

ASPECTS REGARDING THE REGULATION AND APPLICATION OF LOCAL AUTONOMY IN ROMANIA - PART I

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ABSTRACT: *This study aims to analyze local autonomy, as the fundamental principle of the administrative-territorial organization, in the light of doctrine, of the European Charter of Local Self-Government, in the light of the Romanian Constitution and the Romanian Administrative Code. The first part of this study presents some opinions of well-known authors related to the dimension of local autonomy, the international dimension of the principle regulated by the European Charter of Local Self-Government and the constitutional regulation of the principle in Romania. Local autonomy is considered as one of the most effective forms of administrative self-management, because offering the management of problems to local authorities, the expectations of citizens can be better answered.*

KEY WORDS: *local administrative authorities, administrative self-management, local needs, local interests, internal and international regulation, unitary state.*

JEL CLASIFICATION: K23.

1. LOCAL AUTONOMY IN DOCTRINE

Local autonomy is the fundamental principle of the administrative-territorial organization of a state and represents the recognized right of administrative-territorial units to fulfil their own interests, as they deem appropriate, abiding by the principle of legality and without the intervention of the central power (Apostol, 1991, p. 144; Ionescu, 1997, p. 70).

Local autonomy is considered in Romanian doctrine as one of the most effective forms of administrative self-management. It is the one that ensures a high degree of democracy to the territorial communities, changing them, by granting autonomy, into real counterpowers that prevent the abuse of the central government (Manda, 2001, pp. 307-320).

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Local autonomy becomes an important part of the way of organizing public power, and, just as the classic separation of public powers or the theory of relation between the political majority and the minority achieves a horizontal and material balancing of power, local autonomy also imposes, in turn, a vertical and territorial balance (Mabileau, 1994, pp.40-41).

In the doctrine, it was emphasized that local autonomy is justified by the following grounds: the ability of local bodies to satisfy local needs in a more appropriate way in conditions where a central official is prone to give a single and imperfect solution for all localities without taking into account of the differences between them that call for circumstantial solutions and the emergence of the responsibility of the bodies elected by the respective collective generating their mobilization to make all efforts to satisfy local interests (Lepădătescu, 1972, pp. 38-39).

As for the usefulness of local autonomy, a French professor succinctly points out that it can be seen in economic, political and sociological terms; thus, in the context of the current global economic crisis, the failure of nations for the benefit of local communities can be seen in political terms the existence of distinct centres of decision-making power both at the central and at the local level allows the opposition to play an important role at least at the local level, if not at the central level, and on a sociological level, through the management of problems by local authorities, the expectations of citizens can be better answered (Guerard, 2012, pp. 2-3).

2. LOCAL AUTONOMY IN EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

An essential aspect regarding the state's commitment to guaranteeing local autonomy that must be emphasized is that of international regulation. Through the constitutional guarantee of local autonomy, the state is irreversibly committed to complying with this principle, but at an exclusively internal level; the recognition of the international consecration of autonomy, represents an international commitment of the state.

Through the ratification of international treaties such as the European Charter of Local Self-Government¹ and the European Framework Convention on Cross-Border Cooperation of Territorial Communities or Authorities² - local autonomy and the relations between the state and local communities come out of the exclusive sphere of domestic law, becoming matter of cooperation and international regulation.

¹ Romania ratified the Charter of Local Self-Government through Law 199 of 1997 for the ratification of the European Charter of Local Self-Government, adopted in Strasbourg on October 15, 1985, published in the Official Gazette of Romania, Part I, nr. 331/26.11.1997.

² Romania ratified the European Framework Convention on Transboundary Cooperation of Territorial Communities or Authorities by Government Ordinance no. 120 of August 28, 1998 for the ratification by Romania of the European Framework Convention on Transboundary Cooperation of Territorial Communities or Authorities, adopted in Madrid on May 21, 1980, published in the Official Gazette of Romania, Part I, nr. 329/31.08.1998.

So that, from this moment, the territorial communities and their autonomy are no longer at the discretion of the absolute sovereignty of the states, ending up being protected and guaranteed at international level.

Article 3 of the European Charter of Local Autonomy establishes that "par autonomie locale, on entend le droit et la capacité effective pour les collectivités locales de régler et de gérer, dans le cadre de la loi, sous leur propre responsabilité et au profit de leurs population, an important part of public affairs". It follows that, in accordance with the text of the European Charter of Local Self-Government, by local autonomy is meant the right and effective capacity for local communities to solve and manage, within the law, under their own responsibility and in the interest of their populations, an important part of public affairs.

In exchange, the official translation from the annex to Law no. 199/1997, which ratifies the European Charter of Local Self-Government, has the following wording: local autonomy means the right and effective capacity of local public administration authorities to solve and manage within the law, in their own name and in the interest of the local population, an important part of public affairs.

In several specialized studies, attention was drawn to the wrong translation of the European Charter of Local Self-Government in the annex to Law 199 of 1997 by replacing the phrase "local communities" with the phrase "public administration authorities", the phrase "under own responsibility " with the phrase "in their own name", the expression "in the interest of their populations" with the expression "in the interest of the local population", expressions which, as can be easily seen, are not identical (Cornea, 2002, pp.58-64; Popescu, 1996, p. 62; Popescu, 1999, pp. 126-131; Stancu-Țipișca, 1996, pp. 94-95; Bălan, 2008, p. 102).

In these studies, it was considered that this aspect must be regarded as quite serious, because it determined an inaccurate definition of local autonomy, so that by Romanian law, local autonomy is not recognized by local communities, but by their administrative authorities, under the conditions in that the local public administration authorities cannot act in their own name, but in the name of the local communities that elected them, given that the unanimous opinion in European doctrine is that by "local community" should be understood the township, the department and the region, so the administrative-territorial units and not the bodies that exercise their right to local autonomy. This wording, criticized in the mentioned studies, is also maintained in the text of the Administrative Code, being taken from the old Local Public Administration Law no. 215/2001.

As for the interpretation of this Article 3 of the European Charter of Local Self-Government, a French specialist believes that local autonomy is a principle of management, rather than a principle of organization, because it is a principle that affirms the freedom of management and decision of local communities (Guerard, 2012, p. 2).

A more "plastic" opinion is formulated by two contemporary authors regarding local autonomy, arguing that "for the first time acknowledged at constitutional level in 1991, in Romania, local autonomy evolved describing an arch over time, reaching its peak phase in determining an independent legal institution", the same authors also emphasizing "the qualitative leap of the principle of administrative-territorial

decentralization through its metamorphosis into its modern version, namely local autonomy" (Manda & Manda, 2007, pp. 104-105, 139-140).

And in the foreign specialized literature, it was emphasized that the principle of local autonomy is not clearly different from that of administrative decentralization, as far as the content is concerned. Regarding this special connection between the two principles of administrative-territorial organization, the following opinions were expressed. Administrative decentralization represents a trend in the evolution of public administration in order to achieve local autonomy, specifying that the basis of decentralization is the idea of a certain local autonomy (de Labaudere, et al., 1996, p. 104). Local autonomy is a codified principle that gives expression to administrative decentralization and imposes its implementation with imperative power (Vida, 1994, p. 22).

3. LOCAL AUTONOMY IN IN THE ROMANIAN CONSTITUTION

Through the constitutional regulation of the principle of local autonomy, the local territorial communities see their existence, competences and means affirmed and guaranteed at the highest internal normative level, through this, the state understanding that at the constitutional level, they must make a firm commitment to the local territorial communities.

Thus, the state made them and acknowledged their existence, granted and acknowledged their autonomy, also guaranteeing them at the constitutional level that it will not back down and destroy local autonomy. Local autonomy, along with decentralization and devolution of public services, represents the principles that underpin the organization and functioning of local public administration.

The acknowledgement of the theoretical and practical value of the principle of local autonomy, its constitutional and legislative consecration as a fundamental principle of the organization and operation of local public administration, must be, at the same time, corroborated with the legal provision that states that its application, along with the other principles which govern the local public administration, must not affect the national, unitary and indivisible state character of Romania.

In this sense, we have in mind the characterization of the Romanian state, carried out by art. 1 of the Constitution, as a unitary national state, and the Administrative Code, which by para. (2) from art. 75 establishes the limits of the application of local autonomy, together with the other principles that govern local public administration and states that the application of the stated principles cannot affect the character of the national, sovereign, independent, unitary and indivisible state of Romania.

By this we understand that the Romanian state ensures the local public administration authorities the autonomy necessary to manage local affairs, but only to the extent that they are integrated into the legal order of the unitary state (Manda & Manda, 2007, p. 146).

Analysing certain decisions of the Constitutional Court³, in the doctrine, attention was drawn to the tendency to preserve a remarkable discretionary power in favour of the legislator, in the context of the analysis of the Romanian constitutional jurisprudence regarding local autonomy, despite art. 120 of the Constitution which enshrines the principle of autonomy (Tănăsescu, 2007, p.66)

Moreover, in the doctrine it was emphasized that the principle of local autonomy can only be correctly approached in the light of another principle, which is a supreme value protected and guaranteed at the constitutional level: the unity of the state (Vrabie & Bălan, 2004, p. 13).

There are opinions that consider that by organizing the Romanian public administration based on the constitutional principles of decentralization and local autonomy, the traditional concept of a simple unitary state is mitigated, without it being transformed into a complex unitary state, but into a decentralized unitary state (Manda & Manda, 2007, p. 85; Gârleșteanu, 2011, p. 92).

The terminology used by the Romanian legislator is also in accordance with the advanced legislation of some European countries and their doctrine, which states that local autonomy is an organizing principle of local public administration, which operates in a unitary state (de Laubadere, 1988, p. 231).

By enshrining in the constitutional text, the principle of local autonomy that regulates the activity of local public administration authorities, we have established a principle that takes into account the relations between public authorities.

It does not appear among the general principles, where the fundamental features of the state are regulated, resulting in the fact that the constitutional regulations inscribed in Title I - General Principles have a superior legal force to those in the other titles, from which it is clear once again that local autonomy cannot be interpreted and applied only within the framework of the characteristics of the Romanian state as a national, sovereign, independent, unitary and indivisible state.

As it was also shown in an article, the state imposes certain limits on local autonomy precisely in order to defend its unitary character, at the same time, however, the constitutional guarantee of local autonomy imposes certain limits even on the legislator, so that he cannot affect the autonomy to local communities by law except under restrictive conditions, i.e. only for reasons related to the general interest that cannot be satisfied by local means (Dănișor, 2011, pp. 17-19).

Also, from the interpretation of the constitutional text, we conclude that the insertion of the principles of local autonomy, decentralization and devolution of public services in the chapter on public administration shows that they have an exclusively administrative character.

Autonomous local administrative authorities and decentralized public services have only administrative, not legislative, governing or judicial powers, because only public administration is administratively decentralized, not legislation, justice or

³ Decisions of the Constitutional Court no. 136/2001, 647/2001, 112/2001, 123/2001, 195/2001, 181/2003, 477/2003, 322/2003, 566/2004, 298/2004, 155/2004, 760/2004, 523/2006, 586/2006.

governance - this being another proof of the seamless integration of local autonomy within the unitary state (Vrabie, 1997, pp. 60-61; Popescu, 1999, pp. 54-55).

Local autonomy exists and functions in the administrative sphere, within a unitary state, without questioning the unity of the legislature and the judicial system; however, it should not be mistakenly concluded that local autonomy has a technical, purely administrative character, because on the contrary, local autonomy is intimately linked to politics and democracy.

And this, due to the fact that local autonomy is not called to respond only to efficiency issues, the extremely important purpose of autonomy is revealed by its political dimension and its democratic value, being the one through which "local democracies" are created (Popescu, 1999, pp. 103-104).

Moreover, in the specialized literature, it was opined that local autonomy is the basic link of democracy, because it concerns the direct and most frequent relationship between the citizen and the state (Iorgovan, 1998, pp. 242).

In addition, the character of a unitary national state is maintained, in the case of the Romanian state being acknowledged only one type of central bodies, one Constitution, one legal system, and for the citizens - one citizenship, even if the existence of other subjects is also acknowledged of public law, vested with power of command over the population of a certain territory and having their own administrative authorities.

In this context, we emphasize that the character of a unitary national state, conferred on the Romanian state by the Constitution, is not affected by the recognition, at the same time, of the existence of administrative-territorial units.

It is obvious that the two notions do not exclude each other, precisely due to the legal nature of the administrative-territorial units, of being geographical sections of the territory of a unitary state made for the purpose of better administration of the interests of the citizens that compose it (Prélot & Boulouis, 1990, p.252).

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