

## THE PROCESS OF DECENTRALIZATION IN ROMANIA

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**ABSTRACT:** *Decentralization does not constitute an end in itself, but a way to deliver more effective public services, a process which tends to achieve a greater degree of administrative and financial independence of the local communities. The local authorities know best the needs and problems faced by the local communities, certainly much better than the central administrative authorities could, are therefore they are in a position that allows them to identify the most appropriate means to satisfy or solve them. The process of decentralization should therefore pursue as an ultimate goal the benefit of the citizen by strengthening the power and role of local public administration in order to ensure the economic and social development of the administrative-territorial units.*

*The transfer of the decision power in the context of decentralization signifies the transfer of the power to decide in the matters of the local community, the power to choose between a number of possible solutions to an existing problem the one considered to be most appropriate, including the power to regulate in certain areas. The transfer of the decisional power must be related to the financial power, for without the insurance of the financial resources in the first place, the decisional responsibility is nothing more than an empty form of decentralization that does not guarantee purposefulness.*

**KEYWORDS:** *decentralization, local community, competence, subsidiary, administrative capacity.*

**JEL CLASSIFICATION:** K 23

### 1. THE DEFINITION OF DECENTRALIZATION

Generically, decentralization implies any process which involves moving away from the center<sup>1</sup>. In the context of administrative organization, decentralization considers the vertical transfer of authority or responsibilities from central to local authorities<sup>2</sup>. The

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<sup>1</sup> Corneliu Manda, „Drept administrativ – Tratat elementar”, IV<sup>th</sup> Edition, Lumina Lex Publishing House, Bucharest, 2007, p. 116.

<sup>2</sup> Francis J. Conway, „Intergovernmental Fiscal Relations in Central and Eastern Europe: A Source Book and Reference Guide for Trainers and Practitioners”, Washington DC: IBRD/World Bank, Urban Institute, 2005, p.

central authorities shall thus transfer the entire area of competences, including the decision-making powers, along with the necessary resources, powers of control, management, execution.

The principle of public services decentralization is the functional form of decentralization which, together with the territorial form, constitutes the characteristic of local governments and consists of the recognition of a certain autonomy and the granting of legal personality to institutions or public services organized at the level of the administrative-territorial units<sup>3</sup>.

The framework law of decentralization, law no. 195/2006, defines in article 2 decentralization as „*the transfer of administrative and financial competency from the level of central public administration to the level of local public administration or to the private sector*”. We can observe from this definition a novelty: if, traditionally, decentralization as a principle or system of administrative organization involves a transfer from central to local levels, according to this new definition the transfer can be also done from the central bodies towards the private sector.

In both possible forms of accomplishment, the process of decentralization should be done for the benefit of citizens by enhancing the power and role of local public administration so as to ensure a sustainable economic and social development of administrative-territorial units.

In a more general and technical sense, according to another opinion expressed in the scholarly literature, decentralization represents a transfer of competence from a higher administrative level to an inferior one<sup>4</sup>.

Decentralization is a transfer of certain prerogatives, or the recognition of certain privileges to independent social bodies with authority functions in society, territorial collectivities and their bodies of expression. The concept of decentralization corresponds to the idea of management by the citizens of those matters affecting them directly. In the legal regime of decentralization, the solving of local issues is done by public servants chosen by the local elective body as opposed to public servants appointed by the center<sup>5</sup>.

Administrative decentralization implies the existence of local public entities, designated by the territorial community, that intervene directly in the process of solving the problems of the local collectivity<sup>6</sup>.

Elections represent the criteria of decentralization that is founded upon the free exercise of the rights and liberties of citizens at local level. This means that decentralization is ensured through the election of the local representatives that will constitute the local public administration, validating thus the assertion that decentralization is „*democracy applied to the administration*”, „*expressing a democratic*

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13. Michiel S. de Vries, „*The Rise and Fall of Decentralization: A Comparative Analysis of Arguments and Practices in European Countries*”, European Journal of Political Research, Kluwer Academic Publishers, The Netherlands, no. 38, 2000, p. 193; Gale Lowrie, „*Centralization versus Decentralization*”, in „*The American Political Science Review*”, Vol. XVI, no. 3, 1922, p. 379 – 386.

<sup>3</sup> Corneliu Manda, Cezar Corneliu Manda, „*Administrația publică din România*”, Publishing House Lumina Lex, Bucharest, 1999, p. 107.

<sup>4</sup> Mădălina Voican, „*Principiile cadru ale administrației publice locale*”, Universul Juridic Publishing House, Bucharest, 2008, p. 21.

<sup>5</sup> Antonie Iorgovan, „*Tratat de drept administrativ*”, vol.I, Nemira Publishing House, Bucharest, 1996.

<sup>6</sup> Dana Apostol Tofan, „*Drept administrativ*”, vol.I, 2<sup>nd</sup> Edition, C.H.Beck Publishing House, Bucharest, 2008, p. 254.

*and liberal philosophy*"<sup>7</sup>. Decentralized systems are those in which the central bodies of administration have a small role in all of the three dimensions: political, fiscal, administrative<sup>8</sup>.

From an economic perspective, it is sustained that the decentralized system has a better ability to adapt the providing of services to the preferences of its citizens and therefore will provide them more efficiently. From a political perspective, the decentralized system is preferable for it tends to be more transparent and responsible, encouraging the participation of the citizens. From these points of view, decentralization is directly linked to efficiency<sup>9</sup>.

## 2. THE LEGAL FRAME OF DECENTRALIZATION

The legal framework of decentralization has known a positive evolution beginning with the adoption of the new Constitution which in its article 120 integrates in the principles of local government organization the decentralization principle, continuing then with the ratification of the European Charter of Local Self-Government and the constant adoption and improvement of the legislation specific to local government, each of these laws addressing the issue of decentralization<sup>10</sup>. Therefore, law no. 69 of 1991<sup>11</sup> of local government in the provisions of article 1 included between the principles upon which local government is founded the principle of administrative decentralization. Later, law no. 215 of 2001<sup>12</sup> has replaced law no. 69 of 1991 but kept unchanged the provisions of the first article of the old regulation, bringing, however, an element of novelty in the field of decentralization through its article 7 according to which the decentralization of the competences towards the authorities of local government has to be done having regard to the principles and rules provided by the frame-law of decentralization.

The frame legislation of decentralization has also known two stages: the adoption of law no. 339 from 2004 that later on was revoked and replaced by law no. 195 of 2006 – the frame-law of decentralization. As secondary implementation legislation, the programmatic documents regarding the governmental reform set a series of aspects on the effective implementation of the decentralization process<sup>13</sup>.

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<sup>7</sup> Ion Deleanu, „*Drept constituțional și instituții politice*”, vol II, Fundația Chemarea Publishing House, Iași, 1992, p. 59.

<sup>8</sup> Aaron Schneider, „*Decentralization: Conceptualization and Measurement*”, în „*Studies in Comparative International Development*”, Vol. 38, no. 3, 2003, p. 33.

<sup>9</sup> Maria Teresa Balaguer-Coll, Diego Prior, Emili Tortosa-Ausina, „*Decentralization and efficiency of local government*”, în „*Annals of Regional Science*”, no. 45, 2010, p. 572.

<sup>10</sup> Law no. 199/1997 regarding the ratification of the European Charter of Local Self-Government, adopted at Strasbourg at 15th October 1985, was published in the Official Monitor no. 331 of 26 November 1997.

<sup>11</sup> Published in the Official Monitor no. 79 of 18 April 1996.

<sup>12</sup> Published in the Official Monitor no. 204 of 23 April 2001.

<sup>13</sup> Once the negotiations began for Romania to become member of the European Union, the Government has made a constant effort to reform the public administration and several successive Strategies to this end were adopted.

### 3. THE SUBSIDIARITY PRINCIPLE IN THE DECENTRALIZATION PROCESS.

We have stated in the previous paragraphs that decentralization implies a transfer process of certain competences from center to local. The subsidiarity principle solves the problem of the level of competence that need to be transferred in order to ensure the function of governmental authorities<sup>14</sup>. According to article 3 of law no. 195/2006, letter a), the subsidiarity principle consists of the exercise of competences by the local government authority that is at the closest administrative level to the citizen and that has the necessary administrative capacity.

The European Charter of Local Self-Government provides in its article 4 the principle of subsidiarity, establishing that the „*Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.*”

The subsidiarity principle, as defined in the provisions of the European Charter of Local Self-Government, can not be interpreted but favorable to profoundly encouraging local democracy<sup>15</sup>. A similar provision with that of the above mentioned article 4, paragraph 3 of the European Charter of Local Self-Government is contained also by the frame-law of local government which in its article 7, paragraph 1 states that the exercise of the competences and attributions established by law falls to the local government authority closest to the citizen, while paragraph 2 of the same article provides that the process of establishing competences and attributions for authorities other then those mentioned before must take into consideration the scale and nature of their responsibility as well as the demands of efficiency and efficacy

In other words, the subsidiarity principle demands that the attribution of competences is made towards the local authority found at the lowest administrative level and that can ensure a maximum degree of efficiency and also has the capacity to decide those objectives that will lead to the development of the quality of services in their area of responsibility<sup>16</sup>.

Subsidiarity comes, however, with a correlate: when considered or determined that the decentralized competences in favor of a local governmental authority situated at an inferior level can better and more efficiently be exercised by an authority situated at a superior level, the competences in question can be transferred from the local level and relocated at the superior administrative level more suitable.

The subsidiarity principle was mentioned for the first time in the context of the European construction, evoking the attribution of the European Union with only those competences that could not have been properly fulfilled by the member states<sup>17</sup>.

However, if in the European Union the transfer of competences was made upwards, respectively from the member states towards the European Union, in the case of decentralization the transfer of competences is made downwards, from central to local. Is

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<sup>14</sup> Mădălina Voican, *cited above*, p. 28.

<sup>15</sup> Corneliu Manda, Cezar Corneliu Manda, *cited above*, p. 126.

<sup>16</sup> Mădălina Voican, *cited above*, p. 37.

<sup>17</sup> Extracts from the European Union Commission Report, June 1975, cited in Bianca Maria Carmen Predescu, Ion Predescu, Aristide Roibu, „*Principiul subsidiarității*”, Regia Autonomă Monitorul Oficial Publishing House, Bucharest, 2001, p. 91.

derives that the philosophy of decentralization resides in maintaining at each administrative level only those competences that can best be satisfied and fulfilled with the final purpose of providing public services of a superior quality to the citizens.

This means that the Government, the ministries and other special bodies of the central public administration are bound to transfer the competences they exercise to the local public administration at the level of counties, cities and parishes, respecting the principle of subsidiarity and two criteria, set by the law: a) scale economies; b) the geographical setting of the beneficiaries.

The application of the principle of subsidiarity in the Romanian administrative law can be revealed through a series of legal provisions, such as: the possibility of the local public authorities to associate with other authorities of the public administration, with the purpose of accomplishing action or projects of common interests<sup>18</sup>; the delegation of competences from the state to the local governmental authorities in different areas of activity.

Subsidiarity must be considered as a solution to the growing desire of the citizens to participate at the decision making process in those matters that concern them directly. The principle can be interpreted also as an invitation to change the *modus operandi* of the state, namely that the state does not only help or support the local collectivities, but should rather favor the initiative of solving problems at the adequate level in the detriment of solving them at a central level.<sup>19</sup>

#### 4. THE DECENTRALIZATION PROCESS

The first step of decentralization consist of establishing those competences of central authorities that need to be transferred towards the local authorities and of those that, on the contrary, have to be retained further at a central level. On this matter, the frame-law states in its article 5 the fact that the transfer of competences is substantiated on impact analyses and performed on the basis of specific methodologies and certain systems of indicator monitoring elaborated by the ministries and other special bodies of the central public administration in collaboration with the Ministry of Administration and Internal Affairs and the associative structures of the local public administration authorities.

The activity areas of the public administration and its specific sub-components for which the opportunity of decentralization must be examined would be:

- education: preschool, primary, secondary, high school, university, research;
- health: primary assistance, prevention, hospitals, public health, emergency medicine;
- culture, recreation, sports: theatres, museums, libraries, parks;
- public services: water, waste collection, electricity, gas, heating;
- environment and public health: waste recycling, cemeteries, street cleaning, environmental protection;
- traffic and transport: roads, public lighting, public transport;

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<sup>18</sup> According to article 11 of law no. 215/2001, the local public administration authorities have the right to associate and cooperate with other national or foreign local authorities, in the limits of their competences and in the conditions provided in the law.

<sup>19</sup> Corneliu Manda, Cezar Corneliu Manda, *cited above*, p. 127.

- urbanism and territorial development : urban and regional planning, economical development, tourism;
- general administration: population evidence, fire-fighters, civil defence, consumer protection, statistics, land registries and immobile publicity.

An important role in the process of evaluating the opportunity of decentralization in the diversity of the social areas is played by the Inter-ministerial Technical Committee for Decentralization, a consultative body with the role of general coordination of the decentralization steps and of a permanent nature, set up in accordance with the provisions of article 18, paragraph (1) of law no. 195/2006.

The Inter-ministerial Technical Committee for Decentralization is lead by the minister of administration and internal affairs, in his quality of coordinator of the reform in the public administration, and is made up of: the state secretary for reform in public administration from the Ministry of Administration and Internal Affairs, a state secretary from the Ministry of Economy, Commerce and Business Environment, the state secretary responsible with the coordination of the Direction of Public Policies from within the General Secretary Office of the Government, a state secretary from the ministries and the directors of other specialized authorities of the central public administration, a counselor of the Prime minister, the president of the Association of Towns from Romania, the president of the Association of Parishes from Romania, the president of the National Union of County Councils from Romania.

Amongst the attributions of this body are the proposal of solution on the process of sector decentralization or on the need to improve the exercise of decentralized competence, when the case, together with giving opinions on the projects of the strategies of sector decentralization and projects of sector strategies for the improvement of the exercise of decentralized strategies proposed by the ministries and the specialized organs of the central public administration.

Taking into consideration, however, that decentralization can take place in a different rhythm from one sector to another, the legislator has considered useful to set up certain structures at each sector level that have to decide upon the opportunity and actual means of accomplishing decentralization for each sector in particular. Thus, according to article 18, paragraph (2) of law no. 195/2006 at the level of ministries and other specialized organs of the central public administration work-groups have to be set up for the decentralization of competences.

The methodological norms of application of law 195/2006<sup>20</sup> regarding decentralization establishes the components of these work – groups as follows: specialists from the ministries and other specialized organs of the central public administration with attribution in the area of: public politics, budget, finance, legal, human resources, as well as specialists that have attributions in the areas taken into consideration in the decentralization process.

The work – group has in its structure also a representative of the Central Unit for reform in the public administration from the Ministry of Administration and Internal Affairs, the Ministry of Economy, Commerce and Business Environment, the National Union of County Councils of Romania, the Association of Towns of Romania and the Association of Parishes of Romania.

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<sup>20</sup> Norm from 06/02/2008 was published in the Official Monitor., Part I, no. 132 from 20 February 2008.

The attributions of these work – groups include: to analyse of the stage of decentralization at each sector level, the elaboration of the project of the sector strategy of decentralization or of the sector strategy of improving the exercise of decentralized competences, to insure of correlation between the sector decentralization strategy or the sector strategy of improving the exercise of decentralized competences, to propose the project of sector decentralization strategy or the sector strategy of improving the exercise of decentralized competences to the Inter-ministerial Technical Committee for decentralization in order to debate and approve it, to elaborate the final form of the sector decentralization strategy project or the sector strategy of improving the exercise of decentralized competences project.

It therefore falls within the competences of these work – groups, as specialized bodies, constituted for each area of public service, to settle, on the basis of their members training and professional expertise, and to propose to the Inter-ministerial Technical Committee for decentralization project of decentralization strategies, and it falls within the competences of the latter mentioned body to debate and give an expert opinion on these projects. For an economic and financial analyses, and for expressing a point of view on the financial implications of decentralization of certain sectors of public services, these work – groups organized at ministerial level forward to the Ministry of economy and finance these projects of decentralization strategies.

After clarifying and establishing the set of competences than can be object to decentralization, the frame-law sets a pilot stage that involves both the ministries and other specialized organs of the central public administration and, in collaboration, the Ministry of Administration and Internal Affairs and the associative structures of local governmental authorities. The purpose of this pilot phase consists of testing and evaluating the impact of the proposed solutions for decentralized competences.

The pilot phase represents the preliminary step to the implementation of the sector decentralization strategy that the ministries and other specialized organs of the central public administration organize for a determinate period so as to able to test the decisions to decentralize certain competences from the central level to the local level before generalizing the decentralization model at the entire national level.

The work – groups from the ministries and other specialized organs of the central public administration intervene once again in this stage by proposing for approval to the ministry the criteria to select the administrative-territorial units in which to test the proposed competences to be transferred, after consulting the associative structures of the local public administration.

In order to implement the pilot phase, the ministries and other specialized bodies of the central public administration sign with the selected local authorities, collaboration protocols.

According to the methodological norms of application of law 195/2006 regarding decentralization, these collaboration protocols have to contain provisions on the signatory parties and their responsibilities, the period in which the pilot phase will develop, the ways of monitoring and evaluating the pilot phase, any other elements specific to the activity area in case, and have in annex the plan of action for the implementation of the pilot phase as an integrative part.

The work groups from the ministries and other specialized organs of the central public administration intervene in the elaboration of the action plan by identifying,

together with the Ministry of Economy and Finances, the sources of finance, the mechanisms, methods and legal instruments necessary for organizing and implementing the pilot phase.

At the end of the pilot phase, for this is set up for a determined period of time, as we have already mentioned in the previous paragraphs, the work-groups have to elaborate a final report of evaluation on the basis of which the Inter-ministerial Technical Committee for decentralization will formulate recommendations on the steps that need to be further taken in the decentralization process in that particular sector.

The transfer of competences is done simultaneously with insuring the necessary resources for exercising these. The exercise of competence is done only after the transmission of the necessary financial resources. The finance of the delegated competences is entirely insured by the central public administration.

According to the law, the transfer of competences takes place following these steps:

- a) the Government, ministries and other specialized bodies of the central public administration elaborate the strategies of competence transfer towards the local governmental authorities as well as the legal bills of application;
- b) the Government, ministries and other specialized bodies of the central public administration identify the necessary resources and the integrated costs implied by the transferred competences, as well as the budgetary sources for their finance. The resources identified are transferred to the local public authorities, in the conditions set by legal provisions;
- c) the Government, ministries and other specialized bodies of the central public administration ensure in collaboration with the associative structure of the local public administration authorities the long-term correlation between the responsibilities transferred and the subsequent resources so that they cover the cost variations in the providing of public decentralized services.

In the complex process of decentralization in public administration, the law sets the cost and quality standards for providing decentralized public services, the administrative capacity of the administrative-territorial units as well as the categories of decentralized competences of local public administration authorities<sup>21</sup>.

Regarding the institutional frame of the decentralization process the law provides that the Ministry of Administration and Internal Affairs approves the initiatives and bills of law on issues of administrative and financial decentralization elaborated by the ministries and the other specialized bodies of the central public administration, and supports the substantiation and implementation of the Governments' decentralization policy.

Having as a starting point the provisions of the frame-law of decentralization, we can fix as specific characteristics of administrative decentralization at the present moment in the public administration in Romania the following:

1. the local problems that concern the parish, city, county fall within the general material competence of the local public authorities that have the right and obligation to solve most of the issues that concern the administrative-territorial unit in question;

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<sup>21</sup> Mircea Preda, Benonica Vasilescu, *cited above*, p. 146.

2. the person that are members of the local public administration authorities – local and county counselors as well as the mayors - are elected by the elective body and the public servants are nominated by these authorities;

3. between the authorities of the local and central public administration there is not a subordination rapport;

4. the central authorities do not have the possibility to annul the act, even illegal, of the elected local authorities<sup>22</sup>.

Addressing the issue of the competences that can be transferred in the decentralization process, we can assimilate the public authority with any type of organization, the main management theory identifying the exercise of three base functions or three main categories of competences for the efficient running of any organization: decision, implementation, control. Each of these three categories is exercised by the appropriate structure within the organization. Similarly, in the decentralization process, we can identify a transfer of the competences that constitute one of these three categories of functions.

The transfer of the decision power, in the case of decentralization, implies the transfer of the power to decide in local community problems, the power to choose the most appropriate solution for an existing problem, including the power to regulate in certain areas.

The regulation authority in this case is that local public administration authority that has the competence to elaborate regulations, norms, procedures and standards for providing a public service.

The transfer of the decisional power must however be correlated with the financial power. The legislator has considered it useful in this case the express mention in the legal text of this rule, mentioning in article 3 of law no. 195/2006 the principle of ensuring the adequate resources for the transferred competences, and again in article 6 it underlined the fact that the transfer of competence is done simultaneously with the ensuring of the necessary resources for their exercise and that the exercise of competences is done only after the necessary financial resources have been transmitted.

The correlation of the two types of competences, decisional and financial, is extremely important, for it is clear that however well the decisional and regulatory power would function, without the financial resources to ensure the effective carrying out of the decision of the local public authorities we can not be in the presence of real decentralization. Without the financial resources firstly the decisional responsibility is nothing else but an empty form of decentralization that does not guarantee a practical finality.

The authority responsible with the financing is that authority that finances public services or has budgetary provisions to this end.

The obligation to correlate the delegated competences with the necessary financial resources exists even when decentralization is made towards the private sector. In this case the insurance of the financial resources can be accomplished through a delegation of administration in the concession contract.

There are however certain obligation regarding the resources on behalf of the local authorities, in particular that of using the resources in a responsible manner. For

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<sup>22</sup> *Idem*, p. 150.

example, when the cinematograph theatres were gratuitously transferred to the City Halls this transfer was done with the correlate obligation of the City Halls to keep their destination so as to avoid, or at least try, situations when these spaces have been used to rather lucrative purposes than cultural.

Implementation implies the put in practice of the decisions and general plans that result from the decisional phase. The transfer of the implementation power supposes then: organization of the decision execution, mobilization of the human and material resources, determination of necessities, analysis of the available resources, resources allotment, and elaboration of specific actions.

In this context, the implementation authority is that structure that is responsible with the resources management and the effective providing of the public service.

The control phase is intertwined with the actual implementation and implies the verification of the undertaken steps, the comparison of the obtained results with those proposed, adoption of correction measures if necessary.

The control authority is that authority or institution that has monitoring, evaluation and control competences of the way the public service is provided.

An effective decentralization implies the transfer of all three categories of attributions, implicitly that of control.

The frame law in this matter, law no. 195/2006 sets three level or competence categories that can be exercised by the local public administration authorities. After it defines competence as the sum of the attributions set by the provisions of the Constitution and the laws that confer the public authorities rights and obligation to carry out, to the purpose of realizing public power and under their own liability, an activity of administrative nature<sup>23</sup>, the law classifies competence in delegated, exclusive and shared.

Delegated competences include competences assigned by legal provisions to local public administration authorities along the appropriate financial resources by the central authorities that are to be exercised in the name and the limits set by these<sup>24</sup>.

The authorities of the local public administration exercise competences delegated by the central public administration authorities regarding the payments of allowances and certain indemnities for children and adults with disabilities.

Exclusive competences include those competences attributed through legal provisions to the authorities of the local public administration and for which are responsible. The authorities of the local public administration have the right to decide and have the necessary resources and means to carry through their competences, respecting the norms, criteria and standards imposed by the law<sup>25</sup>.

According to article 20 of law no. 195/2006, when exercising exclusive competences, the local governmental authorities have the right to decide and dispose of the necessary resources and means of realizing these, respecting the legal provisions in force. After crayoning this general frame for exclusive competences and of what these imply from the assignments and responsibilities of the local governmental authorities point of view the law sets the domains or sectors where, for each administrative level, exclusive competences are exercised.

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<sup>23</sup> Article 2, letter c), law no. 195/2006.

<sup>24</sup> Article 2, letter d), law no. 195/2006.

<sup>25</sup> Article 2, letter e), law no. 195/2006.

Therefore, according to article 21, the authorities of the local public administration from the level of parishes and towns exercise exclusive competences in the following areas:

- a) administration of the public and private domain of the parish or town;
- b) administration of the road transportation infrastructure of local interest;
- c) administration of cultural institution of local interest;
- d) administration of public health units of local interest;
- e) territorial development and urbanism;
- f) water supply;
- g) sewage and cleaning of used and rain water;
- h) public lighting;
- i) sanitation;
- j) social assistance services of primary nature for children protection and the elderly;
- k) social assistance services of primary nature and specialized for the victims of family violence;
- l) public transportation for persons.

The authorities of the local public administration at the level of counties exercise, according to article 22 of law no. 195/2006, exclusive competences regarding:

- a) administration of airports of local interest;
- b) administration of public and private domain of the county;
- c) administration of cultural institution of county interest;
- d) administration of public health units of county interest;
- e) social assistance services of primary nature and specialized for the victims of family violence;
- f) specialized social assistance services for the elderly.

Shared competences are exercised by the authorities of the local public administration together with other level of the public administration (county or central), with a clear separation of financing and decisional power for each party responsible<sup>26</sup>.

In exercising shared competences, the authorities from the local level of parishes and towns collaborate with the county or central administration, depending of the situation, and the authorities at the level of the county public administration work together with the central administration.

The sectors where the local public authorities from the level of parishes and towns exercise shared competences with the central authorities include:

- a) thermal energy in centralized system;
- b) building of social dwellings for young;
- c) pre-university state school system, excepting special schools;
- d) order and public safety;
- e) social aids for people in difficulty;
- f) prevention and handling of emergency situations at local level;
- g) medical and social assistance services for people with social problems;
- h) primary social assistance services for persons with disabilities;
- i) community public services for population records;

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<sup>26</sup> Article 2, letter f), law no. 195/2006.

The public authorities at the level of parishes and towns exercise shared competences with the county public administration authorities in case of public utilities provided through regional operators.

Finally, county public administration authorities' exercise shared competences with the central authorities in problems of:

- a) administration of the road transportation infrastructure of county interest;
- b) special education;
- c) medical and social assistance services for people with social problems;
- d) primary and specialized social assistance services for child protection;
- e) specialized social assistance services for persons with;
- f) community public services for population records.

The new decentralization law brings an element of novelty to the old regulation by establishing the possibility of the ministries or specialized organs of the central public administration to classify the administrative-territorial units by their administrative capacity in the process of transferring competences towards local public authorities.

Article 2, letter b) of the law defines administrative capacity as the sum of material, institutional and human resources at the disposal of an administrative-territorial unit as well as the actions that it takes in exercising the competences established through legal provisions.

Given that the desideratum and objective of administrative decentralization is to raise the quality standard of public service, to satisfy to a great measure the needs of the local community, to bring closer the citizen to the power structures and to involve him in the decision taking process in matters that interest him directly, the ordinary legislator considered it useful to provide the possibility (not mandatory) of classifying local administrative-territorial units on the basis of their administrative capacity. Taking into consideration that the ultimate advantage of decentralization should be a better public service for the citizen, it is clear that those local administrative-territorial units that do not have the needed administrative capacity will not be able to face the demands of decentralization opening possibly the way to failure in certain sectors.

The law therefore links the competence transfer towards the local public authorities in the decentralization process to administrative capacity.

Accordingly, article 10 of law no. 195/2006 states that the administrative-territorial units that have the administrative capacity needed for exercising the transferred competences form the I category and the local public administration authorities from these administrative-territorial units can fully and immediately exercise the transferred competences, in conditions of efficiency; the II category is made up of those administrative-territorial units that do not have the necessary administrative capacity for exercising the transferred competences and the local public administration authorities from this category of territorial units can not carry out the transferred competences in conditions of efficiency.

Those authorities of the local public administration that lack the administrative capacity, respectively the material, institutional and human resources necessary for exercising the transferred competences, will be excluded from competence transfer until the requirements set by law for administrative capacity are met.

The evaluation of the administrative capacity of administrative-territorial units is made on the following criteria, set by the methodological norms of law no. 195/2006:

- a) the capacity of the local public administration authorities of strategic planning, the specific criteria being: the ability of the administrative-territorial unit to elaborate and adopt strategies on economic, social and environmental development;
- b) the capacity of the local public administration authorities in the area of financial management, with the following particular criteria: the capacity of the local administration authorities of collecting incomes correlated with generating incomes;
- c) the capacity of the local public administration authorities in the area of human resources management, having the following particular criteria: the training level of the specialized personnel of the mayor from the year prior to that of the evaluation and the professional performances of the specialized personnel of the mayor both the public servants and the contractual staff, from the year prior to the evaluation;
- d) the project management capacity of the local public administration authorities, with the specific criteria: the ability of the local administration of attracting finance sources for the implementation of local interest projects in the last 4 years prior to the evaluation and the ability of the local authorities of allocating the attracted financial resources for local interest projects implemented in the last 4 years prior to the evaluation.
- e) the conformity between the legal provisions adopted by the authorities of the local public administration and the legal provision in force, the evaluation criteria being: the legality of the decisions adopted by the local council, reporting the number of the decisions adopted by the local council annulled by definitive and irrevocable judgments to the total of the decisions adopted by the local council, together with the legality of the decisions of the mayor, reporting the number of decisions adopted by the mayor annulled to their total number.

The assessed administrative-territorial unit will be given a score for each of these criteria, as follows: each general criterion is given 20 points, adding to a maximum total score of 100 points.

If the administrative-territorial unit has a total score of 50 points or higher, it is placed in the first (I) category. If the total score is lower than 50 points, the unit in question will be placed in the second (II) category.

The ministries and other specialized organs of the central public administration provide in the sector legislation of the decentralization strategy the list of the administrative-territorial units placed in the first (I) and second (II) category, as resulted from the evaluation process of the administrative capacity together with the date at which the reevaluation process of the administrative capacity of the units placed in the second (II) category will take place.

In those situations when the administrative-territorial units lack the administrative capacity needed for the exercise in efficiency conditions the transferred competences, these competences in question are transferred to the county level public administration authorities in the range of which the administrative-territorial unit is located. Therefore, even in these situations decentralization is realized, with the elements of difference that it is done in favor of an authority situated at a superior administrative level. Decentralization done in these conditions does not, however, have a permanent character and is limited up until the moment the administrative-territorial unit acquires the necessary administrative capacity.

## 5. CONCLUSIONS

Decentralization does not represent a purpose in its-self but a means of providing more efficient public services, a process that tends to ensure a higher degree of administrative and financial independence of the local communities. The local authorities know best the needs, problems that the local communities face, certainly better than the central administrative authorities and therefore having the capacity of identifying the best ways of solving them. It is certain that local communities situated in different geographical areas of the state territory are different from the point of their needs, desires, and problems. A unique way of solving this diversity of issues is certainly difficult to find. The solution applied successfully in one local community may prove to be a failure in a different local community. The issue of the material sources of law is certainly applicable in this matter. In this context, decentralization is not only a means of ensuring a greater satisfaction to the citizens needs, but also a means of making the local public authorities more responsible.

The powerful political and social instability that has characterized Romania was caused by the oppressive, totalitarian and centralized communist dictatorship<sup>27</sup>. With a legacy such as this of the transition process it was predictable to a great measure that this process will be rather chaotic then a very well structured one. Otherwise, decentralization has certain particularities in case of post-communist states, which differentiate it from those states that have democratic traditions<sup>28</sup>.

The goal of European integration and, later, the reality of this newly acquired quality in the European system of power organization, has bound the Romanian authorities to give up the characteristic passivity and take measures and efficient steps towards a reform in the administration, attitude reflected upon the progress made in the decentralization process.

Romania must observe and, eventually, assume the positive experiences in this area of the French model, but, concomitantly, catch decentralization in its evolution and pay attention to its evolution and the modernization propositions of a long-tradition decentralized system.

The decentralization principle had a good legislative start – the principle was provided for at constitutional level from 1991. However, this positive beginning stopped at that moment and decentralization remained for a considerable period at a rather enunciation then practical level. The further mentioning of the principle in the normative acts that regulate public administration, law no. 69/1991 and 215/2001 has strengthened the normative authority of the principle, however still only enunciatively.

Therefore, it was necessary and imperative, as a consequence of the pressure of the European Union to reform the public administration as an adhesion condition, to adopt a frame-law of decentralization that would set the „red thread” of the decentralization process. The legislative cascade continued with the law no. 339/2004<sup>29</sup> – frame-law of decentralization.

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<sup>27</sup> According to studies of World Bank on Initial Conditions, Romania had, at the beginning of the transition from totalitarianism to democracy the lowest score of all the East European states and has a very high level of centralized planning, lacking the market mechanisms.

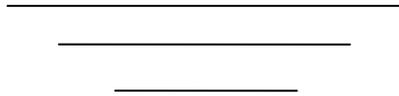
<sup>28</sup> See Jennifer Yoder, „Decentralization and Regionalization After Communism: Lessons from Administrative and Territorial Reform in Poland and the Czech Republic”, East European Studies, no. 63, 2001.

<sup>29</sup> Published in the Official Monitor no. 668 of 26 July 2004.

Containing general provisions this legislative piece did nothing more than strengthen the already existing legal provisions and did not introduce any of the defining substance elements that would truly direct the continuation of the decentralization process<sup>30</sup>. Proof of this statement, only after a very short period of 2 years, in 2006, this law was abolished and replaced by a new one, law no. 195/2006.

The public administration from Romania, in spite having in force a legislative frame regarding decentralization, still confronts its-self, even now, after more than two decades from the shift from a centralized regime to a democratic one, with the general problems brought by this transition. Although that the lack of an adequate legislative frame, insufficiently coherent and complete, could indeed represent the reason for this ascertainment, we can add to this the lack of the political will to truly reform, the planning incapacity as well as the lack of a systematic approach of the social system reform.

As correctly and astutely pointed out by one author<sup>31</sup>, the process of elimination of the administrative centralism is restraint by the secondary and tertiary legislation. If the Constitution and the organic law of the local administration provide the principle of local autonomy and of decentralization of public services, the special laws, but more so the administrative normative acts of the Government and specialized central authorities give expression to a tendency of maintaining centralism.



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<sup>30</sup> According to an opinion, this legal document rather has a political value, a declaration made for the ears and reports of the European Union that restates the commitment taken by Romania. Mădălina Voican, *cited above*, p. 43.

<sup>31</sup> Ioan Alexandru, „*Considerați ii privind necesitatea modernizării administrației*”, in *Revista de Drept Public* – no. 2/2007, XIII (33) year, C.H. Beck Publishing House, Bucharest, p. 37.