SPECIFIC ELEMENTS OF ADMINISTRATIVE DECENTRALIZATION

Irina Adriana BILOUSEAC

DOI: https://doi.org/10.18662/eljpa/2015.0202.01

European Journal of Law and Public Administration, 2015, Volume 2, Issue 2, pp. 5-13

Published by:
Lumen Publishing House

On behalf of:
Stefan cel Mare University from Suceava, Faculty of Economics and Public Administration, Department of Law and Public Administration
SPECIFIC ELEMENTS OF ADMINISTRATIVE DECENTRALIZATION

Irina Adriana BILOUSEAC¹

Abstract

The aim of this article is to examine the specific manifestation conditions to administrative decentralization. What we propose is just to highlight certain elements that when are identified, it let us now if we are or not in the presence of administrative decentralization. The manifestation of the decentralization principle in local management or local government, is based on certain conditions, such as the existence of a local collectivity that administrated itself, it endorse their own businesses, their own local authorities eligibility, etc., aspects that we want to highlight.

Keywords: administrative decentralization, local autonomy, local community.

JEL Classification: H83.

¹ Associate Professor PhD, „Stefan cel Mare” University, Suceava, Romania, irinab@seap.usv.ro.
1. INTRODUCTION

After 1990, the Romanian government has been in a continuous process of change, being organized and based on certain principles, among which we can mention the fundamental principle of decentralization. In accordance with Article 2 of Law no. 215/2001 on local public administration, public administration in territorial administrative units is organized and operates under decentralization, local autonomy, devolution of public services, and eligibility of local public administration authorities, legality and consultation of citizens, in solving local problems of special interest, which are also partially principles of constitutional rank. Administrative decentralization assumes that local authorities are best placed to meet collective needs, knowing best their problems at the closest level to the citizens and can adopt the best solutions to local problems.

2. THE CONCEPT OF DEVOLUTION. THE RELATIONSHIP BETWEEN DECENTRALIZATION AND LOCAL AUTONOMY

For a better understand of the relationship between decentralization and local autonomy we try to define the two concepts.

The decentralization of public administration is a legal regime in which problems solving is done by local government, which enjoys such broad autonomy in decision making and in the management of the budget. Under this administrative regime, we recognize the legal existence of local communities, with their own financial autonomy and their own organs which enable them to ensure proper management of local issues. In general, by applying decentralization of authorities efficiency increases through their ability to be closer to local needs.

Local autonomy is the fundamental governing principle and, also, underpins the development of local government, being an element of “democratic principles, common to all Member States of the Council of Europe” by regulating its legal and practical implementation, makes it decentralization of power possible. Vida I. believe that local autonomy is a modern form of expression of the principle of administrative decentralization.

When we talk about administrative decentralization, we are referring to territorial decentralization, which assumes that the territory is divided into administrative units that enjoy independence from central authority. In this sense, of territorial decentralization, most often, the two concepts of decentralization and

---

2 The Romanian Constitution, art. 20 and the Romanian Parliament, Law no. 215/2001 on local public administration, art. 2 para. 1.
3 Stein, K., Purwo, S., Surviving decentralisation? Impacts of regional autonomy on health service provision in Indonesia, Health Policy No. 77, 2006, p. 251.
autonomy are used together, the idea of decentralization involving local autonomy idea.  

Therefore, we can say that between the principle of administrative decentralization and the local territorial autonomy there is no difference of content, “decentralization is a trend in the evolution of public administration to achieve local autonomy, decentralization being based on the idea of a certain local autonomy”.

3. ELEMENTS OF ADMINISTRATIVE DECENTRALIZATION

We believe that the administrative decentralization process, certain requirements must always be met, whose existence guarantees its functionality, such as: local government is organized and functions at the level of administrative-territorial units of Romania, and performs its tasks by their own created local services, having its own material and financial resources, and there is a plenitude of the powers of local authorities in solving local problems etc.

a) The existence of a territorial local authority, that have specific interests and requirements to the interests of the national community.

The state is not the only local authority recognized, so administrative decentralization based on local autonomy implies the existence of local authorities, constituted in the administrative units. As far as we are concerned, we share the view of Professor Gheorghe Cornea that considers that by phrase “local authority”, European doctrine envisages administrative territorial units and not the authorities exercising their right to local autonomy. In support of this idea, we mention some European constitutions previsions that by this term, means town (rural or urban). We can say that a local collectivity represents all residents of a territorial administrative unit.

Local territorial collectivity are moral persons of public law, with their own needs and public interests that are related to their respective community and are distinct from the general needs of the state.

We believe that the state cannot solve with available resources, under conditions of efficiency and effectiveness, all of those needs and interests. To solve this in a timely and efficient manner, the state decides which issues are within the competence of state and public services and which will come within

the remit of local authorities (such as water supply, heating, public lighting, sanitation, local public transport etc.).

**b) Recognition of legal personality and of accountability of local authorities in solving local problems**

To be in the presence of administrative decentralization, based on local autonomy, is necessary that their local problems to be solved by those authorities, which acknowledged legal status. Local authorities should have their own administrative authorities to satisfy public interests, and the material, financial and human resources that are available to them and that have to be managed. The territorial units are legal persons of public law with full legal capacity.

In this context, the principle of local autonomy is not only a theoretical concept and has no abstract content. He has a material support, which is expressed through concrete practical actions.

Recognition of legal personality and accountability of local authorities in solving local problems, lies with the legislature, which by law establishes their powers, local government authorities exercising, under the law, exclusive competences, shared and delegated powers.

**c) the existence of own material and financial resources, available to local authorities.**

The administrative territorial units must have their own assets and financial resources, necessary to conduct the decentralization process. As mentioned in the literature, the autonomy in the management of local government can genuine work and local needs can be served as far as local authorities have:

- *material resources* belonging to administrative-territorial units;
- *own financial resources*, sufficient to cover planned expenditures\(^\text{10}\).

Article 3 of the European Charter of Local Self-Government, defines the concept of local autonomy as follow: Local self-government denotes the right and effective capacity for local authorities to regulate and manage, within the law, on their own responsibility and in population’s profit, an important part of public affairs.\(^\text{11}\)

European Charter by the concept of “right and effective capacity” of local collectivity expresses the idea that just theoretical granting local autonomy and assigning it is not enough, it is necessary material and financial resources in


order to achieve those conferred rights and capacities. Otherwise, local autonomy without the existence of a material base and without the possibility to freely set this, remains a purely theoretical only level.

Local authorities have at their disposal through ownership or management, heritage (land, buildings, equipment and miscellaneous, etc.) and resources and constituted public or private, and with which solve problems. We emphasize that these issues are distinct from those of the state. Moreover, the existence of local autonomy without material foundation and without the freedom to administer according to their needs would be only theoretical affirmation of the principle without content and without relevance to the practical actions.\(^\text{12}\)

In addition, local authorities are legal issues of tax law. To being in the presence of administrative decentralization, local authorities have the right to establish and collect local taxes, to develop and approve local budgets of administrative territorial units that governs the law.

d) Local authority’s eligibility

Another condition for being in the presence of administrative decentralization refers to the election of local authorities. Naturally, solving local problems that interests the village, the city or county should be in the competence of public authorities and officials elected by the electorate. Exercising the right of local autonomy belongs only to the authorities elected by universal, equal, direct, secret and freely expressed autonomous local government, namely the mayor, city council, county council, county council chairman.\(^\text{13}\)

Romanian Constitution provides that “Public administration authorities through which local autonomy in communes and towns, are local councils and Mayors elected, in accordance with the law. Local Councils and Mayors, under the law, act as autonomous administrative authorities and manage public affairs in villages and towns”.

The local council is a collegial authority of local government, chosen to address local problems of the village, town or city.

Mayor fulfils a public authority. He is the head of the local government and the own specialty apparatus of the local public administration, which he guides and controls.

Art. 122 of the Constitution defines the County Council, as public administration authority coordinating the activity of commune and town councils, to achieve county public services.

The president and vice presidents represent executive county council.

---


Administrative decentralization is organized system, which requires that local authorities to be representatives of local and not a state representative placed at the head of the community. Therefore, governing bodies must be local and autonomy from the central organs of public administration must exist.\(^{14}\)

Local authorities, to which local community will entrust the management of its public affairs, are those who deal with specific problems.\(^{15}\)

We believe that in order to talk of decentralization is necessary that local authorities to be local representatives. The representative authorities will be designated by universal suffrage after free elections held in administrative-territorial units. Therefore, representative authorities' power comes not from the centre but from the local electoral body, through elections.

In this mean scope, it is necessary to establish distinct functions for elected authorities, so that they can decide for themselves in solving local problems. For prompt settlement of local affairs it is necessary that the public authorities to have a responsibility to give them autonomy from the central organs of public administration.

But independent character of these authorities should not be understood as their work is entirely independent of state activity. Local activities constituted through free elections, which must be within the legal order of the state, should be recognized by ensuring harmonization of interests of local administrative units with the general interests of the national community.

**e) Overseeing the work of the local authority by the executive authorities (administrative guardianship existence).**

The Constitution stipulates that public administration in territorial administrative units are based on the principle of “local autonomy”, so on subordination absence of these authorities to the local authorities, so on the absence of subordination relations between central and local authorities. Central public administration authorities have the power to amend or suspend a document issued by the local authorities.\(^{16}\)

Along with other authors, we believe that decentralization cannot be conceived without the existence of a way to watch the manner in which local authorities operate. The control exercised by central government on local public administration authorities is indispensable to the proper functioning of local government.


Local autonomy does not mean a local law\textsuperscript{17} to govern alone in any problems and does not involve the independence of local authorities to the central authorities of executive power. “Local communities are material and legal integrated (territorial) in sovereign state, which ensures their autonomy to manage their specific affairs, but only to the extent that it fits into the legal order of the state”\textsuperscript{18}. Area of influence of local autonomy does not admit intervention of state administration, leaving only place for a review of the legality of local government acts, and their compliance with constitutional principles.

Traditional named “guardianship control”, it can be exercised by officials or state administration authorities, as in France and Italy, as by judges, as in the UK\textsuperscript{19}. Administrative guardianship means control (within limits) from the government on the local that operates in a decentralized manner.

In other words, autonomy does not mean independence of local government bodies to the central bodies, hence based on the need of review that we conducted public authorities of executive power on local government. Administrative Guardianship is an institution of public law under which a central authority of government has the right to control local authorities, organized on the principle of decentralization.

Local authorities are politically accountable to those who elected them, but also to the state law. This requires the exercise of state control (administrative guardianship) over legality of autonomous local authorities. Administrative Guardianship is exercised, unlike hierarchical control, only in cases expressly provided by law, only by the organs indicated by law and only regards the legality of administrative acts and not their opportunity. Constitutional provisions stresses that only “Prefect may challenge, in the administrative court, an act of the County Council, of a Local Council or of the mayor, if he deems it unlawful”.

The state has not only the right but also the duty to exercise control over the decentralized authorities, this particular one control, compatible with the principle of autonomy of elected public\textsuperscript{20}.

From those enumerated, it follows that, although local autonomy state administration does not admit, intervention is needed, however, there is a review of the legality of acts issued by representative authorities of local communities, and their compliance with constitutional principles. Local autonomy must fall within certain limits determined by law. Therefore, administrative decentralization cannot be conceived in unitary states without the existence of a state control known in Romanian doctrine as the administrative guardianship.

\textsuperscript{17} Nemţoi Gabriela, ”Drept constituţional şi instituţii publice: note de curs”, Editura Didactică şi Pedagogică, ISBN 978-973-30-3532-9, Bucureşti, 2013, p. 143
\textsuperscript{18} Grădinaru, G., N., \textit{op.cit.}, p. 20.
4. CONCLUSIONS

At the basis of local government functioning are decentralization and local autonomy the principles, which ensures smooth running of local activities. Territorial decentralization implies the existence of local autonomy, therefore it can be said that decentralization is a system of administrative organization, and local autonomy is a right of local communities, split and resulting precisely from the principle of decentralization.

In light of this article, we can conclude that in Romania, the requirements are met, and we are able to say that we are in the presence of administrative decentralization. Amid the above, we insist that only by giving recognition to the right of local self-managed, by applying the decentralization and devolution principles, will contribute to enhancing the welfare of community members by offering efficient public services and effective use of own resources to solve local public affairs.²¹

REFERENCES

Stein, K., Purwo, S., Surviving decentralisation? Impacts of regional autonomy on health service provision in Indonesia, Health Policy No. 77, 2006.


