

THE JUDICIAL CONDITION OF THE LOCAL PUBLIC FINANCES

Ardeleanu-Popa Carmen

University of Oradea Faculty of Law Str.Gen. Magheru, nr.26 e-mail: carmenardeleanu@gmail.com tel.: 0259.479.980

Cîrmaciu Diana

University of Oradea Faculty of Law Str. Gen. Magheru, nr.26 E-mail: diana.cirmaciu@rdslink.ro Tel.: 0259.479.980

An important condition to realize the reform of the Romanian public administration is to assure the necessary financial resources for a real decentralization.

The governmental traditions in a lot of developed countries have conformed the idea of the efficiency of the function of the local public administration depending on a financial autonomy. As a member state of the European Union, in our country the principle of local autonomy constitutes an indispensable element for the economical development of the state.

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In year 1985 was signed in Strasbourg the «European Charter of self-government»⁹, through which local self-government was treated and defined– as organizational and functional system of the local public administration. Through article 3 of Carta was defined the content of the notion local autonomy. According to this: «local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute».

We mention two essential characteristics of the local self-government, which are obvious from the definition given by Carta and these are: «the effective capacity of the local public authorities» and «the solving of problems and dealing with local business in proper name». In this sense the notion «effective capacity» means that the formal right to rule and to administrate certain public businesses must be accompanied by some measures (institutional, material and **financial**) necessary for its effective practice, and that the sintagma «in proper name» accentuates the fact that the local public authorities must not only delimit themselves to the role of simple agencies of the superior authorities, but they have to own various responsibilities, which could be practiced on a local level.

The legal definition of the local self-government in the internal law can be found in the content of article 3 of Law No. 215/2001 of the local public self-government¹⁰. However we can mention the fact that from the conceptual point of view, the problem of local self-government was treated by the Romanian legislators starting with 1991¹¹.

The real local self-government cannot function without the system of financial resources necessary for the local authorities to exercise their competences and to fulfill their

9 This document was accepted in Romania through Law No. 199/17.11.1997 published in the Off. M. No. 33/26.11.1997.

10 This way, according to art.3 of Law No. 215/23.04.2001, republished in the Off. M. No. 123/20.02.2007, «through local self-government we understand the right and effective capacity of the authorities of the local public administration to solve and treat, in the name of the local collectivity it represents, the public affairs, according to law».

11 Art. 119 of the Constitution foresaw that: «the public administration from the administrative-territorial units is based on the principle of local self-government and the principle of decentralization of the public services».

responsibilities, according to law. From the point of view of *management*, the self-government is connected to the competences of local authorities, which are managing the local patrimony. In this sense, the law must foresee the quality of judicial person of the administrative-territorial unit, the existence of a patrimony, of an own budget and that the local public authorities are fulfilling their duty according to the law in the established administrative-territorial units.

In the table of contents of the article 3 from European Carta regarding to the local self-government there are established some general dispositions about *the financial resources of the authorities of the local public administration*¹², aspects taken into consideration by the Romanian legislators¹³ too.

The actual judicial condition of the financial relations on the level of local collectivities is regulated by Law No. 273/2006 regarding to local public finances¹⁴ with the ulterior modifications and supplements¹⁵. Through O.U.G. No. 28/2008¹⁶ there are some modifications made to the earlier mentioned law, like the followings:

- modification for point 40 from the content of article 2, in the matter of the substitution of the notion of *loans* with that of *repayable finances* which represents: «obligations of the local public institutions from finances engaged through the instruments of the local public debt, on contractual basis or guaranteed by the administration of the local public authority, according to the dispositions of Law No. 273/2006 and according to O.U.G. No. 64/2007 regarding to the public duty, with the ulterior modifications and supplements».

- modification of paragraph 7 of the article 32 in the matter of enlargement of the obligation sphere of fiscal registration of the tax-payer, who had organized some stabile points of work with minimum 5 employees for every point of work. This way the new legal text establishes that «any person, subject of a judicial fiscal report, even the economical operator, the public institution, the local public institution, which organizes a unit, with or without judicial personality, on an other address as the social office of that certain subject, with minimum 5 persons who have incomes from salaries, are obliged to request the fiscal registration of that certain unit, as salary-payer, as payer of other salary-like incomes, by the fiscal organization under the subordination of the National Agency of Fiscal Administration, on the territory where the address of the activity of that certain unit is. The request must be done in 30 days from the date of the setting up, for the

12 According to art. 9 of the Carta: «local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law».

13 Art. 9 from Law No. 215/2001, about the local public self-government.

14 Law No. 273/29.06.2006, about local public finances, reedited in the Off. M. No. 618/18.07.2006.

15 O.U.G. No. 46/2007, to complete art.63 of Law No. 273/2006, O.U.G. No. 64/2007, about public duty, O.U.G. No. 28/2008, to modify and complete Law No. 273/2006.

16 O.U.G. No. 28/19.03.2008 for the modification and completion of Law No. 273/2006 regarding to local public finances published in Off. M. No. 217/21.03.2008, accepted through Law No. 206/24.10.2008.

new units. The fiscal institution has the duty, that in 5 days from the fiscal registration, to send a copy of the fiscal registration certificate to the major of the administrative-territorial unit/ to that sector of Bucharest where the unit has its activity. The salary and income-payers have the obligation to reorganize and to make the accountability in a way that these must reflect the taxation for the incomes of every month, calculated, booked and transferred by every unit which is registered under this paragraph».

- the ordinance makes some modifications in the matter of contraventions and of the sanctions applied. This way, by article 78 paragraph 1, after letter c) it is introduced a new letter d), with the following content: «not respecting the dispositions of article 33 paragraph 7¹ and 7²» and by article 78, after paragraph 2 in is introduced a new paragraph, paragraph 2¹, with the following content: «contraventions foreseen in paragraph 1 letter d0 are sanctioned with an amendment from 10.000 lei to 50.000 lei».

Taking into consideration the legal foresights, we discover that the local financial resources are represented by the followings:

- own incomes, formed by: fees, taxes, contributions, other payments, other incomes deducted from the taxation of incomes;
- amounts deducted from some incomes of the budget of state;
- subventions accorded by the budget of state and by other budgets;
- donations and sponsorizations.

By the establishment of local fees and taxes by the General Council of Town Bucharest or by the regional or local councils, foreseen by the Fiscal Code and by the methodological norms of application of Law No. 571/2003 regarding to the Fiscal Code¹⁷, it is instituted the obligatorily respect of the following principles: **transparence** (according to which the authorities of the local public administration are obliged to do their activity in an open manner towards the public), **the unitary application of legislation** (according to which the authorities of the local public administration assures the organization of execution and the concrete execution, in a unitary way of the foresights of Title IX from the fiscal Code and of the methodological norms, being forbidden to institute other local taxes, just those foreseen in Title IX of the fiscal Code. The special taxes, instituted for the function of some local public services created for the interest of some physical and judicial persons which have incomes only from these, according to the regulation approved by the local councils, by the General Council of Capital Bucharest and by the district councils), that of **the local self-government**. In the content of the appendix No. 9 of Law No. 18/2009¹⁸ there are named the income categories of the local budgets, from which we mention: the tax on the profit from the self-governing administrations and companies under the control of the regional councils, the tax upon transport, the tax upon fines and other sanctions according to the law, subventions accorded by the budget of the central state administration – subventions for the heat rehabilitation of some houses, amounts from the European Union in the account of payments – The European Fond for Regional Development, European programs financed in the period between 2007-2013, etc.

The Law No. 273/2006 regarding to the local public finances foresees some categories of incomes, which complete the system of incomes of the local budgets. This way, for example, from the taxation upon incomes, paid for the budget of state, on the level of every administrative-territorial unit it is allocated monthly, in 5 days after the end of the month of the payment of the tax, a part of 47% for the local budgets of the communities, towns and cities, where the tax-payers are developing their activities, a part of 13% for the local budget of the district and 22% for a distinct account, opened for the general directive of the public finances of the district by the

17 Law No. 571/22.12.2003 about Fiscal Code published in the Off. M. No. 927/23.12.2003, with the ulterior supplements and modifications.

18 Law No. 18/26.02.2009 of the budget of state of year 2009, published in Off. M. No. 121/27.02.2009.

exchequer of the resident town of the district to equilibrate the local budgets of the communities, towns, cities and of the district.

In the matter of the institutional construction, Law No. 273/2006 foresees the setting up of a *Committee for local public finances*, with the aim to protect the interests of the administrative-territorial units on the financial plan, to harmonize the decentralization process of some attributions from the level of the central public administration to the level of the local public administration. The Committee analyzes the proposals regarding to the amount limits to deliberate, which can be annually offered by the local budget of state, as the substantiation and allocation method for districts and it makes recommendations for the development of the allocation system. In the same time, the Committee analyzes the proposals regarding to the modifications of criteria and of the allocation formula of the equilibrating amounts which will be allocated to districts, to administrative-territorial units, and makes recommendations for the development of the equilibrating system.

The Committee creates even proposals upon the projects of normative acts which contain regulations with financial and fiscal character regarding to administrative-territorial units, when they consider it necessary¹⁹. At the same time, The Committee has competences in analyzing the dysfunctions signed by the representatives of the administrative-territorial units determined by the legislative modifications, as by their impact upon the local public finances and creates recommendations to develop the legal frame. From the point of view of organization, the Committee is formed by one representative of the Parliament of Romania, of the Ministry of Administration and Internal Affairs, of the Ministry of Public Finances, of the Association of Communities from Romania, of the Association of Romanian Cities, of the Association of the Romanian Towns and of the National Union of the District Councils from Romania. As president of the Committee, is named the representative of the Ministry of Public Finances.

Finally we can have the conclusion, that local finances have a great importance which gives them the possibility to manifest a real influence upon the local life, especially from economical and social point of view. The effects of decentralization in the domain of public finances is concretizing itself through a better mobilization of the local fiscal resources, of an allocation and of the efficient use of the economic-financial resources, as by the local public service delivery towards the citizens in an equitable and more efficient way from the point of view of costs.

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¹⁹ For example, by the reunion of the Committee on 09.03.2009 there was discussed the opportunity and necessity of the establishment of the Code of local public finances, which will concentrate all the regulations about local public finances.