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OF LOCAL TERRITORIAL COLLECTIVITIES

*Irina BILOUSEAC*

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# FUNDAMENTAL PRINCIPLES APPLIED IN THE RIGHT OF LOCAL TERRITORIAL COLLECTIVITIES

Irina BILOUSEAC <sup>1</sup>

## Abstract

*In the present context, the governance of local territorial collectivities based on fundamental principles is an indispensable attribute of democracy. The article deals with the application of fundamental principles in the organization and functioning of local territorial collectives in Romania. When we talk about fundamental principles, we have in mind the principles of local autonomy, decentralization of public services, subsidiarity, legality, consultation of citizens in local issues of particular interest.*

*At present, these principles are governed by the Constitution of Romania, but are also developed by specific regulations, thus giving up a hierarchical and unified administrative structure and granting some autonomy to local authorities who will have the right to exercise their powers in issues related to the local community. The principles referred to are called to ensure the proper functioning of local communities, their dynamic development in economic, social, cultural environment.*

*Analyzing the evolution of the European and world governance in the last few years, it is noticed that a certain tendency of organizing and functioning of the local territorial collectivities has emerged on the basis of these fundamental principles, the collectivities being assigned, through the local or county authorities, prerogatives, accompanied by financial resources to better solve the problems faced by people in local communities and implicitly to provide them with performing services.*

## Keywords:

*Local territorial collectivities, local autonomy, decentralization of public services, subsidiarity, legality*

**JEL classification:** H79, H83

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<sup>1</sup> Associate Professor PhD, "Ștefan cel Mare" University of Suceava, Faculty of Law and Administrative Sciences, Suceava, Romania, [irina.bilouseac@fdsa.usv.ro](mailto:irina.bilouseac@fdsa.usv.ro)

## **I. Introduction**

The issue of the way of governance of the local territorial collectivities has special significance, it is necessary to apply fundamental principles of local autonomy, decentralization of the public services, subsidiarity, legality, consultation of the citizens in the local issues of special interest etc., on the basis of which their functioning is organized.

The public administration in any state will not be able to solve the tasks assigned to it only from the central administrative bodies; they will have to be shared with the local authorities, which have autonomy in the management of public affairs.

The principles of organization and functioning of a local territorial community have a special role in "configuring the organizational and functional structure" of the territorial administrative units, as well as in fulfilling the tasks of the local public administration, which is why a number of these principles were and are regulated at the constitutional level.

At present, the Constitution of Romania, through Article 120, stipulates three principles on which the local public administration is based: the principle of decentralization, the principle of local autonomy and the principle of deconcentration of public services, the latter being inserted after the 2003 revision, in accordance with the provisions of the legislation of the EU countries.

The principles of local public administration are also regulated by Law 215/2001 on local public administration, which stipulates in Article 2 that the public administration in the administrative-territorial units is organized and functions according to the principles of local autonomy, the decentralization of public services, the deconcentration of services publicity, eligibility and consultation of citizens in solving issues of particular interest, in this respect being noted that there are supplementary principles besides the principles found in the fundamental law. These are complemented by other fundamental principles, such as subsidiarity, legality.

## **II. Administration of the local territorial collectivities**

The principles referred to above, applied correctly, are in a position to ensure the proper functioning of a local territorial community. Also, the stated principles lead to respect for the rights and freedoms of the inhabitants of a particular community, bringing government to the closest level to the citizen.

## Fundamental principles...

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In the specialized literature, the unanimous opinion is that of the dual nature of the local collectivities, that of the decentralized collectivity and of the territorial constituency of the state [3: p.3].

However, when we speak of *local territorial collectivities*, we refer to the citizens, the population from an administrative - territorial unit, which has a distinct administrative legal organization and local public interests [4:33]. For a public administration to be effective, it has to settle its tasks locally within each local community as close as possible to the citizen.

Local territorial collectivities are public legal entities, having distinct interests that are specific to the respective collectivity and are different from the general needs of the state.

In order to be able to talk about the application of principles to the local territorial communities, a first condition is the existence of a local territorial community with specific interests and requirements in relation to central interests.

The application of these principles requires the existence of local communities, established in the administrative-territorial units of the state. In order to solve all needs as efficiently as possible, the state decides which issues are within the competence of the center and which will fall within the competence of local authorities (such as water supply, heating, public lighting, sanitation, local public transport etc.).

It is also necessary for the local communities' own problems to be solved by these communities, to whom the legal status is recognized. Local authorities should have their own administrative authorities in place to meet the public interest, as well as the necessary financial, human and financial resources to be made available to them and managed by them.

In this context, the stated principles are not only theoretical concepts and do not have abstract content. They have a material support, which is expressed through practical, concrete actions. Local communities have at their disposal, in their property or management, patrimony (land, buildings, various equipment, etc.) as well as resources, forming their public or private domain, and with which they solve the problems. We emphasize that these issues are distinct from those of the state. Moreover, local autonomy without this material foundation and without the freedom to house it according to its own needs would mean only the assertion of a purely theoretical principle, without content and without relevance on the practical actions [1:p.12].

Another condition is that any local community has its own autonomous administrative authorities, elected by the citizens that make up it.

It is imperative that local authorities be representatives of local communities and not representatives of the state placed at the head of the

community. Therefore, the governing bodies must be local and autonomous towards the central bodies of the public administration.

The local authorities, which the local community will entrust to the administration of its public affairs, are the ones who solve the specific problems.

We believe that in order to be able to talk about decentralization, it is necessary for these local authorities to be representatives of local communities. Thus, the local public administration authorities are elected by universal, equal, direct, secret and free expression, according to the law.

In conclusion, we can say that in any administrative-territorial unit there is a local territorial community, with distinct, specific needs, which has the capacity to administer through its own forces.

### **III. Fundamental principles applied to local territorial communities**

As stated above, the principles set out are done within local territorial collectivities, organized in administrative-territorial units, themselves equipped with legal capacity, by public law and by private law, by virtue of which they administer, through the organs that they have chosen their own interests, autonomously, within the limits of the law.

The first two principles, decentralization and autonomy, are specific elements in achieving any local democracy.

The principle of decentralization is materialized by the transfer of administrative and financial powers regarding the provision of public services from the level of the central public administration to that of the local public administration.

The main purpose of decentralization is to provide better quality public services at a lower price, while modernizing the structures that are responsible for providing these services. The idea of decentralization is based on the existence of a local community that manages itself, in guiding its own business, a concept that is expressed by "sebstverwaltung" (which means the right to administer oneself in German), "local-government" or local in English) whose French correspondent would be "autoadministration" [2: pp.85-86].

There is no difference in content between the principle of administrative decentralization and local territorial autonomy. Local autonomy is a fundamental principle of the functioning of local communities and involves the solving of local interests by the representative authorities in the territorial administrative units.

## Fundamental principles...

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The principle of local autonomy is the ability of local authorities to decide independently, by assuming their own responsibility, within the limits provided by the legal norms, the destiny and the way of functioning of the local community they lead.

Analyzing the principle of local autonomy, we could conclude that it entails administrative decentralization and thus involves the transfer of central level competences at local level, where local autonomy ensures a high degree of democracy, being one of the most efficient forms of self-management and representing the quintessence of all the public administration activity in the administrative-territorial units.

Another principle of the functioning of the public administration regulated by the Local Public Administration Law is that of legality.

It is a general principle to which the entire organization and functioning of society is subordinated, regardless of whether it has a state or non-state character” [5:p.154].

“The principle of legality requires that the organizational structures that have the quality of local public administration be enforced only by law. The law establishes their composition and their constitution, their attributions, the functioning and the activity, respectively the acts they adopt, their relations with other public authorities or other structures in the country or abroad” [5:154].

By virtue of the same principle, the local government must respect the framework within which it operates, a framework established by the whole legal order. Submission to the legal order implies the need for compliance between the acts issued by the administration and those which are superior to it.

The basis of the functioning of a local community is also the principle of subsidiarity, as set out in the European Charter of Local Self-Government, ratified in 1997 by Romania, which consists in the exercise of competences by the local authority situated at the closest administrative level to the citizen.

In the subsidiarity analysis in the European Union we must start from art. 4 of the European Charter: The Autonomous Exercise of Local Government [6], which attaches importance to this principle, stating that “*these local authorities have, within the law, full power to take the initiative for any matter that is not excluded from their field of competence or which is not assigned to another authority; that the exercise of public power must, in a general manner, be restored to those authorities which are closest to the citizens and that the powers and powers entrusted to local communities must normally be full and complete.*”

Subsidiarity is a principle that explicitly finds expression in the Treaty of Maastricht,<sup>2</sup> (Articles B1 and 313). The Maastricht Treaty introduced the principle of subsidiarity, which requires decisions to be taken at the most appropriate level in areas where the Member States and the European Union have a common competence. In the preamble to the Treaty of Maastricht it is stated that "decisions are taken as close as possible to the citizen". Decisions are taken at EU level only if it is really able to act more effectively than Member States.

According to this principle, the European Community acts only to the extent that the objectives pursued will be better achieved at Community level than at Member State level. In other words, only what cannot be done at Member State level or cannot be done better at this level has to be done at Community level.

Article 3B stipulates that: "In matters not falling under its exclusive competence, the Community shall intervene, in accordance with the principle of subsidiarity, only if and to the extent that the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, due to the magnitude or effects of the action envisaged, be better achieved at Community level. Community action does not go beyond what is necessary to achieve the objectives of this Treaty. "

The principle of eligibility of local public administration authorities and the principle of citizen consultation on local issues are principles of local autonomy. In a democratic state, the role of the citizen is well defined, and one must have real opportunities to participate in the preparation and decision-making of local communities.

The principle of consultation is closely related to the principle of local autonomy, from which it follows that the solving and administration of local public affairs is ensured not only by the elected bodies of the local public administration but also by the direct participation of the population in the fulfillment of the prerogatives of the local self-administration. Electoral consultation is a basic mechanism of democracy, the extent of which is given by the degree of citizens' satisfaction with the functioning of local communities.

According to this principle, local authorities must have the right to intervene directly in the administration process, by referendum or other forms of law. Therefore, the principle of consulting citizens in local issues of

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<sup>2</sup> The word comes from Latin *Subsidium*, meaning "reserve troops" and later used as "support", "assistance".

particular interest or the local referendum is a component of local autonomy, having constitutional regulation.

### IV. Conclusions

Concluding, we can say that the functioning of powerful local authorities, with a modern, flexible and efficient administration, can only take place in the presence of the fundamental principles enunciated. These principles are carried out within the local authorities (within the administrative-territorial units), equipped with legal capacity, by public and private law, by virtue of which they manage, through the organs they have chosen, their own interests established in accordance with the desire major citizens.

We can appreciate that local development starts from the local potential, giving local communities the skills and resources to self-manage.

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