

DECENTRALISATION AND SUBSIDIARITY IN THE MANAGEMENT OF LOCAL PUBLIC ADMINISTRATION

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Abstract:

Assuming the existence of a local collectivity which administers itself by the full exercise of the powers transferred to the process of decentralization, the application of the subsidiarity principle at local public administration level directs the allocation of responsibilities to the lowest level possible, i.e. nearest to the citizen.

Considering the contents of this paper, we can say that decentralization is necessary in connection with the subsidiarity principle, whereby the state makes up and interferes only when the basic structures cannot ensure its effectiveness locally. Administration of community affairs must be done at the lowest level possible so that solutions are most appropriate and can be more easily adapted to the real interests of individuals from the sphere of the community.

Keywords: local government, decentralization, subsidiarity, autonomy, local community, public service

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INTRODUCTION

Regarded as a structure of the system of social organization, public administration is organized and operates as a set of principles that enable successful completion of its tasks. In this regard, constituent legislature establishes the principles underlying the organization and functioning of local government, stating in Article 120, paragraph 1 that “public administration in territorial-administrative units is based on principles of *decentralization*, local autonomy, and deconcentration of public services”.

We have to keep in mind that among the constitutional principles underlying the organization and local government officials is part of decentralization, viewed as a process of modernization of public administration, motivated by the need to define the role of state administration in relation to local government and powers to be delegated from central to local level.

Besides the constitutional provisions, Local Government Law no. 215/2001 includes decentralization in the category of basic principles of local government, Article 2, paragraph 1 stating that “public administration in territorial-administrative units is organized and operates under the principles of decentralization, local autonomy, deconcentration of public services, the eligibility of local authorities, legality and consultation of citizens in solving local problems of special interest”.

But for this process of decentralization to succeed and allow local authorities to solve the urgent problems arising at the administrative-territorial units level, it is guided by several principles, among which subsidiarity occupies a special place.

The principle of subsidiarity results primarily from the interpretation of constitutional provisions covered both in Article 121, paragraph 1 according to which, “public administration authorities, through whom local autonomy in communes and towns is assured, are the local councils and mayors elected according to the law” and in Article 122, paragraph 1 which has it that “the county council is the public administration authority for coordinating the activity of communal and town councils in order to achieve the public services of county interest”. These provisions do nothing but to portray a projection of subsidiarity at the level of the authorities operating in the territorial-administrative units. The reflection of the principle of subsidiarity and can also be found

in Article 7 of the Local Public Administration Law no. 215/2001 according to which "decentralization of powers to local government authorities is done by respecting the principles and rules of the framework law of decentralization. So, without explicitly enshrine the principle of subsidiarity, this legal text refers to the framework Decentralization Law no. 195/2006 listing the principles on which decentralization is based. According to Article 3 of Law no. 195/2006, these are:

- a) *the principle of subsidiarity*, which consists in the application of the skills of the local public administration authority located at the administrative level which is closest to the citizen and who has the necessary administrative capacity;
- b) the principle of ensuring adequate resources for transferable skills;
- c) the principle of responsibility of local public authorities in relation to the attributions they have, which imposes an obligation to achieve quality standards in delivering public services and public utilities;
- d) the principle of insurance of a stable decentralization, predictable, based on objective criteria and rules that would not compel local authorities' work or limit the financial local autonomy;
- e) the principle of fairness, which involves ensuring all citizens' access to public services and public utilities;
- f) the principle of budgetary constraint, which prohibits the use by central public authorities of special transfers or subventions to cover the final deficit of local budgets.

Therefore, we can notice that in the decentralization process development subsidiarity is positioned first, as a principle that guides the transfer of central government powers to local authorities.

CONCEPTUAL DETERMINATIONS OS DECENTRALISATION AND SUBSIDIARITY

Prior to clarifying the content of each of these two fundamental principles in the organization and functioning of public administration in territorial-administrative units, we consider necessary some etymological considerations.

Thus, the term *decentralisation* comes from the French word *décentralisation*, which evokes the idea of granting independence to local administrative bodies and to move to them some tasks which before were the state's competence.

On the other hand, the term *subsidiarity* comes from the Latin word *subsidiarius*, which means a supplementary or auxiliary action in support of an another key action, this principle resulting from the correlation between the following ideas: insurance of the authority of the central power from the lower levels of society and the duty of the upper levels bodies of society to help those at the lower levels and replace them if necessary.

The legal definition of decentralization is amended by Article 2, point j of the Framework Law no. 195/2006 on decentralization, according to which it "consists in transferring administrative and financial powers from the central government to local government level or private sector. Starting from this definition, we can say that decentralization is achieved by widening the scope of duties and responsibilities of local authorities so that necessary measures and decisions will be taken more rapidly, more effectively addressing the priority needs local.

As regards subsidiarity, as stated above, it is defined by Article 3 points, point a of Law no. 195/2006 as the guiding principle in the process of decentralization which "consists in the application of the competences of local government authority located at the administrative level which is closest to the citizen and who has the necessary administrative capacity".

In addition, although not explicitly qualified, we find the principle of subsidiarity stated in the European Charter of Local Autonomy, which in Article 4, paragraph 3 provides that "the exercise of public responsibilities should generally be the responsibility of those authorities which are closest to citizens. Allocation of responsibilities to another authority should take into account the extent and nature of the task as well as the requirements of efficiency and economy".

Formulated in this way, subsidiarity supports local democracy, exercising powers of of the basic level, "closest to the citizens". In light of subsidiarity, the power to solve local public affairs is located at local collectivities level, the latter knowing themselves and their needs best, the intervention of other authorities being recognized only where local authorities cannot ensure effectiveness in carrying out their duties.

SUBSIDIARITY IN THE EUROPEAN UNION

Article 4 of the European Charter: the autonomous exercise of the local power [1] establishes the principle of subsidiarity, mentioning that local authorities have, under law, the entire responsibility for taking the initiative to any matter which is not excluded from their competence or not attributed to any other authority, and the exercise of public authority must, in a general manner, to belong to those authorities which are closest to citizens and the powers, the competences entrusted to local authorities should normally be full and whole.

The use of the concept of subsidiarity has experienced a revival by the modifications of the Treaty of Rome of March 25, 1957 through the Maastricht Treaty signed on February 7, 1992, which established the European Union.

The Maastricht Treaty introduced the principle of subsidiarity which states that decisions are taken at the appropriate level in areas where Member States and European Union have a common responsibility. Decisions are made at EU level only if the latter is indeed able to act more effectively than the Member States.

The text of the Charter anticipated the provisions of the Maastricht Treaty in whose preamble it is specified that "decisions are made at a level as close as possible to the citizen" (Alexandru and others, 2007). Subsidiarity is a principle that finds its formulation in clear terms in the Maastricht Treaty (Articles B1 and 313). According to this principle, the European Community act only insofar as 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 should be made at the Community level.

Article 3B formulated as follows: "In areas which are not within its exclusive competence, the Community shall take no action, according to the principle of subsidiarity, only if and insofar as the objectives of a planned action cannot be sufficiently achieved by Member States and can therefore, because of scale or effects, be better achieved at Community level. Community action shall not exceed what is necessary to achieve the objectives of this Treaty".

The meaning attributed to the principle of subsidiarity was that decision making should take place at the lowest possible level, in other words, higher levels should support the lower levels in their tasks. The Maastricht Treaty has given this principle a major role in two aspects: substantive and procedural.

In the literature in the field, the Committee is called "guardian of subsidiarity" (Labouz, 1994), a fundamental principle, very important when it comes to "continue the process of creating an ever closer Union among the peoples of Europe in which decisions are made as close as possible to the citizen" (Cloos and others, 1993) (Article 3B of the Maastricht Treaty). This principle implies that EU actions should not be initiated only in cases where there is certainty that they are more effective than the actions of national, regional or local (if applicable) institutions. From this point of view, the principle of subsidiarity is opposed to excessive centralization of the decision-making process, in some cases considered too remote from citizens and their problems.

So subsidiarity is a principle enshrined in Community law, according to which European Community does not take action (except for areas that fall within its exclusive competence) in the problems that can be solved better regionally, locally or nationally. Subsidiarity is closely linked to the principles of proportionality and necessity, which require that actions of the Commission to go further than necessary to achieve the objectives of the Treaty [2].

The Edinburgh European Council in December 1992 defined the basic principles of the concept of subsidiarity and established guidance for the interpretation of Article 5 of the European

Community Treaty, through which the principle of subsidiarity was included in the Treaty on European Union. Its findings were presented in a statement that continues to be the cornerstone of the principle of subsidiarity. Global approach derived from this statement was dealt with in a protocol on the principles of subsidiarity and proportionality which was annexed to the Treaty establishing the European Community by the Treaty of Amsterdam.

Its conclusions were contained in a statement that serves as a pillar of subsidiarity.

The Treaty of Amsterdam took the whole approach that followed this declaration in a Protocol on subsidiarity and proportionality annexed to the Treaty on European Community. The Amsterdam Treaty has brought significant changes to the Treaty on European Union and to the Treaty which established the European Community, providing additional clarification on the concepts of local development and subsidiarity.

Each year, the European Commission makes a report ("Better implementation of laws") to the Council and Parliament on subsidiarity.

Under this principle, the Union intervenes only in areas whose problems cannot be solved on a national or regional basis only. The Member States of the Council, signatories of the Charter on local self-government, considers that the aim of the Council of Europe is to achieve greater unity between its members, in order to safeguard and promote the ideals and principles which are their common heritage.

The European Charter of Local Self-Government, ratified by most of the European states, had a significant positive influence on the development of local governance and democracy in Europe.

The principle of subsidiarity - unity in diversity - is the one that will grow in importance. The European Community will take only problems they can solve more efficiently than national authorities. Thus, the role of local authorities in relation to the central authorities will increase. In this context, the European Commission created in 1988 "The Consultative Council of Regional and Local Collectivities". From this perspective, the European Commission's objective is to build a new regional policy to better coordinate funding of local development plans.

Subsidiarity is part of a general policy of reform, providing local and regional collectivities the context to define their own powers (Filip, Onofrei, 2001).

SUBSIDIARITY – A GUIDING PRINCIPLE IN TRANSFERING OF JURISDICTION IN THE DECENTRALIZATION PROCESS

When we talk about the functioning of public administration, we consider necessary to emphasize that the implementation of the decentralization process is necessary in connection with the principle of subsidiarity, according to which state intervention is recognized only when the effectiveness and efficiency of basic structures' action cannot be realized.

The application of the principle of subsidiarity at local government level can be regarded as a method of putting in function the decentralization process, which involves delivering power from the central government authorities to the representative local authorities of the territorial-administrative units. Subsidiarity itself is precisely to determine the optimal degree of decentralization (Voican, 2008), directing the powers to be transferred to the lowest level possible so as not to make obsolete the functioning of public administration bodies.

Moving skills from a higher administrative level to a lower administrative level in the process of decentralization should be based on the principle of subsidiarity, under which responsibility for the provision of public services to the beneficiaries is entrusted to those closest to the citizen. As a consequence of transferring this principle into practice, called "the approach towards the citizens", central administrative bodies share with local authorities not only administrative tasks but also the responsibility of public service provision so that local members have the opportunity to express satisfaction, or dissatisfaction, regarding the promptness and effectiveness of local structures.

Moreover, decentralization allows public administration to become more effective and operational, in the sense that the problems of common interest to people in villages, cities, and counties no longer come to the centre, but are resolved at lower levels, in terms of high efficiency. This is why subsidiarity in government requires that the transmission of powers and responsibilities to be done to local authorities on the lowest administrative level, which are able to ensure maximum efficiency and to decide on the quality of services within their competence.

Subsidiarity requires that the State should not intervene except in exceptional cases where decentralized local authorities cannot ensure effectiveness in fulfilling their responsibilities. As a result of the principle of subsidiarity, it is possible the displacement of a local competence in a higher administrative level only if that jurisdiction would be better achieved at the latter level.

The powers that can be exercised by the public administration authorities in municipalities, cities and counties are listed in Article 19 of Framework Law of Decentralization. Thus, to ensure local public services, local public administration authorities exercise exclusive jurisdiction, shared jurisdiction, and delegated jurisdiction.

Through exclusive jurisdiction is to be understood, according to Article 2 point e of Law 195/2006, those duties assigned by law to local authorities which application they are responsible for. Local public administration authorities are entitled to a decision and have the necessary resources and means to achieve those competences.

Shared jurisdiction is exercised by local public administration authorities, together with other levels of the public administration (county or central), with a clear separation of funding and power of decision for each charge in part (Article 2, point f of Law no. 195/2006).

According to Article 2, point d of Law no. 195/2006, delegated jurisdiction is that granted by the law to the local authorities together with the adequate financial resources by the central authorities, to exercise them on behalf of and within the limits set by them.

Local public administration authorities in the villages and cities exercise exclusive jurisdiction on:

- Private and public sector management of the village or town;
- Road infrastructure administration of local interest;
- Management of cultural institutions of local interest;
- Management of local public health units;
- Planning and urbanism;
- Water supply;
- Sewage, wastewater and pluvial water;
- Public lighting;
- Sanitation;
- Primary social assistance services for child protection and for the elderly;
- Primary and specialized social assistance services for victims of domestic violence;
- Local public passenger transport;
- Other powers established by law.

Local public administration authorities at county level shall exercise exclusive jurisdiction on:

- Airport administration of local interest;
- Private and public sector management of the county;
- Management of cultural institutions of county interest;
- Management of public county hospitals;
- Primary and specialized social assistance services for victims of domestic violence;
- Specialized social services for the elderly;
- Other powers established by law.

Local government authorities in the villages and towns exercise a shared jurisdiction with the central government on:

- Thermal power produced in a centralized system;

- Construction of social and youth housing;
- Pre-university education, except special education;
- Public order and safety;
- Provision of social assistance to people in difficulty;
- Prevention and management of emergencies at local level
- Medical assistance and social services to the people with social problems;
- Primary social services for the disabled;
- Community services for the evidence of inhabitants;
- Road infrastructure administration of local interest to the municipalities;
- Other powers established by law.

Public administration authorities of the communes and cities exercise a shared jurisdiction with the public authorities at county level, when it comes to the provision of public utilities through regional operators.

Public administration authorities at county level shall exercise the powers shared with the central government authorities on:

- Road infrastructure administration of county interest;
- Special education;
- Medical assistance and social services to the people with social problems;
- Primary and specialized social services for child protection;
- Specialized social services for persons with disabilities;
- Community services for the evidence of inhabitants;
- Other powers established by law.

Local public administration authorities exercise jurisdiction delegated by the central public administration authorities on payment of allowances and benefits for children and adults with disabilities.

Listing categories of skills that evokes the idea that incumbent local law may not allow any interpretation concerning the responsibilities are transferred to structures that are closest to the citizen. Moreover, local authorities perceive a more clearly issues of citizens and their range of expertise and solutions that can be adapted to real needs of each member of the local community.

In the context of allocation of responsibilities, as we mentioned them above, the principle of subsidiarity can find its place, and it applies to local government level requiring that the exercise of jurisdiction should be done by the administrative authorities closest to citizens, that are able to bring out the public administration purposes in an as efficient manner as possible. More specifically, in the process of decentralization takes place a transfer of powers from state level to smaller entities, local collectivities (Voican, 2008) which administer themselves. In accordance with the principle of subsidiarity, such collectivities have jurisdiction to exercise the responsibilities assigned to them, the involvement of other authorities being justified only insofar as they may not do that in a satisfactory manner.

CONCLUSIONS

In conclusion, we appreciate that local development in Europe starts with the local potential, giving local collectivities powers and resources to manage their destiny. The extent to which the State retains control over development differs and is manifested in different degrees, but the unanimous will to implement administrative decentralization and subsidiarity has to be noted, obviously with nuances related to tradition, history and culture.

Subsidiarity, which initially covered national and EU level, has had repercussions in the local and regional sphere, arising from the need to be closer to citizens.

ENDNOTES

- [1] *European Charter of Local Autonomy, adopted in Strasbourg in 1985*, http://legislatie.resurse-pentru-democratie.org/199_1997.php

- [2] *Report on Central Public Administration*, prepared by Joachim Lippott, Chisinau, March, 2001, <http://www.pca.md/files/publications12.doc>

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