

RESEARCH ARTICLE:

Theoretical and Practical Aspects Regarding the Limits of Decentralization Based on the Experience in the Republic of Moldova

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ABSTRACT

Administrative decentralization, as a constitutional principle and the means to achieve local autonomy, is a complex process for which it requires extensive research and a broad public debate as effective as possible for its application in practice.

Decentralization is not a new phenomenon of government, except for the states that have passed through a period of excessive centralization, with an authoritarian regime, where the realization of this principle encounters more difficulties.

In our opinion one of the problems that arises is related to the limits of decentralization and keeping a balance between "centralization" and "decentralization". From the experience of the Republic of Moldova one can see that the process of transition from a centralized to a decentralized system of administration was accomplished more under the influence of political slogans of democracy and less on a

well calculated socio-economic program.

Thus, all public economically inefficient services were decentralized and transmitted to local government, without the central government to transmit the adequate financial and material resources for the transferred powers. Later, after more than ten years we adopted specific legal provisions on Administrative Decentralization Law (No. 435-XVI from 28.12.2006) which established the principles and rules that govern this process.

KEYWORDS: *decentralization, deconcentration, subsidiarity, local community, central and local authority, public services.*

1. Introduction

Decentralization implies a more efficient collaboration between local and central government. The constitutional and regulatory framework should ensure that collaboration through clear rules for transmitting powers from the central to the local authorities, to ensure local authorities the right to define appropriate forms of local governance and involvement of the population and the various groups within civil society in the evolutionary development of communities.

Also of particular importance in this process is the School for Public Administration namely, training of local elected officials and employees of the local government in the effective exercise of the powers transmitted and business management and local public services for all members of the community.

2. The principle of administrative decentralization

The essence of local autonomy is the right of territorial administrative units to meet their own interests without interference by the central government, principle which basically implies administrative decentralization. If autonomy is a right, then decentralization is the mechanism by which the autonomy is realized.

Decentralization is a constitutional principle (Article 109 of the Constitution of Moldova¹), a

¹Public administration in territorial-administrative units is based on the principles of local autonomy, decentralization of public services, local

new principle, which replaced the principle of democratic centralism of the Soviet Constitutions. In the history of public administration, we can identify two systems of administrative organization: centralized and decentralized, plus one intermediate and secondary, respectively, deconcentrated organization.

In case of centralization, the state assumes the task to administer alone (for completion of the executive function) in all areas involving promoting the general interest: justice, public order, national defence and foreign relations without this activity involving public legal persons - other than the state - which enjoy autonomy.

Another defining element for centralized organization is that of hierarchical power determined as a system in which the head is able to impose itself to his subordinates and local government authorities are working in close dependence upon central authorities. An example of a centralized administrative system could be the system of the former USSR.

However, as mentioned Prof. E.D. Tarangul, administrative centralization must be distinguished from political centralization, which consists primarily of a centralization of legislative function of the state towards the authority of a single state legislative body for the country, leading to the establishment of united legislation throughout the country.

government eligibility and consultation of citizens on issues of local importance", art. 109 Constitution of the Republic of Moldova, adopted on 29 July 1994.

Secondly, political centralization requires a single political leadership of the country that is a single government for the entire country, and is organized as a unitary state administration².

Administrative centralization consists of a concentration of the administrative activity in the hands of central authorities, of the various ministries, which are leading throughout the entire country through the given services within their jurisdiction through local agents.

In case of administrative decentralization the state does not take solely the task of administration, but shares in certain allowances to other categories of legal entities of public law³. In this sense, decentralization is a way of organizing in which public services with a regional or local level character are organized and conducted by autonomous administrative authorities which are besides the hierarchy of state authorities.

Decentralization means the transfer of certain powers from central administration agencies into the jurisdiction of the local government bodies elected democratically by electoral vote, losing therefore the direct control of the central authorities on the local authorities, remaining instead the permanent control of voters that is

more prompt having also some tools to revoke local officials.

Deconcentration, in turn, means the transfer of certain powers by central agencies to their decentralized services (subdivisions) in the territory. According to Prof. E.D. Tarangul "administrative deconcentration is a variant of administrative centralization. Local authorities have their own decision rights under the power of the central hierarchy. They are considered as local agents of the central power"⁴.

Decentralization cannot be seen as an end in itself, it is a complex process and how success will be achieved means the success of good governance. Also, decentralization and local autonomy in no way preclude any administrative centralization in certain segments and special services of national interest.

In this context, we believe that, as far as it will reach an optimal balance between centralization and decentralization, public administration will be done democratically and effectively.

3.Regulatory and institutional framework of decentralization in Moldova

Consecration within the fundamental law of the principle of administrative decentralization is very important but not sufficiently for the public administration to change its image. The special law is designed to implement the constitutional

²E.D. Tarangul, *Romanian Administrative Law Treaty*, Cernauti, 1944, p.66

³ See in this regard, Eugen Popa, *Principles of Local Autonomy and Decentralization of Public Administration Services in Romania*, 1995, p.6

⁴ E. D. Tarangul, op. cit. p. 93.

provisions. Namely in this chapter, in my view, the legislature has been slow and, therefore, the decentralization process has gone through hardships.

As mentioned above, the principle of autonomy and decentralization of local public interest services is enshrined in art. 109 of the Constitution of the Republic of Moldova of 1994. After the Communist regime, highly centralized, which had left our country in 1991, this principle confirmed the democratic path of development. Subsequently, decentralization was proclaimed in a number of laws governing the organization and functioning of local government, however, a law on administrative decentralization was adopted only in 2006⁵, and the National Decentralization Strategy was approved by Parliament on 06.04.2012.

The latter is the main document which sets out the Government's administrative decentralization policies by sector in the context of the National Development Plan of the Republic of Moldova. From the institutional perspective, the Government created in 2010, a Joint Commission for decentralization, which is composed of representatives of central and local authorities in order to steer the entire country through the process of modernization and implementation of administrative decentralization mechanism in all fields.

However, the decentralization process in our country started in the absence of a clear legislation thus between 1996-1998, the central government, ignoring the fact that local authorities were not yet self-manageable or financially sufficient threw on their shoulders all public unprofitable services, including pre-university education and health.

In my opinion, an attempt to fix this error was made in 1999-2000, when the prefect institution was founded, modelled after the French one, and tried dividing the public services: decentralized, subordinated to local administrative authorities, and deconcentrated services (centralized), subordinated to the Prefect. After 2001, however the institution of the prefect was disbanded and decentralization process stalled, which led to the bankruptcy and destruction of many services of local interest: roads, aqueducts, education and culture, etc..

The adoption of the framework law on decentralization was made just to prove that the country develops in a democratic way, with a more declarative text without sending a clear message about what needs to be done or corrected in the decentralization process. For example, the law establishes other nine principles for decentralization and many other rules that currently are not of actuality, because their observance was appropriate at the beginning of this irreversible process. The task that arises now is, on the one hand, to adapt decentralized sectors to the legislation in force and, on the other hand, to continue the

⁵ The law on administrative decentralization, No. 435 of 28.12.2006, published: 02.03.2007 in the Official Monitor No. 29-31.

decentralization process in strict accordance with these provisions.

4. Difficulties and obstacles in the process of decentralization

The decentralization process is a complex one that depends on a number of factors: political, economic and social. Therefore, difficulties and mistakes are inevitable. But recognition of these gives at least a chance to make things right.

The main aim of decentralization is to provide high quality public services that meet the interests of the beneficiaries, being delivered at an affordable price for all community members.

A. The political component of decentralization

Political decentralization at the local authorities level represents an essential component of democracy and good governance with the involvement of local communities resources.

Appropriate combination of the elements of representative and participatory democracy is the key of the mechanism and of the process of decentralization. In addition, the use of forms of participation and involvement of citizens is the basic principle of operation of local government, both in decision making and also in implementing them.

A large part of the decentralization process, which took place during the last two decades,

was motivated by political issues. As noted above, our country began decentralization in an ad-hoc manner having an incomplete and inadequate legal framework for the administrative reforms that were to be made. By the electoral cycles inevitably every four years, governments with different political priorities appeared, and different forms of approach to the content and essence of decentralization were developed. As a result, administration reform was accomplished fragmented in a slower pace, or in some areas, there was no evidence at all.

Also in this element one can mention the administrative-territorial reforms that in Moldova had a disastrous effect. Thus, the 44 districts (two level structure) inherited from the centralized regime, in 1999 were reorganized into 9 districts, and in 2003 after a new restructuring, returning to 32 districts, not to mention the increasing number of communes by reducing the minimum number of people required by law to establish administrative-territorial units of the first level - from 3,000 to 1500, and as an exception, the law also provided the possibility for their establishment under this limit.

This fragmented structure established by the will of the political class is unfavourable to decentralization because local communities with a small number of people do not have sufficient administrative capacity to autonomously provide public services to its residents.

B. Economic and social components

Decentralization is not an end in itself or as the sole method to provide public services, it is one of the many tools used in the theory and practice of public administration. Therefore, it should alternate (coexist) in a most harmonious manner with other tools and principles.

A fundamental principle of decentralization is the principle of subsidiarity, whereby public responsibilities are exercised by authorities closer to the citizen. However, there are areas where local administrative authorities' powers are exercised simultaneously by other national institutions. This should not be interpreted as a reduction of local autonomy, but a need to find appropriate forms of cooperation in these areas and a need of consensus in the dialogue between public institutions with shared responsibilities, which have as a final aim quality public service for citizens.

Starting from the fact that local administration operates with a high degree of autonomy, however, certain tasks cannot be achieved otherwise than by forms of shared responsibilities with the central authorities, local autonomy should prevail, and the principle of subsidiarity must be expressed explicitly in legislation so as, to ensure that government intervention is limited only in cases where the local administration requires, given that it cannot perform all mandated functions and needs the help of the central government.

Another form of intervention refers to activities of assisting local administration by central administration, in the cases when it comes to coordinate national policies and strategies with local authorities' initiatives and plans. In turn, local initiatives must be supported transparently by the government for the effective realization of community development programs.

Also, decentralization and local autonomy requires appropriate financial autonomy. The tasks and responsibilities transferred to the local government through decentralization to local administration should be proportionate to financial resources to ensure a sustainable local development. Mandating new tasks or responsibilities by the state must be accompanied by adequate financial resources guaranteed by law.

Local administration must respond through services in an efficient and effective manner to local needs and to be recognized by their own electorate. Following decentralization, local politicians must contribute to the formation of the frame of exercise of executive powers based on a code of good conduct, which should ensure the conditions under which both elected officials and civil servants act with integrity, respecting the law and avoiding conflicts of interest.

In this regard, local government must:

- have full responsibilities on its apparatus;
- to achieve the rigorous frame for recruitment of staff based on merit;

- ensure adequate working conditions for tasks faced by employees;
- provide conditions for career development and remuneration of staff;
- to contribute to the maintenance of the professionalism of staff, to ensure the provision of quality services to citizens;
- use local and government funds for the achievement of local development programs.

The staff training in central and local government, both in the design of the decentralization process and implementation of the new responsibilities in conjunction with the new organizational forms and their methods, with the degree of transparency and responsiveness to community requests, is a starting in the process of decentralization and will contribute to its successful implementation.

Conclusions

In conclusion we mention that regardless of the political regime and the government, the State is obliged to provide its citizens with a decent standard of living by providing quality public services and their proper organization and operation depends largely on the conditions and how decentralization is done.

The most important conditions, in our opinion, are:

- high quality of legal regulations by which decentralization is achieved;
- administrative capacity of local communities should be assessed by well-defined criteria;
- the existence of the necessary finances at local community level and presence of well trained staff to achieve decentralized public services;
- exclusion of political influence on administration in the segment of organizing and functioning of decentralized public services.

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