized or deconcentrated.

Therefore, starting from the purpose of organizing public services namely meeting the general interests of the community, this paper aims to analyze the main elements which are at the base of the distinction between decentralization and deconcentration, as ways of organizing public services, given that in the absence of clear demarcations of differences between these two principles, not few times there are many confusions in their implementation.

Keywords: public administration, decentralization, deconcentration, public service, general interest, social needs

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INTRODUCTION

Being called upon to satisfy the needs of society, which suffers frequent changes in time and space, public administration has created structures which would act concretely to fulfill this mission. This is about public services that have a unique role in the daily lives of each of us, given that their organization and functioning decisively influence the living standards of people. The importance of public services is greater for society as long as the state, as well as its components, villages, cities and counties appear as indispensable tools [5, p. 358], designed to ensure its citizens an adequate level of living, to ensure the public good.

The important issue which is of interest for the substance of the problem is the distinction between decentralization and deconcentration of public services, which are two distinct legal realities.

Being a very new topic, which leads to extensive discussion, the issue of decentralization and deconcentration of public services should be subject of debate especially in the context of which the implementation of these two principles regards the needs of a community, be it national or local, the fulfillment of their needs being the quintessence of public administration.

The correct understanding and accurate delineation between decentralization and deconcentration of public services is of special importance especially from a practical point of view, often appearing uncertainties in applying these two basic principles of public administration in our country.

In such context, the discussion of the issue of decentralization and deconcentration of public services allows us to highlight the fact that some public services are the responsibility of the state, and others are the responsibility of public authorities or local councils, to meet the needs and general necessities of the administrative-territorial units.

CONSTITUTIONAL PROVISIONS APPLICABLE TO PUBLIC SERVICES

Before proceeding to identify the constitutional rules applicable in this matter, it is necessary to present the content and the importance of the concept of public service as a central element of public administration.

Seen as a way of achieving human needs of public policy, the concept of public service is of recent date, the analysis of its content and significance being of actuality in the field of administrative science, the more so as it is considered as the foundation of public administration activity, the reason for organizing and functioning of public institutions and administrative authorities [1, p. 127].

Examining the literature, we note that, in an attempt to define the notion of public service, two meanings are obvious: a material (functional) one and an organic one.

In a *material* or *functional* sense, by the concept of public service we understand *any activity of general interest performed by the administration*. Therefore we keep in mind that in this first sense, the mission of the public service is to satisfy the general interest, common to the entire community, this being precisely the purpose of public administration.

In the *organic* sense, public service is *a set of agents and means, that a public person or a private agent authorized by a public person use them to meet the needs of the public*. [10, p. 226]

Seeking a unified definition of public service, we can keep in mind that it represents *the activity organized or authorized by an administrative body, which aims to meet the needs and necessities of the public*.

Once the concept of public service is clarified, in the following pages we intend to identify the constitutional provisions applicable to public services [10, p. 227].

Thus, we distinguish the provisions governing the general principles, which the Basic Law situates at the basis of the functioning of all public authorities, and hence at the base of those providing public services. By way of example, we can mention the principle of equality before the law and public authorities, without privileges and discrimination (art. 16 paragraph 1).

Then, we can identify provisions enshrining the principles underlying the organization and functioning of public administration and general public services, specifically. In this respect, the Romanian Constitution states in art. 120 the basic principles in the field, showing that the administration of the territorial-administrative units is based on the principles of decentralization, local autonomy, and deconcentration of public services.

In the same order of ideas, there are constitutional provisions which mention the public authorities which have competence in providing public services or exercising certain reports with the authorities providing public services. For example, according to art. 122 paragraph 1 of the Constitution, the county council is the authority of public administration for coordinating government activity at municipal and town level in order to meet the public needs of the county, or, according to art. 123 paragraph 1, the prefect is the representative of local government and leads the deconcentrated public services of ministries and other bodies of central public administration in territorial-administrative units.

Another category of provisions is contained in Title II, Chapter II of the Constitution which deals with the fundamental rights and freedoms of citizens, mentioning at the same time the public services involved. Thus, for example, the right to information, regulated by art. 31, is provided by the media, public and private, or the right to health, regulated by art. 34, which is provided by public services of social assistance, etc. We can notice therefore that the implementation of any right or fundamental freedom is achieved through an appropriate public service.

CONCEPTUAL DEMARCATIONS ON DECENTRALIZATION AND DECONCENTRATION - WAYS OF ORGANIZING PUBLIC ADMINISTRATION

Principles of constitutional order - decentralization and deconcentration - are at the basis of the organization and functioning of public administration in Romania as a whole and, specifically, of public services.

Decentralization in public administration is the basis for solving problems which is not done by officials appointed by the center, but by those elected by the electoral body. More specifically, in the decentralized administrative system, the administration of the interests of local administration (municipal, town or county) is conducted by freely elected authorities from and by the mass of citizens of that community, which have, according to constitutional rules, their financial and autonomous decision-making power.

In the case of decentralization, the state does not assume the burden of administration alone, but splits it in certain levels, with other categories of persons such as local communities.

According to legal provisions (art. 2 letter 1 from the framework Law on decentralization 195/2006), decentralization is the transfer of administrative and financial powers from the central government to the local government or private sector required to meet local interests.

It is necessary to retain that decentralization is a principle of organization and management of the state based on broad autonomy of the local management of the administrative-territorial units. According to this principle a limited transfer of power of decision from the central government to local ones takes place. [11, p. 241]

Today, the literature in the field imposed two forms of decentralization:

- *territorial decentralization*, which implies that the state is divided into administrative-territorial units, which enjoy independence from the central authority. The leadership of the administrative-territorial units thus created belongs to the local government authorities, which enjoy general physical competence.

In this sense, Paul Negulescu defined the principle of decentralization as an administrative scheme which recognizes "... the care of local interests or specific to be entrusted to the authorities whose owners elected by local electoral body may establish rules applicable to the residents of the town ... " [6, p. 610]

But decentralization does not imply territorial absolute independence of local versus the state in which they are organized. Consequently, taking into account the dependence to the state, the central authorities exercise over the activities of local community the right to control called administrative guardianship control.

The administrative guardianship presupposes both administrative control over people who are holding positions in local authorities (expressed by the opportunity to dismiss or suspend from office), and control over the documents adopted or issued by those authorities, which consist of approval, but in cancellation, suspension or amendment as well. [5, p. 145]

- *technical decentralization* (in services), whereby one or more public services are removed from the jurisdiction of central or local authorities and organized autonomously. [12, p. 59] Therefore, technical decentralization means granting certain autonomy of a publicly determined service, which is given legal personality.

In other words, the principle of decentralization of public services lies in the transfer of powers from the center to the local communities, in order to meet the general needs. Decentralization allows public services to administer themselves, under state control, which confers them legal personality, enabling the establishment of their own authorities and providing them with the necessary resources. [3, p. 124]

The decentralization of public services ensures the retrieving of administrative and financial powers of certain activities by the local government (county councils, local councils) and is one of the objectives that public administrations have to do in the next period.

Deconcentration is the division of powers and administrative and financial responsibilities between different levels of central administration.

Decentralization law defines deconcentration as redistribution of administrative and financial powers of the ministries and other bodies of central public administration structures to their own specialty structures in the territory (art. 2, letter j).

We appreciate that in the deconcentrated administrative system the central power gives up to a part of its powers, distributing them to the public authorities located at the territorial level. In other words, the principle of deconcentration may be viewed as a move in the territory of powers, responsibilities and competences of the central public administration.

Administrative deconcentration is regarded as an intermediary between the centralized and decentralized organization, being characterized by some independence of the local bodies in the forefront of which there are local officials who are appointed by the central bodies.

Practically, however, centralization in public administration exists at any time, because on the one hand, the agents are hierarchically subordinate to the central administrative power, and on the other hand, their decisions are solely attributable to the state. [4, p. 118]

The close relation between deconcentration and centralization can be noticed from the appointment of local power holders by the center, as they are not elected by the local electorate. What drives it closer to decentralization is the fact that the local power holders have the power to solve local problems themselves without passing them forward to their hierarchic superior from the center. [7, p. 345] The decisions are within the jurisdiction of local bodies which have decision-making power, but remain subject to centralization.

Deconcentration takes in turn two forms: *horizontal* and *vertical*. The first form involves the passing of responsibility of deconcentrated services delivery of various ministries to the sole representative of the state, namely the prefect, unlike vertical deconcentration which puts these services in a direct hierarchy in which the head of the service depends only on the minister concerned. [3, p. 122]

DEFINING GUIDING MARKS IN THE DISTINCTION BETWEEN DECENTRALIZATION AND DECONCENTRATION OF PUBLIC SERVICES

There are a number of public services which can be organized exclusively or predominantly only *locally* (e.g., the transport of people and goods within the towns; streets repairing; city cleaning) or *at county level* (e.g., maintenance of communication routes between localities, a supply of water which may interest the municipalities in the county, etc.). In the case of these services we can speak of their *decentralized organization*.

There is another category of public services that can be organized only at the national level, expressing an interest exclusively national and statal, for example the country's defense against aggression by a foreign army, national security or foreign policy and others that cannot be transferred to local and county councils and even though they are undoubtedly concerned to defend against an external armed aggression. They can only be "deconcentrated" locally, but remaining within the structure, hierarchy and subordination of the "centre." [7, p. 454]

As far as public services are concerned, we must make it clear that it is not about decentralization, i.e. transfer, in whole or in part, of competences from the central level to the local level. We are in the presence of an *administrative deconcentration* [8, p. 574], which defines a system in which the agents and local bodies, being on the spot and subject to centralization, have decision power. Therefore local authorities are not only vested with exclusive powers of execution, these having also a certain decisional power transferred by the central authority.

Administrative deconcentration is identified by the fact that between the central power and the one in territory there is a report of hierarchical subordination, the deconcentrated authority being under the dependence of an hierarchic superior who is entitled to cancel decisions.

Therefore, the deconcentration of public services involves the transfer of competencies held at the central level to the subordinated entities operating in the territory, because of a reduced form of administrative centralization.

The purpose for which these public services are organized is the implementation of the strategy of the state in various sectors of activity.

We can say that the kind of services which are organized at national level can be no more than "deconcentrated" at county level, deconcentration ensuring unity of purpose and action, and the problem of "decentralization" of public services is raised only in relation to those activities which can be made at the local level or county, as appropriate, and whether such activities are, at a certain time, organized as public services at central level. Deconcentration of public services is a form of centralization and is opposed to technical decentralization.

Examining the views expressed in the doctrine, in an opinion it is claimed that a public service of national interest, due to its importance for the entire society, cannot be decentralized. What can and should be decentralized would have been a public service of local interest, hence the conclusion that the correct wording should be "the decentralization of public services of local interest." [2, p. 122]

On the other hand, a critical vision in this matter is expressed by the Apostol Tofan [9, p. 222], who considers that such a point of view shows a lack of understanding of the principle of decentralization and ignorance towards the principle of administrative deconcentration.

The decentralization in services does not refer to a group of local services, given to the jurisdiction of local authorities, but to a single public service, which is removed from the central or local jurisdiction, and being given an autonomous organization. The decentralization in services signifies a diminution of executive power concentration, giving legal personality to the legal service, having a heritage and their own bodies somewhat independent from the administrative jurisdiction of which they were removed.

Deconcentrated public services have, regarding the affirmation of local autonomy, a more reduced effect and significance than decentralization, this being highlighted by professor Mircea Preda in the following:

- from an organizational point of view, these services are embedded in the structure of organic ministries, therefore in the state administration, and they activate not in the centre (as other sections of the establishment ministry), but in an administrative-territorial unit, therefore "deconcentratedly";

- the financial means and the material basis of the deconcentrated services are provided by the ministry of resort (thus not autonomously, decentralized), unlike the decentralization of services, which is followed by a decentralization of resources, thus ensuring the competence of local authorities to provide quality to citizens as well as their actual ability to responsibly manage their public tasks they have undertaken. Moreover, the organizational structure of the deconcentrated public service, the criteria for the formation of compartments that form it and the functions of leadership are approved by the order of the minister of resort;

- deconcentrated public services leaders are appointed and dismissed by the ministers and the documents issued by them may be waived by all ministers whom they are hierarchically subordinated to. [13, p. 4-5]

CONCLUSIONS

At the end of our scientific work, it is necessary to emphasize that the decentralization does not regard all public services; the problem of decentralization is only in relation to those that can be organized locally, as there are public services (such as defense, national security, external relations) which can be organized only at the national level.

In light of the above, it is necessary to emphasize that the principle of decentralization of public services does not consist in the transfer of all and any activities from the central level to the county or local level. Central ministries, departmental, will always exist at this level, because they express the interest of the state in the field. Thus, the role of central ministries is to design and to ensure the state strategy in that activity sector, which concrete practical activities are subordinated to, carried out at lower levels – county, town.

In order to satisfy the interests of a community, the public service should be conducted continuously to ensure the access of all beneficiaries to public services, all persons who are in the same situation being able to claim the same benefits. Therefore the public service is designed to solve the needs of society, determining in a good measure the quality of the life of citizens. In this sense, local public services are regarded as the most concrete ways of expression of the local autonomy, and, at the same time, one of the strong means by which the administrative authorities act for the general interest.

Therefore, taking into account the extended nature of decentralization, administrative deconcentration seeks the creation of an interlocutor for local authorities, strong enough to make decisions that require the services to operate under its responsibility.

BIBLIOGRAPHY:

1. Emil B. Iancu, Instituții administrative, Editura E.H. Beck, București, 2008
2. Dumitru Brezoianu, Drept administrativ. Partea generală, Editura Universității Titu Maiorescu, București, 2003
3. Dragoș Dincă, Servicii publice și dezvoltare locală, Editura Lumina Lex, București, 2008
4. Filip Gheorghe, M. Onofrei, Elemente de teorie a administrației, Editura Junimea, Iași, 2004
5. Corneliu Manda, Drept administrativ, Tratat elementar, Ediția a V-a, revizuit și actualizat, Editura Universul Juridic, București, 2008
6. Paul Negulescu, Tratat de drept administrativ, vol. I, București, 1934
7. Mircea Preda, Drept administrativ, Partea generală, Editura Lumina Lex, București, 2004
8. Valentin I. Prisăcaru, Tratat de drept administrativ român, Ediția a III-a, Editura Lumina Lex, București, 2002
9. Apostol Tofan, Drept administrativ, vol. I, Editura C.H. Beck, București, 2008
10. Virginia Vedina, Drept administrativ, Ediția a III-a, revizuit și actualizat, Editura Universul Juridic, București, 2007
11. *** Vitalie Cuciuc, „Unele aspecte ale reformei administrative-teritoriale și administrării locale”, în Probleme ale edificării statului de drept în Republica Moldova, Chișinău, Tipografia centrală, 2004
12. *** Gerard Marcou, „Experiența franceză în regionalizare: descentralizarea regională în statul unitar”, Revista Altera „Regionalism și regionalizare”, nr. 9, Târgu Mureș, 1998
13. *** Mircea Preda, „Deconcentrarea serviciilor publice, un concept constituțional nou pentru administrația publică”, Buletin de informare legislativă nr. 1/2004