

DECENTRALIZATION, ACCORDING TO THE ADMINISTRATIVE CODE

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Abstract: *The decentralization regime is based on the legal recognition of local authorities organized in administrative units at the territorial level. These communities are provided with their own material and financial means that they can use to solve local problems. Decentralization appears to be the opposite of centralization, a regime in which local problems are solved by authorities freely chosen by the electorate. The status of local authorities derives from the law. They cannot make changes, but must be subject to any changes made by the state. The component collectivities are not associated with the exercise of central power, they have autonomy only of an administrative nature. The state controls the legality of the actions of local authorities and not their membership.*

Keywords: *decentralization, centralization, administrative skills.*

JEL Classification: *K10.*

1. Introduction

The decentralization regime is based on the legal recognition of local authorities organized in administrative units at the territorial level. These communities are provided with their own material and financial means that they can use to solve local problems.

Decentralization appears to be the opposite of centralization, a regime in which local problems are solved by authorities freely elected by the electorate. The status of local authorities derives from the law. They cannot make changes, but must be subject to any changes made by the state. The component collectivities are not associated with the exercise of central power, they have autonomy only of an administrative nature. The state controls the legality of the actions of local authorities and not their affiliation.

2. The principles on the basis of which the decentralization process takes place

The foundation of decentralization is twofold: political and administrative. From a political point of view, decentralization is the expression of "democracy applied to the administration", ensuring a system in which citizens participate in the conduct of local affairs through the bodies elected by them. The political aspect of decentralization is also recognized by the European Charter of Local Self-Government, considering decentralization as one of the democratic principles of Europe.

Thus, according to art. 76 of O.G. no. 57/2019, the principles on the basis of which the decentralization process takes place are the following:

a) the principle of subsidiarity, which consists in the exercise of competencies by the local public administration authority located at the administrative level closest to the citizen and which has the necessary administrative capacity;

b) the principle of ensuring the resources corresponding to the transferred competencies;

c) the principle of responsibility of the local public administration authorities in relation to their competences, which imposes the obligation to respect the application of quality standards and cost standards in the provision of public services and public utility;

d) the principle of ensuring a stable, predictable decentralization process, based on objective criteria and rules, which should not constrain the activity of the local public administration authorities or limit the local financial autonomy;

e) the principle of equity, which involves ensuring the access of all citizens to public services and public utility.

The rules of the decentralization process establish that the Government, the ministries and the other specialized bodies of the central public administration transfer competences to the authorities local public administration at the level of communes, cities, municipalities or counties, as the case may be, respecting the principle of subsidiarity and the criterion of the geographical area of the beneficiaries, according to which the transfer of competence regarding the provision of a public service is made to that level of local public administration. the geographical area of the beneficiaries¹.

The transfer of competence is made by law and is based on impact analyzes and monitoring indicator systems, developed by ministries and other specialized bodies of the central public administration, in collaboration with the coordinating ministry of the decentralization process and the associative structures of local public administration authorities.

Thus, if there are databases at national level within the respective public service, they remain in the public or private property of the state and in the administration of the Government, ministries or other specialized bodies of the central public administration, as the case may be, which have transferred competences for the powers exercised by the central public administration authorities. For the competencies transferred to the local public administration authorities, the databases related to the respective public service remain the property of the state, and the local public administration authorities, to which the competencies have been transferred, have attributions of data entry, updating, exploitation and capitalization. The central public administration authorities are obliged to ensure the access to the respective databases to the central and local public authorities in compliance with the legal provisions.

The methodologies regarding the introduction, updating, exploitation and capitalization of data by the local public administration authorities of these databases are regulated by administrative acts of the heads of the ministries or of the other specialized bodies of the central public administration, as the case may be, which transferred the competencies.

Ministries and other specialized bodies of the central public administration, which have not organized subordinated structures in the territory or decentralized public services, in collaboration with the coordinating ministry of the decentralization process and with the administrative-territorial units, may organize pilot phases for testing and evaluation. the impact of the solutions proposed for the decentralization of the competencies they are currently exercising.

For the competencies proposed to be decentralized, which are exercised by decentralized structures or subordinated to the ministries and other specialized bodies of the central public administration, organized at local level, no pilot phases are organized.

The stages of the transfer of competencies are the following²:

a) the elaboration by the coordinating ministry of the decentralization process of the general decentralization strategy or, in case of non-existence of a general decentralization strategy by which the opportunity of transferring competencies from the central public administration to the local public administration authorities is analyzed, the elaboration by ministries and other specialized bodies of the central public administration of sectoral decentralization strategies;

b) the identification by the Government, ministries and other specialized bodies of the central public administration of the necessary resources and of the integral costs related

¹ Art. 77 of the Administrative Code entered into force by Government Emergency Ordinance no. 57/2019, published in the Official Gazette of Romania, Part I, no. 555 of July 5, 2019.

² Art. 78 of the Administrative Code entered into force by Government Emergency Ordinance no. 57/2019, published in the Official Gazette of Romania, Part I, no. 555 of July 5, 2019.

to the competences that are transferred, as well as of the budgetary sources on the basis of which they are financed;

c) the organization by the ministries and the other specialized bodies of the central public administration of the eventual pilot phases in order to test and evaluate the impact of the proposed solutions for decentralization of competencies, which are not exercised by structures subordinated to the line ministries;

d) the elaboration by the ministries and the other specialized bodies of the central public administration of the impact analyzes of the transfer of competencies;

e) the elaboration by the ministries and the other specialized bodies of the central public administration of the draft sectoral laws through which competences are transferred to the local public administration authorities.

In all these stages of the process of transfer of competencies, it is mandatory to consult the associative structures of the local public administration authorities. The government, ministries and other specialized bodies of the central public administration ensure, in collaboration with the associative structures of the local public administration authorities, the long-term correlation between the transferred responsibilities and the related resources, so as to cover the cost variations in providing public and utility services. decentralized public.

With regard to the transfer of financial resources, it should be noted that the transfer of competences as well as their exercise are done at the same time as ensuring all necessary resources. Thus, the financing of the delegated competences is fully ensured by the central public administration. The delegated powers are exercised by the local public administration authorities or by other local public institutions, on behalf of a central public administration authority, within the limits established by it¹.

Ministries and other specialized bodies of the central public administration establish cost standards for financing public services that have been decentralized until the entry into force of the Administrative Code, as well as those to be decentralized and quality standards to ensure their provision by local public administration authorities. The cost and quality standards for public services that have been decentralized shall be approved within a maximum of 12 months from the entry into force of the Administrative Code. The cost and quality standards for public services to be decentralized shall be approved within a maximum of 12 months from the entry into force of sectoral decentralization laws.

Ministries and other specialized bodies of the central public administration have the obligation to periodically update the cost and quality standards for all these public services. The elaboration and updating of cost and quality standards are done in collaboration with the associative structures of the local public administration authorities, according to the provisions in force, under the coordination of the coordinating ministry of the decentralization process.

These cost and quality standards are approved by Government decision, at the proposal of the ministries or other specialized bodies of the central public administration, with the approval of the coordinating ministry of the decentralization process, the Interministerial Technical Committee for Decentralization and the Local Public Finance Committee. , as the case. Government decisions on the periodic updating of cost and quality standards are the basis for determining and allocating amounts deducted from some state budget revenues to local budgets, to finance decentralized public services.

Local government authorities are responsible for complying with the application of quality and cost standards in the provision of decentralized public services and public

¹ Art. 79 of the Administrative Code entered into force by Government Emergency Ordinance no. 57/2019, published in the Official Gazette of Romania, Part I, no. 555 of July 5, 2019.

utilities and may increase the quality and cost level based on their own revenues and other attracted sources, within the limits of the law.

In providing decentralized public services and public utilities, local public administration authorities are obliged to ensure the application of quality standards and to ensure the financing of local public services at least at the level of established cost standards.

The coordinating ministry of the decentralization process is the ministry with attributions in the field of public administration, being the one that approves, according to the law, the initiatives and drafts of normative acts regarding administrative and financial decentralization, elaborated by ministries, respectively by other specialized bodies of central public administration.

The coordinating ministry of the decentralization process supports the substantiation and implementation of the Government's decentralization policy by¹:

- a) elaboration of the strategy and general decentralization policies;
- b) technical coordination and monitoring of the decentralization process;
- c) elaboration of the policy of financial and fiscal decentralization, in collaboration with the ministry with attributions in the field of public finances;
- d) providing expertise and specialized technical assistance to ministries and other specialized bodies of the central public administration, in order to develop and implement sectoral decentralization strategies;
- e) collecting and managing, in collaboration with the ministry with attributions in the field of public finances, with the other ministries and specialized bodies of the central public administration, with the local public administration authorities, as well as with other public authorities and institutions, the statistical data necessary for substantiation; estimating the impact of decentralization policies;
- f) approving the cost and quality standards corresponding to certain decentralized public and public utility services elaborated, respectively, updated by ministries, by the other specialized bodies of the central public administration in collaboration with the associative structures of the local public administration authorities;
- g) supervising the fulfillment, by the ministries and the other specialized bodies of the central public administration, of the function of methodological coordination of the decentralized public services and public utility.

Ministries and other specialized bodies of the central public administration and local public administration authorities have the obligation to transmit to the coordinating ministry of the decentralization process all the information necessary to substantiate, implement and monitor the decentralization process and to ensure the interoperability of specific data collected with the database. the coordinating ministry of the decentralization process, set up for this purpose.

In exercising this function of methodological coordination of decentralized public utility services, ministries and other specialized bodies of the central public administration also have the obligation to monitor compliance by local public administration authorities, quality standards and, where appropriate, cost.

For the general coordination of the decentralization process, the Inter-ministerial Technical Committee for Decentralization functions, headed by the Minister with attributions in the field of public administration, as coordinator of the public administration reform. The representatives of the associative structures of the local public administration authorities are also part of the Interministerial Technical Committee.

¹ Art. 81 of the Administrative Code entered into force by Government Emergency Ordinance no. 57/2019, published in the Official Gazette of Romania, Part I, no. 555 of July 5, 2019.

At the level of the ministries and of the other specialized bodies of the central public administration, working groups are set up for the decentralization of competencies, and the way of organization, functioning and attributions of the technical structures provided for them are established by Government decision.

The Committee for local public finances, established under the law regulating local public finances, complementary to its role in the process of elaborating financial regulations, has a consultative role in the elaboration and implementation of financial and fiscal decentralization policies. The representatives of the associative structures of the local public administration authorities are also part of the Committee for local public finances. The coordinating ministry of the decentralization process and the ministry with attributions in the field of public finances, through the specialized structures, ensure together the technical secretariat of the Interministerial Technical Committee for decentralization and of the Committee for local public finances. Monitoring the stage of the decentralization process The coordinating ministry of the decentralization process annually presents to the Government, for information, a report on the state of the decentralization process.

3. Conclusions

No state is the only public service contractor. Local authorities take care of a number of public services, more specifically local ones. Local authorities are seen as natural societies, equal to or prior to the state, with rights that it recognizes and attributes.

For economic, political, social reasons, the state, even in the countries with the widest local autonomy, has developed its powers through control procedures. Imitating the example given by the countries with extended local liberties and under the action of modern ideas, in the countries with centralization regime, a progressive decentralization was carried out, the management of the business was more and more attributed to the elected bodies.

For countries where, within the law, autonomy is the fundamental principle, we speak of local government. If at the national echelon, the government imposes the solution in terms of major problems, affecting the whole national community, at the local echelon is recognized the competence of local authorities to address issues that are essential to them. In some countries (for example, the United Kingdom) the central government has allowed a large autonomy of the lower communities on which it is content to watch to remain almost parallel. In other countries, such as France and Spain, the state has subordinated local authorities. But in the last hundred years certain liberties have been restored to them little by little.

This was due to a complexity of social and economic relations in the context of increasing individual needs. The central government can no longer ensure a satisfaction of the interests of the citizen only in the capital. These local communities need to manage their own interests because they know them best.

References:

1. The administrative code entered into force by Government Emergency Ordinance no. 57/2019, published in the Official Gazette of Romania, Part I, no. 555 of July 5, 2019.