RESEARCH ARTICLE:

Current issues, theoretical and practical, regarding the concept of devolution

Iulian NEDELCU
Paul-Iulian NEDELCU

ABSTRACT

Decentralization framework law does not comply with the 2006 Act, which requires preparatory measures for the implementation of the decentralization project that was declared unconstitutional by the Constitutional Court decision No. 1 of January 10, 2014, which considered the adoption of the law by responsibility.

Government violates Article 114 of the Constitution, as interpreted by the Constitutional Court.

Equally, the Government liability violates Article 61 paragraph (1) on the role of Parliament and the Article 102 paragraph (1) on the role of government and therefore the impugned law is contrary to the constitutional provisions contained in article 1 par. (3), (4) and (5) on the separation of powers and the Constitution and laws and the rule of law.

After examining the documents submitted by the Government, CCR notes that they are heterogeneous in content , aiming at general information on the issue of regionalization and decentralization, regionalization process in Romania fundamentals , history of decentralization in the period 1991-2013 , documents on administrative - territorial Romania reports on economic development, documents which have been written over time in a more or less organized context, being united and thus invoked as preparatory measures of decentralization[1].

KEYWORDS: *decentralization, administration, centralization, autonomy, democracy.*

[1]http://www.puterea.ro/dezvaluiri/ccr-legea-descentralizarii-este-neconstitutionala-vezi-motivarea-curtii-86396.html

1.Introduction

In the current design, decentralization is an indispensable attribute of democracy and implies the idea of autonomy[2]. Analysis of public administration in our country, in terms of decentralization, requires detailed aspects of this phenomenon, taking into account the current process of public administration reform in Romania, the transition from a highly centralized structure of government to a decentralized one.

Decentralization of public administration should be a phenomenon characteristic to an administrative organization that enables human societies to manage themselves under state control, which confers legal personality and at the same time allows the establishment of their authority and equip them with the necessary means. Through decentralization, public administration becomes more efficient and functional, issues that people are no longer interested in the files of the ministerial office, but shall be settled at the local level, in terms of maximum efficiency.

As shown in the literature[3], "our current administrative organization forms are derived from traditional administrative and institutional synchronized models - the idea of modernization - the influencing factors and adoption contact or recuperative way in attaining attractive and historic benefit".

2.Decentralization and devolution analysis

Decentralization is a proceeding by which public services provided to citizens must acquire extra efficiency and quality, and the government must improve by reference to the fundamental principles of a democratic society.

Some of the positive effects of transposition of the principle of administrative decentralization are:

1. Achieving grassroots democracy by close decision beneficiaries of public service and solving problems where they appear;

2. Empowering local authorities;

3. Reduction of solutions and the amount of consumed resources, which results in the optimization of business management to local communities embodied in local development, and as a result raising life standards of the locals.

Recent concerns manifested in Romanian society require modifications to the legal framework on administrative decentralization. Romanian Government itself, in the explanatory memorandum preceding the administrative plan on the establishment of measures, to decentralize powers exercised by some ministries and organs of public administration and the reform measures on local-authorities and public servants motivating in detail the need to amend the legal framework of decentralization.

It seems appropriate to restore the main arguments of the government, so we can report them to critical analysis of the administrative plan as an absolutely necessary step in the development of suggestions of law.

Thus, exposure states[4]:

1. Romanian Government being committed thorough reform of public administration and continued administrative and financial decentralization, increased local autonomy is "a necessary step to bring public services closer to citizens and thus more reasonable to use existing resources";

[2]Teodorescu, A. 1929. *Tratat de drept administrativ, vol I*, Bucharest.
[3]Băbălău, N., Ciobotea, D., Zarzară, I. 2004, *Din istoria instituţiilor administrative ale judeţului Dolj*, Craiova: Editura Sitech.

[4] http://media.hotnews.ro/media_server1/document-2013-11-15-16032720-0-expunere-motive-descentralizare.pdf

2. According to the Government Programme 2013-2016, decentralization should be performed in all administrative units - counties, cities, towns and communes - so most decentralized public services of county interest are to become county or local institutions, with the purpose to coordinate or subordinate local authorities;

3. The idea of operationalization of the decentralization process, resulted in the approval of the Government meeting of 19 February 2013 Memorandum states the following idea "Take the necessary measures to start the process of regionalization, decentralization in Romania";

4. Decentralization should be done in such a way so that the principle of subsidiarity, which requires the adoption of "sustained measures to increase the legitimacy of public authorities, in the design and achievement of strategic objectives in the economic , social and cultural modernization effect on Romanian society";

5. Decentralization must be done in such a way so that central government authorities "continue to exercise the duty of preparing and monitoring national policies in the areas of business and regulatory powers, as well as coordination / methodological guidance and control of decentralized public services, while local authorities will exercise the power of implementing policies issued by the central level for each sector and the administration / management of property / assets";

6. There has been a decentralized legal foundation that is active since 1991;

Thus, "since 1991, efforts have been focused on decentralization and funding system of local authorities , establishing rules and principles with their new responsibilities with a focus on public services as an example the data were transferred from central to local county and a range of skills relating to child protection , welfare , health, education , youth, local police and agriculture";

7. A minus to the decentralization process which is to be removed by the new act is that "the transfer of powers from central to local level was not always correlated with the financial resources and the transparency and predictability of the financing system and local budgets were missing[5]";

[5]It is specified in the explanatory memorandum that are exclusive powers of local authorities in the villages and towns, as required by law, "public and private administration of the village or town, the transportation infrastructure of local interest institutions of local culture, the local public health units, and urban planning, water supply, sewerage and wastewater treatment and rainwater, street lighting, sanitation, social services with the primary purpose to protect children and the elderly, social services and specialized primary character for victims of domestic violence and local public passenger transport".
The same legal framework defines as shared competence by local authorities in the villages and towns with central public administration authorities "thermal power produced in a centralized system, social housing and youth, pre-university education with except special education, the provision of social support to people in difficulty, prevention and emergency management at the local, medical and social support services to people with social problems, social services, primary nature for people with disabilities, community public services for the accounting of the administration of road transport infrastructure of local interest in the villages".
As exclusive powers that are exercised by local authorities at county level, these are: "the administration of local airports, the public and private domain of the county, the county interest cultural institutions, public health units county interest, social services and specialized primary character for victims of domestic violence and social services specialist for the elderly. And public administration at the county level authorities exercising powers shared with the central government on the administering road transport infrastructure of county interest, special education, medical and social support services to people with social problems, social services with primary purpose and specialized child protection, social services specialist for people with disabilities, community public services for those records."
[5]We applied the modelation realized by Alina Livia Nicu, *Contribuţia ştiinţei administraţiei la optimizarea activităţii desfăşurate de componentele sistemului administraţiei publice,* Volume "*Cunoaşterea ştiinţifică şi consecinţele ei pentru optimizarea activităţilor organizaţiei*", volume that

8. The social practice has proved that "most decentralized public services of ministries and other central government bodies shall, in addition to the powers aimed at monitoring and controlling , have the purpose to improve skills concerning the implementation of national policies , namely administration / management goods";

9. Social practices "demonstrated the need for greater involvement of local authorities in managing local interests, among others, the opportunity to transfer new skills centrally accompanied by the transfer of financial resources to improve the quality of public services and reduce disparities in the less developed areas";

On the other hand it is necessary to amend the legislative framework on decentralization supported with elements of science administration. As shown in the literature "Public Administration is strongly influenced by changes in society, so the science of administration and administrative law have the difficult task of studying it in conjunction with notions of progress and reform. Progress is a development, a change in well, designed to achieve a certain goal. Reform has the meaning of change (for the better); to renew, to renew a state of things, a concept, etc". "Reform is a political transformation, economic, social, a state with the goal to obtain an improvement or progress"[6].

Analyzing the text of the Law on protection measures for decentralization of powers, exercised by some ministries and specialized agencies of the central government, and the reform measures on local authorities and public officials[7], will reveal that the Romanian Government, as the initiator of the project , has changed a number of laws affecting the main areas of public interest, including:

1.Law no. 273/2006 on local public finance[8];

2.Law no. 213/1998 on Public property;

3.Cadaster and land registration law;

3.The New Civil Code;

4.Law no. 422/2001 on the protection of historical monuments, republished in the Official Monitor of Romania, Part I, no. 938 of 20 November 2006, as amended and supplemented;

5.National education law;

6.No.43/2000 Government Ordinance on the protection of archaeological heritage and archaeological sites as areas of national interest published in the Official Monitor of Romania, Part I, no. 951 of 24 November 2006;

7.Governmental Ordinance no. 51/1998 on improving the financing of programs, projects and cultural activities , published in the Official Monitor of Romania, Part I, no. 296 of August 13, 1998 as amended and supplemented;

8.Governmental Ordinance no. 39/2005 on cinema, as amended and supplemented, published in the Official Monitor of Romania, Part I, no. 704 of 4 August 2005;

comprises the sections "*Epistemologie*", "*Economie*", "*Management*" during the Annual Session of Communications "Cunoaştere şi progres", Sibiu, 2002, Ed. Academiei Forţelor Terestre "*Nicolae Bălcescu*", Sibiu, 2002.

[6] *Eds. 1998. Dex*, Bucharest: Ed. Univers enciclopedic, p. 857.

[7] http://www.hotnews.ro/stiri-esential-16032725-ultima-ora-proiectul-final-legii-privind-descentralizarea-vezi-textul-integral.htm

[8] It is amended Article 6 of Law No. 273/2006, for the purposes of regulation the principle that "Passing by the Government in the management and financing of local government of some public spending as a result of decentralization of powers and also other new public expenditure is done by law" and decentralization of some competences has as result the transfer of financial resources necessary to exercise the powers transferred to the local level.

[8] /[2]It is amended Article 4 of Law No. 213/1998 and entered art.4[1], the consequence being that is left to the discretion of local authorities in the same county the transfer of assets from the private domain of administrative units in the private domain of other administrative units, namely the transfer of goods from the public administrative domain of an administrative unit to unit in the public domain of other administrative unit.

10.The Government Ordinance no. 21/2006 on the regime of concession monuments, published in the Official Monitor of Romania, Part I, no. 83 of 30 January 2006;

11.The Law no. 182/2000 on the protection of movable national cultural heritage, as amended and supplemented;

12.The Law no. 311/2003 of museums and public collections, as amended and supplemented;

13.The Government Emergency Ordinance no. 118/2006 regarding the organization and functioning of cultural establishments, as amended and supplemented;

14.The Government Emergency Ordinance no. 189/2008 on the management of public cultural institutions, as amended;

15.The Government Ordinance no. 58/1998 on the organization of tourism activity in Romania, published in the Official Monitor of Romania, Part I, no. 309 of 26 August 1998;

16.The National Education Law no. 1/2011, published in Official Monitor of Romania, Part I, no. 18 of 10 January 2011, as amended and supplemented;

17.The Law no. 202/2006 on the organization and functioning of the National Agency for Employment , as amended and supplemented, published in the Official Monitor of Romania, Part I, No 452 of 25 May 2006;

18.The Government Emergency Ordinance no. 195/2005 on environmental protection published in Official Monitor of Romania, Part I, no. 1196 of 30 December 2005 as amended and supplemented;

19.The Government Emergency Ordinance no. 23/2008 on fisheries and aquaculture, published in the Official Monitor of Romania, Part I, no. 180 of 10.03.2008, as amended and supplemented;

20.The Government Emergency Ordinance no. 19/2006 on the use and control of the Black Sea activities, published in the Official Monitor of Romania, Part I, no. 220 of 10 March 2006, as amended and supplemented;

21.The Law no. 95/2006 on healthcare reform published in the Official Monitor of Romania, Part I, no. 372 of April 28, 2006 as amended and supplemented;

22.The Law no. 69/2000 regarding physical education and sport , published in the Official Monitor of Romania, Part I, no. 200 of 9 May 2000 and subsequent amendments.

4.Conclusions

It is therefore vital for grounding the constitutionality of this act and healthy social relations in Romania, in order to prevent the pathology of social relations, especially since decentralization refers to skills directly related to the transposition of the legislation, more precisely, public administration. The statement is based on the content of the concept of public administration, given that government functionally organizes runs and provides law enforcement to the material facts. As for this activity it is necessary to constitute a set of embodiments together in a social, political and legal set called - according to the name of the business - government (structural or organizational purposes).

In conclusion, the analysis of the text commented clearly states that the bill violates the Constitution of Romania commented in several ways[9]. Thus, in our opinion are violated Art. 120, para. 1 of the Constitution, that the principle of local autonomy is violated through art. 6 and Article 7 of Title II, Article 6 and Article 7 of Title III, Article II Article 6 of Title V, Article II Article 5 of Title VI, Art. 2 and Article 3 of Article III of Title VI, Article 8 of Title VI, Art of Title VII, Article 1 and 2 of Article VIII disposes the transferring of assets necessary for exercising the competence that will be decentralized from the state patrimony into the patrimony of local authorities[10].

In fact, local and county authorities are those who can appreciate the fair where local community interest approach to introduce the heritage of the administrative-territorial unit, or to be removed from that heritage regarding certain goods. Therefore by Article 9 of the Law no.213/1998 - Law on Public property - provided that "Art. 9 - (1) Transferring a public good in the public domain of an administrative state unit is made at the request of the County Council and of the General Council of Bucharest, or in another case by Government decision. (2) Transferring a public good of the administrative-territorial unit in the public state is at the request of the Government, the decision of the county council, General Council of the City Bucharest or the local council".

Furthermore, constitutional property is also not respected when ordering massive transfer of assets from the public / private state in the public / private administrative units, making exception to the rules of the common law regarding the inappropriate transfer of goods which was not made according to the law.

As shown in the notification submitted by the 70 MPs, tab 10, paragraph 4, we also consider that they have violated the provisions of art. 1, para. (4) and para. (5) of the Constitution, concerning the fact that it breached the principle of legality, a failure of the legal framework in the field of decentralization and property.

Basically, the new regulations were not correlated with Law nr.195/2006 Law - decentralization framework, with the stipulations of the New Civil Code [11] and

[9]Negoiță, A. 1996, *Drept administrativ*, Bucharest: Editura Sylvi.

[10]The principles for public adminstration in the administrative-teritorial units is based on decentralization, local autonomy and deconcentration of public services.

[11]For example: Art. 6 - (1) Notwithstanding the provisions of article 9. (1) of Law no. 213/1998 on publicly owned property, from article 45 par. (2) letter i) of Law no. 7/1996 on cadastre and real estate publicity, as amended and supplemented, the goods referred to in Annex 1, public property of the State and managed by the Ministry of Agriculture and Rural Development, of deconcentrated services, institutions that are reorganized, go to the public domain of counties, or Bucharest municipality and in the administration of county councils, respectively the General Council of Bucharest municipality.
(2) By exception from Civil Code provisions, the goods that are part of the states private property and that are object of decentralization, go in the private domain of the administrative-teritorial units.
(3) Real estate goods trasfered acording to the this law are to be offered on the basis of a delivery-reception protocol.

the Law no.213/1998. The requirements were not complied with clarity, precision and predictability of the law imposed by Law no.24/2000 on legislative techniques regarding law development, as amended to date. The new regulation may generate uncertainty, inconsistency and legislative instability, being violated the rules of law, the concepts introduced in its text as "regulatory conflict" and " the prevalence of legal provisions to other legal provisions". As long as there is a hierarchy of normative acts according to their legal force, and the principle that the special law derogates from the general law is totally useless and even dangerous to introduce the notion of "the prevalence of legal provisions to other provisions in force". The idea of "regulation of conflict" is contrary to the idea of legislative harmonization, what the legislator had it in mind when he regulated by Article 79[12] of the Constitution, the existence of the Legislative Council. Virtually no correlation was made with a whole new act, nor was it harmonized with domestic regulations of the Community law.

Were regulated contradictory rights are transferred, they shall be established by law (or proprietary right of administration) and the lack of correlation with all legal and normative acts in which decentralized authority are retrieved, through the regulation of some decentralized structures to whom no attributions were given sustaining simultaneously the structures that have formed the object of decentralization.

Although initially criticized, the draft law establishing measures of decentralization of powers exercised by some ministries and specialized agencies of the central government and the reform measures on local authorities and civil servants, we think it is extremely useful and extremely necessary that in this historic moment, to immediately enforce the decision of the Constitutional Court and removed the grounds of unconstitutionality to be immediately removed.

In our opinion, in order to comply with the law nr.195/2006 framework[13] for decentralization, in the way in which it is necessary to conduct an impact study, but to respond to the socio-political forces in the implementation of extended decentralization, it would be necessary to modify text article 5, paragraph 2 of Law nr.195/2006 in meaning: "(2) Ministries and other bodies of the central public administration, in collaboration with the Ministry of Interior and the associative structures of local authorities can organize pilot phase to test and evaluate the impact of proposed solutions for decentralization of powers which they exercise now" in this situation there would be no objection to the procedure for adoption of the draft law.

[12]Art.79, alin.(1): "The Legislative Council shall be an advisory expert body of Parliament, that advises draft normative acts for the purpose of a systematic unification and co-ordination of the whole body of laws. It shall keep the official record of the legislation of Romania".

[13]In the Constitutional Court the sesization act it is provided as an example article XII of the comented law.

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ABOUT THE AUTHOR

Iulian Nedelcu, PhD. is Professor at the Faculty of Law and Social Sciences, University of Craiova.

Email: avocatnedelcu@yahoo.com

Paul-Iulian Nedelcu, is PhD candidate at the Faculty of Law and Social Sciences, University of Craiova.

Email: paul_iulyan@yahoo.com