

**FORMING OF LOCAL BUDGETS: BETWEEN FISCAL
DECENTRALIZATION AND SOCIAL SOLIDARITY**

Brîndușa GOREA*

Oana Voica NAGY**

Ioana Raluca TONCEAN-LUIERAN***

ABSTRACT: *Financial decentralization is an essential part of the administrative and financial decentralization process, because it represents the most important source that fuels the public budgets. The transfer of administrative competences from the center towards the periphery, meaning from the central public administration to the local ones, must be accompanied by the increase of the local budget revenues, which is in direct dependence of financial decentralization, by increasing the amount of taxes entering the local budgets (without increasing the tax burden). Increasing the local budget revenues is also possible by allocation of additional amounts from the national budget, but this doesn't represent a real decentralization, rather a disguised centralization, where the state decides how much, from where and under what form they are allocated to the local authorities, and this last one is in a continuous uncertainty and dependency to the center. This study proposes a modern conception on the financial decentralization in Romania, in accordance with the majority of the direct financial revenues (income tax and profit tax) that must enter in the budget of the localities, from where these will turn – in order to respect the financial equality and solidarity principle – odds to the county budget and to the state budget.*

KEYWORDS: *local budgets; fiscal decentralization; social solidarity; financial balance; transparency; quality public services.*

JEL CODE: *K34, K23*

1. THE PREMISES OF THE STUDY

In the last quarter of century, Romania has been going through a continuous process of administrative and fiscal decentralization. Moving from a hyper-centralized system, like the communist one, to a coherent and efficient decentralized system is, without a doubt, not an easy thing to accomplish. However, beyond the intrinsic difficulties and obstacles that are encountered in the process of decentralization, it is necessary for the state to adopt

* Professor, PhD, "Dimitrie Cantemir" University of Tirgu Mureș, ROMANIA.

** University Assistant, PhD, "Dimitrie Cantemir" University of Tirgu Mureș, ROMANIA.

*** University Assistant, PhD, "Dimitrie Cantemir" University of Tirgu Mureș, ROMANIA.

the idea that, in a democratic system, the citizen must be in the center of any public politics (Ionescu, 2008).

Administrative and fiscal decentralization is not a purpose in itself; the goal of this process is to bring together the citizen and the public services, i.e. the "counterperformance" for the payment of taxes and charges, regardless of whether these services are ensured by public authorities and institutions close to the citizen, or whether they are "privatized", i.e. entrusted to non-state operators (Ionescu, 2008). The condition is for the citizen to receive the best possible services, with the least possible expenses, in the shortest possible time. It is also essential for the citizen to be able to choose between multiple public service providers (school, health insurer and other social services, utilities etc.).

The decentralization of public authorities is accomplished in Romania: local public authorities exist and operate both at a deliberative level and at executive level. The major problem that these local authorities face is, however, the insufficiency of funds. The revenues obtained by local authorities derive mainly from charges and taxes paid by the citizens, as is natural in any democratic state. The problem in Romania is that a large part of these taxes do not remain in the "pocket" of local authorities, but they become an income to the state budget, after a centralized communist model, from which it would be about time we separated.

The study hereby represents a component of a wide research that the authors have undertaken regarding the fiscal system in Romania, in comparison to the Swiss one. The research was performed during November 2015 - March 2015, upon the request on a non-profit organization, and the results were published *in extenso* on the website of Asociația Pentru Minți Pertinente: www.amper.ro.

We will limit ourselves to reiterating some of the conclusions that resulted from our research, the main goal being that of bringing into discussion the necessity of certain conceptual changes regarding the method of development of local budgets. To that effect, we will formulate a series of recommendations addressed to the Romanian legislator, which – if they were translated into regulatory amendments – these would lead to an administrative-fiscal reform of such a nature as to ensure good quality public services in a real manner, as well as an efficient and transparent spending of public money, without the infringement of the principles of financial equilibrium or social solidarity.

2. THE LEVEL OF FISCAL DECENTRALIZATION IN ROMANIA

Also motivated by the nature of unitary state, many of the public tasks in Romania are performed by the central level of governance, i.e. by the central public administration bodies: ministries and other specialized bodies of the central public administration (agencies, commissions, state secretaries, offices, registries, institutes, administrations etc.). Some of these tasks are performed by devolved bodies of the central public administration "of the territory", i.e. established at the level of each county and, possibly, each locality. However, a growing number of tasks (although not large enough yet) belong to local public administration bodies, established at county and locality level (communes, cities and municipalities).

Local authorities in Romania have both exclusive competences, and shared and delegated competences (Gorea, et al., 2016, pp. 11-36), and for the fulfilment of each of these competences, they must have appropriate funding.

Although, naturally, exclusive competences should be fulfilled through own funding, local budgets fail to self-finance, especially because the responsibilities that they have are constantly increasing (as the process of administrative decentralization continues). The main causes of this phenomenon can be summarized as follows:

(1) *The most significant part of fiscal revenues collected at a local level enter the state budget, and not the local budget.* Firstly, this refers to the profit tax, which represents approximately 13% of the total revenues at the state budget for 2016, and which remains entirely at the disposal of the central bodies. Secondly, we refer to the tax on income (over 24% of the total budgetary revenue for 2016), which – instead of remaining with the local communities (which then contributes to the central budget), it becomes an income to the state budget, partially returning afterwards to the local budgets.

(2) *There is a decrease from year to year of the rates broken down from the tax on income,* which are allocated to local budgets, as a consequence of the amendments to the Law regarding local public finances through other laws equal in rank, but also through annual laws of the state budget (lower in rank).

(3) *There is a trend of decreasing of the part that remains to the locality from other taxes,* as is the case with amounts collected from judicial stamp taxes, which initially remained to the locality in amount of 70%, but, starting with 1 January 2014, only an amount of 55% remains to the locality, the rest of 45% being transferred to the state budget.

Hereinafter we will analyze some of the most important sources of fiscal revenues, relevant to the study hereby, while trying to highlight the relations between the budgets that fuel these.

2.1. Distribution of profit tax

Tax on income collected from taxpayers that are legal persons, who have the registered office / perform their business in a commune, city or municipality from Romania, belongs entirely to the state. This tax is currently regulated by art. 13 - 46 of the Fiscal Code and has a (unique) share of 16%.

Tax on income is one of the main sources of income for the state budget. According to the Law regarding the state budget for 2016, it is estimated that the amounts collected with this title will be of 14,331,284,000 lei, which represents more than 13% of the total budgetary revenues.

Taxpayers who owe a tax on income represent the majority of legal persons in Romania, but also foreign legal persons who have a registered office, perform their business or realize certain revenues on the territory of our country. In other words, it mainly refers to business banks and companies that, regardless of the turnover or profit that they realize, contribute to the state budget with 16% of their profit.

The difference between "small", "medium" or "large" is performed only with the purpose of following more efficiently the collection of these fiscal revenues, but it creates certain problems for taxpayers who are not managed by local fiscal administrations. Therefore, large taxpayers belong to a specialized directorate of NAFA Bucharest, while medium taxpayers are currently managed by "regional directorates-general" of public finances (for Mureş county, for example, with registered office in Braşov). At county level, there operates what we currently call "county administrations" of public finances,

which only manages small taxpayers. Practically, this means that a company considered by the law as a "large taxpayer" will pay its charges and taxes in Bucharest, regardless of where its office is or where it performs its business, having to travel to the capital to obtain even the most trivial certificate. Similarly, in the case of "medium" taxpayers, they can resolve their fiscal problems only if they happen to have their registered office in a city where a "regional directorate-general" of public finances can be found.

However, the natural discontent that this profit tax collection system creates is not the biggest problem. From our point of view, *it is abnormal for the economic wealth that private companies produce not to be charged at all on a local level*, where they perform their company business and / or where their registered office is located.

Similarly to tax on income, *a percentage of these fiscal revenues should belong to the locality, and other percentages to be granted to the county and, respectively, to the central budget*, for a just enforcement of the principle of equilibrium between the poorer and richer areas.

2.2. Distribution of tax on income

In regards to the tax on income collected from taxpayers that are natural persons, from a declarative point of view, it represents an "own income" of the locality, but - in reality - it also belongs to the state budget, from where it partially returns to the community from where it was collected, with the title of "broken down shares".

This type of tax, currently in a unique share of 16%, is owed by resident or non-resident natural persons who obtain revenues in Romania, except for people with a certain degree of disability and those who activate in the field of computer program creation.

The categories of revenues subject to tax on income are listed and explained in the Fiscal Code. The Law regarding the state budget contains in its annexes a detailed breakdown of the amounts that are estimated to be collected with the title of tax on income.

For example, according to the Law regarding the state budget for 2016¹, most of the income tax comes from earnings from work (almost 80%), followed by income from pensions (more than 6%), income from self-employment and from dividends (approximately 2.5% each) (Gorea, et al., 2016, p. 93). The amounts redirected by taxpayers that are natural persons from the tax on income, for sponsoring non-profit entities, amount to 0.65% of the total collected tax on income, which means that a little more than a quarter of the taxpayers that are natural persons choose to exercise their right to decide the destination of the percentage of 2%, which they can forward to the non-profit entity of their choice (Gorea, et al., 2016, p. 93).

Unlike the profit tax, which goes exclusively to the state budget, regarding the tax on income, the Law regarding local public finances provides a mechanism through which fiscal revenues are distributed among localities, counties and the state. Practically, the tax on income goes to the state budget, from where certain percentages (called "shares") are redistributed to localities and counties. The way in which these percentages are allocated, at the present time, is presented graphically in the figure below:

¹ The Law regarding the state budget for 2016 can be seen online here:
<http://lege5.ro/Gratuit/ha4danrwgm/legea-nr-339-2015-a-bugetului-de-stat-pe-anul-2016>

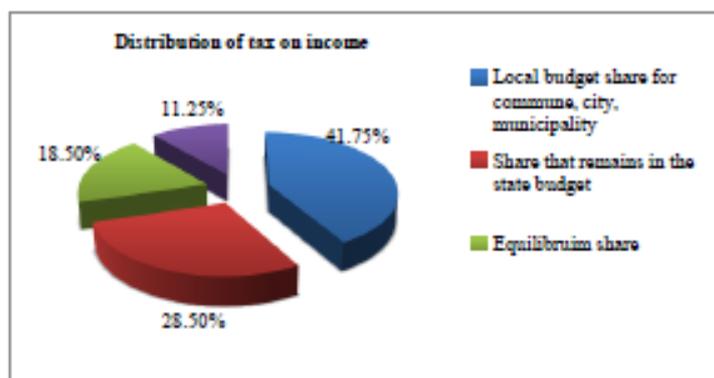


Figure 1 – The shares according to which the tax on income is distributed in Romania, according to the Law regarding the state budget for 2016

2.2.1. The procedure of distribution

The procedure of distribution of the tax on income is described in art. 32 of the Law regarding the local public finances no. 273 of 2006, including subsequent amendments and additions. The following steps are taken:

Step I. Collecting the tax on income in the state budget

The tax on income is collected monthly at the level of each locality, but it does not go to the account of the local budget, but to the account of the state budget.

Step II. The allocation of shares to local budgets

From the state budget, a percentage of the tax on income is allocated monthly (up until, at the latest, the 8th of the current month), as follows:

- The locality share (currently: 41.75%) is transferred to the budget of the commune, city or municipality where the taxpayer who pays the tax on income performs its activity;
- The county share (currently: 11.25%) is transferred to the budget of the county to which the locality where the taxpayers operates belongs;
- The equilibrium share (currently: 18.5%) is transferred in a different account of the treasury of the county capital city;
- The state share (currently: 28.5% - percentage that is not set by the law as is, but which results from the calculation) remains in the state budget.

An exception is the municipality of Bucharest, in which case 20% is allocated to local budgets of the sectors, 44.5% - to the local budget of the municipality and 7% - for balancing the local budgets of the sectors, as well as the local budget of the municipality of Bucharest.

Step III. The allocation of the equilibrium share to localities and counties

Practically, the equilibrium share of 18.5% is allocated to local budgets by the county administrations of public finances, respectively through the decision of their superiors, according to the following algorithm:

- The share allocated to the county (currently: 27% of the share of 18.5%) is transferred to the budget of the county;

- b. The share allocated to localities (the rest of 73% from the share of 18.5%) is allocated to the budgets of the commune, city or municipality, as follows:
- A percentage (currently: 60%) is allocated in successive steps to communes, cities and municipalities that have an average of tax on income per citizen lower than the average for the county, with the purpose of equalizing the individual averages, following a formula provided by the Ministry of Public Finance;
 - Another percentage (currently: 20%) is allocated depending on the proportion of the land within the built-up area, in relation to the total land within the built-up area from the county;
 - Another percentage (the remaining 20%) is at the disposal of the county council, which allocates it to localities for the payment of expenses (arrears, credit reimbursement, programs of local development / co-financing of infrastructure projects).

This information regarding the allocation of the equilibrium share of 18.5% represents the up to date information, extracted from the Law regarding the state budget for 2016, which includes a derogation regarding the division of the 73%. However, normally, according to the Law regarding local public finances, the equilibrium share is allocated in a slightly different way (Gorea, et al., 2016, pp. 94-97).

The possibility of changing the shares broken down from the tax on income through annual laws of the state budget is given by the Law regarding the local public finances, which - in art. 32 (5) - states: "Under special circumstances, through the law regarding the state budget, the shares broken down from the tax on income can be raised." Of course, the possibility of interpretation of the phrase "special circumstances" is very wide, which is undesirable from the point of view of legislative technique (Gorea, 2016). Although, whereas the law text expressly refers only to the share of the locality, the share of the county and the equilibrium share, and the share that remains to the state budget is derived through calculation, the result is that the mentioned shares cannot be reduced in any case, not even in "special circumstances". However, as was shown above, the shares in question were always diminished, which means a serious infringement of the law, even by the legislator.

Although reducing the shares broken down from the tax on income through the law regarding the state budget was contested as being unconstitutional, the Constitutional Court rejected this type of exceptions². Anyway, a true remedial measure regarding this problem could not derive from the claim that one or another annual law regarding the state budget is unconstitutional, but from a set of legislative amendments, some even at a constitutional level, which would clarify and reinforce the administrative decentralization of Romania, including the fiscal one, as all decision-makers at the central level claim that they want (Saharov & Gorea, 2011).

Mapping out the long way of the tax on income paid by the taxpayer, from the moment of payment and up until obtaining the "counterperformance" (the public service of local

² See, for example, the Decision of the Constitutional Court no. 785 of 29.12.2014, regarding the objection of unconstitutionality of the provisions of the Law regarding the state budget for 2015. For justifying the matter in question, see mainly points 11, 28, 29 and 30 of the decision, which can be found online here: <http://lege5.ro/Gratuit/gqydsobwga/decizia-nr-785-2014-referitoare-la-obiectia-de-neconstitutionalitate-a-dispozitiilor-legii-bugetului-de-stat-pe-anul-2015>

interest), we notice that the procedure is cumbersome, with the risk of becoming even arbitrary and subjective.

Without contesting the importance of the principle of balancing budgets and without falling into a simplistic judgment, we believe that it would be in the best interest of the citizen for the tax on income to enter the local budget, from where there would be transferred a share established by law to the county (for balancing the differences between the localities of that county) and another share to the state budget (for balancing the differences between counties). These shares could even be similar to the current ones, the problem being mainly of a procedural nature (money spent uselessly for the calculation and transfer of these amounts, red tape excess, suspicion of *parti-pris* regarding the allocation of money, general lack of transparency). However, as we will see further on, the problem is also of a substantial nature, whereas the share that belongs to localities and counties is smaller and smaller with each passing year and, mainly, there is currently no legal means of countering this phenomenon.

2.2.2. The amount that belongs to local budgets

In order to fully understand the relations between the state, the counties and the localities regarding the distribution of the tax on income, it is necessary to present a short history of the percentages allocated to these administrative levels.

In 2001, before adopting the Law regarding local public finances, the shares that belonged to budgets were smaller than they are now (36.5% - locality, 10% - county and 15% - equilibrium share), but the responsibilities that belonged to local authorities were also much smaller. Then, the process of decentralization led to the growth of exclusive, shared and delegated competences that belong to localities and counties, which required the increase of local budget financing.

Thereby, in the original form of the Law regarding local public finances, as it was adopted in 2006, the share that belonged to the locality from the tax on income was 47%, the county share - 13%, and the "equilibrium share" - 22%. In other words, at the state budget there remained 18% of the tax on income (compared to 28.5%, currently).

In 2010, however, the Law regarding local public finances was amended³, so that: the locality share was reduced with 3 percent, from 47% to 44%; the county share was reduced with 1 percent, from 13% to 12%; the equilibrium share was reduced with 1 percent, from 22% to 21%; the share that remains at the state budget increased with 5 percent, from 18% to 23%.

However, things did not stop here. A year later, in 2011, the Law regarding local public finances was amended again⁴, the shares that belong to local budgets continuing to drop: the locality share was reduced with 2.25 percent, from 44% to 41.75%; the county share was reduced with 0.75 percent, from 12% to 11.25%; the equilibrium share was reduced with 2.5 percent, from 21% to 18.5%; the share that remains at the state budget increased with 5.5 percent, from 23% to 28.5%.

Thereby, in the last decade, the share that belong to the budget of the locality from the tax on income decreased in total with 5.25 percent, from 47% in 2006, to 41.75% now. Although, apparently, the difference of coefficient of 5.25% seems small, in relation to the total amount, the quantum that the local budget no longer benefits from is very large. On

³ Through Government Emergency Ordinance 63/2010.

⁴ Through Government Emergency Ordinance 102/2011.

the other hand, while in 2006, 18% of the tax on income remained to the state budget, now there remains 28.5%, with an extra 10.5% than in 2006. Again a significant amount, which we no longer find at the level of local and county budgets⁵.

Moreover, through the amendment of 2011 of the Law regarding local public finances⁶, there appears a new decrease of the share meant for local budgets from the tax on income. This time, the amendment is more subtle: it concerns the basis for the calculation to which the aforementioned percentages are applied. More precisely, these percentages allocated to local budgets no longer apply to all taxes on income collected to the state budget, because - through Government Emergency Ordinance 102/2011 - the income from pensions is an exception. Again, this is apparently not a major problem for local budgets, but in reality the income from pensions are located on 2nd place in the top of fiscal collection representing tax on income. According to the Law regarding the state budget on 2016, it is estimated that the tax on pensions will amount to 1,586,655,000 lei, i.e. 6.13% of the total taxes on income. Therefore, local budgets are deprived, again, of certain amounts that we cannot classify as being insignificant.

The historical evolution of the allocation of tax on income between the state, the counties and the localities, during 2006-2016 (Gorea, et al., 2016, p. 99), is summarized in the following:

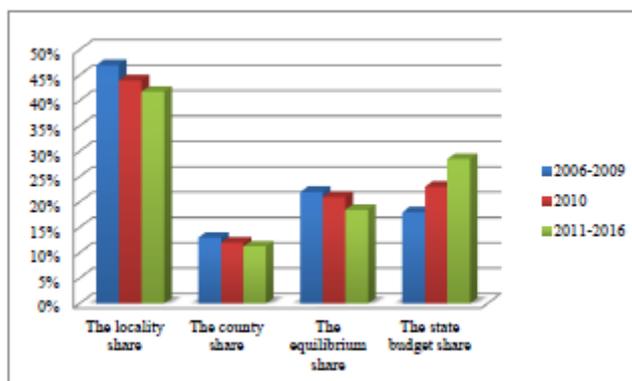


Figure 2 - The historical evolution of the allocation of tax on income, during 2006-2016

2.3. Distribution of value added tax

The value added tax also represents a type of budgetary income that is distributed among the central, county and local administrative levels. However, unlike the tax on income, which is formally stated as own income of the local authorities, VTA is included in a different category of revenues to the local budget, called⁷ "amounts broken down from certain revenues of the state budget". The wording "certain revenues of the state budget" only covered the value added tax until now, which is why we will only refer to

⁵ As an example, in 2016, the amount that derive from the state budget with the title of "shares broken down from the tax on income" is of 17,363,574,000 lei.

⁶ Government Emergency Ordinance 102/2011.

⁷ According to art. 5 (1) (c) of the Law regarding local public finances.

this, but - mainly - it can also include other budgetary revenues in the future, for example: excise.

The value added tax, also called "consumption tax", is the main indirect tax owed to the state budget and is regulated by art. 265-334 of the Fiscal Code. Unlike direct taxes, for which there is an attempt to harmonize them at European Union level (Dobrotă, 2010), the consumption taxes, for example - VTA, are subjected to harmonization through Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. In the EU budget⁸, there can be found not only the contributions of member states, but also import duties applied to products that come from outside the Union and a percentage of the value added tax charged by each country (Gorea, et al., 2016, pp. 99-100).

If the distribution of tax on income between the center and the periphery is performed on the basis of broken down shares, i.e. on the basis of certain percentages, for the value added tax we are dealing with broken down amounts, i.e. numerical values, that are annually established by the Law regarding the state budget.

For example, according to the Law regarding the state budget for 2016, out of the total revenues estimated with the title of VTA, of 52,342,288,000 lei, an amount of 18,693,935,000 lei is distributed to local budgets, with the title of "amounts broken down from VTA". From the calculation, the result is that 35.71% of VTA is allocated to local budgets during this year, while the difference of 64.29% (33,648,353,000 lei) remains at the state budget.

The amounts broken down from VTA are allocated especially for financing predetermined expenses, therefore being considered amounts with special destination (except for amounts granted for balancing budgets). According to the Law regarding the state budget for 2016, the destination of these amounts is: financing decentralized expenses at the level of communes, cities, municipalities; financing decentralized expenses at county level; balancing budgets; roads and, for the first time, financing accredited private or confessional education⁹. The amounts allocated from VTA for these local expenses are indicated in annexes 4-8 of the Law regarding the state budget.

The method of distribution per counties of the amounts broken down from VTA is described by art. 33 (2) of the Law regarding local public finances. According to this regulatory provision, the allocation of these amounts, when the goal is *balancing local budgets*, is performed according to the following criteria:

- a percentage of 70%, depending on the financial standing of the county, determined on the basis of the tax on income collected per resident, according to a calculation formula;
- a percentage of 30%, depending on the area of the county.

Concerning the amounts broken down *with special destination*, there are allocated according to the law.

Regarding the distribution of amounts broken down from VTA received by each county, this is performed according to the same rules, steps and percentages as the ones outlined in the case of the tax on income: a share of 27% is allocated to the county's own budget, and the remaining 73% is allocated for local budgets of communes, cities and

⁸ http://europa.eu/about-eu/basic-information/money/revenue-income/index_ro.htm.

⁹ For details on the financing of accredited private or confessional education, see the press release of the Ministry of National Education and Scientific Research: www.edu.ro/index.php/pressrel/24082

municipalities. The distribution algorithm of the 73 percent is stated in art. 33 (3) of the Law regarding local public finances, but - as is the case with the tax on income - it has been derogated from this through the Law regarding the state budget for 2016. This regulatory act includes the explanation of amounts broken down from VTA per categories of local budgets (art. 4), but also per types of expenses (art. 5).

2.4. Conclusions regarding the transfer of financial competency from the center to the periphery

Despite the legislative principles that Romania fully undertakes, by analyzing the actual situation, we note that the administrative decentralization is not accompanied by a real fiscal decentralization.

Considering that, in the last 10 years, the percentage collected by the state kept growing, to the detriment of the percentages that belong to localities and counties, it is practically impossible for local authorities to self-finance the expenses, being always dependent on the center, from which they expect the "amounts broken down from VTA" or subsidies, and in the lack thereof they cannot fulfill their duties.

In our opinion, the problem is not the insufficiency of fiscal income, because Romanians have a large number of such payment obligations (Gorea, et al., 2016), but the maladministration of these funds, which the taxpayers cannot follow and manage according to their local needs. But the administration reform does not only mean bringing citizens closer to the act of governance, but making them real partners of the public administration (Chiriac & Szabo, 2014, p. 88).

We believe that this situation is mainly due to the legislation in force, which only recognizes at a declarative level the principle of insurance of resources corresponding to locally exercised competences. An in-depth analysis of regulatory acts relevant to our study highlights the existence of "legislative gates" (which, in some cases, are real wide open gates), that allow the infringement of the principles stated by the same laws, sometimes even of constitutional principles (Muraru & Tănăsescu, 2008), thereby emptying all the content of the transfer of financial competency from the center to the periphery. The analysis that we undertook (Gorea, et al., 2016) highlighted especially the case of the Law regarding local public finances, which should be amended so that it does not allow the hampering of the process of fiscal decentralization.

We do not doubt the fact that measures such as distributing the profit tax between the state, the counties and the localities, or the allocation of exact and fixed shares from the tax on income between these administrative levels would have momentary negative consequences on the state budget. But, on the other hand, it is not normal and fair that fiscal revenues obtained at a local level to cover the black holes of the national economy or other obscure areas from the national budget, and, on the other hand, if local budgets would benefit in a fair amount of the tax on income and profit tax, the state would not have to allocate a part of the VTA with the title of "broken down amounts" and to grant subsidies, or it could perform these allocations in a smaller amount, which would balance the "losses" from the tax on income and on profit.

Regarding the devolution of public services, after the research that we performed, we concluded that there is an unfortunate trend of concentration of the competences of certain specialized structures. An example in this respect is the National Agency for Fiscal Administration, specialized body under the authority of the Ministry of Finances, whose territorial structures should ensure a simple, comfortable, affordable, fast and transparent

way for the citizen to solve his/her fiscal problems. The situation in Romania is, however, contrary to this ideal; aside from the problems regarding the mindset, which means that it happens for the citizen not to be treated with the proper respect at the level of fiscal administrations from the territory, medium and large taxpayers are also dealing with the problem of being "managed" in the capital or in cities that operate as centers of certain "regions" unregulated by the Constitution.

Regarding the health insurance, in Romania there still is no possibility to choose between multiple "health funds". Practically, there is only one such insurer for public health services, which decreases the quantity and quality of these services and grows the costs, because of the lack of competition.

The education services enjoy, in principle, the competition between the "state" and "private" education institutions, but only starting from this year the basic funding is ensured for accredited private secondary and confessional education.

3. THE PROBLEM OF SOLIDARITY AND INCOME EQUALIZATION

Decentralization does not mean federalization, because the administrative units from Romania do not need political autonomy, but administrative and financial autonomy from the central bodies that are too distant to the citizens to acknowledge them, to understand them and to solve their local problems. Important decisions of the local community must be made by the community, not dictated by the center.

Romania undertakes, through the legislation in force and through statements of political actors, both the necessity of administrative and financial decentralization, as well as the principles it is based on: the principle of subsidiarity (which does not allow making a decision on a higher level, when it can be made at the level closest to the citizen), the principle of predictability and transparency of the process of decentralization or the principle of insurance of resources corresponding to competences transferred from the center to the periphery. Unfortunately, however, aside from principles and statements, our country did not succeed in achieving a real administrative reform, and our conclusion is that this fact is mainly due to the lack of fiscal decentralization.

Acknowledging the local autonomy of a community without allowing it to use its resources is an attitude that borders on cynicism. The large majority of public resources of a locality comes from fiscal revenues, i.e. from taxes and charges that are paid by citizens and companies from the community (Linder, 2010). In Romania, a major part of this money goes to the endless pocket of the state budget, from where they only return in a small part to the local budget, through a complicated, obscure and often arbitrary procedure. Of course, there are poorer communities, that lack more natural and / or human resources than others, that could not ensure their own revenues necessary for providing public services equivalent to those from a rich locality, not even if they would be allowed to keep the entirety of the fiscal revenues earned at local level. Such communities must be supported, subsidized if necessary, because *social solidarity can never be rejected, under any circumstance*. A community facing a temporary or long-term precarious financial situation often cannot solve this problem through its own power, which means, according to the principle of subsidiarity itself, that there is necessary an intervention from higher level: the county, state or both.

This intervention is usually translated into granting money funds which, naturally, originate from other richer communities that are capable to deliver a part of their wealth in order to support communities in need. We are certain that any citizen of Romania is, in its intimate forum, solidary with his/her fellow citizens. But when the processes of redistribution of the public money are not transparent, when the work and efforts performed locally do not translate into quality local public services, it is natural for the frustration of the taxpayer to appear along with the legitimate question: "What happens with the taxes and charges that I pay?"

Fortunately, the problem of solidarity can be solved, so that no citizen feels exploited, robbed or, on the contrary, forgotten when in need. This is proven to us by the Swiss model, which managed to create and refine a system of financial equalization between different areas of the federation, which works and manages to mitigate the differences significantly (Dafflon, 2015). Switzerland is not blessed with the natural wealth of Romania, it has more areas that are difficult to manage administratively, mountain areas that lack resources, which would be truly poor if there would not exist an intervention at federal level through equalization programs. Despite these natural deficiencies, Switzerland is one of the wealthiest countries in the world, it manages to build transalpine motorways and railroads, it has an impeccable social security system, a citizen-friendly administration etc. The main reason, in our opinion, is the fact that, in the country of cantons, the *public money acquired through taxation is spent in the most intelligent, fair and efficient manner possible* (Gorea, et al., 2016).

For example, the *problem of solidarity* is solved through the allocation of additional funds to communities that do not succeed full self-financing, but, due to both the transparent and fair character of the system of financial equalization, as well as due to the democratic process through which it was created, this fact does not generate dissatisfaction, injustice or abuse. *The relation between administrative levels* derives logically from the purpose of each one of them and of all three in their entirety to ensure the best possible standard of living to all citizens and to treat each one of them with a maximum of deference. The middle level, the canton, has a very important task, that of harmonizing the principle of decision-making at the level closest to the citizen with the principle of coherent and harmonious development of the entire region (Forman, et al., 2011). *Taxes and charges have a clear destination*, often noted in the constitution itself, so that any taxpayer knows what his/her money is used for. Taxation on the three levels of governance has a simple logic: each of these levels must be distinctively funded, because each of these brings a service to the average citizen: federal taxes fund the social security system, motorways, railroads, the army, diplomacy etc., cantonal taxes ensure regional development and public services necessary at this level, and communal taxes are used for funding expenses of strictly local interest. The revenues and expenses of public authorities from all levels are transparent, but there is no suspicion from the citizens regarding public budgets, because time has proven that there is no reason for it. In Switzerland, having a public title is a proof of civism, and never a means of obtaining obscure advantages. The *legislative framework* is, at the same time, clear, concise, coherent and strict, but light and flexible, mainly due to the civic intervention in the legislative decision, which allows an immediate adjustment of the regulatory framework to the changing social realities and to the actual needs of the citizens. Last but not least, all aspects regarding the *relation between the citizen and the administration, including fiscal procedures*, are based on a

deep respect, which derives naturally from understanding the fact that Switzerland was created by its citizens, who understood that they should unite for a common purpose, and that it exists through and for its citizens. In turn, the citizens of Switzerland are actively involved in the life of the community, but they also take part in the cantonal or federal decision-making process, through referendums and legislative initiatives. They have proven a civic spirit that can only be refined by a long-term exercise of democracy.

Our belief is that post-totalitarian Romania could learn a lot of things from the Swiss fiscal system, and the fiscal decentralization of Switzerland is not only one of them, but it is one that is inherently related to the legislative system, to the distribution of administrative burdens and, last but not least, to collective mindsets. We do not suggest non-selectively adopting the Swiss model, which would not even be applicable in Romania as is, but there are certainly *various aspects of the Swiss fiscal system from which Romania could get inspiration for the administrative and fiscal reform that it needs.*

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. Local autonomy and administrative-financial decentralization

Administrative and fiscal decentralization does not mean territorial fragmentation and it does not imply the risk of federalization of Romania; local autonomy does not have a political character, but an administrative-financial one, and its purpose is the optimum management of local problems, at local level (not through decisions made by the center), for the benefit of the citizen. The principles stated in the Romanian legislation are very clear in this matter and do not need amendments. Our *recommendation* is the effective enforcement of these principles of decentralization, both in subsequent legal regulations, as well as in administrative-financial practice; this can be accomplished by eliminating the areas of arbitrary and interpretation from the present legislation. Also, we recommend the replacement of the term of "local public administration" - too wide and imprecise - with that of "local and county public administration", so that the concept of "local public administration" would refer only to localities (communes, cities and municipalities), and that of "county public administration" - to counties, in order to make a clear distinction between the basic and median administrative levels. The imprecision of the term "local public administration" and the confusion that it generates is acknowledged by default by the framework law of decentralization, which, at art. 2 (f), defines the shared competences as being "competences exercised by the *local* public administration authorities, together with other levels of public administration (*county* or central), with a clear separation of funding and of the decision-making power for each one of the responsible parts" (emphasis added).

4.2. Constitutionality review on fiscal decentralization

The system of public finances and of taxation is regulated by organic or ordinary laws, often up for interpretation, which makes it difficult to perform a control of constitutionality on them. The laws themselves allow their circumvention, either through the possibility explicitly granted to be discretionarily amended (for example, the law of local public finances allows the annual amendment through the law regarding the state budget - law of lower rank), or through the ambiguities that they contain. *Recommendation:* Romanian constitutional requirements could stop the interpretations

given to these principles through laws of a lower rank, establishing the taxation shares, the destination of fiscal incomes and the method of distribution for these.

4.3. The stage of fiscal decentralization

Fiscal decentralization is still far from being achieved in Romania. Although legislatively adopted, the principle of appropriate funding for the attributions that the local authorities have is void of substance because of the old mechanism of financial balancing of counties and localities, which is abundant with useless complications and makes room for arbitrariness in the allocation of public money. Practically, this is distributed downwards, from the center to the periphery, although it is collected locally and produced by local communities. The *recommendation* that we make is reversing the system of distribution of the public money, so that it flows upwards, from the locality where it is produced towards the higher levels - county and national. This can be achieved by amending a few articles of the framework law regarding decentralization and of the Law regarding local public finances.

4.4. Stability and predictability of the legislative system

The frequent legislative amendments in Romania, including the financial and fiscal field, is due to a lack of a vision that is modern, coherent and adopted by all decision-makers. If in Switzerland legislative amendments reflect directly the popular will and result in a light and flexible legislative framework, which is not amended arbitrarily, but in order to immediately reflect changing social realities and the actual needs of the citizens, in Romania these legislative amendments are, generally, a result of different views of large political parties that are governing at some point in time. The only *recommendation* that we can make in this matter is the amendment of the Constitution, regarding the explanation of the principles of decentralization: subsidiarity, insurance of resources, fiscal transparency etc.

4.5. Possibilities of circumvention of the law

The possibility of circumvention, in practice, of the principles that are established by law is due not only to the constitutional framework that is insufficiently established, but also to confusing, up for interpretation and even contradictory regulations that are included in the laws that regulate the administrative and fiscal system of Romania. For example, the current legislative framework allowed the decrease of broken down shares and amounts that belong to localities, from 47% in 2006, to 41.75% in 2016, without mentioning the decrease of the basis of calculation of this percentage, through the elimination of tax on pensions. Similar reductions occurred in the case of amount and shares owed to the county, respectively of those meant for balancing local funding, so that the state budget currently keeps an additional 10.5% of this money, in comparison to the moment of adoption of the Law regarding local public finances (18% in 2006 / 28.5% in 2016). Again, the *recommendation* that we make is the elimination of "grey areas" from the legislation dedicated to decentralization and to local public finances.

4.6. The method of distribution of profit tax

The profit tax is excluded from the fiscal revenues that benefit the locality and the county. At the moment, contrary to all principles of the rule of law, of equity and even of logic, this tax goes exclusively to the state budget. It is inexplicable why the tax on income is distributed between the budget of the state, of the county and of the locality, even according to certain objectionable principles and procedures, but not the profit tax, which is the main direct tax owed by companies. They perform their activity within certain communities, but no part of the economic value that it creates is found at a local

level, which is unjust both for the legal person taxpayer who realize the profit, and for the community that "hosts" him/her. In Switzerland, this tax is levied, like the tax on income, on all three levels of governance: federation, canton and commune, and it is an important resource of self-financing of local communities. Our *recommendation*: the amendment of the legislation so that, similarly to the tax on income, a percentage of the fiscal revenues resulting from the profit tax will belong to the locality, and other percentages will be transferred to the county and, respectively, to the central budget.

4.7. The method of distribution of tax on income

The tax on income first enters entirely in the state budget, from where it is partially redistributed to localities and counties, according to some calculation algorithms which - as we demonstrated - are, on one hand, unpredictable because of the frequent legislative amendments and, on the other hand, outdated in conception, because they imply the allocation of money downwards, following the model of centralized public finances. The recommendation is similar: the legislation must be modernized, clarified and respected.

4.8. The method of distribution of value added tax

*The value added tax partially returns to the local community as amounts allocated to local and county councils, but the quantum of these amounts is uncertain and unpredictable, being established annual, by the law regarding the state budget. In Switzerland, VTA is considered an income exclusively of the Federation, out of which the cantons and communes do not receive any amount, but the destination of the amounts obtained by the federation from this consumption tax is established by the federal Constitution itself, so that it is clear to all citizens in what way they benefit from these (road infrastructure and railways, social protection of people with small income, of older people, of the disabled etc.). In our opinion, in Romania, VTA could also fuel exclusively the expenses of national interest, if the state would not have to allocate a part of this tax to local budgets, which cannot self-fund otherwise. But adopting the legislative amendment recommended above would allow the supplementing of local budgets through fiscal revenues obtained from direct taxes (on income and on profit), which would reduce, or even eliminate the dependence on VTA of local budgets. Up until that moment, however, our *recommendation* is for the VTA to also be allocated as percentage shares, provided by the organic Law regarding local public finances, instead of fixed amounts annually allocated, through the ordinary Law regarding the state budget.*

4.9. The allocation of burdens among the local public administration bodies

*In Romania, localities have more attributions regarding the insurance of local public services than counties and, consequently, they benefit from certain local budgetary revenues that the counties do not have access to: tax on buildings, property tax, tax on the majority of means of transportation, tax on the transfer of real estate ownership (of which 50% is, however, distributed to the state budget), tax on performances etc. In Switzerland, the situation is reversed, meaning that the majority of attributions (and related funding) belong to cantons, while the so-called "communes", i.e. localities, have fewer attributions and receive proportionally smaller fiscal revenues. This report of competences was established through the administrative reform of 2002 and is part of the general trend of unification that is manifested in Switzerland. In our opinion, the current allocation of administrative burdens in Romania is just and appropriate to the needs of our country, therefore the *recommendation* is to keep the current system, while also continuing the*

process of transfer of attributions from the central level to the local one, in all cases where this decentralization corresponds to the needs of the citizen.

4.10. Income equalization and balancing local budgets

Income equalization and balancing local budgets is a problem still unresolved in substance in Romania. Subsidizing the poor localities and counties by the wealthy ones, through the paternalistic state that "knows best" where and how much money is needed, only "patches" local budgets for the time being and perpetuates the economic and social imbalances. Some counties receive (from the shares broken down from the tax on income and from VTA) up to 150% of the collected amounts, while others receive about 15%. Undoubtedly, the Swiss system of income equalization and allocation of administrative burdens, which has proven its efficiency in almost 15 years of enforcement, could constitute a source of inspiration for Romania. The minimal *recommendation* that we make for the improvement of the current system of social solidarity in Romania is also related to the system of allocation of public money, in an upward manner. If the locality would keep from the start a significant share of the direct taxes (on income and on profit), but would transfer fair shares from these to the county and to the state budget, these higher administrative levels could think of sustainable, fair and transparent programs for correcting the differences between the localities of a county, respectively between counties.

4.11. The relation between the citizen and the administration

The relation between the citizen and the administration is still perceived in Romania as one of subordination of the former to the latter, contrary to the belief that the administration has in a rule of law, to serve the citizen due to and for whom it exists. One of the most representative proof in this matter is the discriminatory treatment applied to large and medium taxpayers, who are managed at a national level, respectively a regional one, with all the expenses of time, energy and resources that derive from it for taxpayers, but also for the system. Generally, the fiscal procedure is still cumbersome and unsuited for the needs of the citizen, not to mention the problem of transparency and of the respect with which he/she is treated. Our *recommendations* are: (a) abandoning the trends of administrative regionalization, which only contradict the principle of subsidiarity, according to which the citizen must find a solution to his/her problems at the closest possible administrative level; (b) improving the administrative procedures, in general, and of the fiscal ones, in particular, so that they are friendlier to the citizen¹⁰; (c) professionalizing the group of civil servants, by adopting a salary system based on merits and performance; (d) realizing educational programs for civil servants in the spirit of respect towards the citizen.

4.12. Access to information of public interest

Information of public interest is still not easily accessible to the average citizen. There still exist too many obscure areas regarding this kind of information and it is hard to say how much the situation is due to inertia, to the absence of a database at national level or the lack of political will. But budgetary transparency is a mandatory condition for the correct relation between the state and the citizens. *We recommend:* (a) clear mention in the legislation of the destination of allocation of public funds; (b) the creation of transparency

¹⁰ The constitution of the Berne canton, for example, provides that the administrative activities are performed according to the law, in an efficient way and *in a citizen-friendly manner* (emphasis added).

and establishing the procedures of allocation for these; (c) the intensification of publishing efforts, especially in the online environment, but also through other means, of the public budgets, and especially of the financial correlations that derive from these.

4.13. Public services and counterperformance of the administration for imposing taxes and charges

In Romania, the taxpayer does not benefit in a just amount of the "counterperformance" for the fiscal burden that it bears. The unique public services, for which *citizens do not have an alternative option* (health, education, utilities etc.), kill their competitiveness, and this lack of competition is only to the detriment of the citizen. *Recommendations:* (1) Continuing and accelerating the process of decentralization, especially regarding its fiscal component; (2) The transfer of competences not only to local public administration bodies, but also to the private sector, as is provided by the framework-law regarding decentralization, with the purpose of creating alternative and competitive public services.

4.14. The method of spending public money

Public money is inefficiently spent in Romania, the route of the revenues obtained from taxes and charges is almost impossible to follow, and many "black holes" of the economy are permanently fueled by taxation. Emergency funds at the disposal of the Government are not always appropriately spent, probably also because of the large possibility of interpretation of the destination provided for these funds in the Law regarding public finances. There isn't enough responsibility in spending budgetary revenues even at the level of local authorities; for example, the salaries of locally elected representatives do not always reflect the actual amount of work, the existence of the position of deputy mayor if not always well-founded, especially in small communes etc. Among our *recommendations* in this matter, the following are listed: (1) Improving and specifying the legislation regarding public finances, in general, and local public finances, in particular; (2) Establishing wage grids for locally elected representatives, depending on the population count¹¹ and, perhaps, limited by a percentage to a share of the locality budget; (3) Concluding part-time work contracts for civil servants, in the cases in which the amount of work does not justify a full-time contract, or rewarding through compensation granted according to the amount of work performed (taking part in meetings, drawing up draft decisions etc.).

4.15. The citizens' involvement in the governance process

The citizens' involvement in the governance process is minimal; generally, it consists of the periodical exercise of the right to vote. Our *recommendations* are: (a) simplifying

¹¹ Such a legislative provision was adopted in Spain, where the remuneration of mayors and local offices depends on the managed population count, according to the following chart (source: <http://descentralizare.gov.md>):

Residents	Annual remuneration (max.)
Over 500,000	100,000 euro
From 300,001 up to 500,000	90,000 euro
From 150,001 up to 300,000	80,000 euro
From 75,001 up to 150,000	75,000 euro
From 50,001 up to 75,000	65,000 euro
From 20,001 up to 50,000	55,000 euro
From 10,001 up to 20,000	50,000 euro
From 5,001 up to 10,000	45,000 euro
From 1,000 up to 5,000	40,000 euro

the legislation regarding the organization of referendums and regarding the citizen legislative initiative; (b) the development of a proactive attitude of the administration, for the involvement of citizens in public consultations on issues of local/county/national interest; (c) drawing up and adopting a national strategy and programs of civic education.

4.16. The problem of regionalization

The administrative reform in Romania cannot be performed in contempt of the citizens. What would the regionalization imply for them, for example - solution considered by the current Government for countering the administrative-territorial fragmentation? Contrary to all principles of administrative decentralization, in the case of regionalization, the citizen should seek to solve his/her problems not at home, nearby, but in a region capital. Perhaps they would have to change their identity card, driver's license etc., to grant more time, money and energy to an administrative system that is already too bureaucratic, too expensive, too inefficient, too deaf to the needs of the average citizen.

We believe that the current territorial division of Romania is more than enough for accomplishing the projects of regional interest. In our country we do not need regions, but a legislation adapted to our times, which would allow, for example, flexible associations between counties, according to the model of Groups of local action, but that would not force them to artificially unite, contrary to the will of the citizens and in the detriment of their interests.¹²

REFERENCES

- Chiriac, L. & Szabo, Z., 2014. Legal and regulatory implications of successful implementation of the public policy of e-government in Romania. Reflections on the future and barriers. *Juridical Current*, 58(3).
- Dafflon, B., 2015. Swiss Fiscal Federalism: New Roads after the Reform of the Constitution. În: *Principles and Practices of Fiscal Autonomy, Experiences, Debates and Prospects, Federalism Studies*. Ashgate: Farnham UK.
- Dobrotă, G., 2010. Fiscalitatea directă în România și Uniunea Europeană. *Analele Universității „Constantin Brâncuși” din Târgu-Jiu, Seria Economie*, Issue 2, pp. 201-210.
- Forman, B., Minea, E., Ghiolțan, C. & Stănică, V., 2011. *Descentralizare. Dezvoltare urbană*. Available at: http://www.apubb.ro/wp-content/uploads/2011/03/Descentralizare_Dezvoltare_urbana.pdf
- Gorea, B., 2016. *Repere logice ale interpretării în drept*. București: Editura Academiei Române.
- Gorea, B., Nagy, O. V. & Toncean-Luieran, I. R., 2016. *Descentralizarea fiscală în România și Elveția. Studiu comparativ*. Available at: www.amper.ro
- Ionescu, C., 2008. *Drept constituțional comparat*. București: Editura C.H. Beck.
- Ionescu, C., 2008. *Tratat de drept constituțional contemporan*. București: Editura C.H. Beck.

¹² In the United Kingdom, for example, the Localism Act of 2011 introduces concepts such as the "duty to cooperate", according to which the neighboring local authorities have to work together on planning issues that reflect shared interests. There are taken into account bonuses that foster a greater intermunicipal cooperation (source: <http://descentralizare.gov.md>)

-
- Linder, W., 2010. *Swiss Democracy. Possible Solutions to Conflict in Multicultural Societies*. s.l.:Palgrave Macmillan.
- Muraru, I. & Tănăsescu, E., 2008. *Constituția României. Comentariu pe articole*. București: Editura C.H. Beck.
- Saharov, N. & Gorea, B., 2011. *Contencios administrativ*. Tîrgu-Mureș: Editura Zethus.
-
-
-