



## Local Autonomy in Romania

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# **LOCAL AUTONOMY IN ROMANIA**

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**Abstract:** The public administration of the administrative-territorial units has as its foundation / theme the decentralization of public services - the functional form of decentralization which, together with the territorial form, represents the essential particularity of the local public administration within the framework provided by the provisions of the Romanian Constitution in force. In this context, decentralization it is perceived, considered or understood as a transfer of administrative and financial competence from the level of central public administration to the level of local public administration or to the private sector. The decentralization of public services is usually approached in its interconnection and interdependence with their deconcentration / devolution and with the principle of local autonomy that I will approach.

**Jel Classification:** G32, G53

**Key words:** local administration, local autonomy, finance system, economy

## **1.INTRODUCTION**

The most general principle by virtue of which the governance of local public administration is organized and the activity of its authorities is that of local autonomy, a strong argument in favor of the opinion<sup>1</sup> that " there are multiple reasons for its correct understanding, both from the point of view of its democratic values and from the perspective of practical actions", in the sense that it avoids its accentuation and absorption until assimilation / synonymy with the independence of the authorities in the administration local public in all their actions, or with the so-called self-government and other such concepts, which suppose a" contradiction of the local public administration with the central administration by which, in particular, the executive power of the state is realized "<sup>2</sup> . According to the article 3 of Law no. 215/2001 on local public administration, " the local autonomy means the right and possibility of the public authorities to solve

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<sup>1</sup> Preda M., 2007, Law no. 215/2001 of the local public administration. Comments on articles, Wolters Kluwer Publishing House, Bucharest, p. 22.

<sup>2</sup> Preda M., 2007, Lucr. cit., p. 20

and manage, on behalf and in the interest of the local communities they represent, the public affairs, according to the law<sup>3</sup>; " This right is exercised by the local and town hall councils, as well as by the county councils, local public administration authorities, elected by universal, equal, direct, secret and freely expressed vote; the possibilities of resorting to the consultation of the inhabitants by referendum or any other form of direct participation of citizens in public affairs, according to the law, remain unaffected by the previous provisions / provisions ”;

"The local community is represented by all the inhabitants of the administrative-territorial unit"<sup>4</sup>. We observe / notice from the above definition of the principle of local autonomy in accordance with the vision of the European Charter of local autonomy, exclusion, compared to the previous regulation, of the president of the county council among the public administration authorities through which the local autonomy is achieved, the quite controversial aspect, the establishment of participatory democracy, together with the representative democracy, as a way of conducting public affairs (and also the direct citizen participation in the management / administration, management or management of the local public affairs, not only through representatives, through referendum or any other form of direct participation - provision according to the European Charter of local autonomy) and the definition / perception of the local community as a whole of the inhabitants of the administrative-territorial unit.

The essential element of the decentralized administrative system in Romania is "the principle of local autonomy, understood as a right whose holder is the local collectivity on the territory of an administrative-territorial unit and which is exercised through the democratically elected authorities, but also as an effective capacity or a combination of legal, human, material and financial means"<sup>5</sup>. The local autonomy knows / registers in Romania an equally legal and constitutional consecration, following precisely the requirement / imperative of the European Charter of the local autonomy of recognition, in the internal law and, to the extent possible, even in the Constitution, the principle of local autonomy, an aspect that I pointed out before<sup>6</sup>. In other words, there are provisions in this respect for international documents. The European convention of local autonomy defines this / local autonomy as " a principle established by the Constitution or by the laws of the States Parties, which gives the local authorities the right and the capacity to solve and manage, within the law, under their own responsibility and in the interest of their population, an important part of public affairs "<sup>7</sup>. The aforementioned document also emphasizes the need for administrative control by the state on local authorities, a control

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<sup>3</sup> Law no. 69/1991, republished in the Official Gazette of Romania, part I, no. 79 / 18.4.1996.

<sup>4</sup> Law no 115/2015 for the election of the authorities of the local public administration, for the modification of the Law of the local public administration no. 215/2001, as well as for the modification and completion of Law no. 393/2004 regarding the Statute of local elected officials, published in the Official Gazette of Romania, Part I, no. 349 of May 20, 2015.

<sup>5</sup> Riquier-WP, 2007, European Charter of Local Self-Government: An International Legal Instrument for Decentralization, in the French Journal of Public Administration no. 121-122, p. 193, quoted after the Apostolache MC, 2015, Law no. 215/2001 of the local public administration - commented and annotated, University Publishing House, Bucharest, p. 21.

<sup>6</sup> Apostolache MC, 2014, The influence of the European Charter of local autonomy on the legislation on local public administration, in the volume of the International Conference *Uniformization of law - legal effects and social, political and administrative implications*, Hamangiu Publishing House, Bucharest, pp. 447-448.

<sup>7</sup> Preda M., 2007, *Lucr. cit.*, p. 21.

that concerns only the legality of the acts issued by their representative authorities. The president of the county council was excluded from the authorities of the public administration through which the local autonomy is realized once by the Law no. 115/2015 that established the rule of indirect election of him / the president of the county council among the county councilors - according to authorized opinions<sup>8</sup>, the modification of the designation of an institution / in this case of the institution of the county council presidency is an insufficient argument for changing its legal nature. The legal definition of the local community starts from "the population living in a certain area of the territory of the unitary state, which benefits from its own administrative organization recognized by the Constitution and the law, but which has specific local interests other than those of the state"<sup>9</sup>. Some specialists<sup>10</sup> consider, however, that "the definition in question is not in accordance with the commands of the current status of Romania and that it must be rethought / reconsidered in order to be given the appropriate normative rigor".

According to other specialists<sup>11</sup> the recognition by the state of the local authorities represents an additional guarantee of the respect of the rights of citizens in relation to the state authorities and emphasizes the democratic character of the state itself". The local collectivity is the local democracy, the main foundation of any democratic regime<sup>12</sup>. The local autonomy implies the right of a community to govern itself in any problem, but with the condition of its integration in the relations with similar communities or with those located at higher levels or even at the center - local autonomy is something other than / is not an absolute right. The local authorities are organic, material (territorial) and legal components of the sovereign state, which ensures the autonomy necessary for the management / administration, the management of the tasks or their specific problems, but provided that they integrate the legal order of the state. The Romanian state recognizes, first of all by the constitutional provisions / provisions, but also by the Law of the local public administration no. 215/2001, that, within its framework, the local authorities are administered by the elected and their own forces, but under the judicial control of the legality from the state authorities.

The law of the local public administration no. 215/2001 stipulates, further, that "local autonomy is only / just administrative and financial, being exercised on the basis and within the limits provided by law", and that "the local autonomy concerns the organization, functioning, competences and attributions, as well as the management of the resources that, according to the law, belong to the commune, the city, the municipality or the county, as the case may be". The decentralized administrative system in Romania, which involves the operation of the principle of local autonomy, aims to ensure a balance between autonomy, unity, legality and equality. In the opinion of a reputed Romanian specialist, "local autonomy is the modern form of expression of the principle of decentralization"<sup>13</sup>. From the perspective of its dimensions, the local autonomy is only administrative and financial, as previously mentioned - it is exercised within the unitary

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<sup>8</sup> Apostolache MC, 2015, *Lucr. cit.*, p. 22.

<sup>9</sup> Popescu LC, 1999, *Local autonomy and European integration*, All Beck Publishing House, Bucharest, p. 33.

<sup>10</sup> Preda M., 2007, *Lucr. cit.*, p. 38.

<sup>11</sup> Trîilescu A., 2002, *Acts of local public administration*, All Beck Publishing House, Bucharest, p. 2.

<sup>12</sup> Alexandru I., 2008, *Public Administration Treaty*, Juridical Universe Publishing House, Bucharest, p. 258.

<sup>13</sup> Alexander I., 2008, *Lucr. cit.*, p. 334.

state and only in compliance with the law order. Therefore, " local initiatives must comply with the conditions and limits of the law "<sup>14</sup>. This aspect is also reinforced by the case law of the Constitutional Court of Romania, which considers that the operationalization / implementation of local autonomy "is circumscribed to the constitutional principle of law enforcement "<sup>15</sup> . It is stipulated / maintained thus that " the local autonomy is exercised according to the laws of the state, the legal framework being generally mandatory "<sup>16</sup>, that "the principle of local autonomy does not exclude the obligation of the authorities of the local public administration to obey the laws of general nature, applicable throughout the national territory, recognizing the existence of specific local interests distinct from the national interests, but correlated with them " - not contradictory their<sup>17</sup> , " that the local autonomy can be manifested only within the limits established by the law, and the public authorities in the administrative-territorial units are obliged to comply with the legal regulations generally valid throughout the Romanian state, the legal provisions intended to protect the national interests"<sup>18</sup>. We note that, in the opinion of the authors of the organic laws, the local autonomy considers the organization, functioning, competences / competence and the attributions and management of the resources that, according to the law, belong to the administrative-territorial units (in the area of local autonomy the relations between the local authorities and those national, central and county level) - it is questionable, among other things, the associated use of the expressions competence and attribution and the plural competences . The principle of local autonomy has a theoretical character, but its content is not abstract, in the sense that it has a material support materialized in practical, concrete actions. The economic basis of the local autonomy is the own patrimony that the local authorities manage as a true owner, according to the law. Local authorities have, in property or administration, management of material goods (land, buildings, various machines, but not only), as well as financial means of financial nature, which constitute their public or private domain, which they manage, in the same way, in accordance with the needs of the community and in accordance with the regulations in force. The local autonomy would, in fact, represent only the affirmation of a purely theoretical principle, without content and relevance in the plan of practical actions, in the absence of the material foundation and the freedom to manage it in accordance with its own needs. The patrimony of each community in the administrative-territorial units is, in reality, the source of its development and prosperity, of the higher satisfaction of the needs of the inhabitants. The afore mentioned heritage represents, at the same time, the origin / source of the income of the local authorities and element of guaranteeing the credits contracted by them for the achievement of major objectives, but absolutely necessary for the economic-social life in the respective territory.

By virtue of the Law on local public administration, " authorities of local public administration exercise, under the law, exclusive powers, shared powers and delegated

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<sup>14</sup> Apostolache MC, 2014, *Lucr. cit.*, p. 449.

<sup>15</sup> Decision of the Constitutional Court of Romania no. 562/2007, published in the Official Gazette of Romania, Part I, no. 461 of July 9, 2007.

<sup>16</sup> Decision of the Constitutional Court of Romania no. 136 of May 13, 2001 (according to Apostolache MC, 2015, *Lucr. Cit.*, P. 26).

<sup>17</sup> Decision of the Constitutional Court of Romania no. 102/2003 (according to Apostolache MC, 2015, *Lucr. Cit.*, P. 26).

<sup>18</sup> Decision of the Constitutional Court of Romania no. 406/2003 and the Decision of the Constitutional Court of Romania no. 154 / 30.03. 2004 , published in the Official Gazette of Romania, Part I, no. 466/25 May 2004 (according to Apostolache MC, 2015, *Lucr. Cit.*, P. 26).

powers", and " local autonomy gives the authorities of the local public administration the right, within the limits of the law, to take initiatives in all areas, except those which are expressly given to the competence of other public authorities ". We conclude, on the basis of the above, that each authority of the public administration also exercises exclusive powers or powers, shared powers or powers and delegated powers or powers (we will return to their definitions). The areas in which public administration authorities have exclusive, shared and delegated powers are detailed in<sup>19</sup>.

Such provisions are in full accordance with the principles and rules promoted by the Charter of multilevel / multilevel governance (adopted at European level by the plenary session no. 106 of the Committee of the Regions, advisory body of the European Union), whose purpose / aim is translated into " the coordinated action of the European Union, of the Member States and of local and regional authorities, based on the principle of subsidiarity and proportionality and on the partnership materialized in a functional and institutionalized cooperation that aims to develop and implement the policies of the European Union "<sup>20</sup>.

The practical application, after their acceptance, of the principles and standards set out in this document will mean accelerating the process of European integration and increasing democratic accountability in Europe, but also at guaranteeing the effectiveness, coherence and complementarity of the action of different levels of governance, including within the national states. . Law no. 215/2001 of the local public administration states / introduces and imposes, as it can be seen, the all-encompassing competence / on the whole territory under their jurisdiction of the authorities of the local public administration, who, by virtue of the exercise of the local autonomy, have the right / initiative / decision-making power in all areas, except those expressly attributed to other public authorities.

The right of initiative also implies the promotion and adoption / implementation of a solution, by the very fact that the need for the collaboration / cooperation of the local public authorities that have the right / initiative power with the local public authorities that have the right / decision power regarding the operationalization of the respective initiatives for solving the issues that interest them. It is obvious that the power / force of the general competence belongs / belongs only to the authorities of the local public administration located at the base of the administrative system, respectively to the mayor and to the local council (not to those at the intermediate administrative level, such as the county council and the president of the county council, to the latter returning -the constitutional and legal role of coordinating the activity of the basic communities for the realization of the public services of county interest). It is the consideration for which the competence / decision-making ability in the field of issues of local interest / the general clause of competence should rest with the mentioned administrative authorities, provided that the resolution of the problems is expressly in their charge / not allocated to another subject of law, and the county authorities to limit themselves to their role strictly defined by the Constitution and the law. The specialized literature itself emphasizes that "the constituent legislator emphasized the autonomy of the communes and the cities, reserving to the chosen county authority only a coordinating role".

The provisions of Law no. 215/2001 regarding the local public administration in Romania also states that "the relations between the authorities of the local public

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<sup>19</sup> The framework law of decentralization no. 195 of 2006, published in the Official Gazette of Romania, Part I, no. 453 of May 25, 2006.

<sup>20</sup> <http://cor.europa.eu/activities/governance/Documents/mlg-charter/en.pdf>.

administration in communes, cities and municipalities and the authorities of the public administration at the county level are based on the principles of autonomy, legality, responsibility, cooperation and solidarity. in solving the problems of the whole county "(an aspect already pointed out), and that" in the relations between the authorities of the local public administration and the county council, on the one hand, and between the local and the primary council, on the other, there are no subordination relations " . It follows from the previous ones / it can be concluded based on the previous ones that the place and the role of the local public administration and the way of their organization and functioning influence also the nature of the relations that are established between the different components of the subsystem of the local public administration and between them and the state authorities.

"The subsystem of local public administration is part of the system of public administration which, in turn, enters into the structure of the global social system." Consequently, the public administration is, ultimately, a system of relations. The provisions of the law regulate the relations between the authorities that exercise the local autonomy at the level of the commune, the city and the municipality and the authorities that exercise the local autonomy at the county level, in the sense that these / the reports in question are based / based on / are based on the principles of autonomy, legality, responsibility, cooperation and solidarity in solving the problems that interest the residents of the entire county. In order to consolidate this regulation, the rule / norm of the hierarchical non-subordination of the authorities from the administrative system (mayor and local council) to the county council, applicable principle and in the relations between the mayor and the local council was enshrined. The principle of autonomy is only compatible with the idea of hierarchical subordination - autonomy and hierarchical subordination are two antagonistic concepts. It is observed, in this case, that the principle of hierarchical subordination operates only in the relations between the authorities from the administrative system and the county deliberative authority and in the relations between the mayor and the local council.

## **2.CONCLUSIONS**

The provisions of the law no. 215/2001 regarding the local public administration from Romania<sup>21</sup> also states that "the relations between the authorities of the local public administration in communes, cities and municipalities and the authorities of the public administration at the county level are based on the principles of autonomy, legality, responsibility, cooperation and solidarity in solving the problems of the whole county " (an aspect already noted), and that " in the relations between the authorities of the local public administration and the county council, on the one hand, and between the local and the primary council, on the other, there are no subordination relationships " . It follows from the previous ones / it can be concluded based on the previous ones that the place and the role of the local public administration and the way of their organization and functioning influence also the nature of the relations that are established between the different components of the subsystem of the local public administration and between them and the state authorities. "The subsystem of local public administration is part of the system of

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<sup>21</sup> Article 6

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## REFERENCES

1. Alexandru, I. Public Administration Treaty, Juridical Universe Publishing House, Bucharest, 2008
2. Apostolache, MC The influence of the European Charter of local autonomy on the legislation on local public administration, in the volume of the International Conference Uniformization of law - legal effects and social, political and administrative implications, Hamangiu Publishing House, Bucharest, 2014
3. Preda, M. Law no. 215/2001 of the local public administration. Comments on articles, Wolters Kluwer Publishing House, Bucharest
4. Riquier-WP European Charter of Local Self-Government: An International Legal Instrument for Decentralization, in the French Journal of Public Administration no. 121-122, p. 193, quoted after the Apostolache MC, 2015, Law no. 215/2001 of the local public administration - commented and annotated, University Publishing House, Bucharest, 2007
5. Trilescu, A. Acts of local public administration, All Beck Publishing House, Bucharest, 2002
6. \* \* \* Law no. 115/2015 for the election of the authorities of the local public administration, for the modification of the Law of the local public administration no. 215/2001, as well as for the modification and completion of Law no. 393/2004 regarding the Statute of local elected officials, published in the Official Gazette of Romania, Part I, no. 349 of May 20, 2015.
7. \* \* \* Law no. 69/1991, republished in the Official Gazette of Romania, part I, no. 79 / 18.4.1996
8. \* \* \* <http://cor.europa.eu/activities/governance/Documents/mlg-charter/en.pdf>.

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<sup>22</sup> Alexander I., 2008, *Lucr. cit.*, p. 265



9. \* \* \* The framework law of decentralization no. 195 of 2006, published in the Official Gazette of Romania, Part I, no. 453 of May 25, 2006
10. \* \* \* Decision of the Constitutional Court of Romania no. 406/2003 and the Decision of the Constitutional Court of Romania no. 154 / 30.03. 2004 , published in the Official Gazette of Romania, Part I, no. 466/25 May 2004
11. \* \* \* Decision of the Constitutional Court of Romania no. 562/2007, published in the Official Gazette of Romania, Part I, no. 461 of July 9, 2007