

## **SOME CONSIDERATIONS REGARDING THE FINANCIAL AUTONOMY OF THE ROMANIAN ADMINISTRATIVE- TERRITORIAL UNITS**

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**ABSTRACT:** *In Romania local autonomy is administrative and financial. If local financial resources are not independent from the state budget and they continue to depend on it exclusively and if financial independence remains only a target which has not been materialized in practice, then the administrative autonomy of the communes, towns and counties will not yield the expected results and will still be limited. According to the European Charter of Local Self-Government the financial resources available for the Local Government authorities should be correlated, commensurate with their duties and their decentralized competences. A recent decision of the Romanian Constitutional Court sustains the same idea. Having in mind this CC's Decision, the provisions of the European Charter of Local Self-Government and the nowadays insolvent Romanian administrative-territorial units, allow me to underline in this paper my opinion that the financial autonomy is the substance of local autonomy.*

**KEY WORDS:** *financial autonomy, administrative-territorial units, the Decision of the Romanian Constitutional Court, European Charter of Local Self-Government.*

**JEL CLASSIFICATION:** K23.

According to present-day Romanian legislation, local autonomy is only administrative and financial. This above mentioned clarification of the law is meant to eliminate any tendency to implement autonomy on other criteria, such as the political, ethnic or linguistic ones. At the same time, this regulation underlines a very important aspect of local autonomy, namely *financial autonomy*.

In accordance with the European Charter of Local Self-Government, the Romanian Local Government Law No. 215 from 2001 establishes that local autonomy is guaranteed by the existence of an economic and financial base, which will be managed by the local authorities; also, the financial resources available to local government authorities should be correlated, commensurate with their duties.

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The importance given to the concept of financial autonomy can also be seen analyzing a recent decision of the Romanian Constitutional Court, namely CC's Decision no. 1/10.01.2014.

The objection of unconstitutionality regarding the Bill establishing measures of decentralization was accepted by the Court in this litigation.

The main argument provided by The Court in its decision was that a law establishing decentralization measures should provide a transfer of financial resources, too, from the central government to local government level, so that the new structures should be able to support their responsibilities, financially speaking.

Consequently, the Court mainly accepted the objection of unconstitutionality because, among other criticisms of unconstitutionality, the above mentioned bill did not provide sufficient financial resources needed to properly carry out the decentralized competences.

The importance of the economic and financial basis of local autonomy was highlighted in the Romanian juridical literature, too, maintaining that financial autonomy is the quintessence of local autonomy (Popa, 1999, p. 91).

In addition, some Romanian authors consider that the Romanian Constitution defines local autonomy superficially and summarily. So, they sustain that in a future constitutional review the financial autonomy should be guaranteed, also indicating explicitly that any transfer of powers from central government towards administrative-territorial units (tiers) must be accompanied by the necessary resources, equivalent to those previously used by central government (Dănișor, 2011, p.27). We find the same idea in the article 9 of the European Charter of Local Self-Government, which says that "Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law".

Having their own adequate financial resources represents an essential aspect for administrative-territorial units (tiers) from two reasons; one – to succeed to efficiently manage the public affairs and two – to obtain their financial independence.

It is obvious that in reality we have rich and poor administrative-territorial units. The State must take action to protect administrative-territorial units in financial difficulty by establishing financial equalization procedures, but the issue is delicate because these measures must not arouse feelings of frustration among rich units which supply the state budget with important resources, and receive less than they have transferred.

At the same time, however, the following should be taken into consideration: in case local financial resources are not independent from the state budget and continue to depend on it exclusively and in case financial independence remains only a target which has not been materialized in practice, then the administrative autonomy of the communes, towns and counties may not yield the expected results and is still limited.

Referring to the importance of financial autonomy, allow me to bring into question another nowadays phenomenon, i.e. the concept of the *insolvency of Romanian administrative-territorial units*. In Romania, lately, a lot of administrative - territorial units have been faced with financial difficulties, some of them having debts that exceed 50% of the budget of the administrative territorial unit. This was one of the reasons for the adoption of *Government Emergency Ordinance No. 46/2013* on

*financial crisis and insolvency of administrative-territorial units* and the *Methodology* of procedures related to reporting the financial crisis and the insolvency of administrative-territorial units. Beyond the fact that for the administrative - territorial unit which has accumulated debts older than 120 days and exceeding 50% of its budget, the state of insolvency brings some advantages compared to its current financial situation (frozen interests, penalties or surcharges for unpaid claims, no possibility to commence forced execution, under certain conditions some contracts currently in progress may be unilaterally denounced, utility providers cannot refuse to supply services during insolvency, even if the unit has previous unpaid debts), there is still to be determined if an administrative territorial unit can recover financially. There may be a risk that the recovery procedure be extended to infinity. My opinion is that this normative act does not represent the solution to the financial problems faced by administrative-territorial units. Thus, only time will prove if the insolvency of administrative - territorial units is a real solution to the problem of their debts. I shall not present on this paper particular aspects related to the financial crisis and the insolvency of the Romanian administrative-territorial units, because my other papers reveal to you these subjects (Cenușe M., 2013, pp. 49-60).

Considering all these, I believe that in practice it is very important that financial autonomy does not remain only a theoretical principle, but it should be strongly supported, because the lack of local material resources limits in fact the freedom to decide in favour of the community. At the same time, we believe that specifications submitted by the Romanian Local Government Law from 2001, whereby the powers of the local public authorities must be correlated with the financial resources available to them, are very important and should represent the quintessence of *financial autonomy*.

Therefore, I consider that the financial component of local autonomy is an essential aspect in the effective implementation of local autonomy. That is why I also consider that the state has the obligation, under conditions which place local autonomy on a constitutional level, to create, by enforcing laws, a balanced financial system that gives administrative-territorial units the possibility to be financially independent in order to carry out tasks successfully.

Also, some authors consider that the state has the obligation not to centralize excessively financial resources, because in this case the state takes charge of all financial resources and then redistributes them to territorial units, and it is an undesirable process due to the tendency to allocate financial resources unfairly, under political pressure (Dănișor, 2011, p. 20, Klaus-Werner Iohannis, 2003, pp. 89-91).

Another author goes even further and says that the Romanian reality reveals only samples of "decentralized" administrative structures, which in fact are completely dependent on the state, financially speaking, and from the point of view of political influences and of orders from central authorities, so that the two processes are still deficient although there is a relatively organized legislative framework leading to natural decentralization and local autonomy (Lazăr I., 2014, p. 234).

On my turn, I believe that discussion on the method of allocating financial resources to territorial units require some further explanation.

Thus, at present, according to Title IX of the Romanian Tax Code, local taxes and fees are collected directly by local authorities and represent the financial resources of administrative - territorial units, as local budget revenues. Obviously, for the overwhelming majority of administrative-territorial units, their amount is not nearly enough to cover the financial needs, but they represent part of the necessary funds. The rest is covered by the state budget through breakdowns and fund transfers; behind an intricate formula prescribed by law there are often arbitrary transfers, which, as a rule, are dictated by political interests.

In order to reach a *real financial independence of administrative-territorial units* and the equitable distribution of financial resources from the state budget to local budgets, I believe that measures must be taken in *two directions*.

First, the measures taken should *strengthen the independence of administrative-territorial units through their own efforts*. Thus, appropriate legal measures must impose certain conditions on administrative-territorial units in order to benefit from fund transfers from the state budget.

In practice, one can find that the majority of administrative-territorial units have a very low degree of collecting local taxes and fees representing their own resources. We believe that there are two reasons such a situation exists: on the one hand, local authorities do not initiate forced execution procedures against borrowers most likely for political reasons, since such unpopular actions would weaken the confidence of the electorate and, on the other hand, local authorities rely on fund transfers from the state budget.

These are the reasons why I feel that in getting financial autonomy, the State has an essential role, which must, however, be completed by the effort of administrative-territorial units themselves. Therefore, we believe that administrative territorial units should enforce laws regarding the minimum threshold for generating revenue of 75%. In case this threshold is not reached, fund transfers from the state budget should be blocked. In this way I consider that local authorities will be directly involved generating local revenue and we shall not be faced with the current situation any more. Moreover, due to enforcement of laws, administrative-territorial units must be motivated to identify and capitalize on all sources of income to the local budget, and then, as I stated above to collect them. Among the special measures that can be taken by administrative-territorial units for receiving payments are tax-authority debt collection, such as calling for payment, ordering precautionary measures or starting forced execution procedures, according to Title VIII entitled Collection of tax receivables from the Romanian Fiscal Procedure Code.

Special attention should also be paid to the analysis of the percentage of upper level government transfers to local budgets, because many of the transfers to an administrative-territorial unit will make it comply with the requirements of those who transfer, thus giving up a good part of its autonomy. The central idea is that there is no real local autonomy without financial autonomy, and as long as the administrative-territorial unit is based mostly on financial resources coming from the State budget, it will not be able to prove that it is really autonomous.

Secondly, in order to clear *political influences on the flow of financial resources from the state budget to local budgets*, the interference of county authorities

in the financial transfers from the state budget should be stopped. Then the state must find an appropriate solution to cover the necessary resource gap through budget transfers, and at the same time, to solve the delicate problem of ensuring equal opportunities for all administrative-territorial units for the purposes of establishing a minimum and a maximum amount for budgetary transfers, so that poor administrative-territorial units be able to survive.

At the same time, this kind of action must not be carried out at the expense of wealthy administrative-territorial units, which are able to fulfill all the tasks only by using their own resources. A certain volume of transfer of financial resources from the state budget must be established for them as well, because otherwise, instead of being supported and appreciated for being financially independent the wealthy administrative-territorial units will be determined as a result of frustration, to stop being so interested in covering all the resources they need and they can provide for themselves.

We believe that the most effective solution, demonstrated by other authors as well, would be that local public administration authorities from the first level ( from a one tier system) should have important skills and the means, if not more important than the local public administration authorities on the intermediate level (on a two tier system) (Ziller J., 1993, pp. 204-205).

That is why we claim that the solution is strengthening the local autonomy of the first level ( from a one tier system), particularly in the financial field by finding a way whereby the funds allocated to the lower level should no longer go through the intermediate county level (a two tier system) which collects a part of them, and also the intermediate link should no longer decide on the distribution of financial resources, thus eliminating the suspicion that the distribution of resources is subject to political clientelism.

Thus, as other authors have pointed out, I may refer to the granting of sufficient funding to administrative territorial units and to the implementation of a real transparency in the management of local public finances, in order to clear the thought that they are not distributed on the basis of objective criteria (Profiroiu M.(coord.), Andrei T., Dincă D. R., 2006, pp. 63-64).

Nevertheless this idea concerning the strengthening of financial autonomy of administrative-territorial units is not a new one, therefore the French doctrine has emphasized for nearly three decades now that *financial decentralization* plays an essential role in the process of decentralization because only an increase in the resources of territorial units may entail a real decentralization at the level of administrative territorial units (Frege X., 1991, pp. 116-117).

At the end of this paper I consider the following intriguing questions arise and I challenge all the interested researchers to look together for answers:

1. How can a state ensure that the financial autonomy, recognized to administrative territorial units, is applicable in practice? Also, is it true that financial autonomy, insufficiently regulated, becomes mere a theoretical principle inapplicable in practice?

2. How extensive must be the financial autonomy, granted to administrative territorial units, when in practice a state can be confronted with the phenomenon of council/municipal bankruptcy?

3. So, how important and difficult, at the same time, is it to put financial autonomy into practice in a state, and how far should it go?

Also, I promise that my future research objective is to find out answers and theoretical solutions to the abovementioned problems.

#### REFERENCES:

- [1]. **Cenușe, M.** (2013) *Romanian Administrative-Territorial Units in Financial Crisis*, The Annals of the University of Petroșani - Economics, Editura Universitas, Petroșani, pp. 49-54
- [2]. **Cenușe, M.** (2013) *General Considerations Concerning the Opening of Insolvency Proceedings of the Administrative-Territorial Units of Romania*, The Annals of the University of Petroșani - Economics, Editura Universitas, Petroșani, 2013 pp. 55-60
- [3]. **Dănișor, D.C.** (2011) *Reorganizarea administrativă a României - o diversiune reușită (The administrative reorganisation of Romania – creating a succesfull diversion)*, Pandectele Române, no. 7/2011, p. 27
- [4]. **Frege, X.** (1991) *Descentralizarea (Decentralization)*, Ed. Humanitas, București
- [5]. **Iohannis, K.-W.** (2003) *Autonomie locală sau centralism? (Local autonomy or centralism?)*, Revista de drept public, nr. 4, pp. 89-91
- [6]. **Lazăr I.** (2014) *Democrația locală în România – evoluție, context și perspective (Local democracy in Romania – evolution, context, outlook)*, Revista de Științe Juridice, vol. 25, nr. 1/2014, p. 234
- [7]. **Popa, E.** (1999) *Autonomia locală în România (Local Authonomy in Romania)*, ed. All Beck, București
- [8]. **Profiroiu, M. (coord.); Andrei, T.; Dincă, D.R.** (2006) *Reforma administrației publice în perspectiva integrării României în Uniunea Europeană (The Romanian Public Administration Reform in the Context of the Integration of Romania in the European Union)*, ed. Institutul European din România
- [9]. **Ziller, J.** (1993) *Administrations comparées. Les systèmes politico-administratifs de l'Europe des Douzes*, Edition Montchrestien, Paris
- [10]. \*\*\* *Decizia Curții Constituționale (The Decision of the Romanian Constitutional Court)*, nr. 1/10.01.2014, published in M. Of. of Romania, nr. 123/19.02.2014