

## **Ion Creanga – lector superior**

### **Local public administration in the context of current constitutional provisions and perspective of new constitutional regulations**

#### **General considerations**

The analysis of the problem of local public administration comes from the administrative organization of the territory that represents an essential element on the organization and administration of any state. The state is more powerful and influent if it has a larger territory, favorable climate and is rich in natural resources; if it possesses modern technologies, well-developed economy and an efficient administrative system. Administration of the state presupposes the existence of some levers of influence and control over an individual, the levers of monitoring and subjugation of an individual to some general rules. One of them is administrative territorial organization in different forms and structures.

In administrative aspect the state power is as interesting as local collectives are for the modalities of the organization of the state territory because they have a special social and political significance. The state power follows the realization of general interests of society that can be promoted through the intermediary of specially organized structures and of the individuals within those structures, but local collectives seek for the realization of autonomous control over the referring issues<sup>1</sup>.

Good administration of local collectives depends on the principles that are in the basis of the organization of the territory. The principles constitute an object of discussions about the forms and structures of efficient realization of the territory administration but the reason for its reorganization is in the efficiency of the realization of local interests.

Thus, in order to assure the respect and combination of local and national interests it is necessary to take into consideration the following fundamental principles while working over the administrative territorial organization of the state:

- *unity, integrity, inalienability and indivisibility of the territory of the state;*
- *economy and efficiency;*
- *equilibrium in the social economic development and solidarity of the administrative territorial units;*
- *social, ecological and demographic particularities;*
- *historical, ethnic and cultural traditions;*
- *consultations with citizens about the modifications in the territorial limits of the administrative territorial units.*

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<sup>1</sup> **Zaharia T. Gheorghe ș.a.** *Drept administrativ*, vol.I, Editura Junimea, Iași 2000, p.129.

We should view the **unity and integrity of the territory of the state** as consultative aspect of the state<sup>2</sup> that according to the current constitutional formula implies inalienability and indivisibility<sup>3</sup> of the territory. **Inalienability** means the prohibition of estrangement in any form. Abandonment, loss through the prescription, cessions, donations and sales of the territory are illegal and forbidden as they are incompatible with this principle.

Inalienability also means impossibility of any other state to exercise powers over the state territory indifferent of the affected area and invoked motives.

This principle does not mention the subjects; it is opposed to the *erga omnes* in relations between our country with other countries and in relations of individuals and/or legal entities with the subjects of public and private law<sup>4</sup>.

In other words, the territory (the whole territory or a part of it) possesses a special legal status that moves it out of civil circle and makes it exclusively the power of the people, the national sovereignty.

It is necessary to examine the principle of indivisibility (art.1 of the Constitution) together with inalienability of the territory. The state is indivisible in the sense it cannot be divided totally or partially in many state unities (states) and transformed into a federal state (federation). Indivisibility presupposes that a state, political and legal entity, cannot be divided still, its territory one of the components of the state can be subjected an administrative division or organization. Territorial subdivisions of administrative character are not separate states, even if the autonomy is profound; they have to contribute to the realization and centralized functioning of a single structure – **the state**.

The principle **economy and efficiency** supposes administrative territorial organization in such a way that administrative territorial units have their own economy and sufficient finances to guarantee their efficiency. Thus, administrative territorial units have to possess their own resources to be able to assure at least the financing of the administrative apparatus and cultural social institutions that are part of it. To put it in other words, to attribute the local collectives legal entity and to legalize them as administrative territorial units it is necessary to take into consideration their real possibilities to exercise powers given in their competence and their economic potential. Economic support that would ensure good functioning of an administrative territorial unit is required when the question is decided about the formation of an administrative territorial unit.

In the administrative territorial organization of the created units the principle **equilibrium and social economic development** should be taken into consideration. This principle assumes the existence of economic units and the perspective of their development through the guarantee of constant sources of income in local budgets. Administrative territorial units should be united that

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<sup>2</sup> Ase vedea detalii **Ion Creangă**, *Curs de drept administrativ*, vol.I, Editura EPIGRAF, Chişinău 2003, p.12.

<sup>3</sup> **A.Arseni, I.Creangă, C. Gurin, B. Negru, P. Barbălat, M. Cotorobai, Gh. Susarenco**, *Constituţia Republicii Moldova comentată articol cu articol*, vol.I, Chişinău, Editura Civitas, 2000, p.41.

<sup>4</sup> **Constituţia României**, *comentată şi adnotată*, regia autonomă Monitorul Oficial, Bucureşti 1992, p.19.

implies the distribution of a certain part of finances from better economically developed units to centralized funds for further distribution among less developed units thus, ensuring a balance between them.

**Social, ecological and demographic** peculiarities are elements that should be taken into account at the formation of administrative territorial units as they represent the interest of the collectives, average conditions under which the locality can exist and develop.

Other important factors for the formation of an administrative territorial unit are **historical, ethnic and cultural**. They represent the past, the present and the future. These factors are determined to be the connectors between village dwellers influenced by traditions and customs formed in this locality. Custom is an unwritten law, a right or an obligation established by the tradition. We understand tradition (lat. traditio, from trado) as an ensemble of customs, norms of behavior, ideas, habits, etc... that are observed by the people, collectives, social groups; they are transmitted from generation to generation. Diverse forms of traditions and their succession play an important role in the development of material and spiritual culture.

So, an administrative territorial unit can be formed to preserve traditions and customs of a collective or an ethnicity living in the communities of their compact residence. It follows that while forming the administrative territorial unit in the new conditions, especially while building communities the legislator should take into account besides national interests those of ethnicity and the interests of the population giving the locality a possibility to associate. In other words, while associating locality in communities it is necessary to take into consideration the agreement of the people, the association should not be forced. Neglect towards the principle of voluntary association generates incommodities, nervousness and can lead to the loss of citizens' confidence in the rights and equality that are inherent to any democratic society.

**Consultations with citizens about the modifications in the territorial limits of the administrative territorial units** are a principle established by the European Charter for Local Administration. It supposes preliminary receipt of the consent of the people from the administrative territorial unit to amalgamation, division, inclusion of an administrative territorial unit in another unit or even the change of the territorial limits of the locality should correspond with the national and regional interests.

Taking into consideration the above analyzed principles in the light of administrative organization, local collectives have a lot of benefits, because one of the most important goals will be achieved: **guarantee of an adequate level of civilization of all urban and rural citizens**. Adequate level of civilization should coincide with at least the constitutional demands assuring a decent level of life for every person where the contribution of the state together with the contribution of local collectives is necessary.

Besides, the effective administrative territorial organization confers the state stability, economic, political and social certitude, levers of influence and control over individuals and legal entities to monitor and make them respect the law.

At present the territory of our country is 33,844 km<sup>2</sup> and the population 4,3 million. Administrative organization begins with art. 110 of the Constitution that says that the territory administratively is organized in **regions, towns and villages**, but localities on the left bank of the river Dniestr can get special forms and conditions of autonomy according to their special status adopted through the organic law. Art. 111 of the Constitution also stipulates for a special legal status of Gagauzia as an autonomous territorial unit.

Before the adoption of the Constitution our country was divided in 40 regions, after 1990 the Parliament discussed within the frameworks of the commission on local public self-administration the problem of administrative territorial reform and elaborated a new bill on the administrative organization of the territory that foresaw reorganization of regions in 7 or 9 judete (uyezds; districts). This bill did not reach the agenda of the Parliament because the activity of this legislative body was blocked as the parliamentary group „Viata satului” (“Life of the village”) categorically opposed the administrative territorial reform, as a consequence the parliament was self - dissolved.

When the Constitution was adopted the development of its norms found realization in a number of laws that followed each other. Thus, the Law nr.306-XIII from December 7, 1994 says that the territory of the Republic of Moldova was organized in 38 regions, an administrative territorial unit with a special legal status and the metropolitan area Chisinau that included towns and villages. The problematics of the administrative territorial organization of our country was not based on a well defined conception and did not reach consensus among political formations. It followed that every four years parliamentary majorities intervened and modified legislature in this chapter. Invoking the problematics of the administrative territorial organization the Parliament of XIV legislature decided that the Law nr.306-XIII from December 7, 1994 did not correspond to the constitutional principles foreseen in art. 109 and was not efficient because of excessive fragmentation of the territory finding it necessary to organize the territory on the first and the second level in the larger administrative territorial units. Thus, on November 12, 1998 the Parliament adopted a new Law nr.191-XIV, through which the system of regions is disposed and 10 judete were created on the second level. Each judet had villages (communities), towns and metropolitan areas. The number of localities varied from 26 (Taraclia) to 251 (judetul Balti). Along with the judete, there is an autonomous administrative territorial unit Gagauzia with 32 localities and the metropolitan area Chisinau with a specific status, it includes 33 localities. 147 localities on the left bank of the river Dniestr will get a special status.

It should be mentioned that the administrative organization of the territory in 1994 and 1998 did not take into consideration the above described principles. But

neglect of those principles led to disequilibrium in the comfort of population, awoke indignations and political instability. For example, in the Law nr.191-XIV from November 12, 1998 on administrative territorial organization of the Republic of Moldova they did not consider sibling connections and popular traditions, historical traditions of the localities, they did not consult the population liquidating a number of mayoralities including smaller localities within mayoralities of some bigger villages, and they practically effectuated forced association. As a consequence, a lot of petitions and protests appeared; some local communities boycotted the elections in May 23, 1999. The absence of voters in the polling stations was determined by the fact that some localities had a private right to form their own mayoralty. Such situation denotes the incomplete analysis of connections and traditions of every community, the inactivity of the Government to elucidate social, political and economic importance of administrative territorial reform.

Subsequently, within two years of the adoption of the law it endured 7 modifications that referred to the respect of the principle of voluntary association and historical traditions. In 4 years the law was abrogated in general that again demonstrates the advantageous value of a scientific analysis of the whole spectrum of factors and principles that such an important reform should be based on.

The problems that were generated by the administrative territorial reform became an object of the election campaigns, further, the Communist party of Moldova fixed the returning to the regions one of the fundamental objectives of their electoral program. It was realized when Communists became predominant in the Parliament of XV legislature. Thus, on December 27, 2001 the Parliament adopted the Law nr.764-XV on the administrative territorial organization of the Republic of Moldova. The Law came into force on March 23, 2003 -the date of local general elections. The law helped to develop general notions referring to the organization of the territory and established a number of administrative territorial units, the principles of their formation and liquidation, modes of establishing and modification of the borders, and references to the status of the units.

Political confrontations about the determination of the conception of administrative territorial reform evolved and were transferred to the Constitutional Court from the Parliament. Thus, a group of deputies informed the Constitutional Court and solicited control of constitutionality of the Law nr. 764-XV from December 27, 2001 on the administrative territorial organization of the Republic of Moldova.

The authors of the notification considered that the Law contravened constitutional provisions and the European Charter of Local Autonomy. They thought that the introduction of a new administrative territorial unit – region and modification of the territorial limits of 260 administrative territorial units could be realized after consultations with citizens within a referendum. A group of deputies also considered that having adopted the mentioned Law, the Parliament approved

budget expenses without determining the financial sources, the fact that contradicted the provisions of the supreme law<sup>5</sup>.

In its essence, the Law nr.764/2001 develops constitutional provisions and stipulates for administrative territorial organization of the Republic of Moldova to be realized in accordance with economic, social and cultural necessities, respect towards historical traditions in order to guarantee an adequate level of development of all rural and urban localities but the division of the territory in administrative territorial units is called to assure the realization of the principles of local autonomy, decentralization of public services, eligibility of authorities in local public administration, guarantee of the access of citizens to the institutions of power and consultations with the people about problems of local interests. Further, the dispositions of the Law repeat art. 109 of the Constitution.

It should be mentioned that the essence of the Law nr.764/2001, consists actually in reestablishment of the regions that substituted judete, and reduced the number of residents necessary for the formation of a self - administrative territorial unit from 2500 till 1500 people, that was followed by an increase of the number of administrative territorial units.

The Constitutional Court on the occasion of exercising its control over the constitutionality of the Law states<sup>6</sup> that the Parliament is the authority that approves principal directions of the internal and external policy of the state. it regulates through the organic law the organization of local administration, territory and the general regime of local autonomy. The Court underlines that administrative organization of the territory means delimitation of the territory in administrative territorial units, but delimitation follows the situation of authorities of local public administration of the first and second level in a certain territorial, legal and administrative framework to guarantee efficient administration of localities and in order to realize the principles of local autonomy and decentralization of public services.

The reason to reorganize the territory is justified by the Parliament through the necessity of efficient realization of local interests, and at the same time through the maximal closeness of the services to the people. In such a way, the guarantee of capacity to control autonomously, with legal, economic, political and social support the problems of local interest is a primordial premise in the administrative organization of the territory that pursues the goal to assure respect towards rights and liberties of citizens, especially the principle of local autonomy.

In conclusion it should be mentioned that administrative territorial organization of our country found temporal solutions and the problem might reappear on the top of political discussions in dependence of the political options of the parliamentary majorities. We plead for a durable solution that should be reached through political consensus, taking into account general interests of the

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<sup>5</sup> Sesizarea grupului de deputați în Parlament H.C.C. nr.12 din 5 martie 2002.

<sup>6</sup> Hotărârea Curții Constituționale nr.12 din 5 martie 2002.

population and the state, the above mentioned principles with the implication of science and European practice.

### **The place of local public administration in the system of public administration of a law state**

In a democratic state the government cannot be a monopoly of the governors. Efficiency of the government greatly depends on the capacity of political leaders to democratize the decisional process through the intermediary of local public administration. It is well known that if a country wants to become democratic it should create means permitting the citizen to participate in public affairs and making decisions. This is realized through more power given to local public administration and its representative bodies.

It is the local level where the components and roots of democracy appear and are shaped. It determines the place of local bodies that occupy a considerable part in the whole administrative system.

In this context a question appears on the place of local public administration in the system of state powers. Is local public administration a part of executive power? Or, is local public administration a distinctive part in a state? Or, in general, local public administration is not a part of state power?

To answer these questions we should analyze some constitutional provisions. Thus, according to art.2 of the Constitution of the Republic of Moldova national sovereignty belongs to the people who exercise it directly or through the representative bodies. The fact should be mentioned that representative authorities are entitled with the exercise of powers only that is certain powers not power in general. It is not a question of delegation of power, but of some functions of power. The power is and will be in the hands of the people<sup>6</sup>, who realize it according to the principle of direct exercise of the national sovereignty by the people. Further, the people delegate the right and competence to exercise power in their name to representative authorities constituted in the result of elections. The Constitution of the Republic of Moldova in this chapter does not distinguish between local and state authorities; it does not mention that power is realized through the intermediary of state and local bodies of power, as it is in some constitutions. For example, the Constitution of the Russian Federation in art. 3 stipulates that power is exercised by the people and through the intermediary of state bodies of power and local bodies of self-administration. But art.12 clearly establishes that bodies of local self-administration are not a part of the system of state bodies.

In this context provisions of the art. 6 of the Constitution of the Republic of Moldova only define powers as legislative, judicial and executive without specifying local public administration.

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<sup>6</sup> **Ioan Muraru**, *Drept constituțional și instituții politice*, vol.II, București, 1993, p.16.

An argument pro idea that local public authorities are a part of executive power is the fact that they, together with other administrative authorities constituted on the central level and placed under the principle of functional autonomy, are placed under the principle of local autonomy, that is central and local authorities of autonomous public administration are not directly accountable to the central authorities of the state, their activity is subjected to the control of legality through the intermediary of judicial power. This thing is obvious from the Chapter VIII of the Constitution called "Public administration". This chapter does not structurally separate between central public administration and local public administration; public administration constitutes a unique system within the state.

The literature on this chapter sustains that in totality of local collectives we will not find proper competence on a very simple reason: they do not have competence to be competent, i.e. they cannot establish the limits being in direct connection with the degree of decentralization through which we can understand delegation of different administrative attributes by the state power in the advantage of representatives elected by the collectives. Thus, local power is the power that comes from law and is placed within executive power. In this sense, the following statements are very eloquent:

- local representative authorities are a part of the executive structure because the territorial decentralization is viewed as a way of administrative organization but the execution of laws through the adoption of local norms is given not to the officials depending on the supreme executive power but to the authorities elected by the people of the constituencies that they administer<sup>7</sup>;

- the executive or administrative activity is implemented in different directions that correspond to the diverse social goals: defense of the territory, education and public training, financial administration, etc... there are also different bodies that exercise this complex activity. Thus, administrative bodies are divided into central and local<sup>8</sup>;

- it is difficult to understand how a mechanism can function if it is made of isolated parts, each of them functions in void. The functions of the power interact. A coherent functioning of the bodies is not possible if there are no relations between them. But the existence of those relations denies their independence<sup>9</sup>. It realizes the tasks through the administrative public services that are meant to satisfy continually the general interests on the local level within administrative territorial units where they function.

On the other hand, art. 2 of the Constitution mentions the fact that sovereignty is exercised through the intermediary of representative bodies. Local public administration is a totality of local public authorities constituted in the conditions of law to satisfy the general interests of the people residing in the

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<sup>7</sup> Georges Burdeau, Francois Hamon, Micheli Troper, *Droit constitutionnel*, L.G.D.J., 1993, p.150-151.

<sup>8</sup> Giorgio Del Vecchio, *Lecții de Filosofie Juridică*, Europa Nova, 1993, p.279-280.

<sup>9</sup> Marcel de la Bigne, citat de Ion Deleanu, *Drept constituțional și instituții politice*, Ed. Chemarea, Iași, 1993, p.117.

administrative territorial unit. It is competent to exercise powers within the limits of administrative territorial units in which it works or whose authority is determined by the territorial borders of the respective constituency. Representative bodies at this level are local councils that according to the constitutional thesis could realize national sovereignty locally in correspondence with forms written in the Constitution. Developing this idea leads us to the provisions of art. 112 and 113 from the Constitution that mention the right of collectives on the local level to independently administer the local public interests but the regional councils are to coordinate the activity of village and towns' councils. Thus, a number of competences of local public administration, which are précised and detailed in the laws, comes from the Constitution.

The literature of specialty supports the idea that local power is understood as a specific form of public power that contributes to the materialization of general will in the forms established by the constitution and laws although it does not substitute the state power<sup>10</sup>. The state does not delegate and transmit power or a part of power because it does not belong to the state. To administer local public domain the state transmits local collectives a part of its competences that can be bigger or smaller in dependence of a number of factors. Transmitted competence is nothing else but administrative decentralization. Local collectives delegate the right and competence to administer local public interests in the name to some elected representatives through a universal suffrage.

Forethought as a specific form of public power, born in the result of administrative decentralization, local power has a general task to exercise some state functions. There is a close relation between state and local power that comes from the sovereignty, the right of the people to decide their fortunes, to establish political line of the state and the activity of its bodies and goes on to the right of the same people organized in territorial collectives to administer the problems of local interest by themselves, together with the central authorities of public administration to exercise sovereignty. In this sense, local power as a specific form of public power is a reality<sup>11</sup>.

To support the above said thesis we invoke the position of the Constitutional Court as being one of authorities. Thus, on the occasion of control over the constitutionality of the Decree of the President of the Republic of Moldova nr.146 from May 10, 1995 on the nomination of the mayoralty of the metropolitan area Chisinau the Court retains that local public administration is autonomous within limits foreseen by the law. Bodies of local public administration are a part of the system of bodies of state powers<sup>12</sup>.

The same hypostasis is sustained by the Court on the occasion of the control over the constitutionality of some provisions from the Law nr.781/2001 which says that the authorities of local public administration are not the authorities of the state,

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<sup>10</sup> **Victor Popa**, ș.a *De la centralizm spre descentralizare*, Editura Cartier, Chișinău 1998, p.33.

<sup>11</sup> *idem*, p.33-34.

<sup>12</sup> Hotărîrea Curții Constituționale nr.36 din 10 decembrie 1998.

their task is to organize and resolve public issues in villages and towns in the interests of collectives that elected them as their representatives<sup>13</sup>. Thus, local public administration resolves, within legal limits, local public issues and realizes public services of local interest through elected administrative authorities and local referendum. That is why the power of authorities of local public administration does not come from the power of the state but from the will of local electors whom they represent and in whose name they function<sup>14</sup>.

Referring to the intervention of the state in local issues the Court mentions that local public administration is an administrative structure that permits local collectives to resolve their local public issues through their own administrative authorities over the control of central authorities. The power of the state should not intervene where society in ensemble or on its different levels cannot satisfy diverse demands by itself<sup>15</sup>. The Court practically determined through those affirmations local authorities as a distinct power placed beyond the powers of the state. The position of the Court becomes contradictory when it states that dismissal of officials from function by the Parliament infringes the constitutional principle of the separation and collaboration of powers leading to the fusion of legislative and executive powers. So, applying the principle of the separation of powers to local authorities the Court places these authorities within executive power of the state, this fact contradicts the anterior affirmations.

In conclusion it should be mentioned that the problem at hand is one of complicated problems and the constituent law-maker should introduce modifications in the Constitution to make this chapter clear. We plead for a solution based on the principle of local autonomy according to which organization and functioning of the authorities of local public administration implies the following aspects:

- the power of local public authorities results from the national sovereignty;
- the bodies of those authorities are nominated through the direct or indirect vote of citizens with a voting right and who reside in the administrative territorial unit where the body will function;
- the resulting competences belong to local public authorities based on the principle of subsidiarity and proportionality;
- local public authorities should decide independently over the problems connected with the satisfaction of general interests of the residents of the respective administrative territorial unit;
- local public authorities should have their own sufficient incomes to realize their powers to satisfy the general interests of the residents of the respective administrative territorial unit.

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<sup>13</sup> Hotărîrea Curții Constituționale nr.13 din 14 martie 2002.

<sup>14</sup> idem.

<sup>15</sup> idem.

### **The principles of the organization of local public administration**

Referring to the organization of the system of public administration the Constitution stipulates for a number of principles that are fundamental for the system of local public administration.

Those principles reside in the constitutional norms of art.109, 112 and 113, but their detailed consideration marks their importance and offers the researchers and those who solve practical problems of this kind legal basis for their activity. At the same time, those principles are obligatory requirements that all other dispositions of legal norms regulating the activity of local communities should correspond to.

The concept of the “principle” generally means a gyratory idea that is characterized by an obligatory priority legal power directly expressed through one or another coherent ensemble of judicial norms or indirectly expressed through an ensemble of judicial regulations in a certain field. Obligatory force of the “principle” extends over all that have contacts with the field of activity where it is instituted. That is why it is not interesting whether those obliged are or are not authorities (state or non-state) or represent individuals or legal entities.

The fact is relevant that any principle either foreseen by the law or deriving from an ensemble of judicial norms should strictly conform the Constitution.

The principles of organization of local public administration represent a set of generated ideas of local public administrative character. They are in the basis of the organization and its activity established bodies. The principles of local public administration reflect the tendencies of development of local power in accordance with the democratic regime of state government.

The analysis of the legal framework on the organization and functioning of local public administration distinguishes the following fundamental principles that the system of local public administration is based on. They refer to:

- the principle of local autonomy;
- the principle of decentralization of public services;
- the principle of disconcentration;
- the principles of subsidiarity and proportionality;
- the principle of eligibility of authorities of local public administration;
- the principle of consultations with the citizens on the issues of special local interest.

#### **a) *The principle of local autonomy***

The principle of local autonomy is clearly formulated in the dispositions of art. 109, par.1 of the Constitution and art.3 of the law on local public administration. This principle has a priority place among other principles that the whole local public administration is based on. The priority is an imperative of the time and vital necessity that provides a basis for the development of local public administration.

The content of the principle of local autonomy and its complex valences represent the quintessence of the whole activity of local public administration from

the administrative territorial units. Correct understanding of this principle has a special importance for the plan of practical activities; it avoids accentuation and absolutism, although it should be distinguished from “*local independence*”. The peril of accentuation and absolutism of local autonomy can counterpoise local public administration to central public administration that exercises executive power of the state<sup>16</sup>. Local autonomy is limited by the principle of the unitary state. The principle is clearly expressed in the art. 109 of the Constitution, thus, local autonomy cannot lead to the federalization of the territory or to its dissolution.

The principle of local autonomy adds dimension and sense to the administrative decentralization making possible the stability of a distinct status of local collectives and their ruling institutions in relation to central administration. The space of influence of local autonomy does not leave any place for the intervention of state administration; the state only controls legality of the acts of local public administration, their conformity to the constitutional principles.

The essence of this principle is evident from provisions of art. 3 of the European Charter on Local Self – administration where the notion of local autonomy is understood as a *right and effective capacity of the authorities of local public administration to solve and monitor, within legal limits in the their name and in the interests of local population, an important part of public issues.*

The significance of this principle is extremely important for the whole local public administration because it defines the characteristics and the essence of local autonomy in general. The notion *right and effective capacity* means and expresses the idea that the formal right of local authorities to regulate and administer certain public affairs should be accompanied by the material and financial means necessary for the realization of those rights and capacities effectively. But the phrase *in their name* testifies to the fact that local collectives should not be limited to the role of simple agents of superior authorities.

The fact that the principle comprises the phrase *within legal limits* admits that the law maker can establish the competences of local public authorities and the limits of those competences. Thus, what should be remembered is the fact that local autonomy is framed by certain limits that are determined by the law so as to exclude the possibilities of deviation and/or erroneous interpretation of the prerogatives of local public administration.

The following modes of manifestation of local autonomy can be mentioned: organization of local councils, their attributions and functions, prerogatives given to local councils to elaborate and approve local budgets, etc... Thus, according to art. 3 of the Law nr.123/2003, the authorities of local public administration benefit from financial autonomy, have a right to initiative in the administration of local public issues, and exercise their competences under the conditions of law within the administered territory. Actually, the latter competences serve as a basis for the

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<sup>16</sup> **Mircea Preda**, *Tratat elementar de drept administrativ român*, Editura Lumina Lex, 1996, p.423.

whole local autonomy as true local autonomy is possible only when financial possibilities are present; this is a reality that still cannot be realized.

Another mode of manifestation of local autonomy is a diversity of attributions that mayors and local councils have. According to art. 7 of the Law nr.123/2003, the authorities of local public administration, while exercising their powers, have autonomy enshrined in and guaranteed by the Constitution of the Republic of Moldova, international documents and other legislative acts.

Referring to the problematics invoked by the Constitutional Court it is considered that local public administration is an administrative structure that permits local collectives to resolve local public issues with the help of their own administrative authorities under the control of central authorities. The power of the state should not intervene when the society in ensemble or at its different levels cannot satisfy its own demands favoring the authorities from above.

Referring also to provisions of art. 112 from the Constitution the Court affirms that the authorities of public administration that are responsible for the exercise of autonomy in villages and towns are elected local councils and elected mayors. They are to resolve local public issues and realize public services of local interests by themselves or through a local referendum. It follows that the power of local administrative authorities comes not from the power of the state but from the will of local electors whom local authorities represent and in whose name they work.

Referring to the principle of local autonomy the Court concludes that local autonomy is an ultimate step to administrative decentralization; it supposes the delegation of some competences from the central level to diverse administrative bodies or authorities that function autonomously in administrative territorial units. The authorities are elected by respective local collectives. Being one of the most efficient forms of self-monitoring local autonomy guarantees a high level of democracy; autonomous territorial collectives efficiently counterbalance central public administration<sup>17</sup>.

While speaking about the principle of local autonomy we should mention that the Constitution stipulates for the conditions of exercising local autonomy and establishing the general scheme of the authorities of local public administration that does not contain any rules that would be differently applied to the authorities of local public administration. Thus, according to art. 113 of the Constitution the relations between local public authorities are based on the principles of autonomy, legality and collaboration to resolve common problems. Relations between local public authorities of the first and second levels are not those of subordination.

In this context the statements of the Constitutional Court are relevant that mention: the principle of local autonomy of the fundamental principle governing local public administration and the activity of its authorities, it consists in the right of administrative territorial units to satisfy their own interests without the

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<sup>17</sup> Hotărîrea Curții Constituționale nr.13 din 14 martie 2002.

interference of central authorities. This principle leads to the administrative decentralization, making autonomy - a right and decentralization - a system that implies autonomy. Decentralization represents a system that comprises territorial decentralization – regions, cities (metropolitan areas), villages (communities), having a character of a legal public person with all necessary attributions. The authorities of those legal public decentralized persons are not subjected to the hierarchical power of central authorities; they are independent from them<sup>18</sup>.

Finally, we can draw the conclusion that the essence of local autonomy consists in the monitoring its own issues basing on its own decisions at its own expense. The field of activity of local institutions is made of the economic, social and cultural demands of the localities, and particularly local issues. Still, even local interests represent the interests of society in ensemble. That is why the institutions of local public administration should be situated under the control of institutions of central power. The control does not manifest itself through the interference in the activity of local public administration; the interference is possible only when this activity comes in conflict with the general interests.

**b) *The principle of decentralization of public services***

Decentralization of public services and, in general, administrative decentralization is due to the appearance of the Great French Revolution. This event, along with different implications of social, political and economic character, raised a problem of separation, and later decentralization of powers of the state. To achieve the goal the legal status of communities as legal entities was recognized and the departments were reorganized.

The evolution of the concept in time was long and tortuous. It depended on many political regimes that succeeded to power and on the vision of the governments over the administrative organization of the state.

The interpretation of the principle “*decentralization of public services*” first of all implies elucidation of the significance of this notion. According to art. 1 of the Law nr.123/2003 it is defined as *public services beyond the subordination to central public administration and organized in an autonomous way in an administrative territorial unit.*

Organization of public services is effectuated only by legal authorities and in accordance with judicial norms. In this sense it is necessary to state social demands of scale common for a certain collective.

In spite of the fact that, at first sight it might seem, decentralization of public services implies the transfer of all or a part of activities from the central level to local in reality this is not possible, not even opportune. Thus, due to the existence of a general national interest the ministries, departments and other authorities of central public administration exist and will always exist at the central level.

The difference between decentralized and centralized public services is not only in the fact that the first have their headquarters in other localities (not relevant

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<sup>18</sup> Hotărîrea Curții Constituționale nr.750 din 6 noiembrie 1995.

quality in comparison to other) but in the fact that decentralized public services realize operative concrete tasks dictated by the interest of the community, central authorities have a function of synthesis conceiving and guaranteeing the strategy of the state in certain fields of activity.

In order to exhaustively elucidate decentralization it is useful to treat in a simple form the problem of federalism, distinction of federalism from decentralization.

The first distinction would refer to the competence of the state, member of a federal state and competence of decentralized collectives (authorities). While local problems (issues) are of administrative character the state - a member of a federal state possesses a full gamma of competences of a state including constituent legislative, jurisdictional and administrative aspect. To counterpoise, a community does not modify the structure, even if it was given a right to form new bodies, for example – a council of metropolitan administration<sup>19</sup>.

On the other hand, the competence of a state – member of a federal state differs from local issues through the fact that they are determined by law, while distribution of competences between federal state and member state form the object of the dispositions of the federal Constitution.

Another distinction is in the fact that the state – member of a federal state is governed by a truly governmental apparatus having the legislature, the executive, and the judicial system. Thus, “*federalism appears to be a political phenomenon while decentralization – a purely administrative phenomenon*”<sup>20</sup>.

### c) ***The principle of disconcentration***

The problem of decentralization of public services cannot be put where it refers the activities that can be organized preponderantly or exclusively on the local or regional level. The situation is different with the activities of national interests (organization of the defense of the state, national security, etc... ) being aware of their importance these services cannot be organized only on the national, central level. The services can be at least disconcentrated on the regional level, this disconcentration being a form of diminution of centralization and not an aspect of decentralization guaranteeing the unity of the scope and activity based on the principle of hierarchical subordination of disconcentrated service that continues to be an integrant part of that organized on the central level.

To the point, disconcentration means increase of powers or attributions of the local representatives of central power to unload central powers. Thus, an example is transfer of a set of attributions that belonged to ministries and departments to territorial structures; we can witness disconcentration, not decentralization although it would be tempting to think otherwise on making a superficial analysis. We can also witness disconcentration and when territorial structures are vested with realization, within the frameworks of the region where they function, of some attributions that deal with the competence of specialized bodies of central public

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<sup>19</sup> **André de Laubadère** *Traite de droit administratif*, Tome I. Ed. 12. Paris, p. 111-112

<sup>20</sup> *idem*, p. 112

administration. To avoid confusions of this kind we should see whether an institution is a representative of the center or it is elected. In our case, the territorial structures are represented by the center, that is why transfer of some attributions that earlier belonged to ministries in their competence is not a form of decentralization, but of disconcentration.

d) *The principle of subsidiarity and proportionality*

The concept of subsidiarity occupies an important place in the determination of new conceptions on the development of local autonomy and decentralization of public services. It is a political concept as well as a judicial principle that determines new philosophy in the elaboration of principles of organization and functioning of the state after the World War II, this principle determined the relations between an individual and the state and his/her status within a collective<sup>21</sup>. The ambiguity of the concept is represented by the fact that subsidiarity is not a limit of intervention of superior authorities in the problems of an individual or community; it is a duty of this authority to action in relation to that individual and community in the way that the necessary means offer her for the fulfillment of its tasks<sup>22</sup>.

The principle of subsidiarity is closely linked with the principle of proportionality that presupposes on the one hand competences (capacities, rights, obligations) that can be transferred to the center only if those competences can be better realized on the superior level, the fundamental principle is to keep competences as close to the citizens<sup>23</sup> as possible in an efficient way. On the other hand, if some competences could be better realized on the superior level, they should be transferred to the center. It is evident that anybody can invoke this principle to ask for more decentralization as well as for the promotion of centralization<sup>24</sup>. Proportionality imposes that the means used by the authorities to realize the scope should be proportional to the pursued goal and to the distribution of competences between authorities; the preference should be given to those that would realize the objectives more efficiently and economically.

At the same time the concept of subsidiarity does not represent only a sophisticated and bare cover that can be filled with anything we'd like to. The concept of subsidiarity also means "meaning" or "per se" (lat. - proper, through itself)<sup>25</sup>. We will not stop at too many details over the discussions in different fields of linguistics and the theory of symbols and other theories. It is necessary to

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<sup>21</sup> Council of Europe, Definition and Limits of the Principle of Subsidiarity, Local and Regional Authorities in Europe. Starsburg 1994, p. 55.

<sup>22</sup> **Jacques Delors**, *Discurs rostit la colocviul consacrat conceptului subsidiaritatii*, organizat de Institutul European pentru Administrare Publică la Maastricht în 1991.

<sup>23</sup> **E Cojocaru**, *Principiile administrării publice locale în statul bazat pe drept – Republica Moldova*, Editura Cartier, culegere de materiale ale Simpozionului științific național, Statul de drept și Administrația publică, din 28 iunie 1998, Chișinău 1999, p.135.

<sup>24</sup> **Iurii Leășco**, *Probleme și preferințe în determinarea autonomiei locale ; Subsidiaritatea în Europa*, publicat în culegerea de materiale ale Simpozionului național practico-științific, Rolul autorităților publice în garantarea drepturilor și libertăților constituționale, Chișinău, 2002, p.149.

<sup>25</sup> **Balducci M.**, *Carta Europeană Exercițiul autonom al Puterii Locale și principiul subsidiarității: o nouă filosofie în relația dintre Stat și Autoritățile Locale*, Conferința Internațională 17-18 aprilie 1996, Copenhaga., p.8.

emphasize that a *symbol* – for example, a word – can develop various relations with the fact and / or concepts that form the substratum or generates with time different meanings. It might seem that in the past the word subsidiarity underlined the idea that social system represented a *subsidium* (lat.- help, support) for a person (individual) and central administration represented a *subsidium* for local authorities. Thus, individuals and local authorities - the elements of the system in ensemble – got an autonomous dignity, independent from the greater social and political system they made part of<sup>26</sup>.

The principle of subsidiarity and proportionality imposes seeking for optimal solutions to coordinate the interests between individuals, local and state authorities. According to those principles the elements of the system act coordinately not because they are subjects of some hierarchical system, but because they constitute autonomous entities, elements of the system and the system participate in the creation of common good.

The fundamental idea comprised in the principle of subsidiarity is that political power should not intervene unless the society in general and within it different cells of society- from person to the family, town, community, local collective – are not ready to satisfy their own necessities. Subsidiarity is more than a simple principle of institutional organization. On the one hand, subsidiarity refers to the relations between a person and institutions. On the other hand, subsidiarity refers to the relations between different levels of administration<sup>27</sup>.

These principles are applied, first of all, to the relations between an individual and society that surrounds him/her, than to the relations between society and its institutions, being a concept that governs the distribution of competences between the base and the top, between the state and local collectives. The principles of subsidiarity and proportionality should be permanent principles as they evidence the most possible closeness of a citizen to the decision. Subsidiarity is that principle that demands decentralization, political character of this process that is beneficial for elected authorities in administrative territorial units. Proportionality imposes a condition under which means that are to be used should correspond to the pursued objective, not overcome it, when there are possibilities to choose the measures of application that measure is to be chosen that is less onerous.

Within juridical framework the principle is evident from the principle of decentralization and is defined in art. 4 of the European Charter on Local Autonomy that says *the exercise of public responsibilities should, in general, belong to the authorities that are as close as possible to a citizen. The attribution of a responsibility to another authority should take into account the scale and the nature of the task as well as exigencies of efficiency and economy.*

The principles imply the fact that even if task is of a scale and nature that should be effectuated in a larger territorial entity on the imperative of efficiency

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<sup>26</sup> **Iurii Leășco**, op. cit.

<sup>27</sup> **Jacques Santer**, *Colocviul Institutului European pentru Administrare Publică, Maastricht 1991*, reluat după Balducci M.op.cit 1996, p.1.

and economy the tasks usually should be given to the most local stage of local collectives. This clause does not imply necessity to decentralize systematically the functions in favor of local collectives that can assume limited missions because of their type and size.

Of course, the application of the principle of subsidiarity and proportionality should take into consideration and combine evenly and efficiently with the application of other principles of organization and functioning of the state and local collectives as for example are: efficiency, in a broader sense, the unity of application and activity, solidarity, etc...

e) ***The principle of eligibility of the authorities of local public administration***

To define this principle it is necessary to explore the notion “eligibility” that comes from a Latin word “*eligibilis*” and expresses the quality of being eligible, that is to be elected for a post or a representative institution. Thus, the principle of eligibility of the authorities of local public administration establishes the way of their composition.

The principle of eligibility also means the form that gives the citizens access to public functions resulting from the right of an individual for administration stipulated by art. 39 of the Constitution. Thus, citizens participate directly or through their representatives in the administration of public issues. Direct participation in the administration presupposes the activity of an individual within the framework of public functions and participation of citizens in the decision making process through the intermediary of referendum. The right to participate in the administration of public issues ***through representatives*** is the election of some representatives for public posts. But the participation of the dwellers of administrative territorial units through representatives in the administration of local public issues constitutes a substance of local representative democracy.

The principle of eligibility is closely linked with the right to vote. The right to vote or to elect expresses the essence and legitimacy of any power because the elections are of a multifunctional character. They permit the elector to exercise the right to participate in the administration of local public issues through the intermediary of elected representatives and to directly participate in the social political life of local collective. Voting on programs and electoral proposals confer legitimacy of local public administration and selects political leaders for those authorities, it helps to confirm or disapprove the activity of local public administration, giving a mandate to people and nominating other representatives to hold the offices, etc...

Insertion of the principle of eligibility in the text of art. 109 of the Constitution of the Republic of Moldova represents an important step for our legislation and a constitutional guarantee of the realization of that principle in contrast to the constitutions in other countries that do not contain the principle of eligibility of the authorities of local public administration. The electoral code and

the law on local public administration supplement and add details to this principle giving it a practical application.

By virtue of the principles of local autonomy and decentralization of public services local authorities do not represent the authorities of the state that exercise their prerogatives. Their attributions consist of the administration of issues of administrative territorial units. Electors are those who vest power in them giving a possibility to represent them and work in their name. In this context the eligibility of the authorities of local public administration has a special political and social significance.

To practically realize the activities of the authorities of local public administration they should be recognized by the state. The recognition takes place if the elections were organized according to the exigencies of the law that actually means that they are framed in the legal order of the state. In this way the correlation of the general interests with the interests of local collectives is assured.

The formula of art.119, par.1 of the Electoral Code: *mayors of the cities (metropolitan areas), villages (communities), and regional city councils are elected through a universal, equal, direct, secret or freely expressed vote* results in the fact that the authorities that are elected directly by the population of the administrative territorial units are regional councils, city (metropolitan) councils, village (community) councils. The principle of the eligibility is preserved for the heads of the regions; they are elected indirectly by the regional councils.

We can observe that the principle of eligibility is accompanied and conditioned by other principles that impose elections to be expressed through a *universal, equal, direct, secret and freely expressed vote*.

Under the *universal* suffrage we understand participation of the citizens in the elections without discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political views, estates or social origin. The principle of universalism foresees conditions referring to: the citizenship of a person, legal age to participate in the vote, capacity of a person and absence of any interdictions to vote.

The *equal* suffrage means that within any elections every elector has a right to a single vote. Everybody has equal judicial power. In other words, equal vote supposes the possibility of the electors to influence equally the results of the elections constituting an important manifestation of the equality of the rights of all citizens. In this sense we consider the provisions of art. 10 of the Electoral Code significant: according to those provisions within a framework of the elections the elector votes for a single electoral competitor but within a referendum an elector can express his/her opinion over a single option.

*Equality* of the vote guarantees through the right of every elector a certain number of votes following the principle – a person – a vote. However, there is sometimes more than one election process concomitantly and a person can give more than one vote.

*Direct* suffrage presupposes that an elector votes personally. Voting instead of another person is prohibited. In other words, we understand direct vote as a way to participate in the election not through the intermediary of some deputies, their representatives in the institutions of local public administration, but people themselves vote.

It should be mentioned that the election of the head of the region does not apply this principle, he is elected through indirect vote, he is elected by the regional councilors elected from the citizens, and councilors are considered intermediary representatives (electors of the second degree).

From the theoretical point of view direct elections are more democratic, indirect voting can be more rational if it guarantees a possibility of professional appreciation and well weighted qualities of the person to occupy an office of the head of the region.

*Secret* elections mean that voting in the elections is secret, excluding the possibility of influence over the will of the elector. This principle means exclusion of supervision and control over the expression of the will of the elector, the latter is aware of the fact that s/he is responsible for the choice or the expression of the will can have fatal consequences. Guarantee of a secret vote can have place through the fact that elector completes the voting ballot in an isolated booth.

*Freely expressed* suffrage means that nobody has a right to exercise pressure on the elector to make him/her vote or not vote, as well as to prevent him/her from expressing his/her opinion in an independent way. In this context it is not interesting what kind of pressure is exercised over the elector: psychic, moral, financial, from the side of mass media, etc... and of no interests is the scope of the pressing: to participate or not to participate in the elections, to vote pro or against, etc... It is essential that influence is of illegal character and should be sanctioned by normative acts.

The characteristic of local public authorities is the criterion of eligibility. This criterion assumes democratic elections, insubordination to the central intuitions of state power, accountability to the electors. It is the principle that confers dimension and sense to local democracy meaning the transfer of society to a new that corresponds to the exigencies of a law state.

f) ***The principle of consultations with the citizens in the issues of special local interest.***

Enshrined in the Constitution (art.109), this principle finds its reflection in the Law on local public administration (art.3 and 8) that establishes *consultations with the population can take place in the issues of paramount importance for the administrative territorial units through local referendum under the conditions of the Electoral Code.*

The principle of consultation is closely linked with the principle of local autonomy that results from the fact that resolution and administration of local public issues is guaranteed not only by the elected bodies of the local public

administration, but through the intermediary of direct participation of the people in realization of the prerogatives of local self-administration.

Practical realization, organization and functioning of public administration in administrative territorial units are manifested through the expression of the will of the people or distinct groups of people vis-à-vis the issues. The constructive role of the people in the organization of the authorities of public administration in administrative territorial units is shown by the fact that this way formation and functioning of an important chain of the system of local public administration in a democratic way takes place.

In the process of practical application of the legal dispositions of a syntagma “*local issues of special interest*” some problems might appear connected with the interpretation. The Law on local public administration and the Electoral Code establish that *local referendum can deal with the issues that are of paramount importance for respective locality and if the problem deals with the competence of the authorities of local public administration*. The same documents identify only one single problem that is subjected to local referendum. It refers to the *revocation of the mayor* that can be executed through a local referendum in case when *mayor does not respect the interests of local community, does not exercise in an adequate way the attributions of an elected representative that are foreseen by the law, if the mayor infringes moral and ethical norms*.

In the definition of “*local issues of special interest*” we can spring from the elimination of the problems that cannot be subjected to local referendum. Thus, according to art. 178 of the Electoral Code ***the following issues cannot be subjected to local referendum:***

- a) impositions and budget;
- b) extraordinary or urgent measures to guarantee public order, healthcare, and the security of the population;
- c) election, nomination, dismissal and revocation of people who deal with the competence of the Parliament, the President of the Republic of Moldova, the Government;
- d) revocation of the office of mayor established on the basis of definitive decision of revocation, pronounced by the court;
- e) dealing with the competence of judicial institutions or offices of public prosecutor;
- f) on the modifications in the administrative territorial subordination of localities.

It follows from the logic of the text that local referendum deals with the problems that are in the competence of the authorities of local public administration. As a result those people who are empowered to establish the nature of the “*issue of special interest*” are those who make up respective local community – citizens.

Another purely theoretical problem might appear in connection with the use of the notion “*consultation*”. “Consultation” means an additional component that

can not be imposed as if it had the power of a normative act. The given principle cannot be interpreted through a prism of a facultative character, moreover, the execution of this principle is written in the Electoral Code that says that *decision adopted through local referendum is annulated or modified through local referendum or through the decision of a respective local council adopted by 2/3 of the councilors according to the Law on local public administration.*

Another problem could be linked with the use of syntagma “*consultations with citizens*”, in case with the Constitution and “*consultation with the population*” in case with the Law on local public administration. Those two notions are not synonyms but we believe it is not relevant, the difference in the organic laws is of grammatical character, in reality these are citizens, besides, the Electoral Code says about the “*citizens who have a right to vote*”. Thus, international practice recognizes the right of the foreigners and repatriates who have being living in the locality for a long time to vote in local elections or local referendum. Still, they are denied a right to be elected for the post of local officials.

Another connotation of consultations with the citizens in the issues of local interest is connected with the fact that it can be organized only with a part of the residents of the locality. Thus, art. 8 of the Law 123/2003 says that *the issues of local interest which involve a part of the population of the administrative territorial units consultations, public audiences, speeches can be organized only with this part of the population under the conditions of laws.*

In the development of those provisions the law maker comes with the Law nr.436/2003 through which local councils will adopt the status of the respective locality, but the status will stipulate for the way of consultations through referendum of the residents of the village (community), city (metropolitan area) over the problems of special importance for an administrative territorial unit and will determine specific issues as being of paramount importance.

The way of consultations with the residents of the locality, the organization of referenda, citizens’ meetings, consultations, public audiences and speeches are supposed to take place that can be organized in all localities - elements of administrative territorial units or one of them.

The meetings of the citizens are organized in the villages – in rural areas, and in sectors or streets – in the urban areas. The meetings of the citizens, public audiences and speeches can be made on the initiative of a mayor or local council. The protocols are written of the meetings, speeches, public audiences that are given to the mayor or local council but the decision that results is made familiar to the people.

One of the problems resolved through a general meeting of the residents of locality that are a part of the community is the election of the village deputy who works in accordance with the provisions of art. 40 of the Law nr.123/2003.

In conclusion it can be mentioned that the principle of consultations with citizens in the local issues of special interest comes to confirm construction and functioning of local public administration on the democratic principles but the

results of the consultations can be obligatory as well as consultative or facultative for a decision making process.

Finally, it should be mentioned that the above analyzed principles are called to guarantee well functioning of the authorities of local public administration, they contribute to the assurance of dynamic development in the economic, social, cultural and other fields of local collectives. These principles are also called to guarantee respect towards rights and liberties of the residents of administrative territorial units and to protect local collectives from the centralized administration on the side of the state giving local collectives the possibility of freedom of action and decision.

### **Local and regional autonomy in the conditions of a federal state**

The analysis of the provisions of the European Charter of Local Self-administration evidences to the necessity of introduction in the constitutions and in laws of the above described principles and obligation of the state parties to apply those principles in the organization and functioning of the authorities of local public administration. The European Charter does not distinguish between the form of state organization, federal or unitary, as they are all demanded to assure the respect towards European standards and the principles of local autonomy and other principles enshrines in the Charter. The analysis of the contents of regulations of local public administration in the context of the federal constitution made us formulate and propose the following:

In title I of the project of the constitution the following principles should be reflected:

In the article on state power the following paragraph should be introduced: **“The people exercise state power directly or through the intermediary of representative institutions of state power and the institutions of territorial units.”**

In the article on the execution of state power the following paragraph should be introduced: **“The state power in territorial units is exercised according to the principle of subsidiarity and proportionality by the institutions of the units within the limits of competences established by the constitution and law”.**

Referring to the constitutional title of local and regional authorities and taking into consideration the real situation created around the localities on the left bank of the river Dniestr and coming from the necessity to give those localities a special status that will include the elements of profound autonomy and tendency to federalization we propose one of the following variants of constitutional regulations:

**„SECTION IV. REGIONAL AND LOCAL AUTHORITIES”**

## Chapter XII: TERRIOTRIAL ORGANIZATION OF THE REPUBLIC OF MOLDOVA

### Article 1: The principles of the territorial organization

(1) The territorial organization of the Republic of Moldova is based on the principles of unity and integrity of the state territory, economy and efficiency under the separation in the territorial units, balance of social economic participation with the account of historical, ecological, demographic particularities and ethnic and cultural traditions.

(2) The principle of solidarity that assumes fair and adequate economic balance between territorial units is applied.

### Article 2. The system of administrative territorial organization.

(1) The system of administrative territorial organization of the Republic of Moldova comprises the Transdnestrian region, the Autonomous territorial unit of Gagauzia, the metropolitan area Chisinau, cities (metropolitan areas), and villages (communities).

(2) Modifications in the territorial limits between territorial units are not allowed unless the preliminary consultations with the institutions of those units or through a referendum.

(3) Differences in the statutes of different territorial units cannot give them economic and/or social advantages.

### Article 3. Main principles of public administration in the territorial units

(1) Public administration in the territorial units is based on the principles of local autonomy, decentralization of public services, election of the authorities in regional and local public administration and consultations with citizens on the most important issues of regional and local importance.

(2) Autonomy refers to organization and activity of regional and local public administration, as well as to the issues of represented collectives.

## Article XIII: TRANSDNIESTRIAN REGION

### Article 4. The status of the Transdnestrian region

(1) The Transdnestrian region is a component and inalienable part of the Republic of Moldova and is within the jurisdiction stipulated by the Constitution of the Republic of Moldova resolves the issues referring to its competence.

(2) The status of the Transdnestrian region is determined by the current Constitution and the Constitution of the Transdnestrian region.

(3) The estrangement of the Transdnestrian region from the composition of the Republic of Moldova is not admissible.

Article 5. The order of the adoption of the Transdnestrian region Constitution

(1) The Transdnestrian region has its own Constitution that is adopted by two thirds of the deputies of the Supreme Council of Transdnestrian region and is approved by the Parliament of the Republic of Moldova by at least 50% votes of the Parliamentary constitutional commission. Modifications and amendments to the Constitution of the Transdnestrian Republic are adopted according to the same procedure.

(2) The Constitution of the Transdnestrian Republic should not contradict the Constitution and laws of the Republic of Moldova.

#### Article 6. Authorities of the Transdnestrian region

(1) The representative body of the Transdnestrian region is the Supreme Council composed of 43 deputies elected through a universal, equal and direct suffrage by a secret or freely expressed vote.

(2) The Supreme Council of the Transdnestrian region adopts local laws and provisions that are obligatory to be exercised in the Transdnestrian region.

(3) The Government of the Transdnestrian region is the Cabinet of Ministers of the Transdnestrian region. The Head of the Cabinet of Ministers of the Transdnestrian region is appointed and removed from the office by the Supreme Council of the Transdnestrian region on the proposal of the President of the Republic of Moldova.

(4) Judicial branch in the Transdnestrian region is represented by the courts that make part of the common system of courts in the Republic of Moldova.

#### Article 7. Separation of powers

Separation of powers between central power institutions and those of the Transdnestrian region is based on the principle of separation of competences and spheres of competences.

#### Article 8. Powers of the Transdnestrian region

(1) The following spheres refer to the spheres of competence of Transdnestrian region:

1. Organization and holding elections in the representative institutions of the Transdnestrian region;
2. Coordination of the activity of local public administration;
3. Organization and holding of local referenda in accordance with organic law;
4. Economic development of the Transdnestrian region in accordance with the goals pursued by the common national economic policy;
5. Elaboration, adoption and execution of the budget according to the common tax and budget policy, application and determination of local taxes and duties;
6. Participation in the separation of public property, control over the estates of the Transdnestrian region;
7. Metropolitan enterprises of regional importance;

8. Construction within the interests and on the territory of the Transdnestrian region;
9. City-planning and house-building;
10. Construction, control and maintenance of roads, gas-lines, Строительство, управление и ремонт дорог, газопроводов и heat-and-power engineering objects of regional importance;
11. Passenger transportation, bus stations of regional importance;
12. Farming and cattle-breeding in accordance with the common direction of economic development;
13. Land relations, land areas, consolidation of land areas, seed circulation, preservation of natural land qualities;
14. Melioration, projecting, construction and exploitation of hydro resources, channels, irrigated areas that are of interest for the Transdnestrian region;
15. The use of forests, water and other natural resources;
16. Forests, green zones, pastures, mines;
17. Environmental protection and rational use of natural resources in the context of common national programs;
18. Forests reserves, fishery, water industry, hunting;
19. Development of culture, science and guarantee of functioning of state and local languages in correspondence with the national programs;
20. Protection of historical and cultural monuments that are of interest for the Transdnestrian region;
21. Museums, libraries, theaters, and other cultural institutions that are of importance for the Transdnestrian region;
22. Handicrafts;
23. Fairs, exhibitions and advertisement;
24. Development and organization of tourism on the territory of the Transdnestrian region, recognition of the status of local areas as health resorts;
25. Development of sport and recreation, organization of activities for the youth;
26. Charity, public activity;
27. Social security and development in accordance with the goals determined by the national social policy;
28. Protection of family, motherhood, fatherhood, and childhood;
29. Healthcare and hygiene, sanitary and health services, establishment of sanitary zones;
30. Participation in the guaranteeing of rights and freedoms to the citizens, national consent, legality, law and order, public security;
31. Fire prevention;
32. Guaranteeing measures to fight catastrophes, epidemics, liquidation of their consequences;
33. Protection of buildings and constructions;
34. Initiative to introduce state of emergency;

## 35. Protection and maintenance of cemeteries.

(2) According to the Law other competences can be delegated to the Transdnestrian region.

## Article 9. Competences of the state

(1) The following spheres refer to the exclusive competence of the state:

1. Adoption and modification of the Constitution, laws, control over their observance;
2. State organization and the territory;
3. Regulations and human rights protection;
4. Citizenship, migration, issues concerning foreigners, the right to asylum;
5. Property, intellectual and industrial property, control over the state property;
6. Defense and Armed Forces; issues of the war and peace; security; defense industry; sale and purchase of weapons, ammunitions, military techniques and other military equipment; production of poisonous substances, drugs and control over their use;
7. Determination of the status and defense of the state border, airspace, and exceptional economic zone;
8. Border sanitary cordon. Basis and the general coordination of healthcare. Legislature in the field of pharmaceutical substances.
9. organization and activity of the institutions of state power;
10. Criminal and executive legislature; amnesty and pardons;
11. Civil, trade and labor legislature;
12. Procedural legislature;
13. Foreign policy and international relations, external economic relations;
14. Establishment of the law basis of a single market; financial, currency, custom and antimonopoly regulations; money emissions; the fundamentals of price policy; bank and insurance systems; state loan; state economic agencies;
15. State budget, taxes and impositions; state funds of regional development;
16. Meteorological service, standards, etalons, metrical system and time calculus; geodesy and cartography, names of the geographical places; official statistical and business accounting;
17. Fundamentals and coordination of the general planning. Establishment of the basis of state policy and state programs in the field of state, economic, ecological, social, cultural and national development;
18. Development and general coordination of scientific technical researches;
19. State service, administrative procedure, expropriation, administrative contracts and concessions;
20. Sea and river legislation;
21. Airports of national importance, control over the airspace, air transit and transportation, registration of aircrafts;

22. Energetic systems of the state, roads, transportation, communications, information;
23. Legislation, organization and giving interregional hydro-resources in exploitation, permission for the construction of electric power stations, transmission facilities, if it collides with the interregional interests;
24. The fundamentals of legislature on environmental protection, additional protection measures without account of Transdniestrian competences; the fundamentals of forest legislation;
25. Construction of national interest, or if it concerns interregional interests;
26. Determination of the order of production, sale, ownership and use of weapons and explosives;
27. General principles of the press, radio and telecasting and other mass media with the exception of corresponding competences for their development and use by Transdniestria;
28. Protection of cultural and historical monuments, protection from taking them abroad, museums, libraries, state archives, with the exception of this activity in the Transdniestrian region;
29. Keeping public order, it does not depend on the possibility of the Transdniestrian region to have its own police service;
30. education, conditions of getting and giving scientific and professional degrees;
31. State statistics. Permissions to conduct sociological polls of the population through referendum;
32. State awards and honorary titles.

(2) Other competences that do not refer to the competences of the regional or local organizations.

#### Article 10. The representative of the Republic of Moldova

(1) In the Transdniestrian region the Government of the Republic of Moldova functions whose status is determined by the law.

(2) The representative of the Government heads public administration on the territory of the Transdniestrian region and if necessary coordinates the activity of the Government with the activity of power authorities of the Transdniestrian region. It executes control over the observance of legislation of the Republic of Moldova in the Transdniestrian region.

#### Article 11. Protection of state interests

(1) In case when the Transdniestrian region does not fulfill its obligations stipulated by the Constitution of the Republic of Moldova or other laws or the activity of the Transdniestrian region is harmful for the national interests of the Republic of Moldova the Government notifies the authorities of the Transdniestrian region. If the authorities do not react the Government with the

agreement of the Senate can take measures to make the Transdnistrian region follow their obligations by enforcement to protect the national interests.

(2) According to the measures foreseen in part (1) the Government can give respective instructions to any power authority in the Transdnistrian region.

#### Chapter XIV. AUTONOMOUS TERRIOTRIAL UNIT GAGAUZIA

##### Article 12. Autonomous territorial unit Gagauzia

(1) Gagauzia – an autonomous territorial unit with a special status as a form of self-determination of Gagauz people, is a component and inalienable part of the Republic of Moldova. The unit decides its political, economic and cultural issues independently, in the interests of the people, within its competences in accordance with the provisions of the Constitution of the Republic of Moldova.

(2) The rights and freedoms foreseen by the Constitution and legislation of the Republic of Moldova are guaranteed on the territory of the autonomous territorial unit Gagauzia.

(3) Representative and executive authorities act in accordance with the law on the territory of the autonomous territorial unit Gagauzia.

(4) Land, water, flora and fauna, and other natural resources on the territory of the autonomous territorial unit Gagauzia are the property of the people of the Republic of Moldova and an economic basis of Gagauzia.

(5) The budget of the autonomous territorial unit Gagauzia ia made according to the norms established by the organic law that regulates the special status of Gagauzia.

(6) Control over the observance of the legislation of the Republic of Moldova on the territory of the autonomous territorial unit Gagauzia is exercised by the government in accordance with law.

(7) Modification sin the organic law regulating for a special status of the autonomous territorial unit Gagauzia are adopted by 3/5 of the votes of the elected deputies of the Parliament.

#### Chapter XV. RURAL, URBAN AND REGIONAL AUTHORITIES

##### Article 3. Rural and urban authorities

(1) Local councils and mayors are the authorities of public administration that execute local autonomy in villages and towns.

(2) In accordance with the law local councils and mayors decide on the public issues of the villages and towns.

(3) Local councils are elected through a universal, equal, and direct suffrage in secret or free voting.

(4) Mayors are elected by local councils and are accountable to them.

(5) Organization and activity of local authorities of public administration are established by the organic law.

#### Article 14. Regional council

(1) Regional council coordinates the activity of rural and urban councils that deal with the public issues of regional importance.

(2) Regional council is elected and executes its activity in accordance with law.

#### Article 15. The status of the metropolitan area Chisinau

(1) Public administration in the metropolitan area Chisinau is executed by the metropolitan council and the general mayor.

(2) General mayor is elected by the metropolitan council and is accountable to it.

(3) The council of the metropolitan area Chisinau coordinates the activity of the councils in the territorial units in the component of the metropolitan area to rule public issues of the metropolitan importance.

(4) The status, organization and functioning of the local public administration authorities of the metropolitan area Chisinau are regulated by the organic law.

#### Article 16. Representative of the Government

(1) The representatives of the Government of the Republic of Moldova work in the territorial units; their status is determined by the law.

(2) The representative is nominated by the Government; s/he heads the decentralized ministry services, departments and other central authorities of public administration, and controls the observance of legislation on the local level.

#### Article 17. Relations between the authorities of public administration

(1) Relations between central and local authorities of public administration as well as relations between the authorities of public administration in the territorial units are based on the principles of autonomy, transparency and collaboration in the decision of common issues.

(3) Relations between local public authorities are based on the principles of autonomy, legality and cooperation in the decision of common issues.

### Chapter XVI. REGIONAL AND LOCAL PUBLIC FINANCES

#### Article 18. Regional and local public finances

(1) The authorities of regional and local public administration have a right for sufficient finances they can dispose while executing their competences.

(3) Finances of the authorities of regional and local public administration must be proportional to their competences.

(4) At least a part of finances of regional and local public administration authorities should be made of local taxes and impositions, the rate of the taxes and impositions is established within legal norms.

(5) To support weaker financial territorial units it is necessary to use the procedure of leveling the distribution of finances and equivalent measures to correct the results of uneven distribution of potential finances and also to remedy the problems they are aimed to resolve.

## Chapter XVII. CONTROL OVER THE ACTIVITY OF REGIONAL AND LOCAL AUTHORITIES

### Article 19. Control over the activity of regional and local authorities

(1) The activity of regional and local authorities is a subject to the constitutional, judicial and administrative control in accordance with the law.

(2) Control over the activity of regional and local authorities is to guarantee the observance of the Constitution of the Republic of Moldova, international documents and the laws of the Republic of Moldova.

### Article 20. Constitutional control

The Constitution of the Transdnistrian region, the Code of the autonomous territorial unit Gagauzia and local laws are the subjects of constitutional control. Constitutional control is executed by the Constitutional Court.

### Article 21. Judicial review

Administrative acts of regional and local authorities are the subjects of judicial review. Judicial review is executed by the administrative courts.

### Article 22. Administrative control

(1) Administrative control is executed by the Government and the Chamber of Accounts.

(2) The Government exercises control over the reasonability of activity referring to the delegated competences.

(3) The Chamber of Accounts exercises control over the economic and budget activity of regional and local authorities.