



THE 15TH EDITION OF THE INTERNATIONAL CONFERENCE
**EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES**

**Identification of Ways and Means Favorable to the Application of the
Decentralization Process at Local and County Level**

Georgeta Modiga¹, Gabriel Ioan Avramescu²

Abstract: Local public administration from all European countries has as one of the most important principle the decentralisation mentioned by the fundamental law, sometimes. The researchers in local finances and local governments have defined this principle with different words. The aim of all local governments is the same: to rise local autonomy that implicates financial autonomy combined with good management based on productivity of public goods which allowed welfare of local public administration. Oates wrote the theorem of decentralisation that represents an important point of view applied in many countries in present with impact in the welfare of the local entities.

Keywords: decentralisation; local public administration; welfare; local public finances; financial autonomy; productivity; public goods

1. Introduction

The notion of decentralization has a wide and a narrow meaning. In a broad sense, decentralization means any transfer of responsibilities from the central to the local level. In a narrow sense, decentralization is related to the process of its realization, namely territorial decentralization - by transferring responsibilities to administrative-territorial units, and decentralization by services - by detaching public services from central or local competence and offering them an autonomous organization.

In accordance with the public administration reform strategy agreed by the European Union Commission, the concept of decentralization in Romania is defined through three major elements:

- further decentralization through the transfer of administrative and financial competencies and responsibilities, from the level of central public administration authorities to the level of local authorities;
- continuing the deconcentration process by delegating responsibilities in the territory according to the needs at local level, within the same administrative structure (deconcentrated services operate under the ministry that delegated the responsibility to them);
- the transformation of the deconcentrated services from the territory, according to the needs of the citizens and for their efficiency, into decentralized services under the responsibility of the local authorities.

According to the transferred responsibilities, decentralization is divided into three categories: political, administrative and fiscal. Decentralization is a system of administrative organization that allows human

¹ Professor, PhD, Danubius University of Galati, Romania, Address: 3 Galati Blvd., 800654 Galati, Romania, Tel.: +40372361102, Fax: +40372361290, Corresponding author: georgeta.modiga@univ-danubius.ro.

² Economist, PhD in progress, E-mail: gavramescu@gmail.com.

communities or public services to administer themselves, under state control, which gives them legal personality, allows them to establish their own authorities and provides them with the necessary resources. The essence of administrative decentralization consists in the transfer of some attributions of the various central authorities to some authorities that function in the administrative-territorial units and even to the authorities of the local collectivities. Through decentralization, the public administration becomes more efficient and more operative, the problems that interest the population are no longer filed in the ministerial offices, but they are solved at lower levels, in conditions of opportunity and increased efficiency.

2. Decentralization, Principle of Public Administration

The Public Administration, as a component of the system of social organization, applies in organization and functioning, principles on the basis of which it can establish its structure and guide its functioning. Starting from the provisions of the Romanian Constitution, according to which the Public Administration from the administrative-territorial units is based on the principles of decentralization, local autonomy and deconcentration of public services (art. 120 paragraph 1), the legislator defined decentralization in art. 5 letter x of the G.E.O. no. 57/2019 on the Administrative Code as representing the transfer of administrative and financial competencies from the level of central public administration to the level of public administration in the administrative-territorial units, together with the financial resources necessary for their exercise. Thus, a refinement of the definition of decentralization given by the previous regulation is revealed, the Framework Law on decentralization no. 195/2006, which defined decentralization as “the 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”. Therefore, in the sense of the old legislation, the decentralization process included the transfer of administrative and financial competence including to the private sector, while the current definition no longer refers to such a transfer. On the other hand, while the definition of the Administrative Code emphasizes that the financial resources necessary for the exercise of the tasks assigned to the local public administration are transferred, the previous legislation did not mention this aspect in the content of the definition.

3. Principles of the Decentralization Process

The whole decentralization process is assigned the entire Title II in the Administrative Code, a chapter composed of five articles, which regulates, in succession, the principles, rules and stages of the decentralization process, the transfer of financial resources, cost and quality standards. Previously, this matter was based in the Framework Law on Decentralization no. 195/2006, which was absorbed in the Code.

From reading the provisions of art. 76 of the Code we can observe that decentralization in public administration operates, in turn, according to a series of principles:

- 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 the 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 does 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.

A similar enumeration also contained Law no. 195/2006, stating that the Administrative Code no longer lists the principle of budgetary constraint (which prohibits the use by central government authorities of special transfers or subsidies to cover final deficits of local budgets) among the principles of decentralization, which remains the basis for activities local public administration, being expressly regulated in article 75 of the Code, among the specific principles applicable to local public administration.

We find that the legislator distinguishes between principles, which are also rules, and the rules of the decentralization process, basing this process on the principle of European origin of subsidiarity. This is mainly applicable in the political and legal sciences and means that, in the assignment of tasks, priority must be given, among several possible variants, to the body that is closest to the final beneficiary of an activity, because it knows best his needs, expectations and possibilities to satisfy them. The principle of subsidiarity thus appears to us as „a principle regulating competences between a central legal order (the European Union or a state) and the related local legal orders (the Member States of the European Union, respectively the territorial infrastructures)”. (Stratan, 2014, p. 100)

The principle of subsidiarity is applicable and must be respected as a guiding principle in the assignment of responsibilities. The principle of subsidiarity requires that the attribution of competencies be made to the local authorities at the lowest administrative level (local, county, regional, national) which can ensure a maximum degree of efficiency and which have the capacity to decide the objectives for developing the quality of services from their area of responsibility. In compliance with the principle of subsidiarity, a competence can be taken from the local level and transferred to a higher administrative level only if those responsibilities would be more effectively exercised by the higher level. In the context of local public administration, the principle of subsidiarity states that the exercise of powers must be done by local public administration authorities located at the administrative level closest to the citizen, who have the capacity and ability to achieve the goals of public administration.

The principle of ensuring the financial resources necessary to carry out the decentralized activity has a similar importance, because, otherwise, the process is formal and inefficient. The importance of this principle also results from the fact that some states have placed it in their constitutions, as a principle of organization and functioning of the public administration.

4. Rules of the Decentralization Process

The decentralization process has a degree of complexity that has made it necessary to establish guiding principles, which should be sufficient to ensure a stable and relevant regulation. Therefore, in Article 77, the Administrative Code establishes a series of rules of the decentralization process, thus replacing the provisions of Chapter II, Section 1, of Law no 195/2006.

According to these regulations, the Government, ministries and other specialized bodies of central public administration transfer powers to local public administration authorities at the level of communes, cities, municipalities or counties, as appropriate, respecting the principle of subsidiarity and the geographical area of beneficiaries, according to which transfer of competence on the provision of a public service is made to that level of local public administration which best corresponds to the geographical area of the beneficiaries. Unlike the old regulation, the Administrative Code no longer refers to the criterion of economies of scale in this context.

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.

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, 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 the attributions of entering, updating, exploiting and capitalizing the data. 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 ministries or other specialized bodies of the central public administration, as the case may be, which have transferred competences.

The regulation of the database regime is one of the novelties brought by the Administrative Code, it does not find a correspondent in the old regulation. This appears in the context of the indisputable tightening of the legal regime regarding the protection of personal data, with the entry into force of the General Regulation on Data Protection¹.

Ministries and other specialized bodies of the central public administration, which have not organized subordinate 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 it currently exercises. 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 transfer of competences, as well as their exercise, are done at the same time as ensuring all the necessary resources. The financing of delegated powers is provided entirely by the central public

¹ Diculescu, I.M., *Descentralizarea in Noul Cod Administrativ. Principii si componenta esentiala in desfasurarea activitatilor administrative (III)/Decentralization in the New Administrative Code. Principle and essential component in carrying out administrative activities (III)*, 29.07.2019, available at: http://www.euroavocatura.ro/articole/2285/Descentralizarea_in_Noul_Cod_Administrativ__Principiu_si_componenta_esentiala_in_desfasurarea_activitatilor_administrative__III_

administration. The delegated powers are exercised by local government authorities or other local government institutions, on behalf of a central government authority, within the limits set by it.

5. Ways and Means of Implementing the Decentralization Process at Local Level

Administrative capacity is defined by the Administrative Code as “the set of material, financial, institutional and human resources available to an administrative-territorial unit, the legal framework governing the field of activity, as well as how they are capitalized in their own activity according to the competence established by law” (art. 5, letter o). In the old regulation, the law established that in the processes of transfer of competencies to local public administration authorities at the level of communes and cities, ministries or specialized bodies of central public administration can classify administrative-territorial units into two categories, depending on administrative capacity. theirs. This classification has not been maintained by the Administrative Code.

Similar to the previous regulation, the Administrative Code imposes, in Article 80, **a series of qualitative and cost standards regarding the provision of decentralized public services and public utility, thereby understanding to ensure optimal means to implement the decentralization process at local level.** Ministries and other specialized bodies of the central public administration set cost standards for financing public services that have been decentralized until the entry into force of the Code, as well as those to be decentralized and quality standards to ensure their provision by the authorities' local public administration. The cost and quality standards for public services that have been decentralized are approved within a maximum of 12 months from the entry into force of the Administrative Code. The cost and quality standards for the public services to be decentralized shall be approved within a maximum of 12 months from the entry into force of the 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 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.

The cost and quality standards are approved by a decision of the Government, 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 may be. Government decisions on the periodic updating of cost and quality standards are the basis for determining and allocating the amounts deducted from some revenues of the state budget 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 utilities. Local government authorities can increase the level of quality and cost based on their own revenues and other attracted sources, in accordance with the law. In providing decentralized public services and public utilities, the 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 cost standards established under the law.

Another way in which the legislator provided, in the Administrative Code, instruments suitable to ensure the application at local level of the decentralization process was the establishment of an institutional framework similar to the one existing under the rule of Law 195/2006. It is worth emphasizing, however,

that, unlike the Framework Law on Decentralization, the Administrative Code no longer refers to the Ministry of Administration and Interior in terms of coordinating the decentralization process, offering a more flexible regulation, establishing, through art. 81, the role and attributions of the “coordinating ministry of the decentralization process”, but without naming a specific ministry for this purpose. Instead, it is shown that the coordinating ministry of the decentralization process is the ministry with attributions in the field of public administration.

The coordinating ministry of the decentralization process approves, according to the law, the initiatives and drafts of normative acts regarding the administrative and financial decentralization, elaborated by the ministries, respectively by the other specialized bodies of the central public administration. The coordinating ministry of the decentralization process supports the substantiation and implementation of the Government's decentralization policy by:

- a) elaboration of the strategy and general decentralization policies;
- b) technical coordination and monitoring of the decentralization process;
- c) elaboration of the financial and fiscal decentralization policy, 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 finance, 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.

Therefore, regarding the ministry that has attributions in the field of public administration, the Code does not identify it by its name, but by the tasks it has. This is applied in case there is no need to change the provisions of the Code, when the name of the ministry is changed. This ministry has as main attribution the endorsement, according to the law, of the initiatives and projects of normative acts regarding the administrative and financial decentralization, elaborated by the ministries, respectively by the other specialized bodies of the central public administration. The wording is relatively ambiguous, because, as can be seen from the economics of the Code, related to the philosophy of the institution regulated by the part of it to which we refer, we believe that the coordinating ministry should be responsible for developing initiatives and draft regulations on administrative and financial decentralization, and not all ministries (Vedinaş, 2019, pp. 59-60). They must, at most, have responsibilities in their field of activity. Moreover, such a mission is expressly provided in letter a) and b) of par. (3) in art. 81, according to which the coordinating ministry exercises its responsibilities in the field of decentralization by elaborating the strategy and general policies of decentralization and the technical coordination and monitoring of the decentralization process.

We thus understand that the first level in the achievement of the decentralization process is represented by the ministry with attributions in the field of public administration. Within it, the Interministerial Technical Committee for Decentralization is established, whose mission is the general coordination of the decentralization process. Another institutional structure is represented by the Committee for local public finances, which carries out its activity in accordance with the provisions of the Law on local public finances (Law no. 273/2006), whose secretariat is provided by the coordinating ministry of the decentralization process and the ministry with attributions in the field of public finances, currently being the Ministry of Public Finance. We note the caution of the legislator, who does not use the current names of some ministries, given that, in the process of investment or reshuffle, the Prime Minister, with the approval of Parliament, is free to establish and change the structure of ministries that make up the Government.

Beyond their temporary name, what remains unchanged is the fact that, in the process of administrative and financial decentralization, there are two responsible public administration authorities, namely the coordinating ministry of the decentralization process and the ministry with responsibilities in the field of public finance, regardless of the name which they will have over time.

The second level is represented by the ministries and the other specialized bodies of the central public administration, in their structure working groups are set up for the decentralization of competencies. The ministries, the other specialized bodies of the central public administration and the local public administration authorities have the obligation to transmit to the coordinating ministry of the decentralization process all the information necessary for the substantiation, implementation and monitoring of the decentralization process. The ministries and the other specialized bodies of the central public administration ensure the interoperability of the specific data collected with the database of the coordinating ministry of the decentralization process, constituted for this purpose.

In the exercise of the methodological coordination function of the decentralized public utility services, the ministries and the other specialized bodies of the central public administration have the obligation to monitor the observance by the local public administration authorities of the quality and, as the case may be, cost standards.

6. Conclusions

The decentralization at the level of the regions proposed by the Administrative Code is based on the principle of approaching the citizen, the beneficiary. From a managerial point of view, the decentralized administrative system brings efficiency, flexibility and concern for the needs of the community, achieving a link between elected representatives of the population, which allows control of the electorate, thus ensuring a correspondence between policies and citizens' wishes. Thus, local interests can be solved in better conditions, local public services can be better managed by local authorities, because they do not have the obligation to comply with the orders and instructions of the center. From a political point of view, this system brings advantages in terms of the responsibilities of the authorities and the participation of citizens in public life, and in terms of the economic field, the process of decentralization of power allows greater diversification and wider participation in local activities.

Representatives of local authorities have consistently and unanimously supported the opportunity for decentralization in the regions. Their pro-decentralization arguments were¹:

- decentralization can provide a response to the real challenges of the regions, by reducing the differences between and within them, while stimulating sustainable economic development, by capitalizing on the local/regional specific in the interest of citizens;
- reducing the decision-making chain, by limiting the dispersion of functions, a greater accountability of the actors involved, which should ensure a unitary framework of coordination, strategic and operational management in the implementation of the funds available for the period 2021-2027;
- streamlining implementation in terms of deadlines and decision-making;
- the implementation of the European Commission's principle of bringing Cohesion Policy closer to the citizens, by implementing this funding policy at regional/local level;
- stimulating the exchange of good practices and the transfer of capitalized expertise over time in the structures in the territory;

These arguments were complemented by those of the Regional Development Agencies (RDAs):

- the experience gained since the pre-accession period on the implementation of European funds, programs managed through direct management or government programs;
- solid structures, with stable staff (1,200 people employed at the level of the 8 RDAs) and a low turnover rate, below 3%;
- leadership development and decision-making in the implementation of European funds;
- choosing and prioritizing needs, through an approach supported by a centralized, unitary coordination and a good adaptation of funding interventions to regional needs and specifics;
- the efficient performance of the related functions and tasks, considering the fact that the implementation of the funds was based on a system based on performance criteria.

Bibliography

Stratan, V. (2014). *Autonomie locală și subsidiaritate în dreptul francez și în dreptul român/Local autonomy and subsidiarity in French and Romanian law*. Bucharest: Universul Juridic.

Vedinaș, V. (2019). *Codul Administrativ Annotat/Annotated Administrative Code*. Bucharest: Universul Juridic.

Diculescu, I.M. *Decentralization in the New Administrative Code. Principle and essential component in carrying out administrative activities (III)*, 29.07.2019, available at the web address:

http://www.euroavocatura.ro/articole/2285/Descentralizarea_in_Noul_Cod_Administrativ__Principiu_si_componenta_esentiale_in_desfasurarea_activitatilor_administrative__III_

Framework law on decentralization no. 195/2006.

Emergency Ordinance no. 57/2019 of July 3, 2019 - part I regarding the issuing Administrative Code: Government of Romania published in: Official Gazette no. 555 of July 5, 2019.

<https://www.fonduri-structurale.ro/stiri/23160/descentralizzazione-la-nivelul-regiunilor-in-dezbatere-cu-ministerul-fondurilor-europene-reprezentantii-autoritatilor-centrale-locale-si-ai-comisiei-europene>

¹ <https://www.fonduri-structurale.ro/stiri/23160/descentralizarea-la-nivelul-regiunilor-in-dezbatere-cu-ministerul-fondurilor-europene-reprezentantii-autoritatilor-centrale-locale-si-ai-comisiei-europene>