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GENERAL ADMINISTRATION VS. RIGHT TO MANAGE OF LOCAL COMMUNITY PUBLIC PROPERTY

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ABSTRACT: *In accordance with the Law about administrative decentralization from R.M., the competencies of local government are all rights and duties of local authorities in the fields they are established. In order to achieve its competencies, local authorities use institutional, financial, human and economic resources. But all together, make administrative capacity of each authority. In general management of assets in the public domain, local authorities are acting solely as a law subject or administrative one. Therefore, the rights and obligations that make up the content of general management activities of public domain assets are only administrative duties within the scope of their competence, not subjective civil rights. Right to manage is a legal means of enhancing public property, or a form of its use. What is the nature of its legal, private or public law, we will determine in this study.*

KEYWORDS: *management, rights management, local authority, decentralization, public authority.*
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Self-government has an important role in the life of local collectivities and it is realized by the authorities of the local government for each administrative unit.

Authorities of the local government, which govern at the local level, in *Republic of Moldova*, are defined clear by the law, like representative and deliberative authorities of the administrative units of primary or second level. These are chosen by the population in order to solve local problems or, to coordinate the activity of local councils for the realization of the public duties of district interest. In this sense, according to the *article 112, point (2)* from the Constitution of Republic of Moldova, *local councils and mayers activate, in the conditions of the law, as administrative self-governing authorities and solve the public problems from villages and cities.* Moreover, according to the *article 113, point (1)* from the Constitutions of R.M., *district councils coordinates the activity of the village's councils in order to realize the public services that are of district interest.*

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A very important period for the development of the further efficient patrimonial relations and in conformity with the constitutional principles of the self-government between the public authorities and other subjects, was the ratification of the *European Charter of Local Self-Government* and the subsequent reform of the entire local administrative system in conformity with the international requirements ant the practices, legalized by the adoption of the Law regarding local government and the Law regarding the reorganization of the administrative units from 1998, which created the real juridical and organizational premises for the edification of a modern and efficient local government in conformity with the principles mentioned by the Constitution and by The Chapter. Without taking into consideration the fact that administrative system established the valuable juridical regulations during the year 1998, it still demonstrates its expectations regarding the creation of an efficient and modern system of the public administration starting a social-economic evolution of the local collectivities, the coming to the government in 2001 of the Communist Party, came to the stop of the reforms started with the adoption of new reforms, the formulation of new normative acts, including and the local government and administrative organization , bringing back the legislation to uncertainty and confusion.

A simple general analysis of the evolution of the administrative system from Republic of Moldova in the last years, allows ascertaining that this domain of the state suffered a lot of changes until now. As an example, can be taken the fact that in the last 20 years in Republic of Moldova have been adopted five normative acts regarding local government and three regarding the administrative organization, without any continuation and possibility for the new administrative systems and organizations to be taken to a final, demonstrating in this its viability.

Even if 2009, represented the year of turn in the changing of the political class, respectively of the political, economical and social direction of Republic of Moldova, until now the normative background that regulates patrimonial relations, including those of the local collectivities, it is still intact, only with the exception of the fact that the Parliament from Chisinau adopted in the first Lecture the Law regarding the propriety of the administrative divisions, shows the fact it does not represent a priority for the legislative body from R.M.

According to those related above, we make the specification that the legislation that exists in the competencies of public government regarding *the administration of the local public property***,** it is imposing. With all these, as we were mentioning earlier, there are some legal incertitude and confusions between the normative acts, that could disappear once with the unification of all regulations, for example with the adoption of a new Code of public property, as France did by adopting in 2006 of a *General Code of the Public Property* or as it is discussed in Romania about adopting a *Code of Public Domeniality*.

The general administration of proprietary belonging to the administrative domain, in general, and public domain, in particular, represents a modality of direct exercising by the state or by the administrative divisions of the right of property in general, and the right of public property, in particular. (Bălan, 2007, pp.90)

Through the administration of the public property of the local collectivities we understand, the domain of activity specific to the titular of the right of public property that includes the totality of processes of evidence, supervision, capitalization, conservation and defense of some categories of public proprietary's characterized by

inalienablination and imperceptions, in the basis of the rules of efficiency, legality and transparency, with a view to keeping and reevaluating it for the benefit of the entire local collectivity.

*The purpose and the basis principles of the administration of the proprietary of the public domain of the local collectivities***.** Analyzing the totality of the legal regulations regarding the public property of the local collectivities and corroborating the previsions of the Law nr. 436/2006, the Law nr. 435/2006 with the previsions of the Law regarding the administration and denationalization of the public property,[1] the Law regarding the public property of the administrative divisions,[2] the law regarding the domain public property and their delimitations,[3] the *administration of the public local property* is performed according to the *principles: efficiency, legalization and transparency*, with the purpose:

- to determinate the competencies and the value of the proprietary's of the local public domain;
- to perform the evidence of the proprietary's of the local public domain;
- to supervise the local public property;
- to reclaim, with means stipulated by the law, of the proprietary's of public domain, that is the administrative circulation of these;
- to defense the legitimate rights and the interests of the local collectivities in the domain of local public property.

The quality of the rights of public property are exercised directly ad indirectly, more often by the state and by the local collectivities organized in a juridical way by the constitution of some real rights that derive from the right of public property, so-called exercised by the other of the right of public property. Natural person and legal person that get proprietary's of public property in their administration, concession, use or with the title of hiring, exercises, on the basis of the right of their constitution, a part of the qualities of the right of public property. These persons exercise the qualities above mentioned in the power of the law, and in the power transmitted by the titular that constituted the real or the claim right, and not by any means in of personal power. Therefore, it can be affirmed that, through them, the state or the local collectivities exercise in concrete, but indirectly, the prerogatives of public property. (Bălan, 2007, pp. 91)

The features of the administration of the public domain of the local collectivities. After defining the concept of *administration***,** as well as the principles that governs it, we will speak about the features of the administration of public domain of local collectivities. Firstly, we make the specification, that we will deduce them from the definition, in our vision, these are:

- the registering right of public domain;
- the evidence of the public domain;
- the taking into account of the public domain;
- the protection of the public domain;
- the revaluating of the public domain;
- the defense of the public domain;

[1] Law no. 121 of 04.05.2007, Official Journal of the Republic of Moldova, no. 90-93 of 29.06.2007.
[2] Law no. 523-XIV of 16.07.1999, Official Journal of the Republic of Moldova, no.124-125/611 of 11.11.1999
[3] Law no. 91-XVI of 05.04.2007, Official Journal of the Republic of Moldova, no. 70-73/316 of 25.05.2007

The capitalization and the conservation of the public domain. The capitalization of the proprietary's of the public domain, resulting from the doctrine and jurisprudence, it can be realized by: *the use of the public domain by the public services* and *the use of the public domain, that is by the public.*

At the same time, we emphasize the fact that in the activity of revaluating as a component of the administration of the public domain, the local collectivities act as public authorities, that is subjects of administrative law, and not as subjects of civil law. This suppose the practicing of the attributes comprised in the sphere of competencies that the law gives, and not the practicing of some rights and obligations of civil nature.

The general administration of the proprietary's of public domain according to the Romanian legislation, represents a method of a directly, immediate exercising , by the district, city or commune of the right of the public domain. The subject of right within the local collectivity expresses the juridical volition in this sense, in the limits established by the law, it is the district, city or commune council, after case. Regarding Republic of Moldova, the local collectivity expresses the juridical volition through the district, city or village council, after case.

In the activity of the general administration of the proprietary's of public domain, these subjects of right act exclusive in their quality of persons of public law, that is administrative persons. That is why, the rights and the obligations that make the content of the activity of *general administration* of proprietary's of the public domain represents only attributes fom the sphere of their administrative competencies, and not subjective civil rights. (Bălan, 2007, pp. 90)

As for the *conservation*, this can be understood as fundamental mission for the transmission of the public patrimony, with all his components, to the future generations. Otherwise, each local collectivity, has the obligation to keep the public proprietary's and to turn to an advantage in the benefit of the entire collectivity.

Drawing some *conclusions*, the existence of the public and private domain, of the administrative domain in general, gets sense only in the moment and in a large extent in which the public possessions are revaluated, by the use and the exploitation of these in the purpose of gratification of the general interest of the community, in or case of the local collectivities in the conditions of a good administration.4

The committee of ministers from the states that are members of the European Council, by the Recommendation *CM/Rec* (2007), defined the *good-administration*, being a component of the good government, emphasizing the good administration is reduced to the juridical modalities of manifestation, it being imposed and by the quality of organization and administration of the structures and resources, in the conditions of efficiency, effectiveness and the adaptation to the needs of the society, being necessary to be provided the defense and the protection of the public domain and interest, to be respected the fiscal exigencies and to be excluded any form of corruption.

That is why, the use of public proprietary's in the conditions of efficiency and legality must constitute a obligation of the titular of the right of property on these, but and a preoccupation of the recipient of the administrative activity, as well as, to the theoretician interested by the modalities of manifestation of the administrative phenomena.

The right of administration of the proprietary's of the public domain of the local collectivities, represents a component of the general administration of the administrative

domain of the local collectivities. The relation between these two juridical-administrative institutions being that of part-entire. At the same time, we will make and the specification that, from the point of the juridical nature, the right to administrate the proprietary's of the public domain it is a *complex juridical phenomena***,** that includes in his content the elements of administrative law, and the elements of civil law.

In this way, by *of the right of administration proprietary of the public domain* we understand that real right, of administrative nature, through which the domunial proprietary's are confided for an undetermined period by a titular of one public power to an administrative institution or under state supervision for possession, use and partially, disposition. (Bălan, 2007, pp. 104)

The legislation of Republic of Moldova, from the point of view of the possibility of constitution of the right of administration forecasts and regulates only by legislation, in comparison with Romania, for example, which forecasts and by stipulations of constitutional order.

The possessions of the public domain *cannot be administrated* by the authorities of the central and local public administration, by the public institutions, by the state/municipal enterprise, and in the cases forecasted by the law, by the commercial societies.

In this context, according to the *article 77, point 2 of the Law nr.436/2006***,** *the possessions of the public domain of the administrative unit can be given in order to be administrated by the municipal enterprises and public institutions (...),in the conditions of the law;* according *to the art.22 of the law nr.91-XVI/2007***,** *the terrains from the public domain (...) cannot be alienated, but can be given only in administration (...), in the conditions of the law.*

As it results from the legal texts mentioned foregoing, the right to administrate the proprietary's of public domain of the local collectivities, can be constituted in the favor of the municipal enterprises and public institutions.

The juridical status of the municipal enterprise it is regulated by the Model-Regulation regarding the municipal enterprises, adopted through the Decision of the Govern nr. 387 from 06.06.1994.

So, according to the point 11 from the Model-Regulation, *the municipal enterprise it is an economic agent with juridical personality, constituted exclusiveness on the basis of the municipal property, which through its judicious use, produces certain types of consignments, executes the works and carries out the services, necessary for the satisfaction of the requirements of the founder and for the realization of the social and economic interests of the work staff.*

Even if the concepts of municipal enterprise and the state enterprise are old of use already, both as content and formulation, these need to be harmonized, or in the context of some strategies of government, of development, of modernization of the public administration approved by the Govern from Chisinau, the respective entities do not find reflection nor for further actions.

Regarding the public institutions, these are subjects of public law that are sett up by Constitution, by laws or by administrative acts of the state or of the local collectivities, constituted on the basis and for the execution of the law, gifted with material and financial modalities, with juridical personality and competence, necessary to act with a view to organize and execute the law. (Albu, 2005, pp. 57)

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