

## ***General Considerations on the Decentralization Process in Romania***

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The reform of the public administration in the field of decentralization and deconcentration includes three major elements: the further decentralization by transferring the competence and administrative and financial responsibilities to the level of local authorities; the continuation of the deconcentration process by delegating the responsibilities in territory depending on the necessities existing at local level, within the same administrative structure (the deconcentrated services operate at ministry orders that delegated the responsibility); the transformation of the deconcentrated services in territory, depending on the citizens' needs and for making these services efficient, in decentralized services being the responsibility of the local authorities.

The up-dated strategy represents the general framework that provides the premises to continue the decentralization/deconcentration process by providing its coherence. The responsibility to define and implement the sector strategies concerning the decentralization/deconcentration is that of the each institution belonging to the central public administration and of the local authorities overtaking the transferred competences from the financial and administrative point of view. This sector strategies will be accompanied by impact studies concerning the anticipating of the induces effects.

The decentralization and the deconcentration, involving the transfer or the delegation of competences and new responsibilities, represent processes that started from the moment of adopting the Constitution of Romania in 1991. A set of laws concerning important sectors for development, such as the administration organization, the territory arrangements and the urbanism, has been put in application, regulating at the present time both the form of political decentralization concerning certain public services and the territorial and administrative form of decentralization by means of the prefect institution. Later rules<sup>1</sup> have improved the provisions for the public services and have extended the field of responsibilities also in the following areas: financial, management of the real estate patrimony, infrastructure services, both at the county level and local as well. Moreover, the law of local public finances from 1998<sup>2</sup> and the last emergency ordinance concerning the local public finances<sup>3</sup> have increased or will increase considerably the resources allocations to LPA and, also, have increased their financial autonomy. The decentralization process has represented also the beginning of a process aiming to create and strengthen new forms of dialogue between the central and local administration represented by the Federation of Local Authorities of Romania (FLAR), the professional administrative formations or other associative structures of the local authorities. The initiatives of delegating the competences have not been always coordinated at the ministries levels, for certain responsibilities the local administration had not been prepared in advance, this generating difficulties in the process of providing quality services for the local communities. Under the pressure of the

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<sup>1</sup> The law of health insurances beginning with 1997, The law concerning the public services of communal house holding No. 326/2001 together with some amendments of the Law No. 69/1991, Law No. 189/1998 concerning the local public finances, the Law of local public administration No. 215/2001.

<sup>2</sup> Law concerning the local public finances No. 189/1998

<sup>3</sup> OUG 45/2003 concerning the local public finances (coming into force from 1 January 2004).

budgetary deficit, the central administration was not always in a position to accompany the set of decentralized services with appropriate financial resources.

**The decentralization** is the process of transferring administrative and financial authority/responsibility from the level of the central public administration to that of the local public administration. The transfer of authority/responsibility refers to the field of planning, decision taking (finances, fiscal system), legal responsibility (issuing rules, local decisions) and the management of the public services being transferred.

**The deconcentration** is the process of transferring within the same structure, from central level to the territorial level, of administrative and financial authority/responsibility. The prefect is the Government's representative at local level and manages the public services deconcentrated from the ministries and other bodies of the central public administration from the administrative-territorial units.

The continuation of the decentralization/deconcentration process will provide **the improvement of the public services management and the increase of their quality**. This will secure a more coherent allocation of the responsibilities, financial resources and rights connected with the provided services. At the same time, the new approach of this process takes into account the analysis of the reasons on which is based the selection of the system for allocating the tasks/functions between the decentralized structures of the local public administration and the deconcentrated units of the central authorities.

The decentralization/deconcentration process is based on **principles** and **rules** that provide the following:

- **With regard to the responsibilities transfer:** the technical substantiation accepted by the specialty apparatus in the field; the application of the subsidiarity as means for securing the transparency and the efficiency of the public services; the observance of quality standards in providing the public services; a stable system of regulation concerning the encouragement of the local strategies and the reward of the innovating solutions; the treatment of the citizen as „consumer” of public services; the acceptance of the competition as means to increase the efficiency and the efficacy of the public services.

- **With regard to the financing system of the local authorities:** the allocation of the incomes according to the decentralized responsibilities; financing mechanism observed by the central administration which provides a minimum standard for the public services offered by the local authorities; securing the transparency of the local funds allocated with objective criteria and regulations clearly established concerning the volume of the allocated tasks, the localization of the incomes and regulating elements; securing the transparency in the process of setting up the local budgets and proceedings providing an adequate financial management; the simplification of the incomes redistribution proceedings; the anticipation and the stability of the allocation system that allow planning at local level; an efficient system of legal control concerning the use of the funds at local level; the local autonomy concerning the financial management accompanied by strict budgetary obligations.

- **With regard to the transfer of decision-taking competences:** the stable and stimulating character of the coordination process instead of the present mechanisms of control and of discretionary; the decisional autonomy based on own resources and responsibilities; the limitation of the control exerted by the local authorities over the public services management by the authorities from the central level, to the provision stipulated in the national legislation; the transparency of the decisional act based on the public's access to the public information and his participation at the taking decisions.

The Constitution adopted in 1991 has been the first legislative act of the post-communist Romania that recognized “the communal and urban authorities” “on the basis of the decentralization principle” (Article 119) ”as autonomous administrative authorities” (Article 120/2).

The strategy concerning the acceleration of the public administration reform approved in 2001 by the Romanian government has identified the necessity to decentralize certain public services for reducing the expenditures and strengthening the managerial capacity of the local public administration.

Also, there were been set up sector strategies accompanied by plan of action concerning the decentralization process in some fields (for example, welfare work – child’s protection). In accordance with the revised and adopted Constitution in 2003 “*The public administration from the administrative-territorial units is based on the decentralization principles, local autonomy and deconcentration of the public services*”. At the same time, the fundamental Act considers the County Council as “*the authority of the public administration for the coordination of the communal and urban councils activities with a view of providing the public services of county interest*” (Article 122/1).

The financial decentralization is an important component of the decentralization process because the local public authorities have at their disposal the most complete information, on which basis they can take better justified decisions than the specialty bodies from the central level, with regard to the allocation of the local financial resources. Clearly, the financial decentralization and administrative one are closely correlated between them.

During the last decade, Romania has made significant steps in the field of financial decentralization, but the process of implementing this policy has been confronted with many problems because of the lack of a national strategy for decentralization. Within this process three cycles have been identified. In the first cycle (1991-1994)<sup>1</sup> have been initiated important changes in the structure and the financing of the local authorities, which have included also the introduction of the system of local taxes and fees. In the second cycle of the reform policy (1998-2000) new steps have been done for putting in practice the administrative and financial decentralization. In this sense, on the basis of the new legislation concerning the finances of the local public authorities<sup>2</sup> the quota from NGP concerning the local budgets has been increased and, also, the corresponding proportion of the local expenditures in the total of the public expenditures (between 1998-2001 the percentage from the NGP has been increased from 3.6% to 6.5% and the local expenditures from 14.4 to 26.6%). During the third cycle (2001 – the present time) the new laws have adopted and established new rules for some functions of the local authorities<sup>3</sup>, especially with regard to the public services/utilities<sup>4</sup>.

Tendencies of centralizing and decentralizing there were registered all this period of time. Some new legal provisions have strengthened the control of the central authorities over the functions of the local authorities, while others have acted in the decentralization direction<sup>5</sup>. In July 2003 a new law concerning the local public finances has abrogated the first one, having provisions correlated with those of the Law of Public Finances no. 500/2002 (harmonized with the provisions of the Rules of the Council of Europe (CEE) no.1605/2002) and have increased the percentage from the tax on profit applied individually (IPP) which is allocated to the local authorities<sup>6</sup>. A detailed study concerning the

<sup>1</sup> The law of the local public administration no. 69/1991, OG no. 15/1992 concerning the local taxes. The law no. 27/1994 concerning the local taxes

<sup>2</sup> There were been done some amendments of the Law no. 69/1991 and the Law no.189/1998 concerning the local public finances.

<sup>3</sup> Law no. 215/2001 concerning the local public administration

<sup>4</sup> For example: Law no. 326/2001 concerning the public services of the communal management, OG no. 86/2001 concerning the local public transportation services for persons, OG no. 88/2001 concerning the community public services for emergency situations, OUG no.202/2002 concerning the integrated management of the coastal zone, OG no. 21/2002 concerning the management of the urban and rural localities, OG no. 71/2002 concerning the set up of the local public services for the management of the public and private patrimony of local interest.

<sup>5</sup> Law of the local public administration no. 215/2001

<sup>6</sup> OUG no. 45/2003 concerning the local public finances.

present phase of the financial decentralization at the level of all the country, and for the most important sectors of activity (education, health, welfare work, order and public security, agriculture, culture, public services for local development) has been drawn up by the National Union of the County Councils from Romania and the Association of the Economic Manager from the County Councils of Romania.

Besides the positive aspects during the carrying on the decentralization process have been encountered a series of negative aspects: important rights have not been given to the LPA authorities. , this limiting their capacity to organize efficiently the offer of services (for example, the right to establish prices of these services (see footnote no. 3). In certain fields the mechanism of direct control and the discretionary decisions still persist. There are few fields with clear and transparent regulations. This situation limits both the financial planning and prevision and the possibility to experiment and introduce creative local solutions in order to offer more efficient services. Indirectly, this aspect limits also the absorption capacity of the funds provided by the European Union; The autonomy of the local financial management is limited by the regulations concerning the allocation of the own incomes by restricting the use of transfers; The Predominance of the allocation with precise destination is an obstacle for an efficient spending of money because limits the coordination and the integration of the local services; The existing mechanisms of balancing do not provide the equity of the system (aspect pointed out during the Conference from Bucharest – 9-11 October 2003); The incomplete transfer of property is an obstacle in the effective management of the local goods; The insufficient specification concerning the legal and constitutional guarantees connected with the local autonomy; The public policies insufficiently substantiated and partial implemented were not in a position to offer rational solutions for the existing problems; The predominance of the ordinances and law issued in emergency procedure instead of laws issued on ordinary way; The LPA authorities did not benefited in all the cases, in advance, of specialized training concerning the financial management and the management of the decentralized public services; The registration of a gap between the decisional competences transferred to the local authorities and the resources allocated with a view to support them (the allocation of the local resources does not reflect the changes of responsibility). A decentralization process wrongly managed can lead to a large set of State's failures: both "errors by omission", when the State does not succeed to do something that would improved the economic/administrative performance, and, also, " errors of action", when the State carries on actions leading to the worsening of the economic performances<sup>1</sup>. These errors do not only hinder the development of a significant policy of decentralization, which could lead to an offer of more efficient and equitable local services, but has, also, negative effects concerning the credibility of the local authorities.

As an adequate response to the problems identified at the level of the public administration system in Romania in the field of decentralization and deconcentration of the public services, have been pointed out the following priorities:

▪ **The improvement of the system providing the public decentralized/ deconcentrated services.** In the first stage, the Strategy intends to identify the changes of policy required for the improvement of the system providing the decentralized/deconcentrated public services. On the basis of the analytical and conceptual directions developed within the strategy one can set up alternative solutions that lead to the improvement of the process in various sectors and field. Finally, within the Law of decentralization, the new system and relations between the responsible structure can be redefined. Among the most important measures aiming to support this priority we mention: The set up of the necessary mechanisms for coordination of the strategy implementation; The set up of the necessary mechanisms for providing the communication of the main directions of action belonging to the strategy of the civil society and other beneficiaries of the decentralization process; The set up of the working groups for the essential components of the strategy; The adoption of the law of

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<sup>1</sup> Krueger, Ann. 1990. *Government failures during the process of development*, Journal of Economic Perspectives 4 (3): 9-23.

decentralization which will provide the coherence of the decentralization framework; The set up of a system of indicators for measuring the performance of carrying on the decentralization process.

▪ **The clarification of the competences at various levels and structures of the public administration.** Within the reform of the public administration, the decentralization and the deconcentration of the public services must be treated as complementary processes. In each sector and field where these processes are carried on a rational distribution of the responsibilities must be achieved in order to improve the use of resources, the quality of the provided services and the orientation towards the beneficiaries' requirements. The above mentioned objectives can be realized in the conditions of carrying on an analytical and conceptual activity based on sectoral strategies with one consent with the beneficiaries. Among the most important measures meant to support this priority we mention: The set up of specific working groups for setting up the sectoral strategies; The set up of implementing structures at central and local level with responsibilities and relations well defined; The coordination and the harmonization of the sectoral strategies; The set up of a standard system of measuring the performances of the decentralized services.

▪ **The strengthening of the financial autonomy.** For the implementation of the prior measures within the reform, it is necessary to strengthen the local autonomy and the management capacity by increasing the quota of the own incomes at the local level and by strengthening the predictability of the allocation system. One must establish strict rules and procedures for the allocation, and the balancing mechanisms as well, periodically revised in order to guarantee a minimum level of the services in accordance with the national standards. An increased financial autonomy must be accompanied by strict budgetary obligations, by an increased transparency and a better application of the rules concerning the use of resources and the reporting. Among the most important measures aiming to support this priority we mention: The increase of the own incomes at the level of the local administrations; The introduction of the computing system based on the allocation of operational subsidies; Strict procedures and rules for carrying out the investments financing; The improvement of the anticipation capacity of the system concerning the allocation from central level; The improvement of the equalizing system of distributing the resources on horizontal; The improvement of the budget management and reporting system at local level.

▪ **Redefining the prefects' competences.** It is necessary to clearly define their role in coordinating the deconcentrated services, the resources and the means at their disposal. At the same time, it is required an increase of the professional competences of the prefects, so that, beginning with 2006, these become high-ranked public office workers. A program of specialized training will provide the achievement of this objective. Among the most important measures meant to support this priority we mention: The definition of the prefect's attributions concerning the deconcentrated service by means of an organic law; Programs of specialized training for the prefects.

▪ **The set up of the capacity, instruments and procedures necessary for implementing the strategy.** During the strategy implementation a special attention must be given to the specialized training of the staff involved in the reform implementation. Their knowledge about the decentralization and deconcentration process, about the new responsibilities and relations between the various structures and bodies, about monitoring the implementation process must be strengthened so that the application of the reform measures leads to a better quality of the provided services. In parallel with the implementation of the reform phases, the increase of the capacity for setting up and implementation of the policies at the level of the local structure must be taken into consideration. Among the most important measures meant to support this priority we mention: The setting up of a standard system of procedures and norms for supporting the Strategy implementation; The increase of the local authorities capacity to manage and provide the new decentralized services; The training of the human resources necessary for supporting the decentralization/deconcentration process.

## Conclusions

Following the investigation of the decentralization process the conclusions are as follow:

I) The considerable gap existing between the right (constitutional and legislation) and the reality in the field. Theoretically, Romania is already a decentralized State. In this sense we mention the following evidences: the Constitution guarantees the free administration of the local collectivities and the lack of guardianship between the various levels; the successive laws have given to the counties and the local collectivities large competences concerning the education, health, welfare work, cultural actions, management of the local public services, etc. The reality in the field seems to lag behind, often for financial reasons. For example, the VAT transfers that serve for financing the new competences are given in a relatively obtuse way and seem not observing always the objective criteria; ii) The decentralization effects at local level did not manifest in a consistent manner until the present time; iii) There is a favorable opinion concerning the decentralization process with the advantages that it can generate; iv) The absence of a genuine local involved bookkeeping: the annual budgets remain indicative and are adjusted during the year depending on the collected incomes and the effective expenditures, this forcing a large number of collectivities to call the State (moreover, at counties level) for requesting additional funds in case of need; v) The State services lack the visibility concerning the local needs and have the tendency to prove measure in giving credits which, nevertheless, should automatically finance the new competences. From this it results a strong frustration of the local representatives which can say, with good reason, that the decentralization foreseen in the legal texts is applied in an insufficient measure.

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