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**The Democracy at the Local Level**

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**Abstract:** The modalities of citizen participation in the decision-making process of inter-community structures or associations are formulated as principles, general rules. The democratic deficit of such structures is denounced in many European states. Although the main purpose of these associations is to streamline and increase efficiency of local management to the citizens' benefit, the citizens have no means of determining or influencing the exercise of competencies by the local government/authority. The objective of this topic is to analyze the experience of the associations' evolution in the European space, predominantly in Romania, based on the reports of European Committee on Local and Regional Democracy and Romanian legislation. The purpose of this analysis is to draw lessons and recommendations for effective citizen participation in the inter-community. The citizens' participation represents an issue of concern for many states, and is taken into consideration in the analysis of the services offered.

**Keywords:** citizen; democracy; local autonomy; inter-community

## 1 Introduction

The modalities of citizen participation in the decision-making process of inter-community structures or associations are formulated as principles, general rules. The democratic deficit of such structures is denounced in many European states. Although the main purpose of these associations is to streamline and increase efficiency of local management to the citizens' benefit, the citizens have no means of determining or influencing the exercise of competencies by the local government/authority. The objective of this topic is to analyze the experience of the associations' evolution in the European space, predominantly in Romania, based on the reports of European Committee on Local and Regional Democracy and Romanian legislation. The purpose of this analysis is to draw lessons and recommendations for effective citizen participation in the inter-community. The citizens' participation represents an issue of concern for many states, and is taken into consideration in the analysis of the services offered.

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## 2 The Inter-Community Structures in Romanian Legal Science

The democratization of the Romanian society, gradually led to the normative confirmation of some mechanisms able to reconstruct, “reconquer” the legitimacy of public power through the assimilation of an administrative communication mode, based on opening and transparency.

The public power, the state must create those mechanisms which can allow the individual to manifest, and the democracy to expand (Bălan, 2007, p. 95). This complex process of actively involving the citizen in the management of public business and in decision making is realized through granting the administrative power to the local collectivity, the chosen authorities and through stimulating the associative structures of the civil society. (Bălan, 2007, p. 95)

We notice that the mechanisms that sit at the basic of the participative democracy<sup>1</sup> construction are fundamented and devolved through the national<sup>2</sup> and international<sup>3</sup> juridical instruments. The European chart of local autonomy<sup>4</sup> is a document through which a series of principles capable of regulating the interaction between local collectivities and central authorities are decided. The objective of this document is to compensate the lack of common European norms capable to appreciate and protect the rights of the local collectivity, which are closer to the citizen and which give him the possibility to actually participate in the decision making process concerning his daily environment.

Without examining these principles which determine a series of rights in favor of the citizen, we stop upon a *recent problem*, more precisely *the democracy of the local collectivity at the level of inter-community associative structures*. The regulations regarding the means given to the citizens, in order to take part at the local collectivities life are incomplete, although the European Chart Preamble of local autonomy foresees that: “local public authorities represent one of the main fundaments of any democratic regime”<sup>5</sup>, the right of citizens to participate at solving public issues is part of the common democratic principles for all member states of the European Communion.” The local autonomy principle, established by the European Chart of local authorities *founds territorial collectivities and their capacity to organize in cooperation structures*. Therefore, the cooperation is materialized in juridical and territorial autonomy. Nevertheless, the autonomy can know serious limitations, depending on the states’ legislation.

The chart is limited at regulating the area of interactions between the local collectivity and the central authorities through the establishment and share of responsibilities and indicating the mechanisms able to facilitate these reports. Awarding responsibilities consists in autonomy, legality, a general competence clause, subsidiarity, and delegation of competences. The second category of principles can be qualified as instruments which guarantee the normal running of relations set at different activity domains, respectively cooperation, information, financial independence, and supervision. The principle of administrative decentralization regulates the interactions area between the local collectivity and the central authorities’ through the establishment and sharing of responsibilities and the indication of the

<sup>1</sup> We appreciate that at the Timisoara Townhall level; the participative democracy is coherent organized. For more details view consultative district committees, the Seniors Council, The Local Youth Council, public debates.

<sup>2</sup> Article 120 from the Revised Romanian Constitution.

<sup>3</sup> The European Chart of Local Autonomy, adopted in Strasbourg on October the 15<sup>th</sup> 1985, in force on 1<sup>st</sup> of September 1988. Romania signed the Chart on October the 4<sup>th</sup> 1994 and ratified it through Law Number 199 from November the 17<sup>th</sup> 1997, published in “The Official Monitor”, Part 1, No. 331 from November the 26<sup>th</sup> 1997, except Art.7, paragraph 2 from this European Instrument.

<sup>4</sup> Adopted in Strasbourg on October the 15<sup>th</sup> 1985, in force on 1<sup>st</sup> of September 1988. Romania signed the Chart on October the 4<sup>th</sup> 1994 and ratified it through Law Number 199 from November the 17<sup>th</sup> 1997, published in “The Official Monitor”, Part 1, No. 331 from November the 26<sup>th</sup> 1997, except Art.7, paragraph 2 from this European Instrument.

<sup>5</sup> See the European Chart for local Autonomy Preamble.

mechanism capable of facilitating these reports. Therefore, in order to meet the competences and responsibilities conferred through law to the local collectivity, the insurance of financial resources is necessary, in order to allow the authorities to properly manage the local public issues.

The manner in which activities in common can be realized by the local collectivity is held in the Chart, in articles 9 and 10, in international juridical norms, which on one hand regulate the relative principles at the financial resources and on the other hand fixes the rules regarding the right of local public administration authorities to associate, in order to realize common interests.

While the local autonomy principle assumes an independent administration, which can allow the *substantiation, sizing and distribution of local public expenditures compared to the priorities of the local collectivity* (Bălan, 2007, p. 95), but keeping in mind the legal provisions.

*Opening and transparency* are defined in the juridical specialized literature as that phenomenon that allows the absorption of opinions, external ideas and, transparency reflects the advertising of administrative actions, *participation in decision-making of persons whose interests are at stake* (Bălan, 2002, p. 145), through direct access, therefore the approach to citizens being achieved. The objectives of this principle are: respect of public interest and of the individual rights of the individual.

Achieving public interest through opening and insurance of free access of citizens to the administration- one of the fundamental rights of citizens- has as a goal the limitation of any wrong administration and corruption. The juridical nature of these structures varies depending on the internal legislation of states; there are three types of inter communal legislation states. There are three types of inter communal associations. *A more flexible model based on the liberty of the local collectivity which chooses to manage the public services in common.* This model is based on existing structures: associations, enterprises, unions, informal cooperations, having a juridical system of common right. Applicable law is not a specific right, the juridical frame is quite low, so the statute of these structures fixes the applicable rules and the contracting procedure. (Bulgaria, England, Czech Republic)

Regarding the Romanian legislation- relative to regulating association and cooperation there is a general normative frame which defines the association or the foundation, the federation, the proposed goal for realizing several general community activities or as the case is, activities of personal non-legal interest.<sup>1</sup> The normative act defines the status of associative form, public utility, and sets through juridical norms the conditions which must be achieved by the subjects in law in order to gain this status, the rights given to them and the obligations arisen from their task. Law Number 215/2001 regarding the local public administration recognizes distinctively the local public administration authorities' rights of association at a national or international level (Manda & Manda, 2007, p. 453) as an issue that fits in the general system of the local autonomy. From the Romanian model point of view, the most important one is the association for inter community development. As we noted, the normative background was O.G. Number 26/2000, even for community services of public expedience. Under these regulations the inter community development association was a private law juridical structure, with the status of a public expedience. The lawgiver interferes with new acts<sup>2</sup> through which he defines the community development association as a inter community public institution; it establishes the frame status and the constitutive acts<sup>3</sup> of the reports stated between the local public administration authorities and the users as being ruled by public law juridical norms.

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<sup>1</sup> See Government Order No.26/2000 approved through Law No. 246/2005, published in J.Of. No. 656/25.07.2005.

<sup>2</sup> See Art.9 from Law No. 51/2006 regarding public utilities community services, published in J.Of. No. 254/21.03.2006.

<sup>3</sup> See H.G. No. 855/2008 for approving the Constitutive Act frame and the frame status of inter-community development associations with the activity reason –the public utility services, published in J.Of. No. 627/28.08.2008.

Following these legislative interventions, we find enough considerations which lead the inter community structure towards an *incorporated model*, characterized through defining the association mainly as a moral person of public law, with specific organs, having as purpose the input and providence of specific services for the local interests.

For example France, Spain, and Portugal have a well covered juridical system, the financial and juridical frame being well developed.

Then we can talk about an *intermediate model* which is found in most states and which borrows from the two models, an option that is motivated by the fact that on one hand the public law structures give them democratic legitimacy and durability and constancy to the means used and on the other hand the private law structure gives more flexibility. The fundamental purpose of these structures is of rationalizing and streamlining the local management through reducing the number of structures which administrates the same service and the relevance, the boldness of the management. Inside the inter-community development associations, the communities freedom of decision making (territorial-administrative units) is preserved, indicating that every unit keeps its local autonomy, according to the law. As for *democracy*, inside of these structures, it seems that is deficient developed: there is a lack of democratic procedures which can regulate the participation of local collectivities. From a *functional point of view*, inter community associations' cover more areas: the internal organizational structure (the technical apparatus), the institutions' autonomy, specific skills (water, dump goods, transport, environment, tourism etc), and the domain of democracy and community concerns the place of citizens in the community structure.

### 3 The Inter-Community Structures in European Space

Regarding the *initiative to create* an association we distinguish among several actors. The cooperation is generally initiated by the *central power*, like in France, Italy, and Sweden. In Portugal, the juridical basis of inter community cooperation is represented by the 1976 Constitution. Subsequently the legislation evolves and starting with 1981 the inter-communal associations have grown towards other forms of organization. In France, the initiative belonged to the state, the central authorities and later on to the lawgiver-he intervened in favor of a legislation trough which he regulated the territorial administration of the Republic; and in 1999 he opted for strengthening and simplification of the inter-communal cooperation. The cooperation *is initiated at a local level* and afterwards framed by texts at a central level (Russia, The Netherlands, Finland, and Switzerland). In Bulgaria the initiative belongs mainly to the municipalities and it is regulated by the central legislation. The Romanian legislation provides that this initiative belongs to the local public administration authorities who have an exclusive competence in regards with establishing, organizing, coordinating, monitoring, and controlling the services operation through public utilities<sup>1</sup>, having as purpose and objectives: building the infrastructure or developing projects.

But the initiative may come from non-governmental organizations, the private sector or associations as well.

The fundament of these institutions is justified by reasons that concern:

- *efficiency of the management*-local structures must be realistic and relevant at exertion competences level.

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<sup>1</sup> See Art. 3 Law No. 51/2006 regarding public utility community services, published in J.Of. No. 254/21.03.2006

- *financial and administrative reasons* can determine the cooperation, through accessing subsidies offered by the state or by the European Union.
- *the reasons can also be political*: the cooperation offers communities the possibility to answer the requirements regarding services, with constant or even cut back financial resources.
- *geographical reasons*: the cooperation allows on one hand, choosing the territory for different tasks (creating common transportation networks, with the consequence of responsibility for urban congestion issues).

The motives above, give us enough arguments in favor of this structure, however the concrete forms of participation in the inter-community from behalf of the citizen are not regulated because the legislation incompletely provides the democratic means available and then when they are accessible they prove to be inefficient in fixing errors or authority abuse.

Direct participation in decision making through referendum decision or trough population consulting are pretty rare! For example, the legislative frame in Romania, regarding transparency is quite rigorously regulated, but administrative practice, in most situations denounces the inefficiency of some principles like: advertising meetings, motivating administrative decisions, public authorities' responsibility and liability, administrations efficiency and expediency. The decision making process must have a systemic vision of the realities in the administrative system and a high capacity of analysis and synthesis of information derived from the local administration and/or citizens. Some countries mention the citizens' right to petitions and access to information. The Netherlands, for example, emphasize the possibility given to citizens of complaining (making complaints and litigation) for the situations in which their interests are injured. There is often an indirect participation through the selection of the inter-community structure organs or through rules mentions in certain reports published after the debate of inter-communal structures deliberative bodies. (France, Czech Republic, Finland)

Generally, states assign a right to information in the internal legislation, which is applied or produces effects in terms of inter-community. Certain structures forecast a specialized briefing through editing brochures, information reports and several sites. At a structural level, the state is not present in decisional organs; it intervenes only at a control level or in consultative organs. A situation that makes an exception of the principle mentioned above is found in Luxemburg where the state is present in the inter-community. Structure organs are indirectly elected. No organ scans the election procedure through universal and direct suffrage, even if for example, in France it reflects on this subject; in Finland the lack of democratic control and the presence of leadership in inter-community cooperation is highlighted. We must not neglect the negative effects of elections through universal and direct suffrage, seen as a reduction of the competences transfer, in that the Mayors will is to keep their power.

#### 4 Conclusions

The Romanian legislation enrolls in the same patterns, the effectual normative acts<sup>1</sup> expressly provide citizens the possibility to take part and to be consulted on occasion on *organizing public utility services*, but not of their mechanisms; the technical apparatus being called by the General Assembly. Nevertheless, the purpose of public utility service is to assure "equal and non-discriminatory accessibility to services...transparency and protection to users." The inter-community democratic deficiency is denounced in many European states, motivated by the fact that this inter-community system is often exercised detrimental to democracy whereas *structures are often named*.

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<sup>1</sup> See Art.6 Law No. 51/2006 regarding public utility community services, published in M.Of. No. 254/21.03.2006

Therefore, the participative democracy theme inter-community structures level is very little developed and analyzed. The rules applied in regard to the right to information, petition, reference or referendum, are general rules and not specific rules applied to the inter-community; there are no reforms in this direction. At the inter-community democracy level, the direction is to find a high level of democratic legitimacy in inter-communal structures (information, election, consolidating transparency) and also a better quality of services which answer directly to citizens needs. In this sense we notice that the Council of Europe's activities, through the European Committee on Local and Regional Democracy, evidenced in the new project of an Additional Protocol to the European Charter of local autonomy; in which new regulations about the right of citizens to participate at the local collectivities businesses are proposed. The importance if decision making transparency is translated through an evolution of the international society, which recognizes that citizens are actors of the public life. We can not build democratic institutions without taking into account the fundamental role of citizens' participation and involvement in the community they come from, public businesses. The basis of these considerations is represented by the recent "additional protocol to the European Charter of local autonomy, regarding the right to participate at local collectivity businesses" adopted in Utrecht on November the 16<sup>th</sup> 2009 and opened for the Council of Europe, member states to be signed. The real application of the transparency principle would lead to a higher confidence in laws and regulations since they were adopted while consulting those interested. Trusting the legal frame will result in a higher level of law respect, with positive consequences on economic development and on keeping several cooperation relations between the elected local authorities and the citizens. All this circumstances give rise to a rich doctrinal debate, while the implementation of these valuable principles is still scarcely; the administration has serious deficiencies regarding the compliance of the citizens much proclaimed fundamental right, in the international conventions.

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