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THE LOCAL PUBLIC ADMINISTRATION IN THE REPUBLIC OF MOLDOVA

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THE LOCAL PUBLIC ADMINISTRATION IN THE REPUBLIC OF MOLDOVA

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Abstract:

The Republic of Moldova is currently undergoing a complex process of administrative reorganization, in accordance with the European principles of autonomy and subsidiarity. As part of the process there can be identified several stages whose content is defined by the degree of separation of the political power from the Soviet administration pattern. Moldova's transition from the rayonal administration system to one based on counties, only to return to the rayonal pattern, expresses the febrile attempts of a society which is trying to define its own identity in the midst of the democratization process. In the context of this process one cannot help noticing „the Moldavian paradox", namely the fact that there are no less than ten laws proclaiming autonomy and decentralization, while the administrative practice is rather centralist, non-autonomous due to the lack of political will in enforcing legislation and to the insufficient financial resources necessary to exert real autonomy.

Key-words:

administrative reorganization, separation of the political power, democratization process, public administration system

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The functioning principles of the public administration system

The public administration system encompasses the ensemble of institutions and people (career civil servants and politicians) that ensure the proper functioning of the state. In order to achieve its fundamental purpose – represented by the public good –, the administration system *provides public services and implements laws and other normative acts* which regulate the life of the community. The administrative bodies invested with public authority form an integrated system, within which there can be distinguished two levels: a) state administration (or central); b) local public administration (consisting of territorial-administrative units, according to the principles of autonomy, decentralization and local authority eligibility).

The local public administration system is defined as opposed to *the central administrative authority of the state,* starting from the idea that any local community (comprising all the inhabitants of a territorial-administrative unit) has specific problems and interests which it is entitled to manage autonomously. Nowadays *local autonomy* is a fundamental legal and political principle according to which democratic administrative institutions function, manifesting itself at the decision-making, organisational, financial and budgetary levels. But things have not always been as such. Until a few decades ago the state administration had priority over local authorities, the centralism and hierarchal subordination of the system placing the local authorities in the position of mere executants of the orders received from the capital city; later on, as a result of a long decentralization process, localism became a priority.

The administrative decentralization is the political and judicial process that was initiated during the last decades of the 20th century by all the democratic states with centralist tradition. The purpose of the process is to redefine the relation between central and local authorities by transferring the power of decision to the latter and by consolidating the autonomy of local communities. The process first took place under the form of *deconcentration*, followed afterwards by *territorial-administrative decentralization*.

The programmatic document that stimulated decentralization and the autonomy of the local communities in the European area was the *European Charter: the Autonomous Exercise of the Local Authority* (commonly called *the European Charter of Local Self-Government*), document adopted by the Council of Europe on October 15th, 1985. *The Charter* distinguishes

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between: basic local communities (communes, districts, departments) and regional communities. According to the same document, local autonomy is seen as a principle established by the Constitution or the laws of the member states. This principle gives the local authorities the right and the ability to solve and manage a substantial share of public affairs, within the law, under their own responsibility and in the interest of their population. The exercise of this right is conferred on councils and assemblies consisting of members elected by free, secret, equal and universal vote which can dispose of executive organs which are accountable to them. The Republic of Moldova ratified the *European Charter of Local Self-Government* on July 16th, 1997, but it came into force on the February 1st, 1998.

The optimal functioning of the administrative services is not achieved only by ensuring their proximity to the citizens or their democratic control, but also by complying with a series of principles regarding legality and effectiveness. The European Administrative Space therefore follows such guiding principles as: *reliability and predictability (legal certainty)*; *openness and transparency*; *responsibility*; *efficiency and effectiveness.*

In the Republic of Moldova, the principles according to which the local administrative authorities function can be found in the articles 109-113 of the Constitution as well as in the laws

regarding the decentralization, regionalization and the local public administration system.

Article 3 of Law no. *435 of 28.12.2006 on administrative decentralization*, stipulates the following principles: a) *the principle of local autonomy*, which implies safeguarding the right and the effective ability of the local public authorities to regulate and manage a substantial share of public affairs, within the limits of the law, under their own responsibility and in the interest of the population; b) *the principle of subsidiarity*, according to which public responsibilities must be exercised by the authorities which are closer to the citizens, with the exception of the cases where the intervention of the higher authorities presents obvious advantages resulting from the volume and the nature of the responsibilities and the necessity to ensure the effectiveness of the public action; c) *the principle of equity*, which implies guaranteeing equal conditions and opportunities to all local public authorities in order to achieve their objectives in carrying out their competencies; d) *the integrity of the competencies*: any competencies assigned to local public authorities must have a full and exclusive

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character and exercising it cannot be challenged or limited by another authority except for the cases provided by the law; e) *the principle of the correspondence between resources and competencies,* which implies the existence of a correspondence between the financial and material resources allocated to the local public authorities and the number and nature of the competencies which are assigned to them in order to ensure they can be effectively performed; f) *the principle of financial solidarity,* which refers to the financial support offered by the state to the more underdeveloped territorial-administrative units, especially by implementing equitable sharing financial mechanisms (reallocating existing resources from the state budget); g) *the principle of institutional dialogue,* according to which the state involves the local public authorities, through their associative structures, in the planning and decision-making processes by informing and consulting them in due time with respect to any issue that regards them directly or is connected to the administrative decentralization process; h) *the principle of public-private, public-public and public-civil partnerships*, which implies ensuring real cooperation opportunities between the government, the local authorities, the private sector and the civil society; i*) the principle of the responsibility exercised by local public authorities*, according to which the local authorities are required, within the limits of their competencies, to achieve the minimum quality standards established by the law in the process of providing the public services and public utilities they are responsible for.

The above mentioned principles are complemented by the ones provided in article 3 of *Law on Local Public Administration no. 436 from December 28th, 2006*:"(1) Public administration in territorial-administrative units shall be based on the principles of local autonomy, decentralization of public services, eligibility of the local public authorities and consultation of the citizens on local issues of particular interest. (2) Local public administration authorities shall benefit from decision-making, organizational, administrative and financial autonomy; they shall have the right to initiative in the administration of local public affairs and shall exercise authority, under the terms of the law, within their established territorial-administrative limits. (3) The application of the principles outlined by the present article shall not impair the unitary and indivisible character of the state."

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Moldovan administration, from the medieval to the post-soviet era

The organization of the local administration on the territory of the present Republic of Moldova has historically evolved according to its affiliation to various state structures (from the medieval Voivodate of Moldavia, to the Tsarist Empire, then the Kingdom of Romania, the Soviet Union, up to the independent state created after the dissolution of the USSR).

During the feudal period, the territory of Moldavia was divided into counties, towns and communes. The counties were ruled by chief magistrates who were also in charge of the military leadership of the garrisons that existed in the citadels. The towns were governed, on the one hand, by a representative of the Ruler, called Vornic or Ureadnic; on the other hand, they were also ruled by a council made up of twelve pârgari and presided over by a Şoltuz. The town council was subordinated to the Vornic who expressed the will of the Ruler. The administration representatives of the feudal era were not paid public servants; their incomes resulted from discretionary tax payment, from collecting part of the fines imposed or from occasional payments made by common people in exchange for solving certain issues.

In the modern era, the evolution of the territory between the Prut and the Dniester was marked by the consequences of the Russo-Turkish Treaty of Bucharest (1812), whereby a significant part of the Moldavian Principality was ceded by the Ottomans to the Tsarist Empire despite the fact they did not have the right. By signing the treaty, the Ottomans also relinquished other territories they possessed: the Hotin raia and the historical Bessarabia (Bugeac county, as the Turkish used to call it). The Russians gave this entire territory the name of Bessarabia in order to give it an identity by virtue of which they could subsequently claim other possessions (belonging to the Basarab dynasty) from the Romanian Principalities. The region occupied by the Russians had until 1828 the status of a relatively autonomous province, preserving the county as pattern of organization and the Moldovan traditional customs/orderliness, despite the high degree of authority exercised by the General Governor of Novorosia and Bessarabia. The administrative regulation approved by the Tsar in August 1812 (*Regulation on Introducing the Provisional Administration in the Oblast of Bessarabia*) was replaced in 1817 by a provisional law: *Primary Organizational Law for the Oblast of Bessarabia*

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(*Regulations on Establishing the Region of Bessarabia*). The „provisional" system existed for a rather extended period of time, up to 1828. Its existence made possible the removal of more and more autonomous elements, thus preparing the province for the introduction of the gubernia as administrative unit. *The Institute for the Administration of the Region of Bessarabia* – the new administrative act signed by the Tsar on February 2nd, 1828 – brought to an end the russification process, inclusively at the level of the official language used by the administration system. On October 28th, 1873 Bessarabia was transformed into a gubernia, a status it maintained until the end of 1917, when the Tsarist Empire fell apart as a result of the Bolshevik[2] Revolution. Against this background, on January 28th, 1918, the National Council convened at Chişinău proclaimed the independence of Bessarabia as the Moldovan Democratic Republic. In December 1917, the government in Chişinău had required and obtained the support of Romanian troops in the process of liberating the territories from the occupation of the Russian army units which were retreating (and on a spontaneous plunder campaign) as a result of the Peace Treaty of Brest-Litovsk.

On March 27th, 1918, shortly after removing the threat represented by the disorganized Russian troops and the Bolshevik attacks, the National Council decided in favour of a union with the Kingdom of Romania. As part of the new state configuration, the Moldovan territory kept the name of Bessarabia but was reorganized in territorial units named counties. The Administrative Unification Law (no. 95 from June 13th, 1925) eliminated the Russian-type structures from Bessarabia (as well as the Austrian and Austro-Hungarian-type structures from Bukovina and Transylvania). The kingdom was divided into counties, which consisted of rural and urban communes. The counties were divided into smaller subunits called *plăşi* (which included several communes) and the urban communes into sectors – the *plăşi* and the sectors lacked legal status. The deliberative local authority of the communes and the counties was the County Council which was made up of elected councillors (and in addition women who were also co-opted as councillors - mandatorily in the county capital and optionally in the other councils). The mayor was the head of the communal administration and the prefect ruled over the

[2] A detailed analysis of the evolution of the public administration system in Bessarabia during the period of the Tsarist Empire occupation was achieved by Ştefan Purici, in his book *The History of Bessarabia* (Semne Pulishing House, Bucharest, 2011).

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county administration, as part of a centralist system. The centralizing tendency of the administration system would be even further emphasized by the Administration Law enacted in 1938, during the royal dictatorship. The normative act added *the land* to the already existing administrative units; the representative of the government in the land was the Royal resident.

The Soviet occupation in 1940 and the establishment of the Moldovan Social Socialist Republic were followed by the territorial reorganization into rayons. From the level of the commune and the rayon, to the one of the state, the management of the administration system was attributed to the so-called „deputy soviets" – which were formally introduced as democratic institutions elected by the people; in reality they were governance tools of the Communist Party.

In 1991 the newly gained independence reopened the discussion on the territorial-administrative organization and the public authorities' organization, opinions on this issue being divided between the pro-Soviet, the pro-Romanian and the European visions.

The post-Soviet normative acts from this area have been elaborated under the form of „packages" of laws supplemented with government decisions which regulated their implementation. The normative process has known three important stages, in 1994, 1998 and 2006 (the latter being continued by the laws enacted in 2009, 2010 and 2012). The Moldovan specialists in administrative law, as for example Victor Popa, Igor Munteanu and Victor Mocanu[3], also operate additional divisions into periods. They sustain the existence of a *first period* (1990-1994) of transition from the Soviet era to the full independence of the Moldovan State endowed with a democratic constitution. According to the cited authors, the *second stage* lasted from the moment the Constitution was adopted (July 29th, 1994) until December 1998, when the new laws regarding the territorial-administrative organization and the local public administration were enacted (laws which made possible a more consistent application of the European principles of autonomy). *The third stage* is opened by the administrative laws from 1998 under which the Soviet system of territorial organization into 40 rayons was relinquished in favour of the ten-county pattern (to which Chişinău and the Autonomous Territorial Unit of Gagauzia – the former Taraclia rayon with a population

[3] Victor Popa, Igor Munteanu and Victor Mocanu, *From Centralism to Decentralization*, Cartier Publishing House, Chişinău, 1998.

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of approximately 44.000 inhabitants - were added). The fourth stage (which occurred after the paper of the cited authors had been published) begins in 2001 with the return to the rayon system decided by the Law on the territorial-administrative organization of the Republic of Moldova, no. 764 from December 27th, 2001. Onto the new territorial structure, the administration system undergoes a modernization process in the direction of decentralization, initiated by the three laws elaborated in 2006 on decentralization, regional development and local public administration.

Mihail Platon also describes the evolution of the Moldovan administration system starting from the moment independence was proclaimed (1991). In his opinion, during the 1991-1994 period, „the efforts of implementing the administrative reform had an ad-hoc character, aiming merely to adjust the old system to the new Moldovan political, economic and social relations. Thus, the reform process took into consideration the operational aspects and not the strategic ones. Although the subjects of the reform perfectly understood the necessity of giving up the old administrative system, the regulations and methods of administration suffered only superficial changes. Public authorities were especially preoccupied with the provision of public services of vital importance, such as communal services, education and public health"[4]. Such a situation can be explained by the fact that the authorities of the time were undergoing a process of adaptation to the real mechanisms of the central and local government in a period when the Communist Party – the *de facto* power holder during the Soviet era- had been banned. The new authorities had great difficulties in reforming due to fact that within the hyper-centralized system they had inherited the government managed all the administrative details and not only the major directions of public policies. In addition, they lacked the necessary financial resources, the expertise, not to mention the political determination to change.

The second stage of the administration reform identified by M. Platon took place from 1994 to 1997. The body of laws issued during this period established the premises of the new administration system. Then, during the third stage (1998-2002), all efforts were channelled towards the goal of improving the functioning of the public administration system. Among the events that took place during this period mention must be made of the Referendum in May 1999 (which took place at the same time

[4] Mihail Platon, *State Leadership. Problems, searches, solutions*,"Universul" Publishing House, Chişinău, 2009, p. 153.

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as the local elections), under which the population of the Moldovan Republic (with a voter turnout of 58,3%) voted in favour of the administrative reorganization under the form of counties and prefectures. The conclusion drawn by the mentioned author was that none of the three stages that marked the evolution of Moldovan administration was successful. In 2001 in particular, due to the fact that the Parliament was dominated by the Communists, some counter-reforms were passed that had negative effects on the administration system: „First, in June 2001 the Parliament adopted an Amendment to the Law of Public Administration which annulled the authority of the local councils over the local budgets. As a consequence, although local budgets were approved by local councils, they were administered by the county prefects appointed by the central government. At the same, time the Parliament amended the Election Code, stipulating that the Mayors would be elected by the local councils. As a response to the pressures exercised by the Constitutional Court and The European Council, the Parliament reintroduced the amendment regarding the direct election of the mayors. In December 2001, at the initiative of the communist faction, the Parliament passed the Law regarding the territorial-administrative organization of the Republic of Moldova by which the former organization system"[5],"- based on rayons – „was reinstated." The amendment adopted by the Communist majority diverged The Republic of Moldova from the pro-European evolutionary pathway it had been following, distancing it from the regionalization strategies. In order to consolidate this tendency, the legislature adopted a new law on Local Public Administration, Law no. 123 from March 18th, 2003.

In our opinion, a synthetic analysis of the local administration phenomenon in the Republic of Moldova is subsumed to a socio-political history/account regarding the ability of the people who were socialized under the Soviet regime to give up the central authoritarian paradigms in order to accommodate some new democratic concepts and practices based on civic freedom and the principle of subsidiarity. At the same time there can be identified five key periods in the evolution of the judicial system and of the political mentality: a) the first period finishes after the enactment of the following laws: Law no. 306 from December 7th, 1994 regarding the territorial-administrative organization of the Republic of Moldova; Law no. 310 from 07.12.1994 regarding the local public

[5] *Ibidem*, p. 292.

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administration system; b) the second legislative period includes Law no. 186-XIV of the Republic of Moldova from November 6th, 1998 regarding the local public administration system, normative act which abolished the territorial unit of the rayon and established the one of the county; c) the third period consists of an act considered by most jurists „an administrative counter-reform", namely Law no. 764 from December 27th, 2001 regarding the territorial-administration system of the Republic of Moldova; the respective normative act abolished the counties and reinstated the administration system based on rayons; in March 2003 the new law on local administration was issued; d) the fourth period includes the package of laws approved in 2006, completed by the normative acts issued in 2010: Law no. 435 from December 28th, 2006 on administrative decentralization; Law no. 436 from December 28th, 2006 on the local public administration system; Law no 438 from December 28th, 2006, regarding regional development in the Republic of Moldova; Law no. 845 from December 18th, 2009, regarding the territorial offices of the State Chancellery; The Government Decision no. 608 from July 5th, 2010, regarding the implementation of some provisions stipulated by Law no. 435-XVI from December 28th, 2006, regarding administrative decentralization; e) the fifth legislative period opened the way to possible democratic consolidation processes in the field of the local public administration system, according to Law no. 68 from April 5th, 2012, regarding the approval of the National decentralization strategy and of the Action plan on the implementation of the National decentralization strategy for the 2012-2015 period.

The evolution of the local administration system during the period 1990-1994

After proclaiming independence from the USSR, the Moldovan Parliament established a Permanent Commission of local self-governing and local economy. Considering the factual situation created by the *Law on the foundation of local self-government* (adopted on July 10th, 1991) and noticing the conservatory/anti-reformatory general trend, the Commission established working groups with the purpose of elaborating law projects in the field of administration in accordance with the evolution of post-communist European countries: one of the projects aimed at territorial reorganization of the country, respectively the transition from 40 rayons to 7-9 counties; another project referred to the structure and

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responsibilities of the local public administration system, according to the principles of the European Charter on Local Self-Government; the third legislative project aimed at regulating the election process for the local communities according to the model already existing in the consolidated democracies of the West. Due to the opposition of the deputies who represented the political party "The life of the village" (the future Democratic Agrarian Party), the Parliament did not include the respective projects on its agenda. In February 1994 the Parliament was dissolved so that early elections could be held and the deep administrative reform was put on hold for another four years.

Though dense and confuse, the legislation issued in 1994 regulated the following general principles on the establishment and functioning of the local administration system: local autonomy, decentralization of public services, eligibility of the local public administration authorities and the consultation of the citizens on matters of particular public interest (local referendum).

As for the administrative division of the country, the smallest territorial unit defined by the law was the *village*. Two or more villages could form a *commune*; the chief village gave the name to the commune. The following administrative echelon was *the town*; the towns of Chişinău (the capital of the Republic), Bălţi, Bender and Tiraspol had the status of municipalities. *The rayon* was the territorial-administrative unit consisting of several villages (communes) and cities, unified by territory, economic, social and cultural relations. The law also established territorial-administrative units with special status (Găgăuzia) with the purpose of preserving the national identity of a population.

Although professing local autonomy, decentralisation and eligibility of the authorities, the 1994 legislation kept the centralised hierarchic spirit of the soviet period. Thus, Article 6 of the Administration Law (no. 310/1994), autonomy was "tempered down" by imposing a two-levelled administrative system: firstly, there were the deliberative and the executive authorities in villages (communes) and towns (councils and town halls, respectively) and secondly, there were rayon and municipal councils (as deliberative authorities), with presidents of executive rayon committees and mayors of municipal towns as executive authorities. Rayon and municipal councils coordinated the activity of rural (communal) and urban authorities, with certain allowed competence delegating from the former to the latter.

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Article 18 of the Administration Law stipulated that mayors of municipal towns and presidents of rayon executive committees were to be elected by municipal and rayon councils, respectively, from among councillors, upon governmental proposal and were to be further confirmed by the President of the Republic. Should there have been two denied nominations, it was upon the President of the Republic to appoint mayors of municipalities or presidents of executive rayon committees. Thus, the local authority eligibility principle was impaired, as it was restricted merely to urban areas. Nevertheless, there existed the possibility of central executives interfering with the election of mayors in communes and towns: if local mayor elections were invalidated (by the territorial judicial court) twice, consecutively, the President could appoint the mayor. In the time period between the local elections in 1995 and 1999, respectively, such regulations made it possible for as many as 92 local communities (namely, 10% of all communities in the Republic) to have centrally-appointed administrations, instead of democratically-elected ones.

Article 44 of the Administration Law stipulated that mayors were local councillors as well, which made the separation of deliberative and executive authorities not possible. The same article in the law defined mayors as heads of local administrations, thus placing them above the deliberative authority.

Article 45 stipulated that mayors were "official territorial representatives of the executive authority", namely presidential representatives having administrative tutelage attributes. It was completely inadequate for the local executive power to exert such attributes. An authority vested with the right of carrying into effect its duties based on local autonomy couldn't be, concurrently, a state administrative tutelage authority, virtually over its own actions.

Article 55 of the above-mentioned law stipulated that mayors could be revoked "upon request from one third of the constituents, from the local council *or from the hierarchically superior council"*. Article 57 stated that mayors and rayon executive committees could present their resignations to the President of the Republic. Dismissal and resignation regulations proved that the administrative system was centrally-designed, without fully acknowledging local autonomy. Furthermore, regulations diverging from the spirit of the Constitution and from the principles to which the Republic of Moldova had adhered by ratifying certain

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international treaties (such as the *European Charter of Local Self-Government*) were abrogated by the Constitutional Court.

The 1998 administrative organization – relinquishing rayons

The Moldovan Law no. 186-XIV from November 6th,1998 regarding local public administration introduced certain novelties regarding territorial organization, as well as public authorities operating in administrative-territorial units. Thus, the law introduced the *county* as a territorial unit, replacing the rayon. The county had a Council elected by universal suffrage, which, in its turn, elected a president and a vice-president, from among the councillors.

The Government appointed a prefect for every county, who was further confirmed by the President of the Republic. The prefect was head of the deconcentrated public services and exerted administrative tutelage (verifying the validity of actions in the case of local authorities). The mandate of a prefect was similar in length to that of the government he was appointed by.

According to the new legislation, the county and local councillors decreased significantly in number. For instance, whereas under the 1994 Administration Law a locality of over 100,000 inhabitants had 39 councillors, the 1998 law provided merely 35 councillors for a locality exceeding 500,000 inhabitants. In the case of the Municipal Council of Chişinău the number of councillors was also reduced from 57 to merely 35. For a rayon having a population of 80,000 to 100,000 inhabitants 35 councillors would be elected. The number corresponded, according to the new law, to counties of over 500,000 inhabitants. A new element regarding population representation was the so-called "village delegate", elected by the voting-age population in villages which, following local elections, did not have any councillors. The village delegate represented the interests of his/her own village in the commune council. In the municipality of Chişinău (the capital of the Republic), the executive authority was called *Mayor-General*. All the above-mentioned stipulations (except for those regarding the village delegate) made the local administration in the Republic of Moldova rather similar to that of Romania.

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The 2001 administrative-territorial organization

Following a short county-based administrative experience, *Law no. 764 from December 27th, 2001 regarding the administrative-territorial organization of the Republic of Moldova* reinstated the rayon system. Under the new law, the Government was obliged to create liquidation commissions to eliminate counties, prefectures and other county authorities, in order to instate rayons and the corresponding authorities. During the 2003 elections, the citizens of Moldova would once again elect rayon authorities. The above-mentioned territorial organization law also made provisions for the localities left of the Dniester. They were awarded special forms and conditions of autonomy.

Article 2 of *Law no. 764 from December 27th, 2001, regarding the administrative-territorial organization of the Republic of Moldova* (which was modified by *Law no. -XIX from March 17th, 2011*) stipulated the following: "Dividing the territory of the country into administrative-territorial units is meant to guarantee the implementation of certain principles: local autonomy, public service decentralization, local public administration eligibility, ensuring citizen access to governmental authorities and consulting citizens in local matters of special interest".

The administrative-territorial organization of the country included two levels: rural areas (villages and communes) and urban areas (towns and municipal towns) at the first level and rayons, the municipality of Chişinău, as well as the Autonomous Territorial Unit of Găgăuzia, at the second level (Article 4, Paragraph 4).

Article 5 of the above-mentioned law defined rural units: the village and the commune. The village was an administrative-territorial unit comprising the rural population connected by territory, geographical conditions, economic, social and cultural relations, customs and traditions. Two or more villages could join to form a single administrative-territorial unit, called a commune. The village where the village (communal) councils were situated was called a chief-village. The commune bore the same name as the chief-village. A proper administrative-territorial unit could establish itself if it had over 1500 inhabitants and the financial means necessary to support the administrative apparatus. The Parliament could grant derogations from this regulation, by organic laws.

Article 6 defined the urban unit, as an administrative-territorial unit superior to the village (economically, socially and culturally), comprising the urban population, having proper urban household,

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industrial and commercial structures. Its population was employed mainly in the industrial or public service sectors or in various intellectually-centred fields, or was culturally or politically engaged. According to the law, certain towns could be upgraded to municipalities. Article 7 stipulated that a municipality was an urban-type locality having significant economic, social, cultural, scientific, political and administrative roles within the country, important industrial, commercial structures and educational, health care and cultural establishments. A municipal status was ascribed to the following localities: Chişinău, Bălţi, Bender, Comrat and Tiraspol. The municipality of Chişinău comprised administrative-territorial units called sectors, towns and villages (communes).

Article 10 brought under the regulation the rayon, which was defined as an administrative-territorial unit comprising villages (communes) and towns, connected by territory, economic, social and cultural relations. The town where the rayonal council was situated was called the chief town. The rayon and the chief town bore similar names. The Republic of Moldova was divided into 32 rayons.

Article 11 defined several particular types of localities: balneoclimateric resorts, railway junctions, historical centres, cultural centres. Such statuses were granted by government decision.

Articles 15 and 16 referred to the Autonomous Territorial Unit of Găgăuzia (comprising 32 localities, among which one municipality and two towns) and to the localities left of the river Dniester, respectively. The latter comprised 147 localities, including one municipality and 9 towns and could be ascribed particular forms and conditions of autonomy.

All administrative-territorial units in the Republic of Moldova had legal status and held their own property. They were organised according to statutes drawn after frame-statutes approved by Parliament and adopted by local councils. The status of the capital (Chişinău) and of the special-regime autonomous regions was established by organic laws.

The 2006 legislative package - judicial basis for the present local administration system in the Republic of Moldova

Following the return to rayons, the Moldovan Parliament passed a new legislative package regarding public administration. Its foundations were laid in 2006 and it was amended in 2009 and 2010.

Law no. 436 from December 28th, 2006, regarding public local administration established that administrative-territorial units were led by

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both deliberative and executive authorities. Local councils of communes, towns and municipalities and rayonal councils were deliberative authorities, whereas mayors and rayon presidents were executive authorities. All local administration authorities were elected by universal suffrage, with the exception of rayon presidents.

Article 6 established the relations among administrative authorities. It stipulated as follows: (1) Local and rayon councils, mayors and rayon presidents operated as autonomous administrative authorities, resolving public issues in villages (communes), towns (municipalities) and rayons, in compliance with the law. (2) Relations between central and local authorities were based on principles of autonomy, legality, transparency and collaboration in solving joint matters. (3) There were no subordinating relations either between central and local authorities or first and second-level local authorities, except for cases stipulated by the law. (4) Any type of administrative control exerted upon local public authorities' actions (by territorial offices of the State Chancellery – A/N) had to have a sole purpose - ensuring abidance of law and constitutional principles, and targeted inspections could only aim at evaluating the way in which ascribed competences were carried into effect, in compliance with the law. (5) Central public administration authorities conferred with representative associations of local public administration authorities in what concerned local public administration matters.

Local councils comprised councillors, their number depending on the population size of the territorial-administrative unit (from 9 for communes of maximum 1500 inhabitants to 43 for localities of over 200,000). The municipal council of Chişinău had 51 councillors, and its sectors had the following numerical structure: Botanica – 25, Buiucani – 23, Centru – 23, Ciocana – 23, Râşcani – 25.

The mandates of local councils (four years in length) were established by the Election Code. The former could be extended by organic laws, only in cases of wars or catastrophes. Ordinary council sessions (except for the council formation session) were summoned by mayors, every three months. Extraordinary sessions could be summoned upon necessity, their agendas being proposed by mayors/vice-mayors or by one-third of the total number of councillors. There also were *immediate meetings* of councils, in emergency situations. All sessions were public. They were legally held and deliberative if a simple majority of elected

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councillors attended. Each session had a president, elected by the councillors and the president was assisted by a council secretary.

The local council attributes covered all economic and social aspects in the community, from excises and taxes to local budgets, from local public services to territory arrangement and local community property management (putting into administration, tenanting, leasing, and selling). Also, council attributes included: maintaining local infrastructure and housing stock, establishing public institutions and locally-oriented businesses (as well as their operating regimes), public order, fire and civil protection services, the town hall organization charts and pay plans, co-partnerships etc.; local councils elected and dismissed vice-mayors, upon proposal from mayors, appointed council secretaries (following competitive examinations) and they could also modify, suspend or terminate their contracts.

While acting upon their responsibilities, councils gave decisions. Ordinarily, decisions were adopted by majority votes of councillors present. Decisions related to budgets, local community property management, establishing local excise and tax rates, local development planning, territory arrangement and co-partnership with other councils or public (including foreign) institutions were made by majority vote of elected councillors. Decisions to initiate mayor revocation procedures were made by two-thirds voting majority of local councillors. Council decisions were signed by session presidents or by other designated councillors and countersigned by council secretaries. The latter could refuse to countersign decisions which they considered illegal and could request re-examinations. Secretaries remitted decisions they thought illegal to the councils, mayors or to territorial offices of the State Chancellery, accordingly (within five days of signing). Mayors could send decisions which were thought illegal to territorial offices of the State Chancellery or bring them before administrative courts.

Dissolution of councils was stipulated in Article 25 of the Public Local Administration Law. Anticipatory dissolution occurred under the following conditions: a) Councils repeatedly gave decisions, upon the same matter, which were annulled by administrative courts, by definitive judgements, for severely breeching constitutional stipulations or effectual legislation; b) Councillors were reduced numerically to less than half the legal number; c) Councils did not give any decisions for a period of six consecutive months, regardless of session numbers. In the a) situation

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mentioned above, the territorial offices of the State Chancellery or, according to case, the mayors or the Government were entitled to initiate court proceedings in order for local council dissolution circumstances to be established. Rightful dissolutions of councils in cases b) and c) were found upon by mayors and written notifications were issued, no later than ten days of the dissolution dates, to the Central Election Commission, which set the date for new local elections. The Parliament dissolved local councils, upon justified request from mayors or the Government, based on a definitive court judgement finding upon the circumstances which justify dissolutions. The date of the new council elections was set by the Central Election Commission, in compliance with the Election Code provisions. Until new councils were established, current issues of the administrative-territorial unit were to be solved by mayors.

The 2006 legislation preserved the village delegate institution (also present in the 1998 Administration Law). Delegates were elected (with mandates equal to those of local councils) in villages which did not have any councillors following local elections. Elections occurred by majority vote of citizens present at village general assemblies; the assemblies were legal if attended by at least one third of the voting age citizens, in the presence of mayors or vice-mayors.

Mayors locally represented the executive authority and their statutes were regulated by articles 26 to 34 in the Local Administration Law, as well as by *Law no. 768 from February 2nd, 2000 regarding local electee statute*. Mayors were heads of public local administrations. They attended local council sessions and were entitled to give opinions on all matters under debate. The municipality of Chişinău had one general mayor and sector mayors. In exerting their attributes, mayors were supported by vice-mayors (up to four, as was the case of Chişinău). Vice-mayors were elected by local councils, upon proposal by mayors; vice-mayor positions ware not incompatible with those of councillors. Mayors traced down responsibilities for vice-mayors.

Territorial courts confirmed election lawfulness and validated mandates in the case of mayors, then territorial offices of the State Chancellery were informed and judges presented the facts during the next local council session or, as the case may be, during an extraordinary session. In case of invalidation, new elections were organized.

Mayor suspension from office was regulated in Article 33 of Law no. 436/2006. It could be decided solely by courts, in case mayors were

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taken to court for committing certain crimes (suspensions were effective until cases had definitive solutions and organizing new elections was not accepted throughout the period). Organizing new mayor elections was not accepted for the entire suspension period. If mayors were acquitted or their cases were closed (except for amnesty situations), suspended mayors were entitled to compensations, in compliance with the law, for the damage suffered as a result. Mayors were reinstated for the remaining period of their mandates. The same stipulations applied to vice-mayors.

Mayor mandates ceased ahead of term in cases as follow: a) office incompatibility; b) impossibility to carry out responsibility for longer than four consecutive months - medical reasons included; c) court convictions going into effect; d) revocation by local referendums, in compliance with the Election Code; e) resignation; f) death.

Article 29 stipulated the main attributes mayors had. Accordingly, mayors had to: carry into effect local council decisions; submit town hall and subordinated public services organisation charts, staffing tables, pay plans, initiate or terminate employments, plan budgets and act as main credit coordinators in the local community. Mayors were also responsible for taking inventory of and managing public domain property; they led and coordinated local public service actions, ensured the proper functioning of registry courts and tutelary authorities; they contributed to the proper functioning of public assistance and social services, granted permits and licences, made proposals to local councils regarding the organisation of local referendums; they represented local communities in their relations to other communities, institutions, before legal courts etc.; they presented annual reports to local councils regarding the state of local communities and ensured intervention in emergency situations, in collaboration with other abilitated institutions.

Rayon councils were representative authorities of rayon inhabitants. Article 43 comprised their main attributes, which were rather similar to those of local councils. One particular attribute was the election of rayon presidents, from among councillors. Upon proposal from elected presidents, councils elected or, as the case may be, dismissed rayon vice-presidents. Councils appointed, following lawful competitive examinations, rayon council secretaries and leaders of subordinated institutions and divisions.

In the course of their four-year mandates, rayon councils held ordinary sessions (summoned by rayon presidents), once every three

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months, as well as extraordinary sessions (summoned by presidents or by one-third of councillors). Sessions proceeded under supervision from one councillor, assisted by the rayon secretary. The adopted decisions were signed by session presidents and countersigned by secretaries.

Article 48 comprised the conditions under which rayon councils could be dissolved before mandate expiration: a) councils deliberately and repeatedly gave decisions, upon the same matter, which were annulled by administrative courts, by definitive judgements, for severely breeching constitutional stipulations or effectual legislation; b) councillors were reduced numerically to less than half the legal number, proportionally to the rayon population; c) Councils did not give any decisions for a period of six consecutive months, regardless of session numbers. In the a) situation mentioned above, territorial offices of the State Chancellery or the Government initiated court actions to find upon the circumstances justifying rayon council dissolution. Rightful dissolutions in situations like b) and c) mentioned above were found upon by rayon presidents and written notifications were sent, no later than within ten days of dissolution dates, to the Central Election Commission, which set the date for anticipated elections. The Parliament dissolved rayon councils, upon justified request from rayon presidents or the Government, based on a definitive court decision by which dissolution-justifying circumstances were found upon. Until new councils were established, it was the responsibility of rayon presidents to solve the current issues of the administrative-territorial unit.

Rayon presidents were elected by councillors, with majority votes of all elected councillors. In case proposed nominations were not supported by majority votes of elected councillors, a new session was summoned within eight days, to repeat voting. If there was still no nomination supported by a majority vote of elected councillors, one supplementary voting session would be organised within three days, following which the candidate receiving the largest number of votes became elected. A similar procedure applied to vice-presidents as well, who were nominated by presidents. The vice-president position was not incompatible with that of rayon councillor.

According to stipulations in Article 52, rayon presidents functioned as operative managers of public services functioning at rayon level. They were rayon representatives when relating to the Government or other central authorities, to natural and legal persons within the country

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or abroad, as well as before legal courts. Rayon presidents were public service coordinators within rayons and acted as presidents of commissions dealing with exceptional situations. Rayon presidents and vice-presidents were legally bound by the Law regarding local electee statute. Rayon vice-presidents carried out attributes assigned by rayon presidents and bore responsibility in compliance with the effectual legislation.

While acting as executive public authorities, (namely, carrying into effect council decisions), rayon presidents gave normative and individual decisions, within their fields of competence. In exerting attributes corresponding to their positions, rayon presidents were supported by specialised functional structures, called rayon presidential apparatuses.

Rayon presidents could be relieved from office by two-third majority votes from councillors, upon proposal from at least one third of the latter. Vice-presidents could be dismissed upon proposal from presidents or one-third of councillors, merely by a fifty percent plus one vote from all councillors.

Perspective public local administration development in the Republic of Moldova

The Monitoring Report regarding local and regional democracy in the Republic of Moldova, presented in Stockholm in February 2012, during the Local and Regional Powers Assembly, read: "*De jure*, local public authorities in the Republic of Moldova have formal autonomy, but *de facto* it is an autonomy limited, on the one hand, by interference from central public authorities in everyday actions of local authorities and, on the other hand, by the insufficient financial resources allocated. An additional explanation is a certain lack of clarity in ascribing competence and finance distribution"[6]. The report mentioned a "Moldovan paradox", consisting in as many as ten laws professing autonomy and decentralisation while the administration system was in practice rather a centralised one, lacking autonomy, apparently because of the absence of political will in enforcing legislation and because of insufficient financial resources necessary to exert real autonomy.

[6] *Local and regional democracy in the Republic of Moldova*, document presented before the Approval Monitoring Commission, during the Stockholm (Sweden) assembly, February 24th, 2012, in *Vocea autorităţilor locale,* informative bulletin for the Congress of Local Authorities in Moldova, no. 1/2012 www.calm.md

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The document elaborated by rapporteurs Francis Lec (France) and Ignacio Sanchez Amor (Spain) mentioned other functional faults in the Moldovan administration, which had not been corrected after the previous analysis and since the recommendations formulated in 2005. Among them, there was the unclear separation of competences between levels one and two of administrative-territorial units (namely, between communes and towns, on the one hand and rayons, on the other), which placed rayons in a superior position. Central authorities inadequately perceived consultations of local authorities in issuing normative acts concerning the latter, transforming consultations into purely formal matters. Personnel policies and town hall expenditure were established by the government; between 70 and 80% of local finances were represented by special payments, of which local communities couldn't dispose autonomously.

The situation noticed by the foreign rapporteurs was also acknowledged by the Chişinău government in Law no 68 from April 5th, 2012 regarding the approval of the National Decentralization Strategy and of the Action Plan on the implementation of the National Decentralization Strategy for the 2012-2015 period. Considering the realities of the period, the Government's Strategy proposed „the revision of the relations existing between the local institutions subordinated to the central authorities, on the one hand, and the elected local and rayonal public authorities, on the other hand. The reporting and legal control proceedings in relation to the higher levels of the administrative system must ensure a broader local autonomy, and also a legal and professional character to the local decisions and action. Achieving this aim requires a comprehensive reform in all areas of competence and responsibilities assigned to local public authorities. The strategy will also have to define these new forms of administrative accountability by amending approximately 40 normative acts that regulate the competencies of local public authorities. The Government strongly supports the elaboration and implementation of the present strategy in terms of human rights and gender equality. The purpose of these principles (participation, non-discrimination, transparency and accountability) is to improve the living conditions of the population by granting increased and equitable access to public services, to reinforce local democracy by means of intense local participation, transparency and accountability of the local administrative services and politics. Thus, by stimulating a development focused mainly

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on the people, the Strategy will bring about changes beneficial for all strata of society."[7]

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[7] Law no 68 from 05.04.2012 regarding the approval of the National decentralization strategy and of the Action plan on the implementation of the National decentralization strategy for the 2012-2015 period.

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stipulated by Law no. 435-XVI from December 28th, 2006, regarding administrative decentralization.

Law no. 68 from April 5th, 2012, regarding the approval of the National decentralization strategy and of the Action plan on the implementation of the National decentralization strategy for the 2012-2015 period.

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