

LOCAL GOVERNMENT AUTONOMY IN THE DOMESTIC REGULATION AND IN THE EUROPEAN CHARTER OF LOCAL AUTONOMY

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Summary

Romania's integration into the European Union represents a great challenge for the local government. It is the one who must implement successful social models of Western democracies: quality public services, reduce bureaucracy, transparency and efficiency in public spending, high standards of performance for public institutions.

The transition to "democratic centralism" a specific manner of organizing a totalitarian state administration, decentralization and autonomy for local decision-making, was the touchstone for the Romanian government in recent years. Are these years of accumulation sufficient for local government so that it will rise to the level of local Western democracies?

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1. The principle of "democratic centralism" in the communist totalitarian regime.

In the past, "democratic centralism" was called to provide process Communist Party rule through a centralized organization strict nature allow him to impose masses through elections, in which only its members could run (I. Gliga, 1957) .

As a political principle, democratic centralism was defined as "one of the main structural base of the organization of the party, included in the statute, such as ensuring bodies and organizations single party, a wide opening to action and initiative in view of achieving their role as leader for "the masses. The principle of democratic centralism in state activity was considered to represent, in that era, combining unitary management of economic and social life with autonomy and initiative of people's councils county, city, town and village, the economic enterprises, other social units, with the active participation the masses in governing society. "

In reality, democratic" centralism " enshrine strict subordination of local bodies of state administration, both on the horizontal line and the vertical line. Subordination on a horizontal line is to choose by popular councils, the executive committees from among their executive committees which generate an obligation to be accountable to the people's councils for its work. Subordination vertical line match with the hierarchical relationship under which, the executive committees of the people's councils executive committees were subordinate superior "to the Council of Ministers, in the sense that they were obliged to comply with the directions of the latter" (T. Drăganu 1972) .

Time doctrine considers that: "The autonomy of organization of administration is consistent with the principle of democratic centralism, the subordination of local organs of the central state administration. The autonomy of organization of state administration shall be rendered within the system of unitary organization of the country "(Oroveanu, 1975).

The so - called autonomy allotted a formal content, resuming the implementation of the "indications" party. This was actually ensured through the dual functions of party and state. Promoting a public office not done unless the person was a member of the party, while having an important position in the party hierarchy.

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Uniformity of local life was a first consequence of this system, as local authorities were state bodies that were part of a hierarchy established in order to give priority to the general interest. There was no question of local autonomy given that local authorities were representatives of the state in territory and managing its assets.

Although the city has its own budget, it was part of the state budget, because this system over centralized basis was the socialist property of the state.

The other side of "democratic" centralism, namely the democratic, was conceived as a means of citizens' participation in public affairs, counterbalancing the unilateral aspect of the management of society by the single party organs. After all the forms of organization and functioning of citizen participation, although they did not have the nature for formations party were strictly directed and conducted by local party, thereby providing a framework, limited and formalistic of the initiatives promoted during the debate of important projects.

In conclusion, we can state that the principle of "democratic centralism", although he had two heterogeneous elements, one centralized and a decentralized one was conceived socialist ideology, as having a unitary content, as shown above.

In fact, the dominant side was centralized and the effective application of the principle of democratic centralism at the level of local government meant that they had exclusive state function, which involves promoting the excellence of the national interest; the local level, although declared, it had no conditions for affirmation.

The so-called democratic centralism, ensured at local government level a strict centralized organization and functioning of public authorities and the idea declared "local autonomy" was nothing more than an application of the Party's leading role unique locally.

They were therefore patterns that worked in local government in Romania during the communist-totalitarian period.

2. Local public administration in Romania, under the Western model of local government

Communist totalitarian regimes crisis in Eastern Europe led to a shift in the administrative systems of the Western model of local government success: independent decision-making to local communities through decentralization.

The handy solution for solving crisis situations was that of decentralization of authority and hierarchical bureaucracies, accompanied by a wide autonomy granted to administrative - territorial units. The government should encourage competition and quality of service; it will act more like a manager who seeks his company to become more flexible to requirements, more competitive, innovative.

To exist as administrative reality decentralization should be seen as a conceptual change of the entire administrative system, to reassure a rational distribution of powers at decision-making levels as close to where they are running (Alexander, 1997).

The post-revolutionary period was characterized by the desire to strengthen the institutional and legislative of local autonomy; it must become the engine of local development, as happens in European Union states.

The essential European requirement on the organization and functioning of public administration is that of connecting it to democratic principles, characteristic to the rule of law, and making it serve the citizens by eliminating mechanisms of centralist type of the state administration specific to the totalitarian period.

The country reports for Romania, the European Commission, assessing the degree of administrative decentralization, showed that in recent years there has been a steady transfer of responsibilities from central to local authorities in several fields, such as social welfare, health, education, transport, emergency services, public utilities, but the existence

of unclear legal framework and lack of a strategy to coordinate the decentralization process in a transparent and stable manner, were factors that limited the consolidation of local autonomy.

In this context, they have been identified as causes of the malfunctions occurred in the transfer of responsibilities from the central level, consulting low of local authorities on draft legislation that has high impact locally as the absence of transfer of adequate resources that would have to accompany the decentralization of public services.

Financially, the full manifestation of local autonomy is affected by the reduced capacity of collecting local revenues, lack of transparency, of which the legislation governing financial transfers is suffering, as well as the mighty instrument that amounted the control of the County Council on the expenditure of local councils.

A milestone was the adoption of Law no. 199 of 17 November 1997 ratifying the European Charter of Local Self-Government adopted in Strasbourg on October 15, 1985.

In art. 3 para. 1 of the European Charter of Local Self-Government it is stipulated that the local autonomy means the right and effective capacity of local authorities to resolve and manage within the law in their own name and in the interest of the local population an important part of public affairs .

According to art. 4 para. 2 of the Charter, local public administration authorities are recognized under the law, to have full discretion to exercise their initiative in all areas that are not excluded from their competence or are not attributed to any other authority.

The concept of local autonomy has been defined by Art. 3 paragraph. 1 of Law no. 215/2001 on local public administration, whose content is almost identical to the text of art. 3 para. 1 of the European Charter of local autonomy. Thus, according to internal regulation, the local autonomy means the right and effective capacity of local authorities to resolve and manage, on behalf and in the interest of the local communities they represent, public affairs, under the law.

In the scientific literature it has been assessed whether there was consistency between domestic and European regulation regarding the definition, emphasizing qualities, but appreciating, however, that regulations complement each other (Trăilescu, 2005). Moreover, according to art. 11 para. 2 of the Constitution, since it has been ratified by Romania, the European Charter of local autonomy is part of national law in which the rules must be reconciled.

From the contents of the Charter emerge the elements of decentralization based on the principle of local autonomy. These components are: the existence of a territorial local collectivity; recognition of responsibility in managing the specific needs of local communities and the existence of own resources; The local community to dispose of their own administrative authorities, autonomous from the state; overseeing the work of local authorities by way of executive control of administrative tutelage (Alexander, 2002).

According to these legal regulations, local autonomy is not only a principle of organization and functioning of public administration, but also a right of local public authorities which is exercised by them on behalf and in the interest of local communities.

This right shall be exercised by local councils and mayors as well as county councils, authorities of local government elected by universal, equal, direct and secret suffrage, based on the ballot list, respectively the uninominal ballot and by independent candidacies.

Local autonomy is linked to the organization, functioning, powers and duties and resource management which, by law, belong to the village, town or county, as appropriate.

Powers and duties of local authorities are established only by law. These skills are full and exclusive, unless required by law.

Local autonomy gives local authorities the right, within the law, to take initiatives in all areas except those expressly given to other public authorities.

Relations between local government authorities in communes and towns and public administration at the county level is based on principles of autonomy, legality, responsibility, cooperation and solidarity in solving the problems of the entire county.

In relations between local government authorities and the county council, on the one hand and between the local council and mayor, on the other hand, there are no subordination relationships.

Central public administration authorities can not establish or impose any responsibilities to local government in the process of deconcentration of public services or the creation of new public services without ensuring financial means for carrying out these responsibilities.

These central public administration authorities are obliged to consult before taking any decision, the associative structures of local authorities in all matters which concern them directly, according to the law.

In the national economic practice, municipalities, cities and counties have the right to own resources, which the local government authorities manages according to their duties under the law. The financial resources of local authorities should be proportionate with the skills and responsibilities required by law.

Under Art. 25 of Law no. 215/2001 in order to ensure the local autonomy, the local public administration authorities in communes, towns and counties, develop and approve the budgets of revenues and expenditures and have the right to levy local taxes and duties under the law.

These provisions express affirmation of the principle of local autonomy in another important area - public finances - which constitutes a core element of financial support that ensures achieving local autonomy.

Local authorities have the financial resources and manages assets public or private property of communes, towns and counties, in accordance with the principle of local autonomy.

Local autonomy is only administrative and financial, not political. This can not prejudice the national state character, unitary and indivisible of Romania.

The fact that the provisions of art. 4 para. (1) of Law no. 215/2001 specifies the legal nature of local autonomy, namely administrative and financial, is likely to eliminate any tendency or action to distort the meaning and precise content of this principle. By law, local autonomy can exist on other criteria, such as the criteria of ethnic, linguistic, territorial (regional) etc.

Also under the principle of local autonomy, protection and promotion of their common interests, local government authorities have the right to join national and international associations under the law.

Local authorities may conclude agreements between themselves and participate, including by the allocation of funds, the initiation and implementation of regional development programs, under the law.

The principle of local autonomy has an external dimension. Thus, the local councils and county councils in the territorial administrative units adjacent border areas may conclude cross-border cooperation with authorities in neighboring countries, according to the law. These agreements may be concluded in the fields of competence of these authorities also with compliance with national legislation and international commitments undertaken by the Romanian state.

Corroborating the provisions of art. 11 para. 1 with that of art. 13 para. 1 of Law no. 215/2001, the literature distinguishes between cross-border and over-border

cooperation, the difference between these two forms of cooperation being that in the second case, cooperation takes place between local collectivities, that have no common border .

The right to over-border cooperation and is enshrined in art. 10 para. 3 of the European Charter of local autonomy and the right to cross-border cooperation at European level is covered in detail by the European Outline Convention on transboundary cooperation between Territorial Communities or Authorities.

In the same framework of the principle of local autonomy encompasses the right of local councils and county councils to decide on the participation with capital or goods, on behalf and in the interest of the local communities they represent, to companies setting up or establishment of local public services or county, where appropriate, under the law.

On the exercise of rights by citizens belonging to national minorities as an expression of local autonomy and democratic character of the state, in line with European standards, the Law amending the Constitution no. 429/2003 was expressly upheld the right of Romanian citizens belonging to national minorities which has in the administrative-territorial unit a significant share, to use in writing or orally, relations with local authorities, the mother tongue.

In its current wording, Law no. 215/2001 provides that the administrative-territorial units where citizens belonging to national minorities have a share of over 20% of the total population, local government authorities will ensure the use in relations with their native language and in accordance with the Constitution and the international conventions to which Romania is a party.

In these circumstances, it is apparent that the existing provisions of the Local Public Administration Law defines the term "significant percentage" used in the Constitution, when referring to the percentage of over 20% of the national minorities (Preda, 2004).

3. Some aspects relating to the principle of decentralization and subsidiarity are not directly connected with the principle of local autonomy

In essence, the centralization of public administration means on an organizational level, hierarchical subordination of local authorities to the central and appointment of civil servants in the management of local authorities by central authorities which are subordinate in functional terms and issue the act of decision by central and execution of the local ones.

Decentralization in public administration is a regime in which solving local problems is no longer made by officials appointed from the center, but by those elected or appointed by the electoral body. In that system, local authorities are no longer subordinated to the central and their acts (even those not complying with the law) can not be canceled by authorities, but the authorities in the sphere of another power - the judiciary - or in a specially constituted court system.

The doctrine (Cărăușan, 2012) was shown as considering "decentralization as opposed to centralization is wrong because it does not mean negation of centralization, but reducing them, reducing concentration of powers".

The legal regime of decentralization is based on the material plane, on its own patrimony of administrative-territorial units, distinct from the state, which provide the means (financial and material) to meet his needs and local colectivity interests.

The regime of administrative decentralization, recognized the legal personality of administrative-territorial units, and the existence of public authority which is also not part

of the hierarchical system under center, but are subject to special control conducted by the prefect (administrative guardianship) .

The fundamental principles, general rules and institutional framework for the conduct of administrative and financial decentralization in Romania are regulated by the framework law on decentralization no. 195/2006.

Under that law, decentralization is the transfer of financial and administrative powers from the central government to the local government or the private sector. The process of decentralization shall benefit citizens by strengthening the power and role of local government in order to develop economic and social development of administrative-territorial units.

Decentralization framework law enumerates the art. 3, the following principles on which decentralization takes place:

a) the principle of subsidiarity, which is to exercise its powers by the authority of local government located at the administrative level closest to the citizen and that has the necessary administrative capacity;

b) the principle of ensuring adequate resources transferred powers;

c) the principle of accountability of local public authorities in relation with their competences, which requires the achievement of quality standards in the provision of public services and public utility;

d) the principle of a decentralization process to ensure a stable, predictable, based on objective criteria and rules that do not constrain the activity of local authorities or limit local financial autonomy;

e) the principle of fairness, that involves providing all citizens access to public services and public utility;

f) the principle of a budget constraint, which prohibits the use by central government authorities special transfers or subsidies to cover final deficits of local budgets.

Administrative decentralization has as administrative centralization, both advantages and disadvantages.

The most important advantages can be summarized as follows:

- A regime of administrative decentralization can be solved under better circumstances local interests, local public services and may be run better by local elected government authorities because they are not obliged to comply with the orders and instructions of the center;

- The measures and decisions can be made operative by local government authorities, as they no longer need to wait for approval in this regard from the center;

- A regime of decentralization, financial and material resources and even manpower can be used more efficiently and can respond to priority needs that local authorities know , and "they feel" better than the central government;

- Election or appointment of civil servants, for a limited term, greater removes bureaucratic and routine phenomena in local activity, each time bringing a new spirit in managing local affairs;

- Inhabitants participation (elections) the designation of local authorities emphasize their sense of responsibility and initiative for the public life of "city" and motivate them to find their own solutions to the problems they face.

When referring to the disadvantages of administrative decentralization, these are mainly the following:

- A strong decentralized system, central government action is hampered because it is not always connected to the interests and actions of local authorities;

- The choice of decentralized authorities, stressed Professor Tarangul, "introduces in local government, the political party, that takes over and vitiates everything. Lack of competence and responsibility, demagoguery and servility are some of the biggest drawbacks of this mode of recruitment of decentralized authorities";

- Sometimes in small units, it is hard to find good specialists in public administration, which can administer the public services that decentralization (greater) gives to local authorities;

- In terms of asset management and finance, decentralization increases the number of communities with their own assets and its own budget, which makes it difficult to achieve effective control over the use of public money and the formation of a correct vision, as actual finances of the country and national wealth.

Regarding the principle of subsidiarity it is found to be debated, in par. 2 of Article 4 of the European Charter of local autonomy according to which local authorities are first recognized, within the law, have full discretion to exercise their initiative in all areas that are not excluded from their competence or which are not allocated to another authority.

According to par. 3, the exercise of public responsibilities should, on a general basis be given, preferably to those authorities which are closest to the citizens. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

As was revealed in legal literature, the idea of subsidiarity is often currently used at European level considering that the principle of subsidiarity is a response to the various issues raised by the organization and structuring of united Europe.

It also showed that subsidiarity means more than a simple principle of institutional organization; it applies primarily to relations between individuals and society, and relations between individuals and the institution being the inspiration for the division of powers in the institutional scheme between basic and higher levels (M. Cărăușan, 2012).

4. European structures, with impact on the issues targeting local communities

4.1. The Congress of Local and Regional Authorities of Europe (CLRAE)

In 1957, the Council took its first step towards local authority representation. Since then, its activity was extended from Iceland to the Russian Federation and from Norway to the Balkans.

In 1994, the Congress of Local and Regional Authorities of Europe (CLRAE) was established as an advisory body of the Council of Europe, replacing the Conference of Local and Regional Authorities of Europe. It works on the basis of Statutory Resolution 2000 (1) of the Committee of Ministers.

The role of the Congress of Local and Regional Authorities of Europe is manifested in the following aspects:

- Is the voice of Europe's regions and municipalities;
- Provides a forum where local and regional elected representatives can discuss common problems, pool their experience and express their views to governments;
- Advises the Committee of Ministers and Parliamentary Assembly of the Council of Europe regarding local and regional policy issues;
- Work in close cooperation with national and international organizations representing local and regional authorities;
- Organizes hearings and conferences at local and regional levels to reach a wider public whose involvement is essential to a working democracy;
- Prepares regular country reports on the situation of local and regional democracy in all Member States;

- Ensure, in particular on the application of the European Charter of Local Self Government;
- Supports the new Member States of the Organization in carrying out practical tasks necessary to achieve effective local and regional autonomy.

4.2. Committee of the Regions (CoR)

The Committee of Regions (CoR) is an advisory body of the European Union, composed of representatives of the 28 Member States, elected local and regional level. Through the CoR, they may directly express their views on EU legislation which has an impact on regions and cities.

What are the main responsibilities of the CoR?

- CoR offers regions and cities the opportunity to be involved officially in the EU legislative process, ensuring that the views and needs of local and regional authorities are respected;

- European Commission, the EU Council and the European Parliament must consult the CoR when legislating in areas falling within the remit of local and regional health, education, employment, social policy, economic and social cohesion, transport, energy and combating climate change.

- If it is not consulted, the CoR may refer the Court of Justice of the European Union.

- Since receiving a legislative proposal, the Committee of Regions prepares and adopts an opinion which then transmits to all relevant European institutions;

- The CoR may issue opinions on its own initiative.

Structure

CoR members are representatives elected from the local or regional authorities. Currently CoR has 353 members (elected) .Each country designates what members want. They are appointed by the EU Council for a term of 5 years, renewable. The number from each country depends on population size.

Members from a country that form the national delegation reflects the balance of political, geographical, regional and local country. Romania is represented by a delegation consisting of 15 members and 15 alternate members.

Each member may decide to be part of a political group in the CoR. Currently, there are five groups reflecting a range of political affiliations People's Party (EPP), the Party of European Socialists (PES) Alliance of Liberals and Democrats for Europe Group (ALDE), European Alliance Group (EA) and the Group of European Conservatives and Reformists (CRE). Members also have the opportunity to choose not to be part of a political group (unrelated).

CoR appoint a chairman from among its members for a term of two and a half years.

How does CoR work?

CoR appoints a rapporteur (one of its members) to consult stakeholders and prepare the opinion. The text is discussed and adopted by the CoR commission in charge of that policy area. Opinion is then presented in plenary session to all members who can edit and then take a vote. Finally, the opinion is sent to all relevant EU institutions.

Every year, there are organized up to 6 plenary sessions, during which are adopted opinions on 50-80 bills.

CoR and citizens

CoR encourages participation at all levels, from local to regional authorities and ordinary citizens. Regional and local authorities, associations, NGOs, experts and academics can participate in surveys, consultations and events online. The contest

"European Entrepreneurial Region" applies to all regions with political powers, while these contests aimed at academics.

CoR has several networks that allow regions and cities in the EU to share best practices, work together and contribute to European debates on topics such as growth and employment, development and subsidiarity, combating climate change and cross-border cooperation .

Local and regional authorities can sign the Charter on multilevel governance in Europe, which contributes to better promote the legitimacy and responsibility of cities and regions in EU policy implementation.