TERRITORIAL-ADMINISTRATIVE REORGANIZATION, A PERSPECTIVE OF THE SCIENTIFIC CONCEPTS

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Abstract

The traditional problem posed by the organization of public administration is to determine whether the activities that offer it content are going to be entrusted to one and the same administration – the State's one – or are they going to be distributed to several components, having their own authority and territorial dispersion. Without denying the unity of Romanian public administration, we are going to notice that we are facing in front of an administration built in such a manner to ensure two main categories of interest: the national interest and the local ones. In the field literature we find the opinion of two subsystems of the public administration: the national subsystem and the local subsystem. Both public administrations have a common territorial support, even if it has different significations as the one of administrative circumscription in the national subsystem and the other one of collectivity in the local subsystem The reorganization of the Romanian public administration must be grounded on the consecrated scientific significance of the terms employed, the present study aiming to be a contribution to this process of clarification.

Keywords: *public administration, system, administrative unit, local collectivity, reorganization.*

1. Introduction

The study of the organization of public administration involves the research of the principles that ground the constitution of the assembly that formally form this system, the rapports between them and the characteristics of e ach component.

From a material point of view, as an activity that serves the public interest transposed into law, public administration is realized through a variety of organizational forms that make the public administration system.

At its turn, this gearing is a subsystem of the global society.

Having the role to accomplish political values, through which the general interests of the society are expressed, public administration is related to the state power. Executive power is the one that ensures the management and the control of the whole public administration system, established for the realization of the general interests of the society.

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As an activity, public administration represents the organization of the application and the concrete application of the law, in the most varied fields of social action and in relation to some human collectivities that form the global social system. The grouping of social collectivities in relation to which it is constituted the public administration system is made on the basis of the territorial criterion, criterion of the organization of the society. Human collectivities of urban or local type constitute themselves in social ambient for their members and contribute to their quality of life and wellbeing (Morrison, 2011)

The problem of reorganizing public administration in relation to territory has become lately a prevailing subject on the political agenda, fact that stimulates us to bring into attention some conceptual aspects consecrated by the administrative science and the public law science as scientific truth.

Our study combines juridical research with the interdisciplinary approach in order to capture the complexity of the analyzed phenomena.

The research methodology employed involves bibliographic analysis and the research of classical, traditional, doctrine as well as the perspective of the contemporary doctrine on regionalization.

2. Literature review

As it is noticed in the field literature, the organization of public administration appears together with the state (Iorgovan, 2005), but the systemic research of this phenomenon, the scientific criteria are shaped later, starting with the end of the 18th century, with the apparition of the elements of administrative science and public law science. The existence of some historical types of states led to the existence of several types of administrative organization.

The diversity of the opinions expressed in the field carry the mark of each school of thought of every author. The French works on administrative law promote a technical-juridical orientation, understanding the organization of public administration as a organization of executive power. (A. de Laubadere, 1996)

The structuralist school provides the theory of the systemic organization of the state, which stresses the inter-relations between public authorities against the rigid interpretation of the theory of the state's separation of powers. (J.Gicquel, 1991)

The Romanian interwar doctrine imposed for the theory of the organization of public administration concepts as *moral person of public law, public establishment, territorial -political persons.* (Negulescu, P., 1934)

The nowadays Romanian school adapted the theory of organization of the administration to the new political and constitutional context, promoting the distinction between the administration of the state, belonging to the government, and the local administration, placed in relations of cooperation and under the control of legality of the administration of the state. (Iorgovan, 2005)

3. Organization and re-organization of the Romanian public administration

The administrative regime that exists in each country represents the result of some factors mainly exogenous: it reflects the social, economical and political system of the respective state. The tradition, culture and habits as well as the geo-political factors represent elements that allow the understanding of the way the administrative regime is constituted.

The present Romanian Constitution consecrates, through article 3, the organization of the territory of the country in communes, cities and counties, some of the cities being able to be declared, according to law, as municipalities. It is not observed an explicit qualification, by law, for the communes, cities and counties as local collectivities. Other texts of the fundamental law, as it is, for example, article 120, use the phrase territorial-administrative unity.

Historically, the nowadays organization of the Romania's territory was instituted by Law no 2/1968, which enounced as criteria for the delimitation of the territorial-administrative unities the geographical, economical, political and social conditions, culture and education, criteria that changed heavily as the time passed.

The integration of Romania into the European Union puts again into discussion the theme of the organization of the State at administrative level and imposes re-thinking of the relationship between centre and territory.

By the Law no 151/1998 there were created the development regions, without juridical capacity, as a result of a free agreement between the councils of the counties and the local ones, a solution which does not have major economical and social effects.

Law no 315/2004 brought new premises in the field, proclaiming some principles of the regional development as: subsidiarity, de-centralization and the partnership. Taking into account that the attempts of transforming the region in an territorial-administrative unity or a local collectivity did not reach the desired result, it would impose the constitutional consecration of the principle of subsidiarity according to which the superior administrative entity acts only and in the measure in which the objectives of the activity cannot be reached by another state administrative entity at inferior level (The Rapport of the Presidential Commission for the Analysis of the Constitutional and Political Regime of Romania – for the consolidation of the state of law - 2009).

A concrete form for facilitating the implementation of the principle of subsidiarity could be the consecration, at the level of the fundamental law, of the rule of flexible cooperation of the territorial-administrative unities. This form of cooperation could give birth to new entities, having juridical capacity, which could administrate together public services to costly to be ensured separately.

The exploration of the European experience, combined with the valorization of tradition and the specific of the Romanian space must lead to e reform of the organization of the public administration, in a lasting, scientific framework.

4. General principles of the organization of the public administration

The traditional problem posed by the organization of public administration is to determine whether the activities that offer it content are going to be entrusted to one and the same administration – the State's one – or are they going to be distributed to several components, having their own authority and territorial dispersion.

- The general principles of organization of the public administration system, recognized by the administrative doctrine are the principle of centralization and the principle of decentralization.

Centralization implies the concentration of all the administrative tasks on the territory of a country in the person of the State, tasks whose accomplishment is ensured through an hierarchical and unified administration. The assembly of the decisions concerning administrative activities belongs to the central organs of the state administration.

Through centralization it is defined the problem of the relation with human local collectivities and also a method of organizing the administration of the state. If a state is organized in such a way that the satisfaction local or social interests is made through public services, depending

directly on the central public authority and whose titulars are directly appointed by it, that state is a centralized one. Through centralization it is understood the administrative regime where specialized public authorities from the local level are appointed by the central public authority, being subordinated to it. (Prelot, M., 1972)

Under its most rigorous form, centralization does not recognize to local collectivities the right to administrate; only the state, through its civil servants and budget assumes, for the entire national territory, the satisfaction of the needs of general interest. This system does not exclude the organization of the state territory in administrative units. In a centralized regime, there are organized territorial administrative units but local collectivities are not granted autonomy. (Petrescu, R.N., 2001)

Sometimes, practical considerations determined a diminishing of the centralized system, some services and some civil servants of the state being granted the right to solve, by themselves, in the framework of the territorial-administrative units, the problems which are not put forward to the centre for solving.

By administrative ***de-concentration*** it is understood the transfer of some attributions of the structures of central administration to some subordinated institutions that function in the territory. We are facing a diminished form of centralization.

In the situation of administrative de-concentration, on territorial basis, in the territory there are established structures of the state administration, who are appointed, revocable and responsible in front of the authorities of the central administration of the state.

The regime of administrative centralization, with the variant of de-concentration, in fact co-exists with the ***decentralization*** regime, which allows local collectivities juridical recognized to administrate by themselves important common interests.

The local territorial collectivity represents a part of the national territory, with the corresponding population, having juridical capacity and constituting the headquarters of a local administration.

The principle of administrative decentralization implies that an important share of the decisional power in administrative matter to be transferred from the administration of the State to juridical persons distinct from the state, that enjoy, against it, of autonomy and have decisional power on a collectivity territorially determined power which is not placed under hierarchical rapports with the central power (Bălan, E., 2008)

The juridical capacity of local collectivities allows them to have their own rights and obligations, to exercise competencies, to be titulars of patrimony, to stay into justice in their own name. (Oroveanu, M.T., 1994)

Decentralization is grounded on the principle of liberty, liberty for the collectivities constituted in territorial-administrative units, which allow them to solve, through their elected authorities and by their own means the problems of local interest.

5. Administrative units vs. local collectivities

Without denying the unity of Romanian public administration, we are going to notice that we are facing in front of an administration built in such a manner to ensure two main categories of interest: the national interest and the local ones.

In the first category there are activities, services that tend to ensure the interests of the state collectivity, as a whole: the defence of the country, international relations, the great national public services, etc. in the second category there are included the activities, public services that

correspond to some local needs, belonging to some defined and legally recognized collectivities as being local: water supply, public transport, providing thermal energy, primary education, etc.

Each of both categories of public interests is ensured by an assembly of structures that compose each of the administration's sub-systems:

- The subsystem of the national/state public administration;
- The subsystem of the local public administration.

While the firs subsystem acts directly under the management of the Govern, which is placed on the top of the administrative pyramid of the state, the second one is established by administrations belonging to each local collectivity: county, city, commune, administrations that are led by presidents of the county assemblies, respectively by mayors.

On the correspondence of the two subsystems of the Romanian administration and on the way they meet themselves on the territory, the field literature reveals the following:

Romanian public administration has a unitary character, like the state, and the unity is ensured, on the basis of the provisions of art. 102 paragraph 1 from the Romanian Constitution, by its general leading by the Government. This does not exclude the organization – on the basis of different administrative regimes – centralization, respectively decentralization – of some components. Administrative decentralization in relation to the territory is placed, moreover, at the basis of constituting the subsystem of the local public administration.

Both public administrations have a common territorial framework, even if it has different significations as: the one of ***circumscription/administrative territorial unit*** in the state subsystem and, respectively, of ***collectivity*** in the local subsystem.

Local collectivities at the level of city or commune are, usually, natural collectivities established in the framework of some pre-existing human settlements. The county appears as an artificial construction that reunites several local collectivities of city and commune type, its dimension and position being the result of some state political decisions.

The concept of local collectivity defines the unity of three elements: population, territory, administrative power.

The state and its administration, concentrated at its top, must find the methods to get near the collectivities inside the country. One method to answer this desideratum is de-concentration, which implies that the State to place subordinated institutions in territorial divisions established as territorial-administrative units. At the present moment, these territorial divisions correspond to the legally recognized local collectivities, but this is not mandatory! It can also be imagined an asymmetric system, were the territorial borders of the territorial-administrative units and those of the local collectivities to be partially or entirely different.

The problem of the administrative reorganization of the territory can be understood as one that concerns just the delimitation of the territory in subdivisions, that allow the de-concentration of the administration of the state, without affecting the legally recognized local collectivities, as like one that concerns the whole system of the public administration.

Until now, each territorial-administrative unit corresponded to the boundaries of a local collectivity. But we can also imagine the existence of some local collectivities that are not, at the same time, territorial-administrative units or some administrative territorial units that don't correspond perfectly to the borders of a local collectivity.

As a consequence, it would impose the normative clarification and the elimination of the confusion between territorial-administrative units and local collectivities. The administration of the last ones could remain unmodified, the reform concerning just the national/state administration.

We could imagine, for example, the establishment of the region as a territorial-administrative unit, without recognizing it the character of local collectivity.

The region would be, in this case, the framework for the de-concentration for national services: prefect, de-concentrated ministerial organs, etc., followed by setting-up ways of communication with the local collectivities that are legally recognized: county, city, commune.

Summarizing, form the point of view of public administration, it is fundamental the concept of territorial collectivity. It can be distinguished between a national collectivity and several local collectivities (internal and included into the national one).

Each of those collectivities is recognized the right to administrate a certain category of public interests and has associated a public administration, by which it fulfils the missions of general interest, established by law, in relation to supplying some public services or the assurance of public order. The administration of the national collectivity – central administration, is effectuated in the name and interest of the state. For a better administration of the public interests, the state administration must get closer, through its structures, to the territorial communities, implementing the mechanism of administrative de-concentration. But a territorial support is needed for de-concentration – the territorial-administrative unity as a necessary delimitation for the distribution of competencies.

The optimal determination of the number and size of the territorial-administrative units results from a complex analysis: political, social, economic, cultural, etc. it must be accepted the historic character, different in time, of the territorial-administrative units.

Local collectivities received, in the virtue of the recognition of their administrative autonomy, the right to administrate common interests, belonging to their members, in their own name an don their own responsibility. (Halpern, D., 2005) Thus we identify the existence of a public administration belonging to each local collectivity, whose mission is oriented towards ensuring those interests that make the members of the community solidarity.

In the respect of those stated above, the Constitutions of some developed states give evidence: France, Italy, Spain, as well as international documents, as the case of the Charter „Autonomous Exercise of Local Powers".

6. Conclusions

In the Romanian law, inclusively in the Constitution, recognizing the existence of collectivities is implicit, and not explicitly made, being promoted the confusion between collectivity and territorial-administrative unity, two different realities, that may have in common, sometimes, the territory.

The concept of collectivity is more complex and captures different qualitative elements. Local collectivity, in contrast with the territorial-administrative unity (circumscription, in the French law) has juridical capacity, can raise its own juridical will and sit in its own name in juridical rapports.

It would impose, as many times it was proposed by the field literature, the modification of the constitutional text, in the respect of a explicit recognition of the local collectivities as a subject of administrative autonomy, different from the territorial-administrative unities, understood as circumscriptions where the state can divide the territory for a better accomplishment of the central administration.

In the presented logic, the reform of the administrative organization of Romania, in relation to its territory, should specify the public administration subsystem they refer at: state or local, or both.

At the same time, it imposes to decide if the preservation of the actual system is desired, when local collectivities coincide with the territorial-administrative units, or is it intended the establishment of different, asymmetrical system.

Only afterward can be built strategies concerning the effective identification of the desired territorial-administrative units, and eventually, of the local collectivities, on the basis of a complex analysis and the political, social, cultural, economic values that are followed.

References

- Bălan, E., (2008), *Instituţii administrative,* Bucureşti: C.H. Beck.
- Halpern, D., (2005) *Social Capital,* London: Polity Press.
- Morrison, P., (2011), *Local Expressions of Subjective Well-being,* in Regional studies nr.8/2011, Colchester, Essex: Routledge.
- Oroveanu, M.T., (1994), *Tratat de drept administrativ,* Bucureşti: Universitatea Creştină "D. Cantemir".
- Petrescu, R.N., (2001), *Drept administrativ,* Cluj-Napoca: Cordial Lex.
- Prelot, M., (1972), *Institutions Politiques et Droit constitutionnel,* Paris: Dalloz.
- The Constitution of the French Republic – Collection *Constitutions of the World's States*, Bucureşti: All Beck, 1998.
- The Constitution of the Italian Republic – Collection *Constitutions of the World's States*, Bucureşti: All Beck, 1998.
- The Constitution of Spain – Collection *Constitutions of the World's States*, Bucureşti: All Beck, 1998.