THE LOCAL PUBLIC ADMINISTRATION IN THE REPUBLIC OF MOLDOVA

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Autonomy, the real decentralization, the separation of powers within the framework of the public authorities, the free initiative and the independence of the public administration authorities are only the first positive results of the operated reforms in accordance within the legal framework in force.

Being the representative authorities of the local communities, the authorities of the local public administration are at the same time a subject of law that realizes the citizens' rights for managing on their own an important part of the public affairs in the limits of their mandate.

If we look back not too far to our past and comparing it with the today's reality, unfortunately we can mention that the local public authorities didn't become completely the representative and executive authorities.

In some cases the activity of the public authorities is affected by the perfunctoriness and the specifically duplicity of the former Soviet system, expressed in fact through the distrust in Law and Justice.

The soviets of the people's deputies were named as authorities of the state's power, motivating that they were presented as "bearer of the sovereign power of the people".

In fact, they were fulfilling the authority's policy of the communist party (art.6 from the former Constitution of the former USSR), which in reality were involved in solving all the problems including those of the local level.

The local organs expressed the syllabus, resolutions and the convention's decrees through their activities and as well as the decrees of other inferior hierarchical authorities of the party.

The proper initiative of the bearer "sovereign power" of the people (the local

authorities) wasn't taken into account.

The declarations of Independence and Sovereignty of the Republic of Moldova (1990-1991) determined the rediscovery of some of the important principles of constitutional democracy: the political pluralism, transparency, local autonomy, administrative decentralization etc., being legalized in the Constitution of our country (art.109).

Although we regret that these principles were not appreciated in the way they should have been and some of the activities and responsibilities of the local public authorities are still marginalized.

Bringing an example: The Constitutional Court of the Republic of Moldova was apprehended by a group of deputies concerning the constitutionality of the Government decision NR. 688 from June, 10, 2003 "Concerning to the structure and the personal establishment personal of the village's mayoralty (commune), towns (municipalities)", making further modifications and completions through Regulations NR. 1220 from 10.10.2003 and NR. 1286 from 27.10.2003 on the grounds of art. 18 extract (2), letter f) of the rule concerning local public administration.

The Constitution of the Republic of Moldova establishes to the article 6, the separation and the collaboration of the powers in the state. This means that only the Parliament is the unique legislative authority of the state.

In accordance with art.72, extract (3), letter (f) from the Constitution (1) the organization of the local administration of the territory, as well as the general system concerning the local autonomy is regulated through the Constitutional Law. In other words, creating the structure and the personal establishment of the mayoralty deals with the organization of the local public administration.

The stipulation of the article nr.18, extract (2), letter f) of the Law concerning local public administration, sanctioning the elaboration of a model state of the mayoralty by the Government is essentially a legislative delegation.

Our opinion is that the Government didn't adopt the structure and the model of the state of the mayoralty, but it instituted obligatory rules for any mayoralty, encroaching the way of realization of the local autonomy.

According to the content of art.106 extract (2) and art.72 extract (3) letter f) from the

Constitution of the Republic of Moldova, the problems as for organizing the local public administration can't be delegated to the Government, because this deals with the subject of an organic rule.

More than that, referring to the rule mentioned above, the Constitutional Court has mentioned in many sentences, through its Resolutions (nr.64 from 30.11.1999; nr.22 from 18.05.2000; nr.35 from 24.09.2002 etc.), that the normative act adopted by the Government on a specific matter doesn't create a sufficient legal frame for the regulating the respective domain, but the Constitution doesn't authorize the Government with the right of instituting elementary norms in the sphere of social balance that needs legislative regulation.

In this case, the Parliament should establish through the organic rule the mayoralty type structure and could be as an attachment to the Law concerning the local public administration. Based by the type of structure the local council will be able to approbate its own structure, so as it stipulates in art.6 extract (1) from the European Charter (the autonomy practice of the local autonomy), to be adopted to the specific necessities of the local communities and to allow an efficient administration of the local work.

There is also a problem of a main importance, the problem of the juridical state of the subjects of the local autonomy, stipulated in art.5 of the rule concerning the local public administration.

Art.1 from the rule nominated defines the local council as a representative and deliberative authority of the population of the territorial-administrative unity [2].

The mayor is also a representative authority of the population of the territorial administrative unity and an executive authority of the local Council (it's about level nr. 1).

The Constitution of the Republic of Moldova in art.6 "The Separation and the collaboration of authorities" stipulates: "In the Republic of Moldova the legislative (representative) power, executive and judicial powers are separated and they collaborate for practicing the prerogatives that rests upon them, according to the legislation".

We notice that at the local level (level 1) it is not taken into account the existence of the representative and executive body, because according to art.5 from the rule regarding the local public administration, the mayor is at the same time the representative and the executive authority.

No less important and difficult considering the autonomy accomplishment and the decentralization of the public service is the problem of the relationship between the central and local public administration and inversely..

By establishing the local autonomy and the decentralization of the public service in art.109 from the Constitution of the Republic of Moldova, there were substantially modified the relationship between the central and local public administration.

In the systems of the administrative decentralization the relationship between the local and central public administration are not anymore based on guardianship or subordination, but so as it is appreciated in the doctrine, on a mutual collaboration, that what is creating the possibility of accomplishing a coo administrative system at a local level [3].

In our opinion, this kind of relationship has to be based on the collaboration principle, of no interference in the local activities, principles established by the Law for the authorities of the territorial-administrative unity.

For an efficient activity of the local public administration, first it is placed the initiative in all regarding the local public domain, the initiative that has to come to the Council from the Mayor to the Mayoralty.

So, when it is shown a difference between the central and local public administration of specialty in the literature of specialty then it is unanimous recognized that the activity accomplished by the central administration lies on the whole territory of the country, promoting the general interest.

On the other hand, the local public administration is fulfilling its obligations and the promoted interests belong to the inhabitants of a concrete territorial unity [4].

As well, we have to mention that there are also established relationships of subordinating in certain situations stipulated in legislation between the central and local public administration.

Mostly, such situations appear in practicing the obligations delegated by the state to the authority of the local public administration, in which they are controlled by the central public authorities.

In Alexandru Negoiță's opinion there are some more categories of relationships between the authorities of the central public administration with the local ones, especially: of subordinating, participating and collaborating. [5].

In our opinion, it should predominate the relationship of collaborating, in which the subjects are in the equal relationship, because this relationship is accomplished between two authorities of the public administration that is acting together, practicing its duties according to the application of the law. [6].

Regarding the role of the local administration in the system of the organizing the local administration of the Republic of Moldova, we can mention that the Constitution in force brings some new elements in this matter through which they tried to adjust our country to democratic legislation.

An analysis of organizing and functioning of the local public administration only from the constitutional textual point of view seems to be incomplete, because the disposals with general character of this fundamental act does not reflect the entirely structure of the public administration organized at the territorial administrative level.

The analysis of organizing and functioning of the public authorities in the territory is necessary for the fact that such an approach was not fully accomplished in the literature of speciality.

At present the Republic of Moldova moves towards a new system of local public administration, and because of the problems that the local public administration faces, they become constantly and multiple. First of all they deal with enriching the professional level of the local elected and civil servants.

The process of local public administrating needs certain knowledge in the administration domain form the elected officials and civil servants

The nowadays problems come from the lack of necessary knowledge for the public administration in the market conditions and of the local autonomy.

The local councils should find out optimal solutions for solving the local

problems, to find out the most suitable model of developing for the respective zones, adjusted to other accomplished models of regional or national authorities, defining the objectives and the priorities for the short term, for the short medium and long term.

The program of local development should be a complex program which should comprise the vital domains of the local communities.

The perfect functioning of the public authorities, its collaboration so much for the central level, as for the local one that needs a right legislative regulation, that would contribute to a common activity, the duties being accomplished for solving the economic and social problems and for enriching the material welfare of the entirely population.

In the condition of the Republic of Moldova, according to the provisions of the Constitution, the authorities of the local public administration are elected by the population of the respective territorial-administrative unity, they have their own competences established by law, more than that they have the right for organizing and administrating the public service of local interest as well as the right to the patrimony and personal financial resources. So, the local public administration is organized and it is automatically functioning and it has a total independence compared to the authorities of the central public administration, which can only control on its activity, according to the law.

But according to art.109 extract (3) from the Constitution of the Republic of Moldova, the application of the principles of the local autonomy, the decentralization of the public services and of other principles, can not affect the character of unitary state. In our opinion these Constitutional provisions are not in a full correlation with the disposals of the art.111 extract (1) From the Constitution (introduced by the Constitutional Law nr.344-XV from July, 25, 2003 [7]), which stipulates that Găgăuzia is a autonomic territorial unity with a special status, being a form of self-determination of the gagauz people, it is an integral and inalienable part of the Republic of Moldova. Although according to art. 1, extract (4) from the law regarding the specific juridical status of the Gagauz (Gagauz-Yeri), nr.344-XIII from

December, 23, 1994 [8], “in case of changing the status of the Republic of Moldova as an independent state, the population of Gagauz has the right to the external self-determination”. Here appears the question: Is Gagauz an autonomic territorial unity, an integral and inalienable part of the Republic of Moldova. Does it have the right in certain situations to an external self-determination? It is not clear why the legislator, modifying the Constitution, he didn’t made the necessary modifications in the rule regarding the specific juridical status of Gagauz.

Therefore, in the situation of Gagauz it comes to an administrative autonomy, that in unitary states is manifested in the same way for all territorial administrative unities (taking into account only its level). Or is it about some of the elements of the federative autonomy (so as it could be some responsibilities with an internal or external police)?

Regarding to the fact that the Republic of Moldova is a unitary state, Gagauz is not going to have more competences than other territorial administrative unity of level 2 (districts and the municipality Chisinau), excepting only some competences that would assure the multilateral development as a cultural and social aspect of respective entities (minorities) (so as it could be the culture, the language, education etc.).

Along the same line, art.111 extract (7) from the Constitution stipulates that the organic rule that regulates the specific status of the autonomic territorial unity can be modified with the vote of three fifth of the number of the deputies elected in the Parliament, but, according art.74 extract (1) from the Constitution of the Republic of Moldova, the organic rules are adopted with the vote of the majority of elected Deputies (?). Therefore, we have two categories of organic Laws. How will there be solved the problems in Law as a result of non corresponding or of the contradiction between the norms of both categories of organic laws, that is to say, the disposals of which categories of organic law will prevail (or maybe they will have an equal power) ? Which is the Constitutional frame that confirms that?

We have touched only some of the problems that refer to the uniform accomplishment of the local autonomy principle of the unitary state. The aspects

regarding Gagauzia are going to be taken into consideration in the case of an eventual federalization of the Republic of Moldova, that would be special task of researching and discussing. In case if the Republic of Moldova is an unitary state the experience of Gagauzia demonstrates us the existence of two systems of public authorities (governmental) and even the existence of two legislations (which in most cases do not have any common elements), then the question is if there is any compromise and which efficient mechanisms would be necessary in case of a federalization of the Republic of Moldova.

A matter of big significance, that determines the level of the decentralization and autonomy, is the strict and well-defined competence of the authorities of local public administration in the relationship with other public authorities, as well as the full correspondence between the volume of these competences and the established financial resources in the situation of the financial autonomy.

The fires moment deals with the character of the given competences, according to the law, the authorities of the local public administration and the corresponding volume of these competences with the authorities structure of the local public administration and of other local public services.

In the situation of local autonomy, the authorities' competences of local public administration should be (within the law limits) clear, exclusive, and completed. Therefore, the authorities of the local public administration should solve independently the problems of local interest inclusively to create local public services for coming up to these interests.

According to the Law regarding the local public administration from March, 18, 2003 [9], the territorial administrative unities have "personal competences" and "obligations delegated by the State" (art.10-14). In general, the category of "competence" can be attributed to a public authority. Or, the authorities' eligibility of the local public administration would also deal with the competence of the territorial administrative unities, although this is not stipulated in the respective articles from the Law regarding the local public administration. It is not even clear the use of the term "personal" regarding the competences. Could there be impersonal competences

knowing that the competences in the domain mentioned in the law for the authorities of local public administration, the authorities of the central administration could also have (so as the social assistance, education, etc.).

The provisions regarding the obligations delegated by state from the Law regarding the local public administration are also disputable. For example, the social assistance of the people, including the family protection is a private obligation of the authorities of the local public administration, but the social protection of the population is seen as an attribution delegated by State (art.10 extract.(1) letter e) and art.12 extract (1) letter a) from the Law). In the whole content of the nominated law the same regarding the competences of the territorial administrative unities, as well as the attributions of the different authorities of the local public administrations, it is stipulated the syntagm and other obligations stipulated by law. Does not this syntagm presume any obligations delegated by state? In our opinion, the provisions of the Law regarding the local public administration to the obligations delegated by the State are unusefull and even create uncertainty in regulating. The obligations that can be delegated by the state can not have a permanent character because it is transformed in private competences (permanent) of the authorities of the local public administration and they are going to be stipulated already deliberately in the law regarding the local public administration. Such competences can be transmitted based on rules that regulates the given domains, simultaneously with the rectifications of the present Law of the state budget, that are going to stipulate the sources of financing regarding the obligations delegated by the central public authorities.

The mechanism of granting some of the public services and delegating the obligations is regulated insufficiently in our legislation, inclusively by the authorities of the central public administration that is going to stipulate as an obligatory element the consultation in advance.

In the situation of the local authority, the authorities of the local public administration are going to create local public services according to the law, inclusively to assure its financing. For example, the competences of the authorities of the local public administration in the education and culture domain are stipulated in the Law

regarding the local public administration [10]. These authorities can create, reorganize, or liquidate the public services (the public institutions) that work in the given domains, they can also finance their activity. But according to art.40^1 from the Law of Education, nr.547-XIII from July, 21, 1995, the pre-elementary and extra-curricular institutions of education can be established, reorganized or liquidated by the Departments of Education subordinated to the Regional Council, and the other Institutions of Education – the Ministry of Education, the Government and the President of the Republic of Moldova. More than that, the Ministry of Education does not have special services in the territorial administrative unities of the second level, but it activates through the agency of the services of the authorities of the regional public administrations. [11] Although according to art.6 extract (2) from the Law regarding the local public administration, "the relationship between the central and local public administration, I as well as the public authorities of level one and two. They are based on the autonomic principles, legality, transparency and collaboration in solving common problems". So, in reality decentralization and autonomy dilute with elements of centralization. As well, from the present legislative frame (so as it is the Law regarding the local public administration and the Law of education) it is not clear who finances the education – the central authorities or a part belongs to the authorities of the local public administration. We can say the same thing regarding the establishment, liquidation and employing the staff of cultural institutions (theatres, concert organizations, circuses), which are arranged only by the Department of Culture [12]. The Ministry of Culture does not have specialized services in territorial-administrative unities of level two, because the Department of Culture is a service subordinated to the Regional Council.

Another important problem, mentioned above, deals with the proportionality between the authorities' competences of the local public administration and the number of the people employed in the local public services. According to the provisions of the Constitution of the Republic of Moldova (art.72 and 109) and of art.6 from the European Charter of the Local Autonomy, ratified without any reservations by the Republic of Moldova through the Parliament Resolution nr.1253-XIII from July,

16, 1997, the authorities of the local public administration should be able to define themselves in this situation of the organic Laws, the internal administrative structures, regarding their adoption to the specific needs of the local communities and with the aim of permitting an efficient administration. In practice we have two resolutions of the Government through which are established the structure and the personal organizations of the authorities of the local public administration of both levels, level 1 and 2. More than that the Government did not adopt the structure and the model establishment of the Mayoralty that would include the minimum or the maximum of the unities and personal establishment of the authorities of local public administration, evidently, besides the consultation of the authorities of the local public administration, but it instituted some obligatory norms for the local authority, minimizing in this way the way of accomplishing and a local autonomy. For example the mayoralty of the village, that has a population of about 2500 of habitants, should have a personal establishment consisting of four persons, together with the mayor and with the auxiliary personal and it has competencies in more than 20 de directions.

The second point refers to the main subject that assures the local autonomy especially the balance (proportionality) between organizing, functioning, the authorities' competences of the local public administrations and the available financial resources.

According to the provisions of the art. 9 of the European Charter of the Local Administration and of the art. 88 from the Law regarding the local public administration, the authorities of local public administrations have the right to the sufficient private financial resources, that they could have them free in practicing their competence. As well, these financial resources, should be proportional with the competences stipulated by the Law, and the subventions afforded to the authorities of the local public administration should not be destined to financing of specific projects, that is to say to carry the prejudice of the fundamental freedom of the local community policy in their own domain of competence. The local public administration authorities in the investment domain should have the access to the national market of assets.

The financial resources of the territorial-administrative unities are established and administrated through the mediation of the adopting and annual executing of the given budget, in accordance with the Law regarding the local public finance, nr.397-XV from October, 16, 2003 [14]. In the next notes we will draw your attention to a number of points from the Law mentioned which in our opinion affects the accomplishing of the decentralization principles, local autonomy, financial autonomy, and the cooperation between different levels of the authorities of the public administration, – principles mentioned above:

- In the Law regarding the local public financing are used terms such as: “the budgets of the territorial-administrative unities of number 1”, “the budgets of the territorial-administrative unities of number 2”, “the regional budget”, “the local budget”, “the budget of the municipality of Chişinău”, “the municipality budget” etc. (see art. 1, 2 etc. from the Law), the one that creates confusions. The regional budgets are the budgets in total for the given region.
- The budgets elaboration of the territorial-administrative unities would result from the economical and real fiscal potential of the territorial-administrative unities, but not from the macro economical prognostication from the main principles of the state policy in the income domain and budgetary spending and other prognostications presented by the Ministry of Finance (art.19 from the Law).
- Essentially , the biggest part from the volume of the villages budgetary incomes (communes), cities (municipalities), obtained from deduction of the general income of the state, from the taxes of the real estate and from transfers from the state budget, are approved by the authorities of the regional public administration (art. nr. 1, 4, 5, 9 etc. from the Law), which is inadmissible in the conditions of accomplishing the local and financial autonomy principles, when between authorities could exist only the relationship of collaboration.
- The authorities of local public administration are limited in the right of providing, according to the policy of local communities, from some financial resources resulted from transfers of the state budget (art. 8 extract (3), art.11 from the Law).

- The authorities of the public administration from the villages (communes), cities (municipalities) can lend money with the date of payment in the same budgetary year, only from the budget from the territorial administrative unity of level 2 and from the budget of municipality Balti (art.13 extract (2) from the Law), which constitutes a diminution of the financial autonomy.
- In a way the budgets elaboration and the execution of the territorial-administrative unities of level one is organized with the competition of the general finance department from the structure of regional authorities (see art. nr. 1 from the Law). The Ministry of Finance does not have a specialized service in this domain, the aims of this central authority of speciality are being solved by a structure that belongs to the regional authorities as authorities of local public administrations. Through all this, the principles of public services decentralization and of the financial and local principles are violated.
- The control of elaborating and executing the budgets of territorial and administrative unities is made by the General Department of Finance of the public administration authorities of level two and by the decentralized subdivision of the Ministry of Finance – the General Department of Financial and Revision Control (art. 36 from the Law). Although, we have the Audit Office in our state as an autonomic administrative authority with control obligations concerning the way of using the public finances and public patrimony which could practice control functions without reducing the decentralization and the autonomy principles.

We tried to point out some of the legal aspects that influence the activity of the authorities of local public administration in the decentralization and autonomic conditions, without tending that we touched the whole spectrum of problems from this domain or the proposed solutions (or those that will be proposed) are unique.

Finally, regarding to those mentioned, we can point out the following:

1) It would be necessary to delimit clearly in the present normative acts the competences and the domains of the authorities of local public administration, so as these to be entirely and exclusive as for example:

a) the competences and the domains that represent stately general interest and

which is practiced by the central authorities of the public administration, inclusively by the decentralized structures of these authorities in regions, autonomic territorial unity with special status or in municipality Chişinău, as well as the mechanism of delegating of some authorities obligations of the local public administrations;

b) The competences representing regional interest, of the autonomic territorial unity and of the municipality Chişinău, practiced by the given public administration authorities as well as

c) The competences representing local interest and that are practiced by the public administrative authorities from villages (communes), cities (municipalities).

2) A serious problem is also the accomplishing in parallel of the decentralization principle and of that regarding the decentralization of the public services. At present we do not have a representative of the Government, who could coordinate the activity of the decentralized services of the authorities of the central public administration of speciality that could also contribute to the accomplishment of the stately general programs at the level of territorial-administrative unities (so as there are those from the economic, social domain, as well as presenting daily reports regarding the situation in the given territorial-administrative unity). From this point of view, many times the government practices the listening of daily reports of regional presidents, giving straight indications, sometimes camouflaged through the syntagm "character of recommendation", which is not enframed in the local autonomy limits. More than that the Government has to solve a number of problems of stately general interest and it is not going to afford the luxury in using the time regarding the organizing of meetings, with trips in the territory (so as they take place lately)". Therefore, in a unitary state, administratively decentralized, a reason exists in specializing of the public administration authorities regarding "solving the stately general interests", inclusively through the representatives of the territorial-representatives unities, so as solving regional or local interests, evidently in the law provisions.

3) It would be necessary to establish a real financial autonomy of the authorities of the local public administration for the authorities of the central administration as well as for the authorities of public administration from the villages (communes),

cities (municipalities) for the regional given authorities.

4) It would be necessary to establish an efficient mechanism of control and responding of the decision factors from the authorities' frame of the local public administration that wouldn't affect the principle of decentralization and autonomy, that is to say it would exclude the unjustified interference of the regional executive authorities and in some cases of the authorities of central public administration to, in the activity of the authorities of the public administration from the territorial-administrative unities of the level 1.

Notes:

1.Constituţia Republicii Moldova. – Chişinău: Moldpres, 1994
2.Legea privind administraţia publică locală, nr.123-XV din 18 martie 2003 // Montorul Oficial al Republicii Moldova. – 2003. – Nr.49.
3Cezar Corneliu Manda. Administraţia publică locală din România. – Bucureşti: Lumina Lex, 1999, p.222.
4.Eugen Popa. Autonomia locală în România. – Bucureşti: ALL Beck, 1999 p.19.
5.Alexandru Negoiţă. Drept administrativ şi ştiinţa administraţiei. – Bucureşti, 1991, p.33.
6.Cezar Corneliu Manda. Op.cit., p.228.
7Monitorul Oficial al Republicii Moldova. – 2003. – Nr.170-172, art.721.
8.Monitorul Oficial al Republicii Moldova. –1995. – Nr.3-4, art.51.
9.Monitorul Oficial al Republicii Moldova. – 2003. – Nr.49, art.211.
10.A se vedea art.10 alin.(1) lit.g) şi h); art.11 alin.(1) lit.d) şi n); art.18 alin.(2) lit.k); art.49 alin.(1) lit.n).
11.A se vedea anexa nr.1 la Hotărârea Guvernului Republicii Moldova "Cu privire la structura şi efectivul-limită ale serviciilor publice desconcentrate ale ministerelor, departamentelor şi altor autorităţi administrative centrale", nr.735 din 16 iunie 2003 // Monitorul Oficial al Republicii Moldova. – 2003. – Nr.123-125, art.770.
12..A se vedea art.11, 19 etc. din Legea cu privire la teatre, circuri şi organizaţii concertistice, nr.1421-XV din 31 octombrie 2002 // Monitorul Oficial al Republicii Moldova. – 2002. – Nr.174-176, art.1331.
13.Hotărârea Guvernului Republicii Moldova "Cu privire la structura şi statele de personal ale primăriilor satelor (comunelor), oraşelor (municipiilor)", nr.688 din 10 iunie 2003; Hotărârea Guvernului "Cu privire la organigrama şi statele de personal ale aparatului preşedintelui raionului, direcţiilor, secţiilor, altor subdiviziuni din subordinea Consiliului raional", nr.689 din 10 iunie 2003.
14..Monitorul Oficial al Republicii Moldova. – 2003. – Nr.248-253, art.996.