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

MELINDA CENUŞE *

ABSTRACT*: The second part of this study continues to analyze local autonomy, as the fundamental principle of the administrative-territorial organization, in the light of the Romanian Administrative Code. Romanian administrative law has waited for almost 30 years the codification of major administrative law institutions and finally in 2019 the long-awaited Code has appeared. According to the Administrative Code, local autonomy is exercised by local public administration authorities and it is only administrative and financial, being exercised on the basis and within the limits provided by law. Local autonomy concerns the organization, functioning, competence and duties of local public administration authorities, as well as the management of resources that, according to the law, belong to the township, city, municipality or county, as the case may be. Local autonomy guarantees local public administration authorities the right, within the limits of the law, to take initiatives in all fields, except for those expressly given in the competence of other public authorities.*

KEY WORDS*: local communities, local administrative authorities, administrative self-management, local needs, local interests.*

JEL CLASIFICATION*: K23.*

1. LOCAL AUTONOMY IN THE ADMINISTRATIVE CODE

The content of the principle of local autonomy and its complex values result from the set of regulations included in the provisions of the Administrative Code and represent the essence of the entire activity of the public administration in the administrative-territorial units, found both in the activity of the Romanian local public administration and in the relations between the township, city and county authorities, as well as in the relations between them and the decentralized public administration authorities (Manda, 2001, p. 430). This statement is also supported by the formulation

* *Lecturer, Ph.D., University of Petrosani, Romania, melindacenuse@upet.ro*

of the constituent legislator in the 2nd section of Chapter V, entitled local public administration, which provides that public administration in administrative-territorial units is based on the principle of local autonomy, from which it follows that it includes township, city and county administration.

Currently, the Administrative Code defines local autonomy as representing the right and effective capacity of the local public administration authorities to solve and manage, on behalf and in the interest of the local communities at which level they are elected, public affairs, under the law. Along with this principle, of constitutional rank, the Administrative Code also enumerates the principle of citizens' consultation in solving local problems of special interest, the principle of eligibility of local public administration authorities, the principle of cooperation, the principle of responsibility, the principle of budgetary constraints.

In the opinion of some authors, however, local autonomy alleges in its notional sphere both the legal nature of the organization, functioning and relations between autonomous authorities, as well as the eligibility of local representative authorities and the consultation of citizens in solving local problems of particular interest, so that it is considered that it was no longer necessary that, in addition to the individualization of this principle of organization and functioning of the local public administration, the principles of the eligibility of local authorities and the consultation of citizens in local issues of special interest should also be provided (Popa, 1999, pp. 16-18).

As for us, we believe that these principles really derive from the principle of local autonomy, as well as from that of decentralization, but their existence and their distinct statement as independent principles in the Administrative Code benefits democracy, in general, and the efficient functioning of local public administration, in particular.

Instead, as an application of local autonomy we consider, along with other authors (Petrescu, 2009, p. 142), the right provided by the constitutional text to citizens belonging to national minorities, with a share of over 20% of the number of inhabitants of the administrative-territorial unit, specifies the Administrative Code in art. 94, to use the mother tongue in relations with local public administration authorities and decentralized services.

Although in some specialized studies the principle relating to the possibility of using the language of national minorities in relations with local public administration authorities and decentralized services is considered as an independent constitutional principle (Vedinaș, 2007, pp. 220-225), we consider that this does not emerge as a distinct principle but must be considered as an application of local autonomy.

As for the 20% percentage of the number of inhabitants of the administrative-territorial unit, established by the legislator, it corresponds to the international requirements imposed by the Document of the Copenhagen Meeting of the Conference for the Human Dimension of the OSCE of June 29, 1990 and the Framework Convention on the Protection of National Minorities, ratified by Law no. 33/1995[1].

[1] Law No. 33 of April 29, 1995 on the ratification of the Framework Convention for the Protection of National Minorities, concluded in Strasbourg on February 1, 1995, published in M. Of. of Romania, Part I, nr. 82 of 4 May 1995.Law No. 33 of 29 April 1995 on the

For our part, we consider that the percentage of 20% of the number of inhabitants of the administrative-territorial unit, established by the legislator, indeed in accordance with international regulations, is still not a satisfactory percentage, being too low. In order to strengthen the general regime of local autonomy, some specialists believe that the legal framework regarding the application of the principle of transparency and direct participation of the citizen in decision-making in the sphere of public administration should be strengthened, by making citizens' consultation by referendum permanent, as well as by regulating new effective models for the organization and operation of central and local public administration authorities, based on the principles of subsidiarity, decentralization, local autonomy and devolution (Manda & Manda, 2005, pp. 433-436).

According to the Administrative Code, local autonomy is exercised by local public administration authorities. Local autonomy is only administrative and financial, being exercised on the basis and within the limits provided by law. Local autonomy concerns the organization, functioning, competence and duties of local public administration authorities, as well as the management of resources that, according to the law, belong to the township, city, municipality or county, as the case may be. Local autonomy guarantees local public administration authorities the right, within the limits of the law, to take initiatives in all fields, except for those expressly given in the competence of other public authorities. The relations between the public administration authorities in townships, cities, municipalities and the public administration authorities at the county level are based on the principles of local autonomy, legality, cooperation, solidarity, equal treatment and responsibility.

In the relations between the local council and the mayor, the county council and the chairman of the county council, as well as between the public administration authorities in the townships, cities, municipalities and the public administration authorities at the county level, there are no subordination relationships; in the relations between them there are relations of collaboration.

In order to ensure local autonomy, the deliberative authorities of the local public administration have the right to institute and collect local taxes and charges, to approve the local budgets of the administrative-territorial units, under the law. The establishment, ascertainment, imposition, fiscal inspection, collection, follow-up and enforcement of a judgement, as well as the procedures for the administration of local budget claims are carried out under the law. The local public administration authorities manage or, as the case may be, dispose of the financial resources, as well as the public or private property of the administrative-territorial units, in accordance with the principle of local autonomy. Within the framework of the national economic policy, the administrative-territorial units have the right to their own financial resources, which the local public administration authorities establish, manage and use for the exercise of their competence and duties, under the law. The financial resources available to the local public administration authorities must be correlated with the competence and duties provided by law.

---

ratification of the Framework Convention for the Protection of National Minorities, done at Strasbourg on 1 February 1995, published in M. Of. of Romania, Part I, nr. 82 of 4 May 1995.

2. A COMPARATION BETWEEN THE ADMINISTRATIVE CODE AND THE FORMER LAW REGULATING LOCAL PUBLIC ADMINISTRATION

The Administrative Code repealed the former law regulating the organization and operation of local public administration, namely Law 215/2001. For historical reasons, we consider it appropriate to present some aspects of Law 215/2001 on local autonomy, since the Administrative Code did not bring radical changes, but on the contrary largely took the old text of Law 215/2001, so that a series of criticisms brought to Law 215/2001 are also valid in the case of the Administrative Code.

According to article 3 of the Local Public Administration Law, local autonomy meant the right and effective capacity of the local public administration authorities to solve and manage, on behalf and in the interest of the local communities they represent, public affairs, under the law.

We note that the current Administrative Code preserves at art. 5, lit. J, to a large extent the definition from the former Law of the local public administration which it repealed: local autonomy represents the right and the effective capacity of the local public administration authorities to solve and manage, on behalf and in the interest of the local communities at which level are elected, public affairs, under the law. As I pointed out in the first part of the paper, in the case of the translation of the European Charter of Local Self-Government in the annex to Law 199 of 1997, in the doctrine criticisms were made of the definition in the Law of Local Public Administration, arguing that it did not contain a clear definition of the concept of local autonomy and emphasizing that there were inadvertences in the text of the law.

Thus, it was shown that local autonomy represented a right of the local community, as a legal person under public law and not of the authorities at its level, as provided by the law, which only exercises this right in the name and interest of the community (Bălan, 2008, p. 102, Cornea, 2002, pp. 58-59). It was also considered that the use of the phrase "effective capacity of the local public administration authorities" was inaccurate because in reality it was about the competence of these authorities to act in the interest of the administrative-territorial units (Trăilescu, 2002, p. 8).

In the same direction, another author considers that the part of the definition given by the legislator to local autonomy, which refers to "the right and the effective capacity of local public administration authorities" are concepts taken from the European Charter of local autonomy, but whose meaning cannot be separated from the content of the law, which gives them a vague and imprecise character. Thus, if a European or international document may contain less precise terms, an internal law should be more precise in its expression, in order to be obeyed and properly applied by the authorities that fall under its jurisdiction (Popa, 1999, p. 17).

The criticism just stated is considered, in the most extensive commentary of the constitutional text, to be exaggerated, given the fact that both the content of the right and the dimensions of the effective capacity are derived from the legal regime of local autonomy, from the duties conferred by the legislator to the autonomous authorities, from the relationship between these authorities and others placed at the central or local level (Muraru, et al., 2008, p. 1162).

Moreover, the competence transferred to the local authorities must be effective in order to allow them a real self-administration, stating the idea that this effective character can only be judged punctually by the Constitutional Court (Gârlesteanu, 2011, p. 91). The opinion was also expressed that the legal text should distinguish between the right and the effective capacity of local authorities in exercising the powers that make up autonomy (Popa, 1999, p. 47).

At the same time, local autonomy is exercised on the basis and within the limits provided by the law, from which it follows that the principle of legality is closely connected with the principle of local autonomy, which can only be manifested within the framework and under the conditions provided by the law. Autonomy is exercised by local councils and mayors, as well as by county councils and their chairmen, local public administration authorities elected by universal, equal, direct, secret and freely expressed vote.

Although local autonomy presumes a complex of exclusive duties, acknowledged in favour of local representative authorities, which allow them to promote, to the exclusion of other interferences, the interests of the members of the respective collectives, it must be specified that local autonomy does not automatically give local authorities the right to solve absolutely by themselves any problem of the local communities, thus there are certain areas in which the limitation of local power by the central authorities is manifested, and this is natural and derives from ensuring respect for the duties of the sovereign state.

Firstly, their competence cannot go beyond the status of the administrative-territorial unit, and secondly, the prefect's duties must also be taken into account, in his capacity as head of the decentralized public services of the ministries and other central public administration bodies in administrative-territorial units, as well as those regarding the performance of legality control over the documents of the local public administration authorities. This means that at the level of administrative-territorial units, state services also operate, apart from local ones, in order to solve certain types of problems, and also, the services at the level of administrative-territorial units must carry out their activity within the limits and in the conditions of the law, because local autonomy in a unitary state is granted by the sovereign power, which sets certain limits, which means that they are subject to judicial supervision and control of legality, i.e. administrative guardianship control (Manda & Manda, 2007, pp. 145-146). In other words, local autonomy does not mean sovereignty or independence, because local autonomous territorial communities are not independent or outside the state. The state's sovereignty is complete and also extends to the local territorial communities. Based on its sovereignty, the state is the one who decides which of the public interests remain in its competence and which pass to the competence of local territorial communities.

This administrative tutelage exists only in the relations between the state and the local territorial communities, by no means between the local territorial communities. The local public administration authorities at the intermediate level cannot exercise any kind of guardianship over the local public administration authorities at the basic level. As for the role of the prefect and the legality control exercised by him over the acts of local public administration authorities, these are aspects that will be exposed in another work.

3. CONCLUSIONS

According to the current Administrative Code, local autonomy is only administrative and financial. We believe that this clarification wants to eliminate any tendency to implement autonomy on other criteria, for example on political, ethnic or linguistic criteria. At the same time, this regulation brings to the fore a very important aspect of local autonomy, namely financial autonomy.

The importance that must be given to the concept of financial autonomy and the provision of financial resources simultaneously with the transfer of competences to local public administration authorities can also be seen from the analysis of a decision of the Constitutional Court (Decision 1/10.01.2014, published in the Official Gazette of Romania, nr. 123/19.02.2014).

In the argumentation regarding the admission of the objection of unconstitutionality regarding a draft law regarding the establishment of some measures to decentralize some powers exercised by some ministries and specialized bodies of the central public administration, as well as some reform measures regarding the public administration for which the Government had assumed responsibility before the Parliament, the Court emphasized that a law whose regulatory object is the decentralization of certain powers exercised by ministries and specialized bodies of the central public administration must also provide for a transfer of financial competence from the level of the central public administration to the level of the administration local public, so that the new structures can support their activity from a financial point of view.

As such, the Court admitted the objection of unconstitutionality because, along with other criticisms of unconstitutionality, the said law does not provide sufficient financial resources necessary for the proper realization of decentralized competences. We believe that the above-mentioned Decision of the Constitutional Court is crucial in the sphere of discussions regarding the importance of financial autonomy and the decentralization of certain powers, because it clearly cuts through the issue of the impossibility of ensuring sufficient financial resources necessary for the realization in good conditions of the powers transferred to local authorities, in the sense that they can transferre competences to local authorities only as long as the financial resources necessary to fulfil these competences are ensured.

The importance of this economic and financial basis of local autonomy was also emphasized in specialized literature, stating that financial autonomy is the backbone of any local autonomy (Popa, 1999, p. 91.).

Moreover, some authors argue that, given that the current Constitution of Romania is bald in terms of local autonomy, financial autonomy should be guaranteed in a future constitutional review, including by expressly specifying in the constitutional text that any transfer of powers from the central authorities to the administrative-territorial units must be accompanied by the allocation of resources equivalent to those that were devoted to their exercise by the central public administration authorities (Dănişor, 2011, p. 27).

Securing revenues to the local budget is an essential aspect in order to be able to cover the necessary expenses required by the efficient management of the problems

of local communities, but also to grant local authorities the independence they need. Obviously, in practice we have rich and poor administrative-territorial units. The state must take measures to protect administrative-territorial units with a more difficult situation from a financial point of view by establishing financial equalization procedures, but the matter is delicate because these measures must not arouse feelings of frustration among units with rich resources and which pour considerable resources into the state budget, but receive back less than they sent.

At the same time, however, it must be borne in mind that, in the event that local financial resources are not independent from the state budget and continue to depend exclusively on it, and financial independence remains only a desire that has not materialized in practice, then, the administrative autonomy of communes, cities and counties cannot produce the expected results and is limited, in some situations even inapplicable.

In the context of these discussions regarding the importance of financial autonomy, we cannot fail to mention the concept of insolvency of administrative-territorial units, given that we must admit that, in the post-December period, several administrative-territorial units faced financial difficulties, some reaching the situation of having debts that exceeded 50% of the budget of the administrative-territorial unit. This was one of the reasons why the Government's Emergency Ordinance no. 46/2013 regarding the financial crisis and the insolvency of administrative-territorial units[2] (6) and the methodological rules for the application of procedures regarding the reporting of financial crisis situations, respectively the insolvency of administrative-territorial units[3]. We show in the table below the situation of territorial administrative units that entered insolvency after the appearance of the above-mentioned Ordinance.

Table 1. Situation of Romanian insolvent territorial administrative units of the last 10 years

No.	Administrative territorial unit Name	Opening date for insolvency proceedings	No. Court decision opening/ closing insolvency proceedings	Date of closing the insolvency proceeding	The total expenses of the general budget of the UAT	The amount of payment obligations older than 120 days	The weight of payment obligations in the total expenditure of the UAT gender budget (7/6*100[4])
1.	CALINESTI OAS Jud. Satu-Mare	20.08.2015	Sentinta civila 533/2019/F	11.12.2019	5.316.000	11.044.045	**207 %**

[2] Published in the Official Gazette of Romania, Part I, nr. 299 din 24 mai 2013.

[3] Order of the Ministry of Public Finance nr. 821/2.247/2013 on the approval of the Methodological Norms for the application of procedures for reporting financial crisis situations of administrative-territorial units, as well as for the approval of the Methodological Norms for the application of procedures for reporting insolvency situations of administrative-territorial units, published in the Official Journal of Romania, Part I, no. 410 of 8 July 2013.

[4] THE WEIGHT of payment obligations in the total expenses of the general budget of UAT = Value of payment obligations older than 120 days/ Total expenses of the general budget of UAT x 100

2.	ARDEIA SU DE JOS Jud. Vrancea	28.12.2016	Sentinta civila 194/2017	18.05.2017	11.232.100	78.620.	**0,69%**
3.	ARDEO ANI Jud. Bacău	10.01.2014	Sentinta civila 162/2018	14.03.2018	1.978.600	5.314.084	**268,58%**
4.	NALBA NT Jud. Tulcea	31.01.2014	Sentinta civila 1276/2015	27.08.2015	3.872.000	39.014.873	**1.007,62%**
5.	ANINOA SA Jud. Hunedoar a	17.06.2013	Sentinta civila 918/2014	24.10.2014	4.297.650	3.377.629	**78,59%**
6.	NARUJA Jud. Vrancea	25.02.2014	Sentinta civila 533/2019/F	11.12.2014	1.667.300	1.505.931	**90,32%**

Details related to territorial administrative units entered into insolvency can be found in previous studies published by the author (Cenuşe, 2013, pp. 45-50; Cenuşe, 2019, pp. 5-14, pp. 31-38).

Considering all these, we believe that in practice it is very important that financial autonomy does not remain just a theoretical principle, but has a strong support, because the lack of material resources at the local level actually limits the freedom to decide in favour of the community, and the attributions of the local public administration authorities to be correlated with the financial resources at their disposal is very important and we believe that it should represent the quintessence of financial autonomy. Therefore, the financial component of local autonomy is an essential aspect in the effective application of local autonomy. That is why we maintain that the state has the duty, in the conditions in which it has raised local autonomy to constitutional rank, to create by means of the law a balanced financial system through which to offer the administrative-territorial units, the possibility for them to be independent from the point of view financially to be able to successfully fulfil their duties.

Some authors are of the opinion that the state has the obligation not to excessively centralize financial resources, because this variant by which the state takes over all financial resources and then redistributes them to the territorial units is a process that can be criticized due to the tendency to redistribute financial resources unfairly through a process corseted by political pressure (Dănişor, 2011, p. 20, Iohannis, 2003, pp. 89-91).

For his part, another author goes even further and states that the Romanian reality only presents us with samples of "decentralized" administrative structures, which, in reality, are completely dependent on the state, from a financial point of view, from the point of view of influences political and commandments coming from the centre, so that, although there is a relatively cohesive legislative framework from which decentralization and local autonomy should naturally flow, the two processes are still deficient (Lazar, 2014, p. 234).

For our part, related to the method of distributing financial resources to the territorial units, we have already stated some suggestions and proposals in a previous

work (Cenușe, 2014, pp. 13-18). In this paper we make tangible proposals to reach a real financial independence of the administrative-territorial units by enunciating concrete measures in order to strengthen the independence of the administrative-territorial units through their own efforts and by removing political influence from the circuit of financial resources from the state budget to local budgets.

However, this idea regarding the strengthening of the financial autonomy of the administrative-territorial units is not a new one, thus the French have emphasized for a long time that financial decentralization plays an essential role in the decentralization process because only an increase in the resources of the territorial units can attract a real decentralization at the level of administrative-territorial units (Frege, 1991, pp. 116-117).

REFERENCES:

[1]. Apostol Tofan, D. (1991) *Probleme actuale ale descentralizării administrative (I), Studii de drept românesc,* nr. 3-4

[2]. Bantuş, A. (2014) *Subsidiaritatea – principiu de bază al descentralizării*, Teoria și practica administrării publice, Materiale ale conferinţei ştiinţifico-practice cu participare internaţională 23 mai, Chișinău

[3]. Bantuş, A. (2016) *Originea şi noţiunea principiului de subsidiaritate*, Administrarea publică, nr. 3

[4]. Bălan, E. (2008) *Instituţii administrative*, Editura C.H. Beck, Bucureşti

[5]. Cenuşe, M. (2013) *Romanian Administrative-Territorial Units in Financial Crisis*, Annals of the University of Petroşani - Economics, 13(1), pp. 49-54

[6]. Cenuşe, M. (2013) *General Considerations Concerning the Opening of Insolvency Proceedings of the Administrative-Territorial Units of Romania*, Annals of the University of Petroşani - Economics, 13(1), pp. 51-56

[7]. Cenuşe, M. (2014) S*ome considerations regarding the financial Autonomy of the Romanian administrativeterritorial units*, Annals of the University of Petroşani - Economics, 14(2), pp. 13-18

[8]. Cenuşe, M. (2019) *Theoretical and Practical Considerations Regarding the Insolvency of the Administrative-Territorial Unit Aninoasa – Part I,* Annals of the University of Petroşani - Economics, 19(1), pp. 31-38

[9]. Cenuşe, M. (2019) *Theoretical and Practical Considerations Regarding the Insolvency of the Administrative-Territorial Unit Aninoasa – Part II,* Annals of the University of Petroşani - Economics, 19(2), pp. 5-14

[10]. Civitillo, R. (2019) *Il dissesto finanziario degli enti locali. Profili economico-aziendali*, Ed. FrancoAngeli, Milano, Italia

[11]. Cornea, Gh. (2002) *Discuţii şi aprecieri critice în legătură cu principiul autonomiei locale în România*, Dreptul, nr. 10

[12]. Dănişor, D.C. (2011) *Reorganizarea administrativă a României - o diversiune reuşită (The administrative reorganisation of Romania – creating a succesfull diversion)*, Pandectele Române, no. 7

[13]. Frege, X. (1991) *Descentralizarea*, (traducere), Editura Humanitas, Bucureşti

[14]. Gîrleşteanu, G. (2011) *Organizarea generală a administraţiei*, Editura Universul juridic, Bucureşti

[15]. Iohannis, K.W. (2003*) Autonomie locală sau centralism?*, Revista de drept public, nr. 4

[16]. Iorgovan, A. (1998) *Odiseea elaborării Constituţiei*, Editura Uniunii Vatra Românească, Târgu-Mureş
[17]. Lazăr, I. (2014) *Democraţia locală în România – evoluţie, context şi perspective*, Revista de Ştiinţe Juridice, 25(1)
[18]. Manda, C. (2001) *Drept administrativ. Tratat elementar*, Ed. Lumina Lex, Bucureşti
[19]. Manda, C.; Manda C.C. (2007) *Dreptul colectivităţilor locale*, ed. a III-a, Editura Universul Juridic, Bucureşti
[20]. Muraru, I.; Tănăsescu, E.S. (coord.) (2008) *Constituţia României: comentariu pe articole*, Editura C.H. Beck, Bucureşti
[21]. Niță, D. (2012) *Methods of managing touristic investments made by local public administrations*, Annals of the University of Craiova, vol. 3, Economic Sciences Series, pp.141-146
[22]. Petrescu, R.N. (2009) *Drept administrativ*, Editura Hamangiu, Bucureşti
[23]. Popa, E. (1999) *Autonomia locală în România*, Editura All Beck, Bucureşti
[24]. Popescu, C.L. (1999) *Autonomia locală şi integrarea europeană*, Editura All Beck, Bucureşti
[25]. Tănăsescu, E.S. (2007) *Rolul judecătorului constituţional în protecţia autonomiei locale în România*, Analele Universităţii din Bucureşti, Drept, nr. II
[26]. Trăilescu, A. (2002) *Actele administraţiei publice locale*, Editura All Beck, Bucureşti
[27]. Vedinaş, V. (2020) *Drept administrativ*, ediţia a XII-a, Editura Universul juridic, Bucureşti