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Local Public Administration in the Republic of Moldova:

- Fundamentals;*
- Existing problems;*
- European experience;*
- Solutions, perspectives.*

1. Historic aspects

By the end of 1991 the Republic of Moldova appeared on the ruins of the former MSSR (Moldavian Soviet Socialist Republic). It had a territory of 33,7 thousand km² and 4,3 mln of population, 40 regions and 10 cities subordinated to the republican government. Each region had in general about 76.000 residents, this number was much below the average level in some regions: Căinari – 42,7 thousand, Taraclia – 44,3 thousand, Șoldănești – 45,8 thousand, Leova – 52,8 thousand; and the average territory 800 km² each, the potential of all those regions left much to be desired in order to switch to the self-administration. Administrative territorial reconstruction constituted at that moment one of the most important urgencies of the new state.

Reforms in this sphere were difficult to be realized because of the predominance of the branch principle of planning and realization of the budget process in the conditions of continuing administrative territorial reforms – fragmentations. After the decree of the Presidium of the Supreme Council of the USSR (Ukrainian Soviet Socialist Republic) from November 4, 1940 on the delimitation of borders between the MSSR and the USSR, the judete (uyezds, districts) Cetatea Albă, Ismail and Hotin became parts of the USSR. The decree deprived the MSSR of the access to the Black Sea and put the beginning to the assembling of powerful industrial centers within the regions on the left bank of the river Dniestr¹. Every decade important modifications of the territorial borders of the regions take place. Thus, in 1948, the second session of the Supreme Council of the MSSR liquidated judete and instituted 60 regions. The number of regions fluctuated in the soviet period in the following way: 46 (1950), 35 (1959) (organized in four okrugs (districts) (Bălți, Chișinău, Tiraspol and Cahul)); 18 (1963), 26 (1964), 31 (1966), 33 (1972), 40 (in the 80s).²

Territorial reorganizations were realized according to two principles:

1. Proximity of public services (the state apparatus) to the citizens (the principle used when the number of regions increased);
2. Reduction of state administrative apparatus (used in case when the regions were enlarged).

Historical, demographical and economic factors were left in the background.

¹ Igor Munteanu, *Dezvoltări regionale în Republica Moldova*, Ed. Cartier, Chișinău, 2000, pag. 117.

² *Anatolii Gudîm*, *Raioanele și economia // Săptămîna*, # 25, 20 iunie, 2003.

The practice of the administrative reorganization continued after the independence was obtained. At the beginning of 90s, as a result of the Decision of the Supreme Council on the improvement of the administrative territorial organization of the state, the elaboration of the reform project began that foresaw four variants – 7, 9, 12 or 18 județe one of them was to be taken as a basis in 7 years only. According to the Decision of the Parliament of the Republic of Moldova Nr. 636 – XII from 10.07.1991, in a short time the județe were to be constituted³. „At the first stage ... the state power of the present regions is decentralized and the competences of the basic territorial administrative units - communities and cities – are extended. At this stage the vertical executive power is consolidated creating an intermediary mechanism for the functioning of the new bodies of self-administration: till the formation of the regional județe the present borders”, the Decision mentions.

By the end of 1994, the Law on the special judicial status of Găgăuzia (Gagauz-Yeri) nr. 344-XIII from 23.12.94 constituted the Autonomous Territorial Unit (ATU) Găgăuzia (Gagauz-Yeri). Being initiated as a cultural autonomy the ATU Găgăuzia gets the status of the administrative territorial unit benefiting at the same time political administrative autonomy. We bear in mind the fact that in the neighboring states a great number of ethnic minorities live on a compact territory and benefit from cultural autonomy in the spirit of international European instruments in this sphere. Not a single disposition of *the Framework European Convention on the protection of national minorities* gives a special right to autonomy on the basis of ethnicity to people belonging to national minorities. Neither articles of the Convention nor the clauses of *the Charter of the regional languages or minorities* stipulate for an administrative territorial structure or autonomy on the basis of the ethnic criteria. Both refer exclusively to the individual rights of the people belonging to national minorities that can be exercised individually or together with the other members of national minorities⁴. By virtue of the right to emit “local laws” the legislative forum of Găgăuzia adopted a number of normative acts that duplicated the legislature of the Republic of Moldova but sometimes they contradicted the supreme law. Thus, there are local laws adopted by the Popular Assembly (Halc Toplușu) of Găgăuziei (Gagauz-Yeri) on: parties and other social political movements; public associations; administrative territorial organization; local public administration; functioning of languages; property; budget system and budget process; custom control of Găgăuzia; consumers’ cooperatives; the Chamber of Accounts, etc... We see that some of them totally or partially contravene art. art. 72 of the Constitution because the sphere where those laws were elaborated are under the exclusive jurisdiction of the Parliament.

The Law nr. 431-XIII from 19.04.95, gives the metropolitan area Chișinău a special status. Besides the basic territory of the metropolitan area, five sectors

³ Veștile nr. 11-12/111, 1991.

⁴ *Corneliu-Liviu Popescu*, *Autonomia locală și integrarea europeană*, Ed. All BECK, București, 1999, pag. 167.

include some administrative territorial units - villages (communities) and suburban towns. Each sector has a pretor (the head of the sector) named by the metropolitan council and a pretura with the status of the juridical person. Thus, the administrative metropolitan system of the capital is legalized in the Decision of the Government from 25.09.91.

The intermediary mechanism, that the above-mentioned Decision of the Parliament stipulates for, functioned till the end 1998 when a new system of territorial administrative organization was legalized - 9 județe, metropolitan area Chișinău, ATU Găgăuzia and area on the left bank of the river Dniestr. Before this date we cannot speak about regional development because regions being administrative territorial units situated at the level immediately after the state were too small to be considered regions. Actually, they were not perceived as regions, they were rather decisional centers of the old system of government.

In 1999, the Republic of Moldova followed the general tendency of the states members of the EU and began the reduction of the number of administrative territorial units at the second level substituting 32 regions with 9 județe. The number of basic administrative territorial units was reduced as a consequence of enlargement of some villages and communities. The metropolitan area Chișinău and ATU Găgăuzia (with three internal regions) preserved the status of administrative territorial units of the second level. The reform did not affect 5 regions formed and controlled by the self-proclaimed authorities in the East of the Republic of Moldova. The eventual status of autonomy is foreseen for these localities. One of the goals of this reform was to consolidate the financial regional and local system that would guarantee financial autonomy through the broadening of the fiscal base of the territory and through the obtaining of income appropriate to cover the regional necessities.

In October 1999 the first amendment is introduced about the separation of the judet Taraclia (on the basis of the former region), but by the end of February 2001 the Government declares its intention to separate the judet Drochia on the basis of the region with the same name. Hence, from the start, the new administrative territorial system has a factor of instability that makes the planning and implementation of some long-termed actions difficult for public local and regional authorities as well as for central authorities. In a year a new law on the administrative territorial organization is adopted. It stipulates for the division of the Republic of Moldova in 32 regions, metropolitan area Chișinău, ATU Găgăuzia (with three internal regions) and localities on the left bank of the river Dniestr. The law could not be applied from constitutional considerations until the end of the term of office of local elected representatives in May, 2003.

2. Legislative framework

Beginning with 1994, a series of laws were adopted on the introduction of principles of local autonomy, decentralization of public services, eligibility of

authorities of public local administration and consultations of citizens in the problems of local interests foreseen in the art. 109 of the Constitution. Among them are the following:

- the Law on public local administration Nr. 123-XV from 18.03.2003;
- the Law on the status of local elected agent Nr. 768-XIV from 02.02.2000;
- the Law on the administrative territorial organization of the Republic of Moldova Nr. 764-XV from 27.12.2001;
- the Law on public property of the administrative territorial units Nr. 523-XIV from 16.07.99;
- the Law on public local finances nr. 397-XV from 16.10.2003;
- the Law on local taxes Nr. 186-XIII from 19.07.1994.

The status of the metropolitan area Chişinău and the ATU Găgăuzia (Gagauz-Yeri) is regulated through special laws. The European Charter „The autonomous exercise of local power”⁵ was ratified by the Parliament of the Republic of Moldova in 1997.

3. Institutional framework

The system of judete of the administrative territorial organization did not last a term of office of local elected agents because it was difficult to realize what the weak and strong points of this system were. Still, in the opinion of specialists, the potential of judete differs from that of small regions. From this date we can say about the development of regional centers, but in comparison with the former regions the judete were better supplied from the economic and social points of view having more powerful infrastructure and even the forming identity. At the same time from May 2003 we returned to the regional system of local public administration organization but the number of basic administrative territorial units is increased.

At present the Republic of Moldova has two levels of local public administration – basic (in villages (communities), cities (metropolitan areas)) and intermediary (regions, the metropolitan area of Chisinau, and autonomous territorial unit Găgăuzia). At the basic level the administration of public issues is effectuated by a mayor (executive authority) and local council (collegial sitting authority). At the intermediary level in the quality of executive authorities act: in the regions – the head of the region (who is helped by an apparatus); in the metropolitan area Chisinau - general Mayor (and general mayoralty of the metropolitan area) and ATU Găgăuzia – Governor (Başcanul) who heads the executive Committee. Regional councils activate in the function of sitting authorities at the regional level, metropolitan council – in the metropolitan area Chisinau, Popular Assembly - in the ATU Găgăuzia. In their activity public authorities adopt normative acts subordinated to the law.

⁵ Ratificată prin Hotărîrea Parlamentului nr. 1253-XIII din 16.07.1997, publicată în ediția oficială “Tratate internaționale”, 1999, Vol. 14, p. 14

4. Existing problems

It is local public administration that suffered the most frequent reorganizations from the moment of getting the independence being the weakest point in the system of Moldovan public administration. The analysis of the activity of local public administration in the last years, including the period that followed the returning to regions, shows deficiencies that can be divided into the following categories: 1) limitation of financial autonomy; 2) the lack of clear delimitation of competences between the state and local public authorities and between the different levels of local public administration; 3) interference of central public authorities in the spheres that deal with the competences of local public administration under the pretext of administrative supervision and the absence of institutional dialogue between the state and local public authorities.

1. According to the legislation on public finances local public incomes are formed of three major sources: net incomes, allocations, transfers. The law on local taxes establishes a system of 13 taxes that can be applied by local public authorities. Still, local public administration has no right to decide on the increase of the local taxes, it is fixed by the Parliament. Only 4 local taxes (for the arrangement of the territory, the right to render transportation services, placement of commercial unities, market tax) provide for almost 95% of the income of local public administration. The rest of the taxes are of minor significance, resort zone tax, tax for the right to sell in the custom zone did not bring important finances to the local budgets, but some taxes (tax for the owners of the dogs, tax for the right to shoot a film) were completely useless (2001).⁶ Thus, the cost of collecting some taxes is higher than the collected sum.

The ratio of net incomes of the administrative territorial units in the

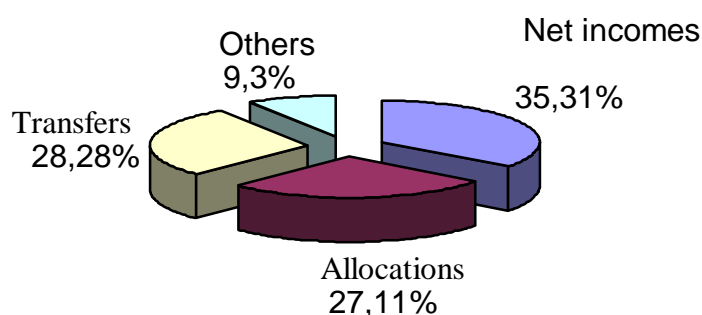


Fig. 1 The structure of income in the budgets of the administrative territorial units
%, 2002

general income is reduced (see fig.1). Only the metropolitan area Chişinău has a capacity to self-finance from its incomes and allocations, they are also the main source of financing of the activities of the rest of the administrative

⁶ Veaceslav Ioniţă, Analiza sistemului finanţelor publice locale în Republica Moldova, Politici publice, # 4, Editura TISH, Chişinău, ianuarie 2003, p. 7

territorial units, although only 21% of the population of the country lives in the capital. The ratio of local taxes collected in the metr. Chişinău constitutes about 67% from the local taxes collected from nationwide. Local taxes that have a small ratio in the incomes of the national public budget are more difficult to be collected and make up the net incomes of the local public administration while taxes with the higher ratio (for example, tax on the surplus value or income tax for the enterprises of judicial persons collected on the territory of the administrative territorial unit) are general incomes of the state. These taxes can become the incomes of the administrative territorial units exclusively through the allocations from the general incomes of the state. The minimal percentage of those allocations is fixed by the Law on local public finances but the exact percentage of allocations for each region, metropolitan area Chişinău and Bălţi or ATU Găgăuzia (Gagauz-Yeri) is fixed annually with the adoption of the Law on state budget by the Parliament. Beginning with 2004, percentage norms for allocations to regions, metropolitan areas Chişinău and Bălţi are not calculated from the tax on the surplus value.

Not all administrative territorial units are interpreted according to some unique well defined criteria; some of them enjoy the preferential treatment. To exemplify, the Law on state budget for the year 2004 stipulates (art. 30, par. 2) that the tax on the surplus value of goods and services provided by the economic registered agents in the ATU Găgăuzia and excises for goods (products) dutiable to excises made in this unity completely go into its central budget. While in case with 32 regions and the metropolitan areas Chişinău and Bălţi, tax on the surplus value and excises do not make up the regional or metropolitan budgets. In such a way, *fiscal decentralization is reduced because the ratio of net incomes of the administrative territorial units is relatively small, but the local public administration is limited in the right to make decisions on taxes.*

If in 2001, the total quota of transfers from the fund of financial support for the territories of judet budget, metropolitan budgets of Chişinău and Bălţi, and budget of the ATU Găgăuzia (Găgăuz-Yeri) constituted 320000 thousand lei, now for the year 2004 (already on the budgets of regions, metropolitan areas, and autonomous territorial unit) this quota increased twice being planned according to the Law on state budget for the year 2004, in general 636700 thousand lei. We can witness the reduction of net incomes of the local public administration and implicitly at the limitation of its financial autonomy. Transfers from the state budget are of a conditional character. The ratio of transfers in the totality of local budget is considerable; it is the central authorities that stabilize the destination of the expenses. In its turn public administration of administrative territorial units of the second level decide on the volume of allocations in the budget of villages, communities, towns. Local public administration can decide on the destination of the expenses in case of the surplus of incomes, though the localities with the exceeded budgets are very few. Thus, the local public administration is limited in stabilizing priorities referring to the orientation and making expenses. The ratio of local

public expenses in the national public expenses is also small (about 30%, 2002). We can ascertain that *the financial decentralization is reduced*.

The system of local public finances is marked by two phenomena. Thus, the fiscal decentralization is reduced because the ratio of net incomes of the administrative territorial units is relatively small, but local public administration is limited in its right to make decisions on taxes. at the same time, local public authorities have a limited right to take decisions on the destination of the expenses and budget surplus. The diminished level of those two indicators (fiscal and financial decentralization) shows limitation of local financial autonomy. The experience of the European states testifies to the fact that at least one of those indicators should have a higher level to counterbalance another.

The practice of decision of the majority of budget problems „in the center” on the one hand discourages partnership initiatives between local public administration and enterprise. On the other hand it favors hidden incomes and fiscal evasions the fact that has negative consequences for national public budget.

The principle of solidarity requires the existence of a national system of financial equality. It can be achieved through the rendering of advantageous fiscal facilities to economic agents who work and pay taxes in provinces, especially in the unfavored zones and, at the same time, through the increase of the tax percentage for the economic agents in the capital. We also insist that the economic agent should be registered in the territory where s/he has permanent residence and exercises economic activity.

2. In the Republic of Moldova there are serious doubts that refer to the communal competences over their financing and especially over the relations between local administration and the role of the state in this sense. The Law on local public administration does not clearly stabilize the spheres of activity of every authority that is why some responsibilities of the regional council coincide with the responsibilities of the local councils. The tasks of the local authorities that were delegated by the state through the same law are too vast. Normally, local authorities can be vested with the specific responsibilities that deal with the management of services with the maximal limitation of the degree of discretionary activities. Sometimes central public authorities decide on the problems that deal with the responsibility of local public authorities. Dismissal and nomination of officials in local public administration by the Government serves a good example. In this context there are inconsistencies between the powers attributed through the law to administrative territorial units and expenses for their execution.

Another problem that generated confusions in the field of local powers in comparison with central is the status of local public property. The disputes systematically appear over the distribution of the household in such a way that it prevents the assurance of efficient local autonomy. As a consequence of illicit privatizations not local authorities benefited from the process of transmission of property or change of the staff. It led to the failure of some

important public services of local and regional interest⁷. The appearing problems reside in the overlapping of pretences to ownership and the lack of inventory that would constitute the base of the distribution. Administration of property assumes freedom of purchase and sale actions or its rent. The current legislative framework limits local public administration in its right to run local public property.

The staffs of the mayoralties and regional councils continue to be centrally regulated. As a result of the administrative territorial reform, through the decision of the Government⁸ the staffs of the regional public authorities were enlarged to the prejudice of basic administrative territorial units. It created intermittence in the activity of mayors.

Those disadvantages of the legislation often generated erroneous interpretations and even conflicts between local public authorities of different levels. The lack of limits of the powers and responsibilities actually lead to the fact that they are fixed arbitrary by central and regional authorities, to the detriment of local authorities.

3. The notion of local autonomy presupposes also decreased possibility of occasional control. At present, the Law on local public administration gives a right to any body of central public administration to interfere under the pretext of an opportune control in the activity of mayor or regional public authorities. There are no provisions in the Law on the conditions and the modalities of calling to account of the subjects of administrative tutelage that exercise illegal control of local public authorities.

In spite of the fact the Law on the administrative contentions was adopted that regulates the control of the legality of acts emitted by local public authorities and there are also recommendations of the Council of Europe that any form of occasional control should be eliminated and the tutelage of authorities should be limited to the control of legality according to art. 8 of the Charter of Europe on local autonomy, the practice of checking for the legality and opportune actions of the decisions of local public authorities by the central public authorities was not stopped. Plus, the part of the Law on administrative contentions is permanently modified that deals with the object of contentious activity (what kind of normative acts can be subjected to the control) and subjects that are vested with the right to contest legality of administrative acts.

According to the administrative territorial reform we can state that there are visible similarities between the eliminated prefectures (that represented the Government in the territory through the control of legality of acts emitted by local public authorities and through the general management of territorial extensions of the ministries and departments) and territorial offices of the State Chancery (more recently, the Apparatus of the Government), placed practically in the former judete. The Law on local public administration in the new editorial version does not differentiate between the decentralized public

⁷ Victor Popa, Regîndirea procesului de reformă al administrației publice locale în Moldova prin politici publice și acțiuni participative, *Politici publice*, # 3, Editura TISH, Chișinău, ianuarie 2003, p. 18

⁸ Nr. 688 din 10.06.2003 și nr. 1220 din 10.10.2003

services and those desconcentrated. but in present there is no public authority that will provide general government of desconcentrated public services of the central public administration of specialty (ministries, departments, state agents (concerns, companies, inspectorates, commissions, etc...)) Territorial offices of the State Chancery got possibility to make invalid any act of local public administration under the pretext of the lack of opportuneness in the absence of any jurisdictional qualified decisions. It lets central authorities to get the levers of influence over the local elected agents of another political color than that of government.

Returning to regions

In the ensemble the system of regions has 32 new administrative territorial units that were not touched by the reform (from the point of view of territorial organization) remaining autonomous territorial Găgăuzia, localities on the left bank of the river Dniestr, with some exceptions the metropolitan area Chişinău. IF we don't take into consideration the capital, autonomy in the south and transdnestrian part of the Republic on the average 76.000 people live in every region. IT can be seen in the table below that the figure is the smallest among the states of the Central and Eastern Europe. The average number of population that belongs to the basic territorial community (villages (communities) and towns) is one the lowest in Central and Eastern Europe.

Table # 1 regional comparison between the average number of population in the administrative territorial units of the inferior and superior level and local administration in the countries of Central and Eastern Europe.⁹

#	Country	Number of the levels of local public administration	Average number of population at the superior level	Average number of population at the inferior level
1.	Czechia	3	720.000	1.670
2.	Slovakia	2	510.000	1.850
3.	Hungary	2	590.000	3.315
4.	Moldova	2	76.000	4.400
5.	Ukraine	3	2.050.000	4.770
6.	Estonia	2	96.000	6.120
7.	Romania	2	550.000	7.730
8.	Albania	3	275.000	8.800

⁹ Adopted from: Project of the World Bank SAR, "Are România nevoie de regiuni?" de Sorin Ioniță, web: <http://www.sar.org.ro>

9.	Croatia	2	230.000	10.900
10.	Poland	3	2.400.000	15.600
11.	Bulgaria	2	920.000	30.400
12.	Slovenia	1	-	32.200
13.	Lithuania	2	371.000	66.900

The medium square of a region, even if we take into account ATU Găgăuzia and the metropolitan area Chişinău as administrative territorial units of the second level, is 991 km², it is also below the average square in the countries members of the EU.

In contrast to the tendency in the states members of the European Union to decrease the number of basic administrative territorial units (villages, communities, towns) regions come with about 300 new mayoralties. The lowest limit when the territorial collective can have a mayoralty was fixed at 1000 people. Small localities if they do not associate with other local communities will not be able to provide efficiently public services (roads, water lines, gas lines, buildings and capital repair, etc...) that demand financial resources that can be obtained only if there are more sources of incomes in the local budget. For example, finances offered to local communities by the Fund of Social Investments are provided only in case when there is a co-financing of the community. It is simpler to collect a sum necessary for the reparation of the roof of the school from the population of a community numbering 10.000 people than from the village with 1000 people. It can happen that in the second case the roof of the school will remain in the emergency condition because of the impossibility to collect necessary sum for co-financing. in the conditions when the law only stipulates but does not encourage associations between communities in order to solve some problems of common interest local collectives cannot be truly autonomous. They remain dependent on the help given by the state. This dependency, no matter how the constitutional texts proclaim the existence and guarantee of local autonomy, buries the idea of local autonomy.¹⁰

¹⁰ *Corneliu Liviu-Popescu, op. cit., pag. 127.*

Fragmentation of the territory in small units with the fragmented geographical distribution reduces the quality of planning and especially implementation of the elaborated plans. For example, a plan of gas lines of the region Criuleni constituted in the form of two territorial areals will be extremely difficult to implement because it needs coordination of activities with the regions Anenii Noi, Dubăsari, Orhei, Strășeni, the metropolitan area Chișinău and localities on the left bank of the river Dniestr. (see fig. # 2). Similar situation we have in case with the region Dubăsari. It is difficult to imagine how the plan of the regional development of those regions will look like if together with the competences of the regions they deal with, according to art. 11 of the Law on local public administration, social economic development, arrangement of the territory, construction,

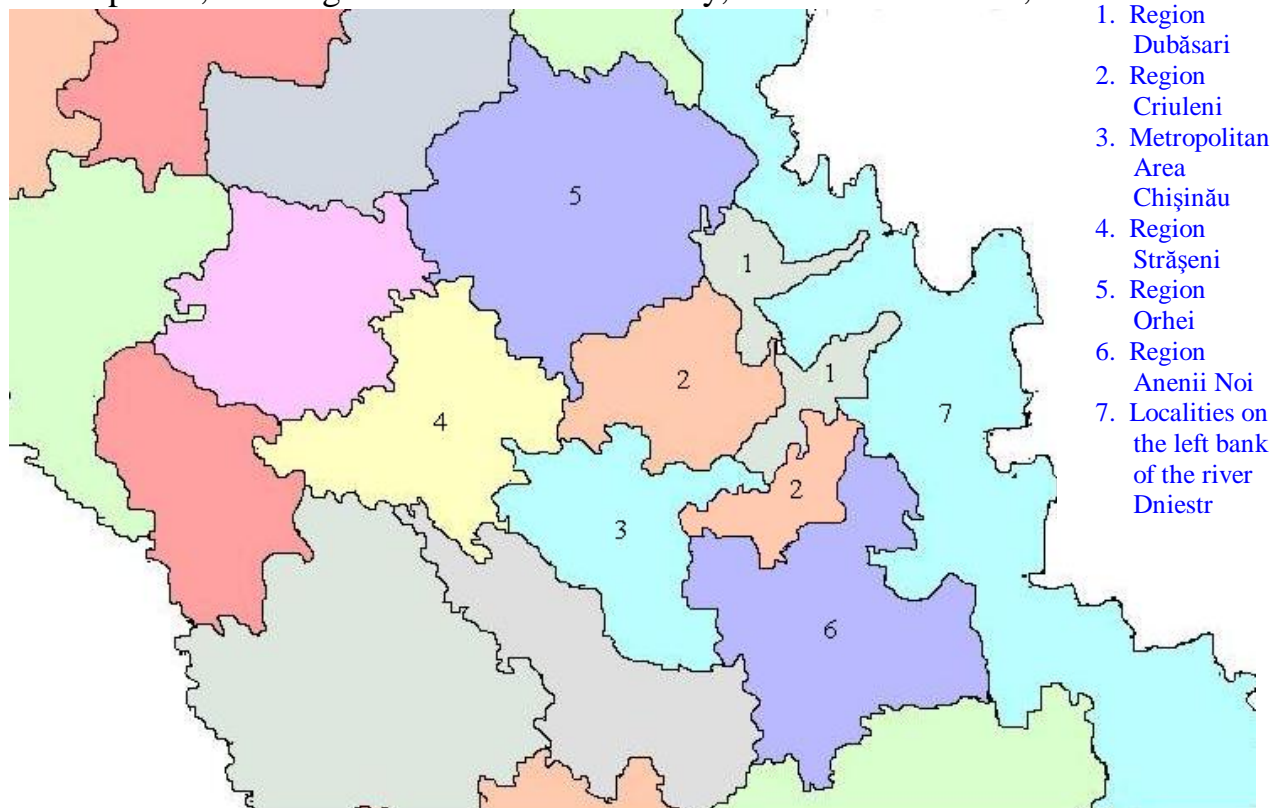


Figure 2 The distribution of the administrative territorial units in the central part of the Republic of Moldova as a result of the reform of 2003

administration and reparation of the roads of the regional interests, construction of the interurban gaslines, etc... but the regional council, in the conditions of the art. 49, can fix general guidelines on the urban development of localities and arrangement of the territory. The matters would be essentially simplified if those territorial collectives formed a single administrative territorial unit.

Cutting the territory of the state into administrative territorial units aims at the unitary realization of state power and realization of some local public interests of collectives integrated into the respective units. These public interests are the ways of communications, health centers, cultural institutions, education institutions, cultural centers, etc... To provide those services important financial sources are necessary. The smaller are administrative territorial units of the second level, the smaller are the financial possibilities. If

we switch from 10 judete to 32 regions, the economic and financial potential of the administrative territorial units reduces in 3,2 times¹¹.

Frequent reorganizations brought a lot of problems: the quality and content of regional statistics diminished; the order of forming local budgets and metropolitan property encounters many difficulties. As a consequence of illicit privatization local authorities did not benefit from the process of transmission of property or the change of the staff. It brought a mass failure of some important public services of local and regional interests¹². At the same time, the principles of regionalization are fixed in the normative act of 1991 and namely the Law on the basics of local self-administration. Some foreseen principles of this law are applied only in 8 years together with the establishment of judete. After years of privatization and attribution in property of financial, forest, water resources, the Law on public property of the administrative territorial units is adopted. The law is 8 years late. The first step in the application of this law would be the distribution of state property, a single proprietor until the adoption of the law among the actors of a new circle of public property. The problems appear that reside in the overlapping of pretensions to property and the lack of inventory that would constitute the base of the distribution. It comes from the Soviet period, i.e. within the property of the communist state there was no public and private property in its classic sense. It has not been clarified what the elements of patrimony of public interest are that cannot be expropriated and belong to the property of local communities. On the other hand, local administration seeks for the solution from somebody else without realizing that other people will not be in a hurry to find solutions.

European norms underline the extension of fiscal power of local collectives as an imperative necessary for the success of a local autonomy that can generate economic prosperity at the level of communities. It is evident that at present this extension is insignificant because the state budget is alimeted from these taxes. Another problem is the lack of knowledge about all levers of power to attract external finances. In conditions of a budget of austerity sometimes it is the only way to develop a better climate locally. The system of judete existed less than the term of office of the elected officials lasted. it did not manage to demonstrate its economic financial advantages that would completely manifest themselves in a long termed period.

At the establishment of the regions it was not taken into consideration that the process of delimitation of the territory demanded different criteria: geographic, social, economic, climatic, ways of communication, demographic, labor force, unemployment, etc... Unification of mechanic dismembering of some administrative centers to create administrative territorial units is inadmissible. Administrative organization of the territory is a science and in all European states this problem is a concern of specialized institutions of research

¹¹ Victor Popa, op. cit., pag. 19.

¹² Op. cit., pag. 18.

and urban planning¹³. Returning to regions shows that the lesson was not learnt because the same mistakes are made before and after the establishment of judete: limitation of fiscal power of local collectives, increase of the number of administrative territorial units of the first and second level, limitation of decisional autonomy, discouragement of inter-communal and inter-regional cooperation, in continuation the ambiguity in the delimitation of competences predominates, etc...

*Informative note on the structure of administrative nature at the basic and intermediary level in the non-recognized „Moldovan transdnestrian republic”
(m.t.r.)*

Legislation on organization and functioning of public administration has a judicial effect only for 88 % of national territory because the rest 12 % are controlled by self-proclaimed authorities from the east of the Republic of Moldova. It reduces the quality of the administrative process and diminishes the efficiency of the taken measures as the majority of decisions are affected by the consequences of the transdnestrian conflict that demands time, human resources and supplementary financing.

The text of the constitution stipulates for an eventual autonomous status for the localities in the east of the Republic of Moldova. Practically, there was preserved the judicial regulation and the system of administration of the former USSR. There are certain similarities with the system of local public administration of the rest of the territory of the Republic of Moldova especially what refers to the administrative territorial organization. It is due to the returning in 2003 of the Republic of Moldova to the regional system of administrative territorial organization.

From this perspective, in the non-recognized m.t.r. there is the following organization of the territory: villages, communities, towns, regions. Thus, there are 5 regions (Camenca, Rîbnița, Dubăsari, Grigoriopol and Slobozia) and two cities of the republican importance – Tiraspol and Bender (according to the legislation of the Republic of Moldova - Tighina). As in the rest of the territory of Moldova the association of some administrative territorial units is permissible under certain circumstances. This system of administrative territorial organization is not recognized by the legislation of the Republic of Moldova. The Law on the administrative territorial organization limits the enumeration of localities (villages (communities) towns, metropolitan areas) without them being included in the existent administrative territorial structure.

According to the Law on the bodies of local power, local self-administration and state administration of the non-recognized m.t.r. from November 5, 1994 “local (territorial) self-administration is the form of organization of citizens to decide social, economic, political, cultural problems of local importance in the name of the interests of the population independently

¹³ Op. cit., pag. 19.

or through the elected bodies and public organizations according to the material and financial base, taking into consideration particularities of the development administrative territorial units within the competence of those bodies.”

The system of local self-administration includes the local Councils (Soviete) of popular deputies and their departments as well as bodies of public territorial self-administration (councils and committees of micro-regions, residential complexes, houses, streets, blocks of buildings, towns, village committees, etc...) Local self-administration can be exercised through local referenda, citizens' meetings, etc... Local Soviete of popular deputies are created on the level of village, community, town, region and are elected by the citizens who are permanent residents of the respective territory according to the above mentioned laws though equal vote direct or secret for a 5-years term of office. The Law does not say anything about the free expressed vote. Local elections are to take place in March (or December) 2005.

Institutions of public territorial self-administration are created on the basis of free expressed will of the citizens on their initiative or of local Soviet of popular deputies. Institutions of public territorial self-administration can conclude with the Soviete of popular deputies an agreement about the delegation of certain powers that refer to environmental protection, arrangement of the territory, construction and exploitation of housing resources, objects of associate spheres, etc...

It is presupposed that Soviete of popular deputies are collegial sitting organs. They have power in the sphere of planning, technical-material supply, budget and finances, administration of local property, agricultural development, land protection, protection of other natural resources and environment, construction, social services to the population, assurance of legality, respect to rights, liberties and legal interests of the citizens, state decorations, etc...

Session is an organizational form of activity of Soviete that has to take place at least 4 times a year. Some deputies form the permanent specialized committees. The head of the town and regional Soviet (Chairman) is elected at the session by a majority vote of the elected deputies and can be dismissed from the function through the same procedure. The Chairman and Vice-Chairman organize the activity of the Soviete and their bodies. The Chairman does not represent executive branch of power this role is reserved for state administration of the non-recognized m.t.r.

It is assumed that the state administration is vested, in the limits of attributed competences, with all executive power in the administrated territory. The structure and then composition of the state administration is determined by the government of the non-recognized m.t.r. Generally speaking, state administration organizes enforcement of the decisions of Soviete of popular deputies, superior state institutions.

The organization of the system of state administration denotes excessive centralization. The head of the state administration is the highest person with

accountability to the region (village, community, town) and is a part of the system of executive power. The head of the administration of the community and town is named by the president of the non-recognized m.t.r. In towns and villages this person is elected through an equal vote, direct or secret, usually on the alternative basis with a 50% vote from 100% votes of electors who participate in the elections. Nothing is said about the freely expressed option. The head of the administration of town or village is a deputy to the respective Soviet. S/he organizes and runs the activity of the Soviet, i.e. fulfills the functions of the Chairman. The head of the administration has a right to introduce, propose project and acts in the representative body of the region, community, town or village, and also introduce the projects of the decisions of the government of the non-recognized m.t.r. The head of the community or village is accountable to the respective Soviet and to the head of the administration of the town or region. The head of the state administration of the town or region is directly accountable to the president of the non-recognized m.t.r. and to the respective Soviet. One of the activities of the head of administration is to make decisions and emit dispositions.

The head of the state administration is the manager of bank accounts of state administration. He can annul the acts of departments, sections and other subordinated bodies that refer to local property of respective administrative territorial units. He can also suspend the acts of enterprises, organizations that are on the territory of this administrative territorial unit if he finds the acts contravene the legislation. The head of the state administration of the town or region is helped by a prime vice head, a vice head, a secretary of state administration, that organizes the work of the apparatus of state administration.

State administration has important powers in the field of state and public order protection and organization of fight against crime on the administered territory. In the agreement with the militia they determine budget, personal staffs, effectuate control over the services of patrolling and sentinel, the service of traffic police, sectors inspectors and other police services paid from the account of local budget. Specific activities of the state administration in the non-recognized m.t.r. are the attributions in the sphere of defense. Besides recruitment in the armed forces of the non-recognized m.t.r. the state administration guarantees respect to legislation on the defense by organizations, enterprises and all kinds of private organizations, contributes to the development of military trainings, military patriotic education of the population, guarantees the enforcement of the legislation on the facilities for people who participated in the armed conflicts.

Economic financial base of local self-administration is made of: natural resources, units of production, communal property and of other nature; financial resources that other budget and extra-budget sources constitute. Administration of local property is exercised by the state administration in the name of the soviet of popular deputies. The head of the state administration contributes to the extension of external economic relations of the enterprises, organizations that are on the territory of the administrative territorial units.

State administration has a right to make agreements with external partners to produce and buy goods from the account of existing currency resources or from other resources. State administration elaborates, coordinates with the hierarchically superior organs and presents for the Soviet approbation the budget. The budget of villages and communities is included in the regional budget. Budgets of the towns and regions is included in the central budget of the non-recognized m.t.r. The minimal size of the budget is determined on the base of norms of budget covering per capita fixed by the supreme soviet of m.t.r. The incomes in the local budgets are made of proper sources and allocations from the republican taxes.

Normative acts of the public authorities of the Republic of Moldova are not applied in localities on the left bank of the river Dniestr. That is why while elaborating state policies and introducing modifications in the macroeconomic and fiscal policy, investment projects central public authorities have to leave out of account this region. It leads to emphasizing differences in all spheres of public and private sectors, and to the discrepancies in the development of localities in the left bank of the river Dniestr and the rest of the country. Administrative structures that exist in the transdnestrian region were founded in the abusive manner, evading internal and international legislation. They activate in the conditions of self-isolation and assumed powers of central and local public administration on the left bank of the river Dniestr.

5. Local public administration in unitary and federal states: European experience, perspectives for the Republic of Moldova

There are no totally unitary states, that is all countries have certain decentralized parts. The question appears what the difference between the unitary state that realizes decentralization, a unitary decentralized state and a federation is. The essence of those differences can be put in the following way: "Decentralization is in the transfer of some state organs that are on the territory but depend on the Government, some of their powers."

„Decentralization in the transfer of some powers of the Government (or some state organs that are in subordination) to the representatives of territorial collectives that do not depend on the Government (neither on the authorities in its subordination)". Decentralization is implemented in unitary states. Local collectives or decentralized units have only delegated powers.

Among different elements that distinguish federal state and unitary decentralized state there are the following: entities (subjects of the federation) have from the beginning autonomy in contrast to decentralized levels of the Government. This autonomy is constitutionally established not only on the level of organic law.

The level of centralization or decentralization of a unitary state depends on two key elements: delimitation of powers between the central and local level of public administration and separation of state powers. Besides, it is evident that centralization is exercised more quickly if central public

authorities are those that allocate finances and the fact how they are distributed among central and local structures of power.

Decentralization is to a greater extent determined by the existing juridical traditions. The system of common law, in contrast to continental European system, does not rest on the hierarchy of norms. It partially explains the fact why the English system permits greater decentralization than French, for example. Local public authorities in England are not simple state organs of the United Kingdom Unit. They were formed as organs entitled with the right to exercise proper functions on the base of proper juridical norms. This fact is unimaginable for a centralized state in France. The fact that in the United Kingdom the execution of many laws is the function of local public authorities has a greater decentralizing effect than in France. People, having governing functions, organize the enforcement of laws and are accountable to local public authorities while in France the prefect and his apparatus are under the immediate disciplinary control of central Government.

Bearing this in mind in the English system central public authorities can influence local public authorities through the intermediary of subventions. AT the same time they can ask for the enforcement of a law basing on the decision of judicial institution. To exercise the supremacy of law the British Parliament has legislative unlimited power and accordingly can change the system of local public administration. The Parliament to a certain degree used this possibility adopting normative acts in the sphere of local autonomy that lead to a certain legislative centralization. still, taking into consideration that local public authorities in England always exercised important functions and had much greater autonomy that local authorities in other European states this process of centralization did not have a great influence on the system of local public administration. On the other hand, local public authorities in England do not have limited constitutional status. Generally, in contrast to subjects of the federation, local public authorities always exist by the will of the central powers and have only powers that were delegated by the central Government.

Constituent power of public administration and representative constituent body

Constituent power (pouvoir constituant) means the right to institute/constitute state organs and to determine the structure and their relations with certain groups of citizens. This power as a rule belongs to the Parliament that has legislative attributions. It is the constituent power that decides whether administrative levels should have only delegated powers (administrative territorial units) or primary competence (subjects of the federation). Constituent power always should be centralized otherwise we could speak about confederation. Moreover, even in decentralized unitary states it excludes direct participation of decentralized units. We should mention the fact that in the unitary states the second chamber of the Parliament can include representatives of decentralized units. For example, the constituent power of French Parliament is divided between the National Assembly and the Senate, but the Senate consists of the representatives of decentralized

communities. Senators are elected through indirect vote by other local elected agents, i.e. deputies, general councilors, regional councilors and delegates of metropolitan councils of the departments.

As we have already mentioned it is the Parliament in most cases that is entitled with constituent power, especially in case of systematic revision of the constitution. It is the consequence of the democratic character of this organ. The political will of the people is represented and constitutionally expressed in the decision making process through Parliament.

An indispensable element of the federalism is participation of the subjects of federation in the legislative process at the level of state. They not only execute decisions made at the federal level, they actively participate in the formation of political will of the federal state whether it refers to the constitution or other laws. In Switzerland, for example, cantons not even participate in the legislative process through their representatives in the Parliament. They are consulted during the process of preparation or modification of laws.

The electoral system can also influence the level of centralization and decentralization in the state. If electoral constituencies correspond with the decentralized units of the territory and if parties that activate in these units have possibility to push by themselves the candidates for participation in the elections the results of the elections will be different from the results obtained in case when electoral constituencies do not coincide with the territory of the decentralized units and if the parties at the central level choose candidates to be included in the lists for local elections (as it is in Germany, for example).

Many states have one bicameral Parliament (The United Kingdom, Holland, France, Ireland, Spain, and Italy). They have the second chamber that fulfills the function of counterbalance and control over the first chamber. It might happen that not only interests of the political party dominate this chamber, but local as well. In this very case the electoral system plays a special important role i.e. it may help to reduce the influence of the party in the second chamber.

In continuation we will analyze particular cases of development of local and regional autonomy in the European states, unitary as well as federal. The accent is laid at three aspects that we consider relevant for the Republic of Moldova in the sense of experience that can be taken: authority that can decide over the organization of the system of local public administration, economic point of view and delimitation of competences (especially in cases with federations).

We saw that in unitary states the decision on the structure of local public administration belongs, as a rule, to the Parliament. In the federal state we can speak about two levels of public administration. The intermediary level situated at the immediate inferior level of the state (subjects of the federation) and basic level on the level of localities. There is one more intermediary level in some counties situated between immediate subnational level and basic one. In federations, the role of constituent power for local public administration

differs from case to case. Usually, when the status of local public administration within subjects of federation is not regulated the structure of local public administration, especially what refers to its competence, constitutes the result of consensus between federation and the subjects of the federation.

In **Germany** Lands have a right to resolve in a free way all economic, social, cultural problems but without infringement of the constitution or federal laws. They have their own budgets and stabilize at the level of land taxes; to put it in other words they have full financial autonomy. It follows that each land contributes to its proper development and prosperity. Besides, **lands have organizational autonomy including autonomy over the local administration.** That is why administrative organization of 16 *Lands* presents different organizational schemes. For example, only eight out of them established *Bezirksregierungen* (intermediary instance of administration of *Land*).

Competences of *Lands* can be divided into:

- Legislative – initial rule of distribution of competences of this type between Federation and the federal subjects is in art. 70 of the Constitution of Germany that stipulates for the “Lands have a right to legalize in case when the present fundamental Law does not confer Federation the powers of legalization”. Art. 71 differentiates between three types of legislative competences: exclusive legislative competences of the Federation, competing competences and frameworks laws. Federal law predominates over the right of *Lands*.

- Administrative – subjects of the federation apply the federal law as if it were the law of the *Land*. The federation exercises control of legality of administrative actions without putting into discussion their opportunity. The authorities of the *Land* should respect the instructions of the empowered authorities of control.

- Financial - Art. 106 of the Constitution stipulates what types of taxes belong to the competence of Federation or are only in the jurisdiction of *Land*. It is foreseen that “big” taxes (income tax, tax from societies, taxes from transactions) should be common, that is belong to both the federation and the subjects of the federation. Between *Lands* the richest and the poorest financially compensate each other.

Swiss federation is formed through the unification of many states (cantons) that originally were independent (until 1948). As the term federalism denotes in the traditional way **distribution of state tasks** in political units of the inferior and superior level, in case with Switzerland the principle is valid:

- things that affect the *whole* Switzerland is an issue of the federal state (especially what foresees external policy, export, country defence, monetary problems, circulation, economic policy, energetic policy, social assurances, consumption tax, judicial problems in all spheres);

- things that can be resolved at *the level of canton* remain totally or partially the problem of canton (education, construction, healthcare, respect of legality, social policy).¹⁴

Cantons are autonomous state elements that through the consent of population can have proper laws and proper constitution for as long as it does not contradict the federal legislation. Every canton is made in its turn of communities that are structures with limited autonomy. At the same time, all tasks that are not obligatory attributed to the superior political administrative unit are the responsibility of those localities. The tasks are defined in the legislation of the canton that comprise in general the following fields: organization of secondary schools, increase of local taxes, organization of voting and elections, social assistance, construction and territorial planning, resolution of everyday problems as, for instance, local police, supply with drinking water, fire prevention, garbage transportation, purification of industrial water, organization of centers for reutilization of materials, organization of transportation in community, etc...

Cantons will present proper constitutions for the approbation of the Federal Assembly (parliament). Cantons have large competences because according to the Constitution it enjoys all rights that are not attributed to the federation. To put it other way the state has only the powers that explicitly appear in the Constitution.

In **Austria** the concept of the federal state is not so powerfully fixed because there is disequilibrium of powers in favor of federation and the influence of the lands over the federal legislation is minimal. According to the Constitution it is the Federation that should principally divide the powers between itself and *Land* through the intermediary of a constitutional law.¹⁵ In contrast to fundamental German law, the federal Austrian Constitution does not include the clause of superiority in favor of federal laws as the principle „the primordial federal right over the *Land* right” is applied. Another federal characteristic comes from the competence granted to the *Lands* as members of a Federation to have a proper Constitution. Within the constitutional federal law *Lands* enjoy relative constitutional autonomy.

Limitation of the sphere of regulation of regional institutions is emphasized by the flagrant centralization in the **financial sphere** because fiscal sovereignty belongs mainly to the federation. As for the budget incomes of the *Lands* a part that comes from the federal collective tax is the most important. Fiscal sums collected from *Lands* represent 1% of the total sum¹⁶ that is too little in comparison to other federal states. Taxes can be collected only by the special federal authorities.

¹⁴ Traducere: *Eva Pop*, Sistemul elvețian, Tîrgu-Mureș, 1993.

¹⁵ *Christine Leitner*, Christine Neuhold, Nivelul intermediar de administrare în Austria // Nivelul intermediar al administrației în țările europene, Chișinău, 2002, pag. 323.

¹⁶ Op. cit., pag. 328.

Beginning with 1970, **Belgium** got to know the process of institutional reforms that very quickly transformed the country from a classic unitary structure into the complex federal structure. In unitary Belgium territorial institutions were constituted of nine provinces and 3000 communities with the population of almost 10 million people. As a result of a vast operation of fusion that was realized in 1970s to give the communal entities a dimension that would be adaptable to the necessities of political and administrative modern rule the number of communities reached at present 589, they are divided into federal subjects as follows: 308 in Flanders, 262 in Wallonia and 19 in the capital Brussels. As a rule, the right to decide over the structure of local public administration belongs to the Constituent Assembly.

The basis of the community is the linguistic criteria correlated with the territorial dimension. **Competences** they have according to the Constitution and special laws are: culture (language, press, youth policy, arts, sports, general culture, staff training, etc...), the problems that refer to the life and health of a person (healthcare policy, police, family and social policy, assistance to immigrants, etc...), education in the limits of community competence. Communities regulate the use of languages in administrative field, education, social relations between employer and employees.

If competences of the communities are “personalized”, those of the regions belong to the economic and administrative government. These competences can be grouped in four blocks: 1) economy (agricultural policies (without those that belong to the federal government), economic policy (with the exceptions of economic and monetary union), energy policy, policy of engagement in labor market); 2) public and transportation works; 3) urbanism and arrangement of the territory; 4) administrative power.

Financing of communities and regions is based on two principles: financial autonomy and irreversible federal solidarity. The first implies financial responsibility of the federal entities as well as free disposal of disposable resources. The second is realized through the mechanism of solidarity referring exclusively to the regions and is realized in favor of disfavored regions from the point of view of the production of taxation of natural persons.

Communities have three financial sources: 1) the quota from the taxes collected by the federal government; 2) non-fiscal incomes resulting from exercising competences or state transfers; 3) loans. The regions have five sources of income: 1) a quota from taxes of natural persons; 2) fiscal incomes or regional taxes; 3) non-fiscal incomes; 4) interventions from the federal solidarity; 5) loans.

Quotas of taxes collected by the federal government and responsibilities of the communities and regions are stabilized on the base of some objective criteria determined by the special Law on finances ¹⁷ that excludes any discrimination on the base of political considerations, any type of negotiations

¹⁷ Op. cit. pag. 44.

between different powers and permits every community and region to anticipate precisely the budget preparation and sources of income.

From the point of view of territorial organization the modern Spanish state is supplied with a complex structure of federal or semi-federal character. **Spain** numbers at present 8083 communities, 50 provinces, 17 autonomous communities and 2 autonomous cities. From them 15 regions are continental and 2 are insular regions. Each of 17 regions comprises from 1 to 8 provinces. This country makes part of the group characterized by the regional autonomous supremacy like Italy because Spanish regions are situated at the maximal limit of decentralization. Decentralization of the regions provides fewer models for administrative organization and more financial aspects.

The Constitution of 1987, probably anticipating the separatist tendencies avoids any reference to “federalism” preferring saying about “the state of autonomies”. At the same time, Spain is considered *de facto* a federation. Those *comunidades autonomas*, have a larger sphere of competence than territorial entities – subjects of some federation.

Specific nature of Spanish federalism is due to the following five distinctive aspects:

- 1) in contrast to the situation in the majority of federal states the creation of autonomous communities does not flow from the process of integration of sovereign entities that were earlier separated but from the process of political decentralization realized by the anterior unitary state and also powerfully centralized through the historic periods preceding the actual constitutional democracy;
- 2) in contrast to federal constitutions that fix in general a single list of competences of the federation, in Spain the distribution of competences between the state and the autonomous communities is not regulated by a unique framework of the Constitution but by a system that has two lists and the right of local communities to choose;
- 3) all powers and competences that do not formally belong to the autonomous communities through the status of autonomy or through an adequate organic law are considered powers and competences of the state, while the true federal systems function according to the principle that says that undistributed powers and competences belong to the subjects of the federation;
- 4) the Spanish Parliament does not know the second Chamber exclusively for autonomous communities, that is the Senate is a House of popular direct representation because only a small part of its members (45 out of 255) is elected by the legislative assembly of the autonomous communities;
- 5) progressive nature of the process of autonomy that permits autonomous communities to increase their competences in time, that is to produce

constant tension center – periphery and progressive dispossession of the center in favour of periphery, has unforeseen results.¹⁸

The Constitution, laws and Spanish jurisprudence distinguishes between the terms of “competences” that are judicial faculties of institutional actions (e.g. to legalize, to execute, to govern) from “matters” that form the object of competences: economic organization, agriculture, education, defense, tourism, etc... The distinction springs from the fact that the regions got political autonomy through different ways and assumed different competences. That is not all communities assumes the same matters and not all of them have the same competences in those matters.¹⁹ According to the Constitution the competences can be classified in: a) exclusives of the state; b) exclusives of the autonomous communities; c) competing competences; d) exercised competences.

Next to the principle of financial autonomy the Constitution stipulates for the principle of solidarity of autonomous communities and the principle of coordination with the state finances. Principle sources of income in autonomous communities are:

- Participation in the state incomes (transfers from the state calculated on the base of some criteria (population, area, insularity, administrative units, wealth, relative wealth, fiscal effort));
- ceded impositions and taxes (autonomous communities cede 30% of income tax of natural persons to the state, patrimony, legacy and donation tax, tax on the transmission of patrimony, gambling);
- proper resources (collections from patrimony income, proper impositions fixed in the agreement with legal provisions, taxes and special contributions, supplementary taxes on the state imposition, fines, administrative sanctions, money from the credit operations).

From the constitutional point of view Italian regions are organs of vast political, legislative and financial autonomy. In reality, the power of regions is limited from above through the influence of regional parties and central government and from below through the deep-rooted powerful tradition that permits sub-regional authorities to act independently sometimes avoiding regional level.

In accordance with art. 119 of the Constitution of **Italy** regions enjoy “*financial autonomy in forms and within limits prescribed by the laws of the republic, coordinating with the finances of the state, provinces and communities*”. The dominant interpretation of art. 119 were always that **financial autonomy** of 15 usual regions is very limited and they cannot impose new taxes or regulate imposition or distribution of already existing taxes. Thus, “financial autonomy” attributed to the regions by art. 119 means mainly autonomy to directly administer taxes fixed by the state. Even greater

¹⁸ Antonio Bar Cendón, Nivelul intermediar de administrare în Spania // Nivelul intermediar al administrației în țările europene, Chișinău, 2002, pag. 145.

¹⁹ Op. cit., pag. 167.

financial autonomy is attributed to five regions with the special status. only in exceptional cases they have power to impose their own taxes.²⁰

Authorities of public administration of the regions have a right to organize public services of regional character, to organize local police, professional education, medical assistance, local commerce, transportation in the interests of the region, systematization of the territory of the region, network of public libraries, regional tourism, etc...

The right to modify the structure of local public administration belongs to the Parliament. Art. 5 of the Italian Constitution stipulates for the principles of autonomy and decentralization made of regions (regioni), provinces (provincie) and communities (comuni) (art. 114).

Extremely complex structure of the local and regional administration of **the United Kingdom** represents a conglomeration of administration with different attributions, competences and responsibilities activating in overlapping geographical areas. Besides, the structures of local public administration differ in all four parts of the United Kingdom: England, Ireland, Scotland and Wales.

The biggest administrative territorial unit in the United Kingdom is district. It is similar to the region. District deals with the some services of public interest, health care, education, construction and building roads, supply with drinking water, etc... To realize the competences district get subventions from the state budget.

Central government exercises strict control over the budgets of local collectives. In the United Kingdom the expenses of local collectives constitute 25% from total public expenses and 11% of British GDP. Two most important articles on expenses are considered education that consumes one third of expenses of local collectives and providing housing that uses almost one fifth of the total local resources. There are four principle sources of financing of local collectives:

- Property tax (in the function of property value);
- income tax (professional);
- providing services;
- subventions from the part of central government.²¹

Economic public services and financial banking services are controlled by public corporations. That is why the competences of districts in economic field are very limited.

There is no written constitution that would have rights and responsibilities of intermediary administration, its relations with the central government, these structures have being changing for almost twenty years.

In **France** the regions do not represent the expressions of regional particularities that would give birth to the demands of political autonomy, they represent the result of the concentration of departments it is made of. They

²⁰ *Anna Bull*, Regionalismul în Italia // Regionalism și/sau descentralizare, Altera # 10, 1999, pag. 23.

²¹ *Steve Martin*, Administrarea nivelului intermediar în Regatul Unit sau fragmentarea nivelului mediu // Nivelul intermediar al administrației în țările europene, Chișinău, 2002, pag. 409.

were created to deal with certain problems that many departments are interested in; they were born out of functional necessities of the policy of administration of the state territory. This fact is explained by the weakness of regional currents in France. The only exception is Corsica.²² Regions are transformed in territorial collectives by the Law of 1982, beginning with the first elections through direct universal suffrage of regional councils in 1986.

Regions have great material **competence** but reduced normative competence. Taken globally, the budgets are reduced in accordance with other communities and departments, but regions have more dominance over their resources and more freedom to use them, especially because the nature of their competences leaves them space for financial maneuvers and permits them to make disposable a capacity of important investments. The list of normative competences is compensated by the variety of instruments of planning (for example: the plan of the region, the regional plan of formation professional youth, the perspective program of regional interests in the sphere of investigation, regional plan of the development of higher education, regional plan of transportation, regional scheme of regional development of tourism and recreation). They all use the possibility of the region to deal with the institutions and interested parties, with the work of defining common perspectives for a medium term, to elaborate projects that enter those orientations and foresee finances and their realization.

The competences given to the region by law refer to: economic development and arrangement of the territory that is fulfilled through:

- participation of regions in the programming of arrangement of the territory through planning and annual negotiations with the state;
- co-financing of public legacy of regional interest;
- Financial aid into the investments of enterprises and participation in the capital of agents of regional development and of mixed economic societies;
- responsibility for the professional training on the regional level (with the agreement of the state, institutions of education and raising professional skills);
- participation in the construction and maintenance of lyceums²³.

We add the maintenance of water networks, regional tourism development, participation in the policy of elimination of rubbish²⁴.

Region, as a department, has its own **budget**, moreover its own financial means that come from the impositions and taxes they receive. Creation of regions was followed by the social economic development of the local collectives. 55,7% of the resources of the regions come from fiscal collections half of which are the product of the four direct impositions that aliment local

²² *Gérard Marcou*, *Experiența franceză în regionalizare: descentralizarea regională în statul unitar // Regionalism și regionalizare*, Altera # 9, 1998, pag. 9.

²³ *Franck Petitville*, *Regiunile, departamentele, prefectii, intercomunitățile: rețeaua administrației teritoriale în Franța // Nivelul intermediar al administrației în țările europene*, Chișinău, 2002, pag. 197.

²⁴ *Gérard Marcou*, op. cit., pag. 24

budgets (professional taxes, residence taxes, property land (constructed and non-constructed) taxes). Another half of the resources comes from indirect fiscal system. In this case imposition base depends on economic conjuncture and its effects over the automobile market and immobile transactions. Thus, regional councils fix the percentage of additional regional tax to the right of movement (within certain limits), the percentage for the tax on driving license, percentage from the tax on certificates of matriculation for vehicles (collection in this chapter constitute a quarter from the ensemble of fiscal resources of the region).

Regional decentralization in France appeared within constitutional principles of the unitary Republic and is incontestable by any political force. Certain evolution is possible in what refers to the competences, finances, configuration of the regions or fusion of communities.

Geographically, the system of government of **Sweden** is divided in three levels: central government, regional districts and local metropolitan areas. Administrative conditions of the district develops in the field of vast activities and decides over a large specter of important problems, principle of which are: planning and regional development, roads and road traffic, education, pisciculture, agriculture; environmental protection, water and nature preservation, health care, including sanitary control of alimentary system, civil protection. Councils of administration control civil issues and different types of licenses. The real importance of different attributions varies from district to district. As a rule, the tasks relating to the environmental protection, agricultural activities and regional development occupy the major part in the activity of the councils.²⁵ According to the Constitution „... councils of districts can raise taxes using them for the execution of their rights”.

The sector of health care absorbs the major part of **expenses** made by the councils of the districts. Other functions included in the part of expenses of the district councils are hospitals, public transportation, tourism, education, culture. Fiscal collections guarantee the financing of those activities (constitute 71% of the total income). Neither constitution, nor the legislation stipulates for the restrictions or limitations referring to the level of local imposition.

Decentralization of the Greek state is foreseen by the Constitution. In the regions administration authorities function vested with decisional power in the limits of the region. These authorities do not have a clear judicial status because they belong to the administrative apparatus of the unitary state. At the same time we can affirm that **Greece** has a decentralized administrative system. Art. 101, par. 3 of the Greek Constitution says via concrete irrefutable principle characteristic of the principle of decentralization: “*State regional bodies have general power to decide problems of their region. Central administrative authorities have, besides their special competences, the competences of general guidance and are responsible for the coordination and*

²⁵ *Magne Langset*, Nivelul intermediar de administrare publică și de guvernare în Suedia : structura, istoricul și evoluția recentă // Nivelul intermediar al administrației în țările europene, Chișinău, 2002, pag. 388.

the control of regional bodies".²⁶ In Greece there are 13 regions that include 54 administrative prefects.

Competences of the regions belong to five ministries: of Finance, of Environment, of Territory arrangement and Public Works, of Agriculture, of Healthcare and Social Security, of Internal Affairs, Public Administration and Decentralization.²⁷

The region has **competences** in the following fields:

- planning and development (regional policy, measure of democratic programming, promotion of new institutions, water control);
- Health and social security (health protection on the regional level, preventive medicine, treatment and promotion of healthcare in the region);
- public works and control over them;
- maintenance of road networks;
- programming and realization of the environmental policy, of the territory arrangement and urban planning;
- regional development and forests protection;
- agricultural development and realization of agricultural policy.

The region exercises a role of supervisor over the prefect self-administrated entities when it comes to public investments and planning, environmental protection and agricultural development.

As for the **financial control** of the regions donations for the execution of the competences of the general secretary of the region, including remuneration, are written in a special chapter of the general budget of the state. Collections from the prefect self-administered elected entities are distributed through ordinary and extraordinary collections. The first are constituted from the part of the national impositions and reserved resources on the central level, from local impositions instituted in the law, from annual subsidies of central government for the execution of delegated responsibilities, from credit for the programs of public investments, from the rent of immobile goods, and from "reciprocal" subsidies asked "in exchange for" certain services. Extraordinary collections are constituted from loans and subsidies, from state subventions, from the subsidies of the European Union, from the rent of financial and immobile goods, from bills for the use of works of art financed from the loans.²⁸

Denmark is a unitary state whose political and administrative structure is very decentralized and includes 14 councils of districts (*Amtskommuner*) on the regional level and 275 principle metropolitan areas on the local level.

With the exception of some specialized hospitals administered by the government districts are responsible for all hospital services in Denmark.

²⁶ George Kassimatis – P. Lazaratos, Statutul juridic și instituțional al regiunilor în Grecia // Regionalism și regionalizare, Altera # 9, 1998, pag. 37.

²⁷ Stella Kyvelou-Chiotini, Nelli Sakellariadou, Nivelul intermediar de administrare atipică din Grecia // Nivelul intermediar al administrației în țările europene, Chișinău, 2002, pag. 128.

²⁸ Op. cit., pag. 137.

Districts are responsible for education in secondary schools and higher schools. Culturally, they support theaters, giving subventions to regional theaters, museums, orchestras and libraries and special cultural projects. Important powers belong to the districts in planning and localization of the principles of infrastructure in transportation and in the sphere of nature and environmental protection and arrangement of the territory, regional economic development. In comparison with other European states regions of Denmark are much decentralized: **regional authorities have much more competences than central authorities.**

Control over the hospitals constitutes the most honorable function of the district because it represents 50% of all expenses.²⁹ Incomes of the districts come from three major sources: 1) direct impositions; 2) general subventions of the state; 3) royalty taxes. Councils of the districts and councils of the metropolitan areas are free to fix their own coefficient of tax and decide on the level of services that are to be provided. Thus, every year the councils of the districts decide what coefficient should be applied for incomes from natural persons.

There are no official mechanisms that would permit the central government to influence the level of taxation or expenses on inferior steps of administration. This fact corresponds with the liberal concept of autonomous local collectives.

Holland is a decentralized unitary state with three levels of administration: central state, provinces and communities. There are 12 provinces, different in size and number of the population, with 548 communities. The borders of the majority of provinces were historically set, thus, they do not coincide with the territorial form of social economic activities or actual infrastructures. That is why the plans of reorganization of the Dutch provinces became in the last thirty years a constant subject on the agenda of public administration.³⁰

Competences of the provinces can be divided in general and those exercised in “co-administration” that implies obligatory cooperation for application in practice of national laws. More concrete, provinces fulfill the following functions:

- general administration: in this sense the province has important powers in the sphere of communal restructuring that includes fusion and annexing communities, separation of their territory and inter-communal cooperation. According to the legislation, provincial council determines geographical districts in which inter-communal cooperation should be stabilized. Agreements between the communities will be approbated by the executive province;
- public order and security;

²⁹ *Magne Langset*, Administrația intermediară în Danemarca // Nivelul intermediar al administrației în țările europene, Chișinău, 2002, pag. 71.

³⁰ *Ralf Kleinfeld – Theo A. J. Toonen*, Aspecte politice, instituționale și juridice ale regiunilor Olandei // Regionalism și regionalizare, Altera # 9, 1998, pag. 49.

- traffic and transportation;
- water control;
- environment;
- entertainment and nature;
- economic and agricultural affairs;
- social affairs;
- arrangement of the territory and locative kings.³¹

Annual **expenses** of the provinces are very modest in relation to the expenses of communities and of the state. In percentage relation it makes about 10% of the expenses of the communities. Sources of income of the provinces are:

- proper incomes;
- incomes from the provincial fund;
- specific subventions.

Provincial council can decide on the introduction, liquidation or modification of provincial taxes. The decision of the council is approved by the royal decision. In comparison with the largest European countries, their financial autonomy is reduced. The services that the provinces offer autonomously or on their own initiative are financed from proper resources. The provinces hold in subordination 18.000 public officials. , the inferior number the metropolitan area Amsterdam has (24.000).

Tendencies of local and regional autonomy evolution at European level.

Perfection of regional autonomy was initiated by Italy (70s), Spain (from 1978), Portugal (from 1976), Belgium (1970-1988), France (from 1982), etc. The examples do not stop here, on the contrary, taking into consideration integration of Union states, decentralization is imposed everywhere as a structural model. Regionalization of Ireland or Greece intervening right with structural funds attraction makes a new argument in favor of structural reform of a state in the context of integration. Regionalization of states in the course of adherence is considered as a support element of integration that is foreseen by European Parliamentary Resolution from November 18, 1988. Revitalization of interest towards regional reform in candidate states was challenged by European dimension awareness of regional policy and governing.

Thus regions become engines of integration.

Analysis of regional autonomy evolution in the states of Central and Western Europe puts forward a number of major tendencies.

In administrative-territorial organization domain these are:

- *Increase of administrative-territorial unities dimensions.* As basic territorial collectivities so and regional ones are meant here. Basic reason of this tendency points out that only territorial collectivities big enough

³¹ *Koen Nomden*, Nivelul intermediar de administrare în Olanda: supraviețuirea provinciilor // Nivelul intermediar al administrației în țările europene, Chișinău, 2002, pag. 283.

and through this strong enough, could be viewed as really autonomous, disposing necessary financial strength of a real autonomy, in the frames of material competence area amplification.³² Reformation of administrative chart in Eastern Europe states had two big directions: reduction of basic administrative-territorial unities and regionalization. Elimination procedures of small communities especially in Sweden, Denmark, Belgium, Austria, Germany, were more or less authoritarian. Some examples: the number of basic administrative-territorial unities in Belgium was reduced from 2.700 to 600, in Germany from 24.000 to 8.500, in Great Britain (England), from 1.400 to 420.³³ The same could be observed at regional level. In Denmark, for example, the majority of local as well as regional communities were very small to resolve major problems having very limited proper resources. This reform caused a movement of 40% of county council number, reduced to 14 in the future, while the number of population in new regional unities increased to 100% reaching the figure 350.000.

- *Fostering inter-communal and inter-regional cooperation* There where dimension increase was unsuccessful and implicit, the reduction of basic and intermediary administrative-territorial unities number, volunteer association of local and regional communities was prompted to resolve common interest problems. There are more than 36500 local authorities in France. 90% of these are very small rural communes with less than 2000 of inhabitants (3500 have less than 100 inhabitants). It is paradoxical that in a country that is famous for its centralism, French specific of communes is still preserved, that could be understood as historic inability of central power to impose fusion of small communes with the big ones. A governmental policy that was initiated in 60s prompting fusion brought very modest results (about 1200 of fusions during 20 years). This failure imposed the state to promote different forms of inter-communal cooperation, and other responses are given through regionalization. Major evolution is tied to reappearance of informal alliances between neighboring authorities of England and it is directly tied to the fact that EU programs have regional predetermination, what makes a strong motivation of their collaboration intensification. Forms of inter-communal cooperation are very diverse. In France, for example, they have a form of inter-communal trade unions, trade unions of „new (urban) throng”, districts, urban communities, communal unions and town communities.

In internal development domain of local and regional autonomy these are:

³² Corneliu Liviu-Popescu, op. cit., pag. 126.

³³ Op. cit., pag. 127.

- *Enlargement of competence domain.* Constant strengthening of institutional autonomy (proper administrative authorities) and decisive autonomy could be observed today. In France, debates concerning increase of regional authorities are still on political agenda. From the beginning of 90s, Italy is involved in a process of competence devolution to its regions. Debates still continue in Denmark, Portugal, Sweden, and the United Kingdom.
- *Increase of local and regional community means.* A general tendency that could be observed in member states of European Union (except the United Kingdom) means *increase of financial autonomy* of intermediary level of administration as emphasizing relative importance of taxes as a form of income, or replacing endowments with certain destination through general endowments.³⁴ This cannot be possible without patrimonial, fiscal, and budget autonomy increase.

A particular aspect of functions exercised by regional authorities in some European states is prevalence of health protection sector. In Sweden, health protection represents almost 80% of all county council activities, in Denmark, 64% of county council expenses are reserved for hospitals and medical assistance services. In Norway these services make up 58 %. In Finland health protection represents the most important category of common municipal authorities' expenses (73 % in 1997).³⁵ Education also is one of the most important competences of intermediary level. (Germany, Belgium, Finland, etc.)

In the case of federal states, examples of regional autonomy represent only a constitutional model. Life is much richer in events than any model could foresee. To find out what is the real competence distribution in a federal state it's necessary to study, together with legislative aspects, real interaction of political elite at federal level and at the level of subject federation. Thereby, it is worth to pay attention over one of the most important levers of influence by central authorities of subject federation authorities department. Here we mean finances. Too often fiscal competence distribution between federation and its subjects is realized in a way that federation subject, without financial support from the center cannot exist. Certainly, that the center distributes financial resources, but too often sponsorship depends on the demand that federation subject should participate in realization of any federal program, moreover when its implementation is tied to federation subject competence.

Finances guarantee indirect influence to the center. Still it could happen that *direct federal intervention*³⁶ would be necessary. It is not the case when the state is in the war period with an external enemy but a situation of internal crisis. Some European constitutions contain regulations concerning situations

³⁴ *Colectiv*, Nivelul intermediar al administrației în țările europene. Democrație în pofida complexității?, Chișinău, 2002, pag. 447.

³⁵ Op. cit., pag. 443.

³⁶ *Colectiv de autori*, Тенденции развития федерализма в Российской Федерации, (Аналитический доклад), Москва, 2002, pag. 61.

alike. For example, art. 37 of German constitution contains stipulations that in the case when *Land* does not perform federal duties assigned by constitution or federal laws, federal government with *Bundesrat* agreement can take necessary measures to determine duties accomplishment by federal coercion. To realize that federal government or a person in charge can give certain indications to *Land* or public authorities.

There are no precisions, just the doctrine can interpret that certain infringements as non assurance of federation subject to collect federal taxes by authorities, to refuse to participate in the planning and building a highway of federal importance, termination by *Land* of its activities in *Bundesrat*. Certain measures can be taken as: financial pressure, application of police forces, the use of right to give indications, and in emergency case replacing *Land* government. Other authors also add to this measures list, dissolution of *Land* parliament, naming a federal commissioner with general or special prerogatives, temporary trusteeship of federal authorities over *Land*.³⁷

Administrative-territorial improvement

Dimensions and region competence should be put into discussion. It's clear that regions are very small to elaborate programs that would obtain financial support based on regional community policy and be able to allege its presence in an interregional competitive ambience. It becomes necessary to elaborate certain regional policy. A simple final redistribution following a reorientation of income fluxes from certain territories by others is insufficient for the Republic of Moldova. It is true that there is no reason that income measures would assure administrative-territorial improvement, and internal development of regional autonomy would be applied independently. A good result could be obtained by collective application of all measures. In other words, for example, creating a big region not increasing rural (communal) dimensions, or at least not encouraging inter-communal cooperation, is a wrong step. Experience of candidate states in adherence and EU member states can help the Republic of Moldova to hustle the process, avoiding eventual failures.

Those three European documents that lay in the basis of regional autonomy (*European Charter: Autonomous exercise of local power*; project of *European Charter of Regional Autonomy* and Declaration of European Regions Assembly over regionalization) do not contain relative stipulations at administrative-territorial unities dimensions. Indirectly these presuppose a problem of relative disposition in local competences and resources. At the same time it stipulates that local or regional authorities should be advised before deciding modification of territorial limits. That is why on the Republic of Moldova legislation agenda *resizing of administrative-territorial unities* would be primordial. It was told that multiplication of administrative-territorial unities is not only costive and inefficient but also inevitably leads to local

³⁷ Ibidem

autonomy enfeeblement. The reduction of their number should be preceded by practicability studies, depending on the problem that is going to be resolved, categorization criteria of regions accepted in European states. To project new administrative-territorial unities it would be necessary to take into consideration the level of communication and access net development, first of all of road maxi taxies as well as relative remoteness of regional centers of railroads. Not less important is the structure of urban localities in the frames of region and their potential of polarization on the territory. The possibility to form a quantum of sufficient incomes to realize financial regional autonomy to assure social-economic development of the territory, would be also considered

Possible scenario

Taking into consideration the existence of a territorial frozen conflict with direct implications in local autonomy domain, the necessity appears to elaborate certain policies and policy scenarios concerning reintegration of administrative systems from localities of the left bank of the river Dniestr with those of the Republic of Moldova. Taking into consideration territorial administrative organization it could go in several directions:

a) Maintenance of the actual formula of administrative territorial organization, launching of the process of federalization, including the localities on the left bank of the river Dniestr in the framework of a subject of federation. It would contravene the tendencies manifested in the European plan according to which small administrative territorial units are dependent on the state, because they cannot dispose of power necessary for true decisional autonomy with all following consequences – maintenance of depression in economy, big internal debts, the growth of discrepancies on the urban – rural level of life, etc... and great risk of an eventual failure of the European integration. In case with the federalization it is significant to examine an example of Serbia. Among elections promises of the power of Serbia after Miloshevich there were two great promises: „D”-s. Besides democratization regularly and continuingly appeared the topic of decentralization. After almost two years of government it can be said that practically nothing had happened to satisfy the interests of constitutional regulation and promised regionalization. It happened because at moment there was reconciliation in the center of attention of Serbian and Montenegrin authorities to construct federation and the future common state of the republics of Yugoslavia.³⁸

b) Projecting and establishing a new system of administrative territorial administration through summation of present regions and federalization of the Republic of Moldova under those conditions. While the elaboration of the project on the new administrative territorial

³⁸ Autonomie și descentralizare în Serbia “postmiloshevici” // Provincia, # 8-9, august-septembrie, 2002.

organization can be realized any time, modification of the actual administrative territorial system through the growth of dimensions and implicitly reduction in the number of territorial collectives of the intermediary level can be realized only with the expiration of the term of office of present elected agents. AT that moment federalization on the constitutional level can actually be fulfilled as it is not clear whose competence will be administrative territorial reorganization and organization of local public administration. Plus, even if economic, geographic and demographic motives can prove that the creation of regional administrative territorial entities is possible that would exceed the limits of the subject of the federation it cannot be realized in virtue of legislative and constitutional obstacles.

c) „Amalgamation” of the regions within conventional regions of development that would have an average area and population comparable with the situation existing in many European countries and accepted by the norms of Nomenclature of Territorial Statistical Units(NTSU) of the Euro-state.³⁹ II. In this case there are two variants for the regions: 1) they can be preserved until local general elections after the elections they are abolished becoming administrative territorial units of the second level; 2) regions are preserved in future on the intermediary level of administration that is between local and regional level. There are also two possibilities for the process of federalization: 1) it can be denied on the motive of inopportunity and disparity with the process of regionalization; 2) federalization can be continued if appreciated as necessary after the end of the project of new regions, they should be taken as a base for drawing territorial borders of the subjects of federation.

The chosen was is not as important as taking into consideration the imperious necessity to respect existing European tendencies.

It is true that the creation of the regions will require a study of practicability. It will be followed by the construction of homogeneous regions through the prism of some unifying characteristics, some key-criteria as for example: economic criteria (e.g. income on close localities, common dominant industrial sector), geographic criteria (similar topography or climate, common natural resources), social political criteria (a certain “regional identity”, common historic development). Precise criteria are in the foundation of the emergence of a region that would like to be resolved through the establishment of regions.

According to the study⁴⁰ elaborated within the Institution of Public Policy in Romania not depending on the method the final decision over the regionalization should respect the following considerations:

³⁹ Nomenclatorul Unităților Teritoriale Statistice al Eurostat. Nivelului NUTS II corepund, spre exemplu, provinciile în Belgia, comunitățile autonome în Spania, regiunile în Italia, landurile în Austria etc.

⁴⁰ Anca Ghinea, Adrian Moraru, Considerente privind procesul de descentralizare în România. Reforma administrativ-teritorială, București, Octombrie 2002, pag. 18.

- the analysis should be based on a complete set of indices so as to study the specificity of every zone as exactly as possible, technical indices of development;
- debates on the level of independent experts;
- preliminary consultations with implied local public authorities;
- presentation by experts in the intermediary phase of the potential of the models for political option in order to choose between them;
- final decision (political) to have in the base many variants of zoning constructed on the model selected in the intermediary phase;
- eventual final consultation of local authorities on the final variant;
- explication / public debates of the process of regionalization.

However, there are some characteristics of the model of regionalization that we know without preliminary study:

1) The reform should be preceded by democratization, decriminalization, and demilitarization of localities in the east of the Republic of Moldova, whose legislation stipulates for an eventual status of autonomy.

2) To realize the reform it is not necessary to modify or adopt a new constitution. We will tell about it later.

3) The regions should correspond with the requirements of NTSU II of the EU. The relations of the regions with NTSU should be institutionalized. Thus, future regions will be compatible with states members of the European Union as dimension, importance and competences and will correspond with the European standards of regional autonomy.

4) *Localities on the left bank of the river Dniestr cannot form a region.* There are no regions that could extend for 200 km, with 2-15 km at width. This type of organization does not contribute to the efficient use of disposable resources. The arguments supporting this statement are, first of all, of economic character. Localities situated in the upstream of Dniestr can find advantageous market on the left bank of the Dniestr, this possibility could not be appreciated because of political disagreements between central public authorities of the state and self-isolated authorities of the “m.t.r.” It is very easy for towns Rîbnița and Camenca, for example, to transport goods in the town Soroca, than to the market offered by the metropolitan area Tiraspol, with all following consequences. The lack of infrastructure favoring the inclusion of five former regions on the left bank of the Dniestr (Rîbnița, Camenca, Dubăsari, Grigoriopol, Slobozia) in the administrative territorial units together with regions on the right bank is given. But even during former – USSR period three of them (Rîbnița, Dubăsari and Slobozia) worked with the territories on the both banks of the river Dniestr.⁴¹

⁴¹ Enciclopedia Sovietică Moldovenească, Tom. 8, Chișinău, 1981, pag. 242.

Juridical and institutional aspects

The establishment of the regions will be preceded by the creation of a legal and institutional framework.⁴² From the juridical point of view we can see in the below given table that with some exceptions the Law on local public administration corresponds with the requirements of normative European acts in the field of regional autonomy, that evidently encourages adoption of the *Law on regional development*.

European Charter of local autonomy	The project of the European Charter of regional autonomy	The Declaration of the Assembly of European Regions	The Law on local public administration of the Republic of Moldova
Local autonomy should be recognized by the legislation (art. 2)	Legislative dispositions that determine the extension of regional autonomy should offer regions specific protection referring to the procedure or conditions of their adoption. (art. 2)	The region is given its own Constitution, a status of autonomy or a law that is a part of juridical structure of the state on the highest level that would define at least organization and competences (art. 1)	The notion of local autonomy is foreseen in art. 1 and art. 7
Solution and control over an important part of public issues (art. 3)	Taking of regions under their own responsibility and in the interests of the population of an important part of problems of public interests according to the principle of subsidiary. (art.	The region should be responsible for all functions with predominant regional dimension (art. 3 par. 3)	The second section of Chapter I contains “delimitation of spheres of competence” between administrative territorial units of the second level and some powers “delegated by the state to administrative territorial units”.

⁴² Mihai Roșcovan, *Dezvoltarea regională: Republica Moldova vis-à-vis de Uniunea Europeană*, mai 2003, <http://www.ipp.md/publications/St~Roscovan~fin.doc>, pag. 34.

	3)		
the volume, nature of the task, requirements of efficiency and economy should be taken into consideration while giving responsibilities to regional authority (art. 4)	Means, especially materials and finances that permit effective application of additional competences should be adequately taken into consideration during the period of empowerment. (art. 5)	If the state has decentralized administration on the regional level it should transfer local bodies the staff and financial resources sufficient for avoiding their duplication. (art. 3, par. 3)	Financial resources of local public authorities should be proportional to the competences foreseen in the Constitution, the current law or other legislative acts. (art. 88, par. 3). Any delegation of powers should be followed by the allocation of financial resources necessary to cover the cost of competence exercise. (art. 88, par. 7)
The protection of territorial limits, their modification can be done only after consultations with population or at least local authorities (art. 5)	Modifications of the territory of a region can be introduced after an expressed prior agreement (art. 16)	Decisions are measures adopted by the state that affect the competences or regional interests ... cannot be adopted without prior consent of the respective regions (art. 3 par. 6)	Consultations with citizens are foreseen in the art. 8 and art. 17 of the Law on administrative territorial organization in power. The mechanism of consultations is not detailed.
Local authorities will establish their internal administrative structures (art. 6)	The Regions will define in a free manner internal structures of administration and their bodies. (art. 13)	Members who make representative assembly or executive body (of the region) cannot be, form the part of central power, the object of measures of control susceptible to make problems	Although art. 1 stipulated for “autonomy (<i>local</i>) provides for organization and functions of local public administration”, art. 49, lit. k has provision according to which organizational scheme and staff of the head of the region are approved by the regional council, organizational scheme and staff are taken with the

		to the leader who exercises the entitled functions (art. 2, par. 5)	approbation of Government.
Administrative control will follow, as a rule, respect towards legality. the control of the opportunity is acceptable in case of tasks delegated to local public administration (art. 8)	Control means providing respect towards legality and is <i>a posteriori</i> , control can include appreciation of the opportunities in case of delegated competences (art.19)	Control of the state over the regions if it exists is foreseen in the Constitution or, if there is no Constitution in an adequate law. (art. 8 par.. 2)	Chapter IX regulates control of legality and opportunity. Control of opportunity limits local and regional autonomy because subjects of the control of opportunity are, according to art. 70, „bodies of central specialized public administration other administrative authorities”, that is any body of public administration. These, according to art. 70 can modify or revoke the acts of local public administration or even adopt in some cases acts in their place. Responsibility for execution of administrative control of illegal opportunities is not foreseen.
Local public authorities have a right to proper sufficient resources that they can dispose of in a free manner while exercising their powers. (art. 9)	To put competences in application great part of the resources of the region should be made of proper resources that can be freely disposed. (art. 14)	Regions have financial autonomy and have proper sufficient resources to exercise competences (art. 4)	Authorities of local public administration have a right to sufficient proper resources and can freely dispose of them while exercising their competences. (art. 88, par. 2)
The right to	The right to	The declaration	According to art. 49, lit.

association and cooperation with other local authorities including external. (art. 10)	interregional and transnational relations (art. 8)	has three separated articles that regulate: international relations of the regions, (art. 10); transnational cooperation (art. 11) and relations of the regions with the European Union (art. 12)	p, the regional Council decides on the association with other authorities inside and outside the country including transnational cooperation.
Legal protection of autonomy (art. 11)	The right of the regions to present in justice (art. 17)	The regions have to participate at the nomination of judicial bodies aimed at resolving the conflicts of competence between the state and a region. These conflicts are resolved legally or through the court (art. 7)	The right of some subjects of public administration and some cases when they can address the administrative court are foreseen. (art. 24, 28, 51, 75, 76 etc...)

Until regions have administrative bodies there are no obstacles of constitutional order to their existence. The Constitution does not permit the existence of a system with 4 levels that is 2 intermediary levels as with the attribution of the quality of an administrative territorial unit to the region it will be necessary to refuse the present regions. This type of system is not desirable taking into consideration the small territory of the Republic of Moldova and appearance of a generating source of conflict and supplementary costs. The notion of region foreseen by the Constitution and the fact that it will collide with the proposed regional system we would mention that the supreme law stipulates for the notion of a region in art. 110 as an administrative sub-aspect. The Republic of Moldova is organized in regions, cities, towns and villages. The Constitution does not regulate the number and size of the regions, it is the

legislative responsibility. It follows that constitutional provisions can limit the regional system proposed only in case of nomination the *regions*. A strictly constitutional notion for new administrative territorial entities would be raioane, from 1998 till 2003 legislative texts contained the notion *județ* without anybody to insist on constitutional name. We will mention that we used the generally accepted at the European conventional level term *region* but there can be other names as well. (for example, *ținut*).

As for the basic administrative territorial units the amalgamation of two or more villages will bring a community. The reasonability of this action comes from the reduced number of people in villages in correlation with economic potential also reduced, insignificant incomes and increased expenses, necessity for every village to have bodies of proper administration with professional training that demands costly allowance, does not permit the creation of an efficient base for the supply of the mayor apparatus, medical and social institutions, that cannot assure practical realization of the principle of decentralization of public services.⁴³ That is why it is necessary to increase the number of inhabitants to make the formation of the basic administrative territorial unit possible.

The tasks of local public administration are very difficult, even impossible to realize. The causes are different: from economic and financial power of local communities till objective necessities of collaboration between a big city and limitrophe localities where a lot of people live who work in the city.⁴⁴ That is why in the period of transition towards creation of regions it would be necessary to take stimulating steps to favor inter-communal and interregional cooperation.

Internal development of local and regional autonomy

It is true that the regions should be responsible for all functions of predominant regional size. We can see in the table below that competence of the Moldovan regions does not deal with public healthcare as we saw before the expenses on healthcare constitute a significant part of expenses in all states – members of the EU.

Table # 2 Examples of existing competences in the regions according to the Assembly of the European Regions and competences of the regions

Appendix to art. 3, par. 1 of the Declaration of the Assembly of the European Regions	The Law on local public administration, competences of administrative territorial units of the second level
Regional economic policy	Social economic development (art. 11, lit. a)
Arrangement of the territory, the	Arrangement of the territory and

⁴³ Ion Creangă, Oleg Ufiță, Organizarea administrativă a teritoriului (Cu comentarii la Legea nr. 191-XIV din 12 noiembrie 1998), Chișinău, 2000, pag. 76.

⁴⁴ Corneliu Liviu-Popescu, op. cit., pag. 197.

policy of construction and housing	urbanization (art. 11, lit. a)
Infrastructures of telecommunications and transportation	Construction, administration and repair of the roads of regional interests (art. 11, lit. b)
Energy and environment	Environmental protection (art. 11, lit. I)
Agriculture and piscicultura	Land relations under law conditions (art. 11, lit. l)
Education at all levels, university and research	Institutions of lyceum education, with the exception of those of the competences of administrative – territorial units of the first level. (art. 11, lit. d)
Culture and environment	Financing of cultural activities (art. 11, lit. n)
Public health	-
Tourism, recreation and sport	Coordination and implementing sport activities and other activities for the youth (art. 11, lit. g)
Police and public security	-

The best solution for duplication of competences is offered by art. 3 pct. 4 from the Declaration of the Assembly of the European Regions: if the state has decentralized administration on the regional level, it should transfer local bodies the staff and financial resources to avoid duplication.” The respect towards only this article would resolve not only the problem of the conflict of competences but also many other problems, as for example is the problem with citizens necessities to place in the residence of the region (județ or regiune) and fill in a form. It follows the closeness of public services not of the administration of some small regions.

Dealing with the resizing of the administrative territorial units should be overshadowed by the problems existing in the sphere of local public administration that the Republic of Moldova is currently facing. For their removal we find it necessary to follow and respect the following priorities in the agenda of the local public administration reform:

Short-termed goals

- elaboration and adoption of a Law on decentralization;
- *to consolidate financial autonomy:*
 - § to formulate some clear criteria of distribution and allocation between the first and the second level of administration;
 - § to eliminate intermediary authorities in the process of transfer of financial resources by local authorities;
 - § to encourage collaboration of local authorities with fiscal inspectorate of state in collecting local taxes; to give the fiscal

- collectors from mayoralities the right to write the protocol on tax-dodgers and pass them to the court;
- § to consult local public authorities in decision-making process that would speed the interests and patrimonial rights;
- § to transmit in local public administration of those parts of public patrimony that would contribute to the growth of the economic potential of the respective territory.
- *to clear delimit competences*
 - § to modify legislation for the liquidation of overlapping between responsibilities of the first and the second levels of local public administration;
 - § to provide details on the responsibilities and limitation of the degree of discretion of local authorities referring to the management of services delegated by the state.
- *to assure effective administrative supervision:*
 - § to establish clear procedures on the procedure of administrative supervision;
 - § to identify priorities of the supervision;
 - § to limit administrative tutelage based on the result;
 - § to condition legal supervision of acts emitted by local authorities by the territorial extensions of the State Chancellery through some jurisdictional decisions;
 - § to establish accountability for the consequences of exercise by central public authorities and their territorial extensions of unlimited illegal control over the acts and activities of local public authorities.
- *to promote institutional dialogue between the state and local public authorities:*
 - § to introduce some institutional mechanisms of permanent consultation over different aspects that deal with local democracy (local public finances, delegated responsibilities, supervision, training, etc...) including through the intermediary of associations of local authorities;
- to increase the staff in mayoralities at the expense of local public administration of the second level, to give local authorities freedom to decide over the number of units of the necessary staff;
- to consolidate the staff of local elected agents according to the proposals of experts from the Council of Europe through elimination of inconsistencies between the Law on local public administration and the Law on the status of elected local elected agents;

Medium termed goals:

- to prepare judicial and institutional staff for construction of units responsible for the European integration within local public administration of the second level;

- to review judicial and administrative framework referring to the local fiscal system; to review the system of local taxes through the unification of 3-4- taxes; to authorize direct and integral allocations of the tax of supplementary value and of the income tax in local budgets;
- to approve transfers of general state taxes directly in local budget of the administrative territorial units of the first level;
- to monitor the legal regulations on water supply and sewer system, local transportation, thermal energy, public illumination, property associations, administration of patrimony;
- to review and adjust legislation that regulated patrimonial relations of the administrative territorial units;
- to systematize legislation in the sphere of local public administration according to the Constitution and European legislation including the European charter of the local autonomy.