LOCAL PUBLIC ADMINISTRATION PRINCIPLES IN ROMANIA-A CRITICAL POINT OF VIEW

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Abstract:
In this paper we try to analyse each of the principles on which local public administration is based in Romania. After describing their content we have tried to point out, in a critical manner, some of the aspects regarding these principles, aspects that are not yet very clear.We refer here to the followingss: the unsubstantiality regarding the legal document they are stipulated in, the principle's more or less theoretical approach, the possibility of hierarchizing them or the existence and use in the administration daily life of other aspects such as collaboration, that are not yet officially declared as principles.

Keywords: principles, local autonomy,decentralization,deconcentration, eligibility, legality

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INTRODUCTION

Regarding the local public administration, the constitutional principles on which it is founded in Romania are: the principles of decentralization, local autonomy, and deconcentration of public services. The Local public administration however, comes and adds to the above principles also the principle of the eligibility of local public administration authorities, the principle of legality and the principle of citizens' consultation in solving local issues of particular interests. Also an important measure to amend the current law basis for local government, which refers to its principles is the European Charter of Local Autonomy.

In the following, we will insist on the particularities of each principles in the Romanian local public administration.

THE PRINCIPLE OF LOCAL AUTONOMY

This principle is one of the legal bases for local government. It led to the adoption of Law no.215/2001 of Local Public Administration, subsequently amended and supplemented by Law no. 286/2006 that modifies the Local Public Administration Law. Under the Charter's regulations, local autonomy is the right and effective capacity of local authorities to resolve and manage, within the law, in their own interest and in the local population interests, an important part of public affairs. Here is also envisaged that this principle should be recognized by the national law and by the constitutional principles and that this right can be exercised by councils or assemblies composed of members elected through free, secret, equal, direct and universal vote, which may have executive and deliberative bodies accountable to them.

Thus, the local public administration law states that local autonomy means the right and effective capacity of local authorities to resolve and manage, on behalf and for the local collectivities' interests, the public affairs, according to the law. This right is exercised by local councils, mayors and county councils. The relations between local public administration authorities in communes, towns, cities and public authorities at county level are based on the principles of autonomy, legality, responsibility, cooperation and solidarity in solving the whole county's issues. The relationship between local government authorities and county council authorities, on the one hand, and between local council and mayor, on the other hand, does not involve subordination relationship.

The fact that for each local government authority there are rules regarding its organization and functioning is itself a transposition of the principle of local autonomy.

Local autonomy does not mean the right of a collectivity to self governing regarding *all the aspects* (Preda and Vasilescu, 2007), without regard to the relationship with the similar collectivities or with those located at higher levels, often at the center. The autonomy of itself administration of public affairs is recognized by the state for the local collectivities only insofar as it incorporates the state law and only where the principles of local government can not affect the status of national, unitary and indivisible state of Romania.

The organic law states that local autonomy has legal, administrative and financial nature, as such there can be no local autonomy based on other criteria such as: territorial, ethnic, linguistic, etc.

The principle of local autonomy does not have a theoretic character, but it is expressed through practical actions (Ivan et al., 2002) because of its material base, meaning the heritage of each local authority.

The prosperity of a collectivity' residents depends on the way the building, the land, the equipment, materials and other financial assets are managed, by local authorities, that local residents prosperity depends. Thus based on these considerations, local government establishes and levies taxes, develops and approves budgets, in other words is ensuring its financial and local autonomy. A reference to this issue is reflected in the European Charter of local autonomy, which stipulates that the financial resources of local authorities should be proportional to their powers stipulated by the Constitution or by the law.

Because this principle is considered the quintessence (Preda and Vasilescu, 2007) of all government activities in the territorial-administrative units, with our country's integration into EU, measures must be taken to achieve real independence, measures to ensure:

- compliance with the legislative framework;
- equitable and timely allocation of resources for local authorities;
- limiting the intervention of central authorities into the affairs of local ones;
- consultation of local authorities in a timely and appropriate manner;
- establishing the controlled object over local authorities' activities.

THE PRINCIPLE OF DECENTRALIZATION

In the Romanian constitutional system, the decentralization at organizational and institutional level regards the elected local government authorities (the local councils, the county councils, the mayors, including the public institutions subordinated to them), and at a functional level, the powers and duties conferred them by law.

Searching for appropriate governance models was central to the administration reforms in the past 30 years. In some states it lead to privatization, in others to decentralization (Bourgon, 2009).There are opinions (Whitford, 2002) who belive that a decentralization regarding policy formulation involves a loss of political control.

The process of administration getting close to citizens and the government awareness of local needs is reflected in the decentralization and deconcentration of public services (Profiroiu, 2004).

The Framework Law of Decentralization defines decentralization as the transfer of administrative and financial competencies from the central government to local government or private sector.

The same law also stipulates the principles underlying the decentralization process namely:

- the principle of *subsidiarity*, which consists in the exercise of competencies by the local government authority located at the administrative level closest to the citizen and who has the necessary administrative capacity;
- the principle of *ensuring the adequate resources* to the powers transferred ;

- the principle *of accountability of local public authorities* in relation to their competences, which imposes an obligation to achieve quality standards in delivering public services and public utilities;
- the principle of ensuring a *stable, predictable, decentralization process*, based on objective criteria and rules that do not compel local authorities work or limit the financial local autonomy;
- the principle of *equity*, which involves ensuring the access of all citizens to public services and public utilities;
- the principle of *budgetary constraint*, which prohibits the use, by central government authorities, of special transfers or grants to cover the final deficit of local budgets.

In France, among the principles underlying decentralization it is also stated the guardianship suppression (Lixăndroiu, 2001).

Evidence underlying the acceleration of the decentralization process consist in (Stîngu, 2006):

- ensure a democratic framework for making decision by increasing the representation of citizens and by increasing political representation;
- the development of public management by improving the quality of public decision by increasing civil servants' integrity, the transparency of public decisions and the participation of the community in public decision-making.
- improving the quality of public services and local revenue base by introducing a management system based on performance indicators;
- the growth of resource mobilization and allocation for the national / local programs / projects by coordinating and improving the information system.

The administrative decentralization in Romania has as a basis outside the organizational and functional autonomy, also a financial and patrimonial autonomy supported by local taxes (Manda, 2007). The government is seen as whole, as all public services which meet the needs of citizens and society. Yet all these services locally are supported of local financial resources.

We have to keep in mind that not all public services involve decentralization. Such conduct is neither necessary nor possible nor desirable (Ivan et al., 2002). Public services such as national defense or national security, do not decentralize. They may however be deconcentrated at local level, being still in the structure, hierarchy and subordination of the center. There are also services that are organized only locally. If they had the necessary financial resources, theoretically all public services, except national defense could be provided by local government.

The rules underlying the decentralization process stipulated in the framework law of decentralization are:

- the competencies transfer is founded on impact analysis and based on specific methodologies and systems of monitoring indicators;
- the ministries and other specialized bodies of central government, in collaboration with the Ministry of Administration and Internals and the associative structures of local authorities, organize pilot phases to test and evaluate the impact of proposed solutions to decentralize the powers they currently exercises;
- the competencies transfer is made while ensuring the necessary resources for their exercise. The exercise of the competencies is done only once the necessary financial resources are transferred;
- the funding of delegated competencies is provided entirely by the central government;
- in the provision of decentralized public services, local government authorities are required to meet the quality standards under the law.

By law, the transfer of competencies takes place in the next steps:

- The government, ministries and other specialized institutions of central government develop strategies for the transfer of competencies towards the local government authorities and the draft for the legislation for its implementation.

- The government, ministries and other specialized bodies of central government identify the necessary resources and the associated full costs of the transferred powers and also the budgetary founds on which they are financed.
- The government, ministries and the other specialized bodies of central government, in collaboration with the associative structures of local authorities, assure the long-term correlation between the transferred responsibilities and their associated resources.

Also in the same law are mentioned the standards of cost and quality of decentralized public services, the administrative capacity of administrative territorial units and the categories of competences of local authorities.

Cost and quality standards are approved by Government at the proposal of the ministries or other bodies of central government and with the approval of the Ministry of Administration and Internals. Government decisions on periodic updating of cost and quality standards underlie the determination and allocation of the amounts deducted from certain income of the state budget and local government authorities are responsible for fulfilling the standards of quality and cost in providing public services.

As for the administrative capacity in the legal framework there can be found two categories of administrative-territorial units: the category I includes those administrative-territorial units that have the administrative capacity to achieve the powers transferred (the local government authorities from this category are able to exercise fully and immediately the transferred powers in terms of efficiency) and category II of administrative-territorial units which do not have the administrative capacity to achieve the transferred powers (the local government authorities from these administrative-territorial units may not exercise efficiently the powers transferred being excluded from the competencies transfer until completion of the administrative capacity to exercise them, according to the law).

To be able to perform its functions, local authorities must define three aspects of relations with central authorities (Ioan et al, 2007):

- central authorities must conceive a good system to evidence the public finances at all levels and to provide incentives where local authorities have a good activity;
- for each level of government to know very well the responsibilities and powers;
- the sources of income to be proportional to the extent of responsibilities and competences .

As a result the decentralisation structurales (Bordean, 2005) approaches are:

- *institutional direction* for the creation of local structures;
- the *operational direction* for local authorities to establish powers and operational relationships;
- *financial direction*, involving a local tax reform.

In the decentralization framework law are presented three types of local government competencies: exclusive ones, shared, delegated and others according to the law.

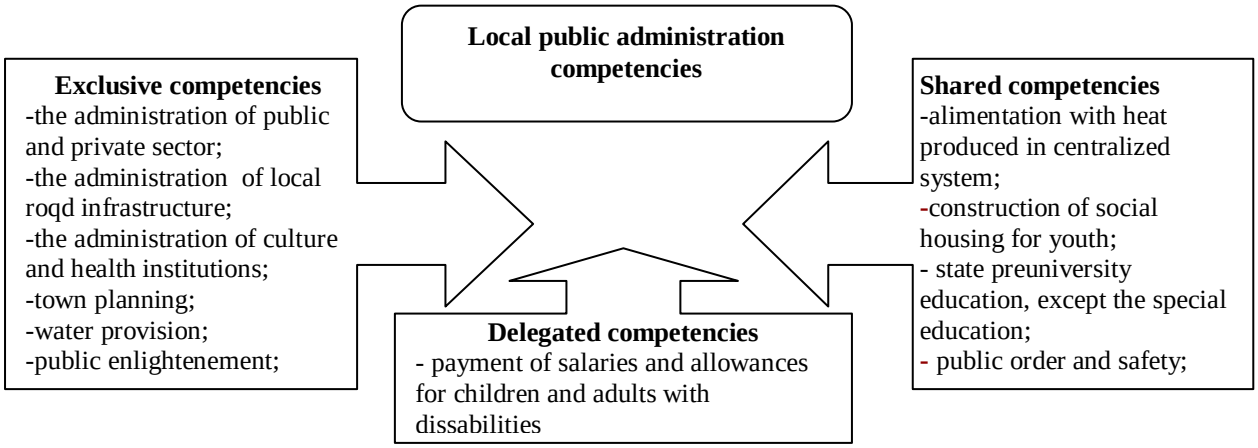

Figure 1. Local public administration authorities competencies

***Source**:* adapted after decentralization framework Law, no.195/2006

As in Romania, the decentralization process was not continuous and its progress has not registered a gradual improvement over time, its ongoing brought up a number of negative aspects also (Stîngu, 2006):

- failure of local authorities to obtain certain rights, thus limiting their ability to effectively manage the supply of services;
- the maintenance of some discretionary control and decision mechanisms in some areas;
- insufficient details relating to legal and constitutional guarantees related to local autonomy;
- public policies that are insufficient reasoned and partly implemented;
- the dominance of legislative acts issued in case of emergency, instead of laws issued by the ordinary way;
- the existence of differences between the decision transfer towards the local authorities and the resources transfer to support them.

Theoretically, Romania is a decentralized state, the ground reality seems far lagging behind, often for financial reasons (Andrei et al., 2006). There is the financial decentralization tendency of local public administration, fact supported by the authorities frequently acceding to the capital market by issuing municipal bonds (Moşteanu and Lăcătuş, 2008).

By its effects, decentralization is likely to ensure and realize the principle of local autonomy, therefore between these two principles there is a special connection. Some believe (Fleurke and Willemse, 2004) that there are four approaches of decentralization in relation to local autonomy, approaches based on the following criteria: decentralization direction, the dominant object of analysis, the relationship between decentralization and local autonomy and the perspective towards local government autonomy.

Table 1.Decentralization's approaches related to local autonomy

Approach	Direction of decentralization	Dominant object of the analysis in its importance order	The relation decentralization – local autonomy	The Perspective onlocal government autonomy
Formal	Vertical	The system features;central government as an actor	Decentralization is local autonomy	Derivate, potențial, local autonomy
Dinamic	Vertical	Central and local governance actors; non guvernamental actors	Deliberate decentralization may rise the local autonomy but decentralization is more comprehensive	Effects on local autonomy în terms of a more efficient governance

Functional	Mostly horizontal	Local governance as actor; non guvernamental actors	Descentralizarea poate duce la reducerea autonomiei locale	Extindere a autonomiei
Governance	Irelevant	Networks	No relationship	Shift from government to governance implies a reduction of autonomy

***Source**:* adapted after : Fleurke and Willemse, 2004

THE PRINCIPLE OF PUBLIC SERVICES DECONCENTRATION

In the Romanian Constitution, the principle of deconcentration of public services appears to be the third principle underpinning the local public administration. This principle is a new one, since it was not stipulated by the 1991 Constitution.

The Framework Law no. 195/2006 of Decentralization, defines deconcentration as the redistribution of the administrative and financial powers of the ministries and other bodies of central government towards their specialized local structures.

In reality, the deconcentrated services are organizational structures of ministries and other specialized agencies, organized in the territorial-administrative units, through which they exercise their powers in counties, cities, towns, communes (Preda and Vasilescu, 2007). These decentralized public services are run, according to the Constitution by the prefect. The new aspect that deconcentration brings, is the decision-making capacity of these public services, that beneficiate of a delegation of competence, as a result of powers transfer from the local authority that established them (Miulescu, 2006). What should be noted is that not all ministries shall organize such public services in the territory, while others organize their organizational structures from the county level to the basic level of administrative-territorial unit: the commune.

The smaller effects that deconcentration has on local autonomy, compared to decentralization, are the following (Preda and Vasilescu, 2007):

- at the organizational level, these public services belong to the state government only that they operate in the territorial-administrative units and not at the center;
- their material basis and financial resources are provided by the specific ministry (not decentralized) and the staff is part of the total approved ministry staff;
- the leaders of the decentralized public services are appointed and dismissed by the minister, at the proposal of the prefect, and the acts issued by them can be dispensed by the ministers who they subordinate to.

THE ELIGIBILITY OF LOCAL PUBLIC ADMINISTRATION AUTHORITIES PRINCIPLE

The legal basis of this principle lies in article no.121 of the Constitution, which states: " The government authorities, through which local autonomy is accomplished in communes and towns, are the local *elected* councils and *elected* mayors, under the law regulations." The legal rules detailing this principle are Local Public Administration Law and the Law no. nr.67/2004 on the Election of Local Public Administration Authorities.

Since the authorities are elected ones, they do not belong to the state and therefore neither are the tasks they perform. However, in order for these actions to have legal effects, they must be recognized by the state, but only if the election of these authorities was legal and also if their actions are in accordance with law. Thus one can speak of a state dual recognition (Preda and Vasilescu, 2007) by combining the general interests with the ones of local collectivities. The rationality of local and county councils and mayors existence, is only to manage the affairs of the administrative and territorial authorities in which they have been elected, to serve and solve the

local collectivities interests and the ones of the electorate (Ivan et al., 2002). We must not forget that the mayor acts also as a state representative exercising its powers as an officer of civil status, guardianship authority, its tasks that result form the regulations concerning the census, the organization and conduct of elections, and other such tasks.

A consequence of this principle consists in the permanency of the chosen authorities mandate for their entire term, since their mandate may be terminated only in particular cases provided by law.

In addition to the social connotation, the eligibility of local authorities has also a political connotation, since their applications for elections are proposed by political parties (Manda and Manda, 2002).

THE PRINCIPLE OF LEGALITY

This principle appears for the first time stipulated by the constitutional revision in 2003. Previously, its application was inferred from the activity's nature, through the enforcement of law by public administration. This principle must be respected by all local public administration authorities, whether or not they have a mandatory character for the entire state. The entire activity of local authorities should be based on strict law obedience. As a result, legality means in fact also the implementation of law content.

The principle of legality requires that all elements, aspects of local public administration to comply with the Constitution and other laws and legislative acts based on law. These aspects relate to: the organizational and functional aspects, the organizational structures of local public administration, their constitution and functioning, powers, duties, issued documents, relationship with other public institutions, etc. As a result, the administrative-territorial units can not create other structures of government than those of Constitutional Law and other laws, in this case, the Local public administration law. In other words, any form of local autonomy manifestation involves respect for legal norms and for the public interest.

Regarding the content of the principle of legality, and its consequences, there are a few mentions to be made (Flonder and Cristea, 2000):

- legality is the public administration limit, it designates all law rules to be applied across it;
- legality is the base for administrative action and is therefore impossible for local authorities to act or to issue legal documents unless they are authorized by a rule of law.

The guarantee that the principles are respected is also ensured by law, by establishing sanctions for both local public administration authorities and officials when their conduct and their actions do not comply with the law.

THE PRINCIPLE OF CITIZENS' CONSULTATION IN SOLVING LOCAL ISSUES OF PARTICULAR INTEREST

Applying this principle is considered to be the basis of democracy, although it is governed only by Law 215/2001, and not by the Constitution, especially as this principle is part of local autonomy and aims to strengthen the role of local authorities, collectivities and citizens, to find solutions to for the local problems.

The specific way of consulting the citizens it is not mentioned specifically. The European Charter of Local Autonomy states that the rights of elected local authorities can not affect in any way citizen's possibility of having gatherings, referendums or any other form of direct participation of citizens, where it is stipulated by law.

Since the formulation of this principle in the local public administration may arise questions related to some of the concepts like *consultation* and not approval, *local* issues (not regional issues), Law no. 3 / 2000 on the Organization and Holding of a Referendum has the role of

providing clarification. This law specifies that issues of particular interest in administrative-territorial units may be subject, to the approval of their citizens, through local referendum.

This does not mean that other forms of citizen's consultation such as citizens' gatherings, public meetings, organizing public demonstrations, conduct polls, surveys, etc., are excluded.

On the other sight, Law no. 215/2001 obliges the organization of a referendum, for the change of the administrative-territorial units' boundaries.Usually, the referendum is optional. However the views on the compulsoriness of the referendum outcome are divided. Some authors (Ivan et al., 2002) believe that since the referendum is indicative, it is not mandatory, while opponents (Miulescu, 2006) say otherwise by arguing that Law no.3/2000 specifies that "the citizens are called to rule by YES or NO on the question submitted to the referendum'', which would entail the compulsoriness of the outcome.

CONCLUSIONS

Proper conduct of public administration and local public administration activities would not be possible without the existence and compliance with the principles described above. We must keep in mind that some of these principles existed and were implemented before being officially expressed. As a result we find that some of the principles have a pronounced practical sight, the example of the local autonomy principle, while others are considered to be more useful theoretically speaking, but difficult to put in practice.

Another aspect that should be taken into considered is the provision of these principles.

In the European Union countries, the principles underlying the public administration are provided either by the constitution or by the organic laws. Most times however, the Constitution sets out only the general principles. The specific organic law establishes the principles of local public administration. This is also the case of our country. We believe that a unitary regulation of all principles together, by both the Constitution and the organic law, would be more practical.

The importance of these principles, or rather trying to prioritize them, raises some questions as well. Even if we find diversity in the regulation of these principles, our country, just like most other European Union states, confers great importance to the principle of decentralization and local autonomy. Does that mean that as long as the two principles are applied, there is no other careful observation required for the application of the rest of principles, or better said, the application of other principles is less binding?

Regarding the principles of local public administration, our country in an effort to join the European structures, has operated many changes both in the Constitution and the law of local public administration. We refer primarily to the addition of some principles not stated officially, but whose existence was somewhat implicit, as it is the case of the principle of legality. So we come to ask ourselves why other criteria that are still not stated as principles, such as collaboration, but criteria that frequently occur in legislation related to local public administration, are not yet officially declared as principles. We believe that the legislative authorities should take this into consideration.

The principles are the foundation of local authorities .It is important to keep in mind that whatever the way of stating them is, or the law regulations in which they occur (the Constitution, the organic law, etc.), these principles should not prejudice in any way the sovereignty of the state or its national and unitary character.

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