Conceptual Research on the Organization of Local Public Administration in Romania and Republic of Moldova

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Abstract

Local public administration plays a very important role for society. In theory, the contribution of local government activity, should help to create the welfare state through implemented social policies. In the scientific approach, we intend to explore in a comparative way the organization of local entities in Romania and Republic of Moldova. Along the same lines, we will analyse the legal provisions relating to the mayor as an executive authority. The importance of research is highlighted in the need to compare the legislation of Romania and Moldova, one as an European Union member state and another one as a state which want to join the big European family. After all, we will present a proposal to adapt certain articles of the law on local public entities in the Republic of Moldova, calling attention to the need to revise the legal framework in the spirit of European principles.

Key words: local administration, mayor, local council, public entities.
J.E.L. classification: K23, K31, R11.

1. Introduction

The local public administration is a structure designed to meet the inhabitants needs and interests. In order to be aware of its fundamental purpose, we begin the scientific approach by becoming aware of the essence of the notion of administration and the regulatory approach of the state, because administration cannot exist without a state organization. Otto Mayer believes that "the administration includes all the activity of the State which is neither law nor justice" (Mayer, 1934). Another theorist of the law believes that the administration is the most complicated activity of the State; it's omnipresent in society, in people's lives, and for these reasons there is a constant concern of decision-makers to make public administration a force in the interests of people" (Corbeanu, 1999).

When analysing the concept of administration in the literature, but also in the fundamental laws of two states, the laws of the local public administration of Romania and the Republic of Moldova, we identified a multitude of forms given by the theorists of the law. The usual forms used by researchers are concepts such as public authorities, legislative bodies, State bodies, legislative authorities, etc. (Farmer, 2020). Thus, the public administration is a type of administration exercised, on the basis of the executive bodies of the State, and differs, for example, from the private administration (in certain particular social groups, seeking the realization of particular interests, enterprises, etc.), which is also a kind of administration (Cobăneanu, 2007).

2. Literature Review

In order to identify the prerogatives of administration that are omnipresent in achieving the primary objective of governing, we must be aware of the link between administration and the organs of public authorities. Thus, the public authority constitutes an agency of the State or territorial section, acting in the regime of public authority, in order to capture a legitimate public concern (Law 554/2004). The analysis of the concept of public authority is more comprehensive from a quantitative point of view. The administration and public administration are concepts that must be analysed individually because we know that the administration includes a broader field of action.

Due to the territorial but also numerical dimension of the population, the State consists of several public authorities that achieve the primary objective, that is the leadership of the State in good faith, for the good development of social life, but also of the main prerogative - the good development of things under the law. Therefore, we distinguish the powers that perform the functions: legislative, executive and judicial.

Ioan Nicola defines the public authority or body of the State as the basic structural element and the separate organizational form of constitution and manifestation of public power composed of one or more persons and with the legal capacity to participate in its own name in the execution of tasks, specifically to the public power (Nicola, 2007). We therefore realise that the public authority is not a mere authority of prestige and strongly invested in the implementation of the proposed prerogatives. An authority is directly or indirectly by the State court, the political court, but also by the moral court: citizens. Similarly, we deduce from this notion that the public authority is at the disposal of the nation, a court created for all, which operates exclusively in the interests of the citizens.

We emphasize the main characteristic of the administration, that is, its organizational side, which implies the proper development of social relations following the executive of the State, we appreciate the existence in the administration of some formal functions, that is the role of leadership, coordination, orientation, control and practical application of the provisions of the law (Tabără, 2012).

The question How does the local administrative system affect social security? , requires not only a theoretical analysis, but also the operational nature of this process, which means identifying measurable ways to characterize the creation of the well-being of state citizens. Social welfare is the type of well-being that all members of a community must have a minimum of economic assets, which is considered to be decent and normal. The State as a whole, as well as the public administration at the municipal, county and city levels, as organizational forms of life and activities of its members, have a purpose which consists in ensuring the necessary conditions for coexistence, social, economic, cultural and other, on a continuous and permanent way (Manda, 1999).

To fulfil the primary obligation to ensure the general good for local communities, the local public administration has a set of rules, the most important being the quality of public services offered, since the public service is the means by which the administration operates (Muraru, 1995). That is why we are aware that the quality of public service influences the community, but also guarantees the well-being of citizens and the proper functioning of things in the community.

Thus, the administration of the State is carried out by the public authorities of the State, in order to satisfy public needs, and the multitude of services available to the nation are established only in the interest of the citizen and in order to ensure the proper administration of the State's affairs (Ongaro et al. 2018).

3. Research methodology

Several research methods are applied to achieve the proposed objectives. The documentation method is one of the most important for analysing basic concepts relating to management, local public administration and public services. We used this method to consult specific working documents, laws, articles, publications and databases. The scientific approach to research is based on the study of specialized literature and on the existing legal framework which refers to the mayor as executive authority of Republic of Moldova and Romania.

In this paper, we will introduce a proposal for a *de lege ferenda* with amendment of some articles of the Law of Local Public Administration of Moldova.

4. Findings

4.1. The Mayor as an Executive Body of Level I

The institution of the mayor was regulated for the first time in communal law, in 1864, during the dynasty of Alexandru Ioan Cuza. Since then, it has undergone natural change and reform according to the principles of democracy, but also the needs of administrative and territorial localities (Placek et. al., 2020).

Today, the establishment of the mayor is seen as the first level executive body of the local public administration. At the same time, it plays the role of state representative in relation to both individuals and legal entities, both in the country and abroad. The mayor is elected by universal suffrage, freely expressed by the citizens of the administrative-territorial unit in an equal, secret and direct manner. An authority must derive from the legitimacy of the State, as a modern form of organization of society (Munteanu, 2010). It is an authority of the State that exercises the function of public authority, in fact he is considered the head of the local public administration, and he is responsible for his actions. The scarf in the colours of the national flag is the mark of the Romanian mayor. The Mayor is obliged to take him to all kinds of solemn meetings: receptions, public ceremonies but also during the organization of a marriage. In doctrinal analysis, we have realized that the Moldovan legislator does not talk of a distinctive mark of the mayor.

In conformity with the laws of local public administration in both Romania and the Republic of Moldova, the mayor has a series of attributions by which the power of first local authority is realized.

The mayor would play an important role in the hierarchy of the management of local authorities being an executive body of the public administration. To make a quantitative analysis of the mayor's authority from the perspective of the local leadership, we must mention that this authority exercises and coordinates the executive power at the level of administrative-territorial unit. Their competence as community leader, city or village, is to solve the problems of the community. Ioan Santai defines the concept of mayor as a one-person, eligible, representative and autonomous local public administrative authority responsible for deciding matters of interest to the local community as an executing body, acting as a State agent in that city (Santai, 2011).

In addition to obtaining administrative-legal capacity, the mayor status as head of local public administration is obtained only after obtaining the necessary votes, but also his investment in the position that confirms the legality of the Central Electoral Commission, the mayor acquires the capacity to exercise but also to use all types of resources within the administrative-territorial authority to resolve local problems. The mayor is a person who carries out his duties in a manner that is in accordance with the principles of local self-government. It consists of "the right of the administrative-territorial units to satisfy their interests without interference by the central authorities, which implies that the autonomy of administrative decentralization is a right, and the decentralization a system that implies autonomy" (Manda, 2007).

In the Republic of Moldova, the law on local public administration defines the notion of mayor as an "representative authority of the population of the administrative-territorial and executive unit of the local council" (Law 436/2006). Being essentially invested to solve *erga omnes* all local problems, he is also the representative of the State as we have reiterated above, here we can conclude that he falls within the legal framework, but being subject to both dimensions: the State and the community from which he was elected.

The election of the mayor can take place in two rounds. Validation of the mayor's mandate is carried out by the judge of the territorial area where the administrative-territorial unit is based. In Romania, the result of the validation or nullity of the mayor's election will be notified to the prefect and shall be submitted to the Constituent Assembly of the local council or, as the case may be, at an extraordinary meeting convened by a judge appointed by the President (Santai, 2011). In the Republic of Moldova, the same procedure for the validation of the mandate by a judge, after which the outcome of the elections and the winner are made public by the press and then communicated to the provincial office of the State Chancellery. If the elections are declared invalid, a new vote will be held in accordance with the provisions of the electoral code.

The mayor is obliged to take an oath before the local councillors at a council meeting, it is the procedure to invest in the mayor's presidency. If the Mayor refuses to do so, he will be considered dismissed by law.

The mandate of the mayor begins, in accordance with the law, after its validation and until the confirmation of the mandate of a new mayor. We mention that, as in the case of local councillors, the mayor's mandate can be extended in emergency situations through an organic law in situations strictly underlined by the law: war or disaster.

In the theoretical sense, but also in the practice of local elections, we realize that its main objective is to promote and invest in people who have the capacity and spirit of organization and who work with other State institutions only for benefit of the citizens, resolving the community issues in which he has been invested.

It is essential to remember that the interests of the territorial unit and citizens must prevail, not political interests or more personal interests.

4.2. Proposal of *de lege ferenda* amendments to articles of the law of the local public administration of the Republic of Moldova

After the analysis of the Moldavian regulations on local public administration, and to promote the principle of eligibility, but also the accuracy of the administrative process in the local public administration, and referring to the need for a strict organization of the activity of civil servants, we realized the need to reformulate certain articles of the respective law.

The regulations on local public administration should support the efforts of integration and adaptation to the European Union's principles. Consequently we consider it indispensable to amend the following articles of the Moldavian Law on Local Public Administration:

a). Act No. 436 of 28 December 2006 on local public administration shall be amended as follows:

In Article 19(3), the phrase *vote of the majority of the members present* will be replaced by the phrase *the vote of the majority of elected councillors* thus the full text of paragraph 3 will be "*In the exercise of its powers, the local council shall take decisions by a majority of the elected councillors unless the law or regulations of the council require a greater number of votes. In the event of a tie, no decision shall be taken and the debate will resume at the next meeting*".

The corresponding amendment is imposed on the possibility of the permissive interpretation of article 19 of the aforementioned law, so that paragraph 2 of the same article mentions the meeting of the local council meeting is deliberative if the majority of elected councillors are present (Law 436/2006). These two paragraphs of the Act allow for a wide interpretation of the decisions of the local council with a limited number of councillors.

In this case, if we have a local council of 9 members, the majority elected is 5 members (which constitute the legal basis of the meeting to be deliberative) and decisions can be made by the present majority, which in this case is 3 members. Thus, the regulatory provisions analysed in this context show that the local council could take decisions with 3 out of 9 members, even if the same article mentions that the presence of councillors at council meetings is mandatory. This would favour decision-making that could easily be questioned, leading to denigration of the image of local authorities among members of the community. Or this is an important criterion for the credibility of the rule of law.

b). Act No. 436 of 28 December 2006 on local public administration shall be amended as follows:

Art. 19 paragraph 7 will be completed with the phrase *or by civil society in the territorial area where the local council operates* thus paragraph 7 will read as follows: "*Draft decisions are proposed by the councillors and/or the mayor, or by civil society in the territorial area where the local council operates*".

This change will enable civil society to participate actively in local governance, which is a prerequisite for governance and for the benefit of citizens. In its old form, the legislative text would not prohibit the participation of civil society, but it would create an impediment to community participation through self-government. Thus, in order to facilitate the activity of local council meetings, the citizens will be given the open possibility to propose draft decisions that will be

analysed in the council meetings by the participants, which implies the initiative and the desire to involve the members of the community but also their responsibility, in the context of participation in the legislative process through the local self-government. Or, in most cases, the citizen complaints and criticizes the activity of elected local officials who undermine the image of the rule of law, but also has a third attitude, even if the acts of the local council are compulsory.

c). Act No. 436 of 28 December 2006 on local public administration shall be amended as follows:

Article 26(3) will replace the phrase *Local council, at the proposal of the mayor* with the phrase *Mayor* it is therefore proposed to amend the article to read as follows: *The mayor decides to establish the position of deputy mayor and determines the number of Deputy Mayors who will assist him in the exercise of his duties*.

Based on the principle that the mayor is elected by the citizens, and has to fulfil some promises offered in the electoral campaign, and attributions conferred by law, we believe that his working apparatus, but above all the deputy mayors must be competent persons elected by the mayor without the participation of the local council. Here we reiterate that most of the time the local council elects vice mayors on a political basis, not in terms of activity and capacity. We believe that this legislative change opportune both for the proper organisation of the mayor's affairs, for the satisfaction of citizens and for the granting of their right of choice. We can realize that, being set up by the mayor, the deputy mayor automatically becomes the voice and desire of citizens of the territorial unit.

We believe that the amendments proposed in the regulations on local public administration in the Republic of Moldova are necessary and timely to achieve the principles of the law governing local authorities.

5. Conclusion

As a result of the analysis of the regulations governing the activity of local public administration, it can be concluded that it has become confusing and controversial, as it is filled with a large number of regulations concerning the formal attributions, obligations and responsibilities of elected local and public officials who are part of the staff of public authorities. These regulations are found in organic or ordinary laws, government or parliamentary decisions thus making it difficult to strictly comply with them. The above causes confusion in the implementation and promotion of the reform of local public administration, which leads to the degradation of the living standard of the community due to the lack of proper construction of the system. It therefore requires a qualitative analysis of existing rules, a systematisation of the regulatory framework in the field.

The powers of the mayor, the local councillor, at the level of the normative regulations are excessively many, although they have in the first phase they have a symbolic and declarative character, no real mechanism has been formed that leads to their exercise in good faith. With regard to the legal responsibility of elected local officials, both the sanctions and the enforcement procedure are very vague, fragmented and sometimes incomplete, making it difficult or even impossible to hold accountable. It can be summarized from the above that: certain elements of the legal status of local elected officials in general and especially the content of the mandate, their duties, needs and responsibilities are regulated by multiple legislative acts that overlap or contradict (because of the hierarchy of legislative acts) whose provisions are repeated or incomplete, this situation causes difficulties and confusion for those responsible for their application.

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