THE PRINCIPLE OF ADMINISTRATIVE DESCENTRALIZATION

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Abstract

The local public administration in Romania operates on the basis of a series of fundamental principles. One of these elemental principles is decentralization. Administrative decentralization assumes the existence of local public persons, designated by the community of the territory, with their own attributions, which intervene directly in the management and administration of the community's problems, implying the local autonomy. Thus, through decentralization, the unity characteristic of centralization is given up, reserving to the local communities the task of solving their problems and satisfying their specific interests.

Keywords: *local autonomy, local community, local public administration, public administration principles, decentralization in European Union countries.*

1. Introduction

The realization of the unitary national state led to the need for legislative unification of the country. The legislative steps for the integration of the united Romanian provinces were confronted with the various models of administrative organization, existing until then in each of the Romanian territories. The administrative-territorial organization of a country, carried out by law, is an element of superstructure of great importance, due to the fact that it determines the constitution of the state administration system and its local subsystems, territorially frames the political life and organizes the economic and social life of a nation. The models of administrative organization adopted are always imposed by concrete historical, geopolitical, economic and social conditions. Thus, Romania has experienced in terms of administrative-territorial organization at least as troubled experiences as its own history, the search for the optimal model oscillating between centralized, decentralized systems or imposed solutions, all but conceived, since the establishment of the State, in a structure of unitary state.

In the interwar period, Romania faced the inherent problems of the transition determined by the need for legislative unification, in order to ensure state control over the entire territory and administrative unification, which proved to face many obstacles. Therefore, the world economic crisis of 1929-1933, together with the country's political instability, the establishment of the royal authoritarian regime and the beginning of the Second World War, were the events that determined Romania to be in a state of disrepair throughout the period of permanent search for the right model of administrative organization.

Also, the way to achieve administrative unification has encountered difficulties, requiring numerous legislative changes and adjustments. The laws of administrative organization of 1929 and 1936, under the influence of the Constitution of 1923, proposed two different models of organization, one based on local autonomy and decentralization, and the other based on a series of centralist principles. The model of organization based on the regional level, with its particularities, determined by the Constitution of 1938, which enshrined the royal authoritarian regime, imposed by Charles II, brings as a novelty the land as a territorial administrative unit, also noting thorough regulations on building and systematization. After 1944, communist political codes had a major impact on the reorganized administrative territory following the Soviet model in regions and districts. The transformations in agriculture thus led to the merging of lands and the organization of collectivist exploitation. Therefore, starting with 1968, the administrative organization by counties of the Romanian territory and the economic development policies from the socialist period, led to new evolutions in the development of the territory.

Moving on to the contemporary period, the revised Romanian Constitution of 1991 provides in art. 120 para. (1) that: "The public administration in the territorial administrative units is based on the principles of decentralization, local autonomy and deconcentration of public services". Also, the legal regulation of the two principles results from the nature of Law no. 215/2001 of the local public administration, Framework Law no. 195/2006 on decentralization and Law no. 199/1997 for the ratification of the European Charter of Local Self-Government, adopted in Strasbourg on 15 October 1985. It is therefore observed that the principle of decentralization and local self-

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government are enshrined by the constituent, while the legislator, applying these principles.

This observation is of particular importance given the fact that it implies the exclusivity of the law, as an act of the Parliament, which can determine the content of the principles, any other act issued by a state authority in this field being unconstitutional. In fact, this is also the position of the CCR which, through Decision no. 45/1994 declares unconstitutional art. 192 of the Regulation on the organization and functioning of the Chamber of Deputies because "it imposes obligations on local and county councils. Such a thing can only be done by law, and the regulatory provision violates art. 119 of the Constitution on the principle of local autonomy".

2. The principle of Decentralization in Romania

Decentralization is the system that is based on the recognition of the local interest, distinct from the national one, the localities having organizational, functional structures and their own apparatus, affected by the local interest[1]. Analyzing from a historical perspective, the principle of administrative decentralization was first established during the French Revolution of 1789, the period in which Europe raised the issue of a transition from centralization of state leadership to decentralization, administrative decentralization itself[2]. The first legislation on decentralization in Romania was in the Constitution of 1866, in art. 106 and 107, respectively, which referred to laws that regulated county or communal institutions. Currently, the Administrative Code provides in art. 5 letter x), the explanation of the notion of decentralization which it stipulates as the transfer of administrative and financial powers from the central public administration to the public administration in the territorial administrative units, together with the financial resources necessary to exercise[3].

In Romania, decentralization is carried out based on principles stipulated in the Administrative Code under art. 76, these being the principle of subsidiarity, the principle of ensuring the resources corresponding to the transferred attributions, the principle of responsibility of local public administration authorities in relation to their competence, the principle of ensuring a process of stable, predictable decentralization, based on objective criteria and rules and the principle of equity[4]. We will proceed in the extension of the article to analyze individually each of these principles. Thus, the first principle, namely the principle of subsidiarity, is represented by the exercise by the local public administration authorities located on the administrative level closest to the citizen, having at the same time the necessary administrative capacity. It is interesting to note that this principle can be found both in the regulations of domestic law, regulating the relations between the state and the political and territorial communities, and in the norms of international law[5].

The following principle, respectively the principle of ensuring the resources corresponding to the transferred attributions, the Administrative Code stipulates in art. 79 the fact that the transfer of competence, as well as their exercise, are made simultaneously with the provision of material resources. The financing of the delegated competencies is fully ensured by the central public administration [6]. Thus, we find that in order to ensure the principle of good administration, the central public administration, at the moment of delegating the attributions to the local public administration, has the duty to ensure the entire financial, legislative and economic framework for the efficiency of decentralization.

The principle of responsibility of the local public administration authorities in relation to their competence is the principle by which the obligation to achieve those quality standards necessary for an optimal provision of public services and public utility is imposed. Also, the principle of ensuring a stable, predictable decentralization process, based on objective criteria and rules, has the role of ensuring the absence of a constraint or financial limitation of the local public administration authorities. The last principle, that of equity, refers to ensuring the access of all citizens to public services and public utility.

The issue of how to achieve decentralization varies from one state to another with individual features. There is a famous quote in this respect which shows that “it can be governed from afar, but can be administered only from close”[7], by which the essence of the principle of decentralization has been perfectly synthesized and the fact that it cannot exist. only central bodies of the public administration, without the existence and organization of the local ones.

[1] E. Popa, *Local autonomy in Romania*, All Beck Publishing House, Bucharest, 1999, p. 121.
[2] V. Prisacaru, *Treaty of Romanian Administrative Law*, Lumina Lex Publishing House, Bucharest, 1993, p. 751.
[3] GEO no. 57/2019 of 3 July 2019 on the Administrative Code, art. 5, letter x).
[4] V. Vedinaș, *Administrative Law*, 12th ed., revised, Universul Jurdic Publishing House, Bucharest, 2018, p. 215.
[5] D.M. Vesmas, *Aspects on the principle of subsidiarity in the light of the Constitutional Treaty European*, Scientific Notebook no. 8/2006, “Paul Negulescu” Institute of Administrative Sciences, p. 145.
[6] GEO no. 57/2019 of 3 July 2019 on the Administrative Code, art. 79.
[7] Decret sur la decentralisation, 1852.

The doctrine recognizes two forms of decentralization, these being territorial decentralization and technical decentralization[8]. In the following we will analyze individually the characteristics of each category of decentralization as follows. Thus, territorial decentralization is based on the existence of a community of interests to be achieved by the bodies elected by the citizens of a territorial subdivision, invested with general material competence. This implies the recognition of an autonomy of local authorities, administrative or territorial constituencies, which, under the law, are administered themselves. On the other hand, technical decentralization is generated by reasons that want to streamline the activity carried out by legal entities under public law, called local public establishments, invested with the provision of public services independent of the services provided by state bodies[9]. It is important to note that territorial decentralization responds to the needs related to the social and political diversity of the country, while technical decentralization deals with satisfying interests such as a harmonious distribution of functions between branches of administration, responsible for efficiency and management of local interests[10].

3. Decentralization in European Union countries

The administrative organization represents the institutional system through which the state exercises its power over the territory and the population of the administrative units. The division of the territory means the achievement of a division into administrative units, at the level of which, in a logic of subsidiarity, the local problems are managed, units that at the same time constitute points of diffusion of the state authority.

The public administration, currently based on the common belief in legality, in normative rules, has known three stages in the history of its legitimacy, stages that marked the evolution of the administrative organization of the states as follows. The first stage was that of the "gendarme state" in which legitimacy was based on the nature of power; this stage, which covers the entire 19th century, corresponds to the classical liberal conception of the state[11]. The public power of the state was based on the sovereignty transferred by the nation through election, so that. the state had to exercise its prerogatives in the fields of police, justice, diplomacy, without infringing on public and private liberties in the matter of property rights governing the economy.

The next stage is represented by that of the providential state in which the legitimacy of the administration is based on the nature of the aims pursued. At this stage, the concept of "public service" was established as the exclusive result of administrative action[12]. And the last stage was the stage of the ubiquitous state in which legitimacy is based on the methods used, after World War II, the diversity and scope of state interventions gaining new dimensions (planning, taxation, industrial policy, urbanism), and qualitative criteria evaluation began to prevail. The administration needs to demonstrate, on the one hand, the effectiveness of the methods of action and, on the other hand, to take into account the wishes of the citizens.

Depending on the characteristics of the political-administrative systems, the historical conditions, the cultural or linguistic specificities, the states have developed their own ways of organizing in the territory. There are classifications that divide states according to state structure into 3 categories such as unitary, federal, and confederal states. A classification of the states of the European Union that takes into account certain particularities, is that of Jacques Ziller [13] identified 4 categories of states:

1. United States such as Denmark, Greece, Finland, Ireland, Luxembourg, Sweden and the metropolitan part of France, the Netherlands, the United Kingdom and Portugal;

2. Federal states such as Austria, Belgium, Germany;

3. States with strong regional and community structures: Spain and Italy;

4. States integrated into a quasi-confederal ensemble as in the case of France, the Netherlands and the United Kingdom.

In this article I will present a state that belongs to each category so that we can easily make a comparative analysis of the forms of organization and administrative decentralization. First of all, in the case of unitary states, the political power, in the fullness of its attributions and functions, belongs to a sole holder who is the legal person of the state. All individuals placed under state sovereignty are subject to the same sole authority, live under the same constitutional regime and

[8] A. Iorgovan, *Treaty on Administrative Law*, vol. I, 4th ed., All Beck Publishing House, Bucharest, 2005, pp. 44-45.

[9] I. Nicola, *Local autonomy or centralism-critical look at the legislation*, Scientific Notebook no. 6/2004, "Paul Negulescu" Institute of Administrative Sciences, p. 283.

[10] I. Nicola, *Management of local public services*, All Beck Publishing House, Bucharest 2003, p. 44.

[11] V. Stanica, *Territorial Administrative Policies in Modern and Contemporary Romania*, Accent Publishing House, Cluj-Napoca, 2010, p. 52.

[12] R. Laufer, A. Burlaud, *Public Management. Management and Legitimacy*, Dalloz Publishing House, Paris, 1980, pp. 20-23.

[13] J. Ziller, *Administrations comparées, Les Systemes politico-administratifs de l'Europe des Douses*, Montcrestien Publishing House, Paris, 1993, p. 239.

are governed by the same law[14]. The unitary status is not incompatible with decentralization in favor of local authorities, but the autonomy of local authorities is limited, as the competence of local authorities is established by the central power, which then controls how they exercise it.

We will begin the analysis of the United Kingdom of Great Britain and Northern Ireland in which we find that it does not have a written Constitution. The Constitution consists of a set of customary rules and principles and a series of written texts, inaugurated by the Magna Carta in 1215. The fundamental constitutional principle is that of the sovereignty of Parliament, according to which it has the power to legislate for the entire territory of the UK (England, Wales, Northern Ireland and Scotland) and in any field, which demonstrates the unitary character of the state. But, by virtue of the same sovereignty, Parliament may legislate differently for certain parts of the territory and may also delegate a number of tasks to regional bodies, which gives specificity to the British model[15].

Thus, the unity of the British state, unlike other unitary states, is accompanied by the diversity of law, especially with regard to local governments as in the case of English law which differs considerably from Scottish law. Despite these regulations which would lead to the idea that the United Kingdom is a federal state, it remains a unitary state, but with a specific, particular configuration, because the powers of regional authorities are delegated by Parliament, by virtue of its sovereignty and can be withdrawn at any time as was the historic precedent of the Northern Ireland Semi-Autonomous Assembly which was suspended from February to June 2000.

Also, the British Parliament can legislate in any of the delegated areas, its law taking precedence over any other regulation. integrated into a quasi-confederal ensemble.

The next analysis will be on the federal system which presupposes the existence of a state which, although it appears as a single subject of public international law, consists of (federal) member states which retain part of their legislative power and a number of attributes of internal sovereignty. The federal states, unlike the local communities within the unitary system, have, through the federal constitution, their own competences in the legislative, executive and judicial fields. There are currently 3 federal states in the European Union: Austria, Belgium and the Federal Republic of Germany. Next I will analyze the German model to observe the differences in the administrative organization of a federal state.

Thus, the current German Constitution dates back to 1949 and was originally applied to the British, American and French-occupied Länder, with the exception of the Saarland which until 1957 was under French sovereignty. After 1957, the fundamental law was applied to the latter land, and since the fall of the Berlin Wall, it has been applied to the former R.D.G., the reunited Berlin becoming the capital of the country. The federal character of the state is guaranteed by the Basic Law. By virtue of art. 20 para. 1 of this Law, "Germany is a federal, democratic and social state", and according to art. 30 “The exercise of public powers and the fulfillment of state duties are the responsibility of the Länder”[16]. On the other hand, art. 31 establishes the pre-eminence of the federal state, in cases of concurrent competence, which means that the Basic Law establishes a competence common to both the federation and the Länder.

Germany had only one experience as a unitary state between 1933 and 1945, but this organization was an exception to the German tradition. According to art. 79 para. of the Basic Law, cannot be the subject of revision: the principle of the division of the federation into Länder, the participation of the Länder in the elaboration of the federal legislation and the essential content of the fundamental rights. In conclusion, we can say that German federalism has strong legal guarantees and is a structure unanimously accepted by the political class and the population [17].

The last category to be analyzed is the one represented by the states with strong regional and community structures. This type of organization is found in Italy and Spain and is considered a hybrid structure between the unitary state and the federal state. According to Phillipe Lauvaux, “The distinction between the regional state and the federal state is primarily of a legal nature. In the regional state there is only one constitutional order, that of the original central state and the constitution is the one that determines the status and attributions of the regional bodies, but, according to the federalist principle of distribution of legislative powers. On the contrary, the federal state possesses a duality of constitutional orders: the order of the federal state and the orders of the federated states”[18].

The Italian Republic was proclaimed a republic in 1946, and the following year the current Constitution was adopted and entered into force on 01.01.1948. The

[14] G. Burdeaux, *Droit Constitutionnel et institutions politiques*, 19th ed., LGDJ Publishing House, Paris, 1980, p. 54.
[15] V. Stănică, *Territorial Administrative Policies in Romania modern and contemporary*, Accent Publishing House, Cluj-Napoca, 2010, p. 60.
[16] Constitution of the Federal Republic of Germany, All Publishing House, Bucharest, 1998, art. 30.
[17] V. Stănică, *op.cit.*, p. 61.
[18] Ph. Lauvaux, *Les grandes democraties contemporaines*, PUF Publishing House, Paris, 1990, p. 134.

source of inspiration for the legal construction of the regional Italian state, which has as its constituent elements the central state and regions with varying degrees of autonomy, is found in the Spanish Constitution of 1931. Italy has a 3-level regional structure, regulated by the Constitution of December 27, 1947. According to art. 114, the Republic is divided into regions, provinces, 3 provinces with special status with the regime of local and common communities, with the status of local authorities. Art. 116 of the Constitution expressly recognizes the status of autonomy for 5 regions, while for the other 15 regions art. 131 establishes only a decentralization status[19]. The Italian Constitution devotes considerable space to regulating the regime of regions, provinces and communes and in this context, pays special attention to the issue of the distribution of powers between the state and regions, this being one of the most important and complex issues of the regional state.

The economic development of Italy in the 1960s amplified the disparities and also the dissensions between the industrialized North and the patriarchal South, fueling the federalist current. The creation of the regions aimed to reduce the separatist tendencies in the French-speaking or German-speaking border regions. The other regions, those with ordinary status, were created within the statistical regions by the Constituent Assembly, but their institutions did not come into being until 1970. The regions differ from local communities in that they exercise legislative power. This legislative competence has a special status, being determined by the specific status, given by the constitutional law. Ordinary regions have more limited status. The state exercises a constitutionality and legality control over the activity of the regions, the regional laws being targeted by the government commissioners in the region. Regions may develop agreements for joint programs with other communities and administrations. All these program agreements, whether within the competence of the mayor or the president of the province, must take effect by a decree of the president of the province, and then their execution is entrusted to a regional college chaired by the president of the region. In the referendum of October 7, 2001, Italy took an important step towards federalism. Thus, on the one hand, the regions with regular status can acquire special forms of autonomy, thus giving the possibility to standardize the regime of the two types of regions, and on the other hand, the regions have been recognized general legislative competence and financial autonomy.

4. Conclusions

Without representing a perfect organization system, the administrative decentralization proved to be optimal in all the states with developed democracy, and with a market economy, which makes us appreciate that it must be developed in the Romanian administrative system as well. Accelerating the decentralization process is considered one of the pillars of the public administration reform strategy, enshrined in the political programs of all governments, including that of the current government political program. It is important that after this article we can see that decentralization itself is not a goal, but a means to facilitate the approximation of the level at which decisions are made by the one who will bear the consequences, respectively the citizen.

In the current Romanian administrative system, what is absolutely necessary does not count in copying a model or designing a new one, but eliminating from the existing structures and system of relations those elements that affect the proper functioning of public services, the citizen-public administration relationship and which opposes the transfer of competence from the state to local authorities.

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[19] V. Stănică, *op. cit.*, p. 69.

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