Legal and ideological fundaments of administrative decentralization in post-communism

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Abstract:

The basic hypothesis of the research we are carrying out is that in post-communism the most important processes of reforming the administrative system are those in the area of decentralization. Initially seen as a "Western fashion", in the former socialist states, decentralization has proved to be the main means through which totalitarian institutional structures have been dislocated, through which mentalities have been changed and governmental processes have been streamlined at the level of local communities. In this ample process, we have identified two main components: a) the legal bases of decentralization; b) the ideological fundaments of decentralization (represented by the implementation of the principle of subsidiarity).

Keywords:

administrative bureaucracy, decentralization, post-communism, public administration, public servants

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The study of the legal and ideological fundaments of administrative decentralization in post-communism is based on the *theoretical premises* of the numerous studies that have emerged during the last two decades regarding the administrative-bureaucratic phenomenon, both in consolidated democracies (where stress is put on the relationship between the government and citizens and on the streamlining of the mechanisms set to reinforce public policies) and in the new democracies of East-Central Europe (that have to deal mainly with the issue of decentralizing and de-politicizing the administrative apparatus). The increasing number and the quality of the analyses in the field of administration (carried out by legal scientists or experts in political science and sociology) prove that the administrative reform is an essential challenge of the contemporary civilization.

The practical motivation of our research is related to the fact that, in post-communism, the changes taking place at the formal level of political-administrative establishments have frequently been emptied of content, on the one hand, due to the persistence of mentalities pertaining to the centralist state (dominated ideologically by the soviet-type socialism), and, on the other hand, due to the inconsistencies of the laws on government de-concentration and decentralization.

The development of the study on the *Legal and ideological fundaments of administrative decentralization in post-communism* is foreshadowed by several projects of legal and ideological documentation, summarized in the following lines.

1. The legal status and the political conditioning of public administration

Public administration is a phenomenon present throughout the entire history of politically organized human communities being related, at the same time, with the societal mechanisms used to synthesize legal regulations. Historical writings indicate separate administrative functions in all ancient cities and empires, in medieval kingdoms and in modern states; in all these there were people or even institutions responsible for political affairs. But administration with the current meaning of the term – as *the institutional system of the state, responsible for carrying out public policies* – emerged only in the modern era, along with the codification of public law (adoption of constitutions and legal codes). In modern times, two crucial historical processes in the area of civil governance and administration were completed: a) the depersonalization of administrative acts to the advantage of their institutionalization; b) the separation of administrative activities from other activities supposed by the management of large human communities. The first process brought stability and continuity to the state; the other gave identity to the governmental function among the other powers of the state.

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Modern public administration is not confused with the legislature (parliament), which sets the general rules of action in a society; it is not confused with the judiciary, whose intervention in the social game is related to the acknowledgement and punishment of deviations from legal regulations. Finally, administration is not identical with the executive function (Governmental), even if often enough the political language suggests such a situation. The main difference between the Executive (Government) and the administrative apparatus resides in the fact that the first sets the public policy priorities of a country while the administration carries out those policies. Another difference between the Government and the public administration results from the personnel employed by the two structures: the Government works with politicians who are propelled in office by political parties, through mechanisms specific to representative democracies; oppositely, the administration works with professional public servants, with no formal and explicit political affiliation, selected according to criteria of professional competency.

In the political and administrative exercise, the differences between the Government and public government are often blurred. Thus, in what regards the administration's status of mere "executor" of governmental policies, we note that the administrative system frequently tends and has the capacity to "reshape" public policies in the process of their implementation. In what regards the criteria of access to political and administrative positions there are also interferences. In any political regime, be it as democratic as possible, the leadership, objectives, opportunities and means of action of the administration cannot avoid political conditioning. For example, in what regards "top" leadership, the administration always has a leader appointed by political criteria and not necessarily by his/her competency in the field. Moreover, if every public servant is appointed after an open selection process, carried out according to well-defined and transparent rules and criteria of evaluation, the appointment of a minister is a political process, with mechanisms of negotiation and compromise. Also, the administration is subordinated to the political, not only at the level of people, but also as an operational principle of state authorities. Thus, depending on the political regime, the administration may be subordinated directly to the parliament (in assembly regimes) or to the Executive (in systems where the separation of powers is strongly emphasized). Last but not the least, the administration's objectives, opportunities and means of action are settled by the parliament that approves the budget and the laws pertaining to administration, by the Government that issues the methodological standards to enforce the laws.

The most common image in modern administrative law is that the role of administration consists of performing the functions and duties of the state, that is, "executing" the missions entrusted to it by the state power. But the functions and duties of the state, although they may be defined in a general manner (i.e. the anti-entropic function, of elimination of conflicts that risk

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destroying the social body; the function of authoritative distribution of values; the function of protecting the national community against outside aggressions, etc.) always take actual forms. They are dependent on the *political ideas* and *values* prevailing in a given state, by the *social structures* and *actors* supporting the dominant ideology (and, possibly, the alternative or opposing ideologies) and by the existing *constitutional system.* Hence, the accomplishment of administrative duties is subject to the political steering that is carried out, within the limits of the Constitution, by the Government in power.

To summarize the characteristics of public government, opposed to the predominantly political activities of other state authorities, Antonie Iorgovan arguments that: "public government may be defined as the totality of the activities carried out by the President of Romania, the Government, the autonomous central government authorities, the autonomous local government authorities, and, where appropriate, their subordinate structures, through which, under a public power regime, laws are enforced or, by law, public services are carried out. The following dominant notes may be detached from this definition: a) the activity carried out only by executive and administrative authorities that we call *public administration authorities*; b) the activity of enforcing the law (that also means adopting legal regulations that have a legal power inferior to the law) or, where appropriate, of organizing or actually providing public services; c) the activity carried out under a public power regime, that is, through the prerogatives granted by the Constitutions and laws that uphold the public (general) interest when it conflicts with the private interest"[*].

2. Public servants – actors of the decentralization process

Public servants are the people holding a public office based on a contract. The public office represents all the duties and responsibilities established according to the law in order for the local and central government to carry out public power prerogatives. In all contemporary democratic states, the activities carried out by this professional category are the following: a) to enforce the laws and other legal regulations; b) to prepare drafts of legal regulations and of other rules specific to the public authority or institution and to ensure their approval; c) to prepare drafts of policies and strategies, of programs, studies, analyses and statistics and also the documents regarding the implementation and enforcement of laws; d) counseling, controlling and public internal auditing; e) to manage human and financial resources; f) to collect budget debts; g) to represent the public authority's or institution's interests in its relationship with natural or legal persons of public or private law, domestic or

[*] Antonie Iorgovan, *Tratat de drept administrativ (Administrative Law Treatise)*, vol. I and II, Nemira Publishing House, Bucharest, 1996.

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foreign, within the framework of responsibilities set by the leader of the public authority or institution, and to represent the public authority or institution where he/she works in courts of law; h) to carry out activities according to the informatization strategy of the public government.

The principles underlying the exercise of public functions are: a) legality, impartiality and objectivity; b) transparency; c) efficiency and effectiveness; d) responsibility, according to legal provisions; e) citizen-oriented; f) stability in the exercise of the public office; g) hierarchical subordination.

The history of public servants coincides, to some extent, to the history of the state. However, we have talked about public servants as administration professionals for only two centuries. Thus, the administrative apparatus serving the modern state has aimed, since its beginning, to build itself a special status within the national community by virtue of its real or symbolic proximity to the political decision-making centers. This reflex of the administration and implicitly of the public servant body seems to have been formed, historically, as an extension of the difference between the servants of a religion (mainly Christianity) and the secular majority of society: the former – the priests and all the "maintenance" staff of the Church – had a sense of a privileged (or at least special) relationship with the supreme authority, whose actions and reasons they pretended to understand and that they hoped to persuade of their good faith; laymen had to wait for an ecclesiastical mediation of their relationship with God. It seems that the distinction between state servants and the civil society was born in the same way. On the one hand, public servants became "priests of the state cult", who had the privilege of knowing the obscure mechanisms of power; on the other hand, common people reached a situation of inevitable dependency on the public servants who, with great parsimony, revealed to them secret fragments of the "navigation" across legal restrictions, administrative routines and institutional customs. To a greater or lesser extent, the public servant "brings the state on earth", i.e. translates in the language of common people the ciphered messages of political authorities.

Such an intermediate position between the state and the civil society often impregnates the public servant with a specific behavior that is based on a mechanism of self-identity construction through the inclusion in a proximate genus named "state" or "bureaucracy" and through the separation (often "irritated") from the rest of the world, from "civilians". The sense of *caste* had by many public servants is suggestively analyzed in an essay by Horia-Roman Patapievici, who argues that the identity of the one serving the state "results immediately after having applied a set of simple rules, based on some affiliations and exclusions crucial to any primitive society (…). A representative of the State is anyone who can take advantage *in any way* of his/her membership to State structures. This class of citizens forms the *state apparatus caste*; it behaves as if it had rights, moral instincts, relationships with the law, social duties and *knowledge* that are different from those of other citizens. The citizens that do not enjoy

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such a privileged relationship with the State merely represent the remainder: that is, when appropriate, the *civil society*. Hence, for the *state apparatus caste* we are remnants, a result of exclusion. This is immediately visible when we look at the behavior of public servants. However low their place in the hierarchy, they feel that they serve a special tentacular institution, the State, and this is why their behavior, even when they are decent people in private, is paternalist, discretionary, distant, under the sign of separation and caste secrecy. Of course, here we find, woven in filigree, the type of the *Chekhovian public servant* as a *sui generis* operational social type"[*].

From what we have presented above, it seems that the administrative activities developed under the state's authority lead to a distinction between two categories of citizens: common citizens (submissive to the State under the "contractual" provisions of the Constitution) and the "state-citizens" (public servants). In other words, we would be dealing with the mass of clients that demand public services and the minority of service providers, with the remark that the latter, holding the monopole, can act discretionarily in relationship with their clients. However, if the temptation of discretionary behavior is wide-spread among public servants, it is counter-balanced by the legal and ethical regulations gathered, i.e. in Romania, in the Law on the Status of the Public Servant (Law no. 188/1999, amended and supplemented by Law no. 251/2006), in Law no. 544/2001 on the free access to information of public interest and in Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignities, public offices and in the business environment, prevention and punishment of corruption. These regulations try to contribute to a greater transparency of the administrative activities of the state and of local government, and to a greater "protection" of the citizen against the possible abuses of the power.

The laws that regulate the exercise of public functions in democratic regimes try to transform the public servant body from a blocking factor of decentralization processes, into a motivational factor for local initiatives, an incentive for the consolidation of sustainable development networks. Public servants marked by the authoritarian administrative practices of the old communist regime must pass through a difficult process of behavioral adjustment to the exigencies of democracy and of decisional transparency, a process to which many of them are still reluctant (because it undermines their privileged position).

[*] H.-R. Patapievici, *Politice (Politics)*, Humanitas Publishing House, Bucharest, 1996.

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3. Administrative bureaucracy and its place in the decentralization process

Theories about the state and power name *bureaucracy* the totality of public servants and of similar structures from privately-owned entities, the term being sometimes employed with a *technical and neutral meaning*, and sometimes with a *pejorative meaning*. Thus, **bureaucracy** may be seen as a permanent administration system, governed by stable regulations and served by professionals organized in a hierarchical structure, and pursuing the purpose to streamline and harmonize the functioning of society. On the contrary, the pejorative meaning points to the dysfunctions specific to burdensome, slow, inflexible administrative systems that are more interested in their own growth than in social efficiency; bureaucracy and bureaucrats are, from this point of view, obstacles to progress, harmful growths of a state that wants to dominate its citizens.

When it first emerged in the ancient Eastern empires, where it participated in organizing great community activities (such as, for example, sewerage and irrigation works, building defense walls, etc.), mobilizing the resources of society, transmitting and enforcing civil laws and religious values in the country, *bureaucracy* represented, together with the army, the tool through which the monarch's will was fulfilled. In ancient times, Europe also had bureaucratic systems that worked as "skeletons" of the state. The Roman Empire is a good example in this respect. During the middle age, along with the consolidation of the centralized kingdoms that rose from the ruins of the former empire, bureaucracy returned on the stage of history as a tool of political authority. Through it, absolute monarchies managed to control legally and economically the territories under their rule and to strengthen the unitary character of the state. After the French Revolution of 1789 and after the constitutional government system spread worldwide, bureaucracy was given the main role in the development of the rational modern state, even becoming one of its symbols.

If from a historical perspective bureaucracy was represented by the body of officials appointed in administrative offices to carry out the sovereign's wishes, the last century witnessed an extension of the term's meaning, correlated with an evolution of the bureaucratic phenomenon. Thus, not only in public administration, bureaucracy became the framework of almost all social activities: from industrial and financial corporations to scientific organizations, political parties, unions, etc. The political scientist David Beetham asked himself in this context: "What have in common the Vatican, General Motors, NASA and British Health Service? The sociology of organizations aims to answer this type of questions by exploring the most general features, common to organizations from all areas of modern societies (…). In doing so, it (sociology – a.n.) starts

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from Max Weber's works, one of the first thinkers who developed a generalizing theory of organizations, applicable to the entire modern society. Weber's answer to the question above would have been simple: they all are bureaucracies"[*].

In Weber's definition of bureaucracy, four defining features of modern administrative systems may be delineated: a) *hierarchy* (residing in the clear delimitation of functions, skills and responsibilities for each administrative agent, and in the control of duty accomplishment); b) *continuity* (in bureaucracy, an agent's office is seen as a permanent activity, paid and subject to promotion rules); c) *impersonality* (the administrators' activity is governed, in principle, by precise rules applicable to all the citizens, excluding the arbitrary and favoritism; the administrative activities of bureaucracy do not originate from the person holding the office but from the office itself); d) *expertise* (save public servants who are elected and who come from the political arena, the members of the bureaucratic apparatus are selected according to their merits and professional competency and then they register in a special training system for public service; bureaucrats have specific know-how on administrative procedures and have the capacity to apply general rules to particular cases). Bureaucratic mechanisms are, therefore, hierarchical structures with a continuous and impersonal activity that aim to put in force social, political and economic organizing strategies etc.

The analysis of the bureaucratic phenomenon may be carried out from a sociological, economic and political perspective. *Sociology* is interested in bureaucracy seen as a distinct social category or group, representative for the middle-class and at the same time different from capitalists and the working mass. The privileged situation and the power of bureaucracy within society are explained by the fact that this category has knowledge and authoritative roles in organizational hierarchies. Whether operating in democratic or authoritarian / dictatorial political regimes, bureaucracy in remarkable in that, without holding productive means (as their owner) and without supporting the classic "working class exploitation", it occupies a privileged position in society, a position that offers material advantages and a symbolical recognition from the community. In *economics*, "orthodox" theories make a fundamental distinction between bureaucratic and market principles. If the market area is fundamentally an area of competiveness, dynamism and freedom of choice, bureaucracy is seen as an area of monopoly, stagnation and constraint. Thus, a society is as developed as its fields of activity are governed more by the laws of the marked and less by the rules of bureaucracy. From the perspective of *political theory,* bureaucracy is related to governance, administration and democracy.

The Belgian sociologist Henri Janne believes that, in democratic systems, the government's mission is to draw up a general program, approved by parliamentary majority. From a sociological perspective, such a program does nothing but express, for a given period of time, the manner to maintain, to

[*] David Beetham, *Birocrația (Bureaucracy)*, CEU & Du Style Publishing House, Bucharest, 1998.

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restore or to improve social order in various sectors; and the tool used to accomplish this mission is the bureaucratic-type administration*.

Administrative bureaucracy cannot be reduced, however, to the state of tool of the executive; it is also a "social power" that represents a peculiar entity within the state. Modern administration, organized on bureaucratic bases, is a pluralist and decentralized power in democratic political systems while being highly hierarchical and centralized in totalitarian ones.

When it manages to replace the executive, administration becomes an autonomous bureaucracy, out of control and capable of undermining or blocking the political initiatives of the Government. To counteract such phenomena, the executive power (i.e. ministers) seeks to create impressive political cabinets (formed by so-called "advisers") that try to replace the activity of the administrative body or to closely control its movements.

The French sociologist Michel Crozier examines bureaucracy in relation to the ampler phenomenon of political power and to what we call *organization*. In his work *The bureaucratic phenomenon,* the French sociologist focuses on the functioning of great administrative and bureaucratic organizations and on the relationships of power developing within them. From this perspective, he reveals the dysfunctions and pathologies specific to a flexible and strategic pattern of power. Where Max Weber saw the rational accomplishment of modern society, the birth of a coherent and structured entity, Crozier highlights a form that is not rational at all, mechanical and closed, and is not governed by an infallible hierarchy; on the contrary, great bureaucratic organizations pass through multiple internal blockages and are influenced by exterior phenomena. Overall, the organization represents a mixture of "open games".

As for bureaucracy, "with the meaning given to it by the public (i.e. a climate of routine, rigidity, constraint and irresponsibility…), does not foreshadow the future – says Crozier – but it represents the paralyzing legacy of a past when a narrow and limited view on the means of cooperation between people was prevailing. In fact, no organization has been able and will ever be able to function as a machine. Its performance depends on the capacity of the human structure that it forms to coordinate its own activities in a rational manner. This capacity depends on the development of techniques, and on the manner in which people are able to play the game of cooperation"†. The new view on organizations and bureaucracy promoted by Crozier and Erhard Friedberg (in the work *L'Acteur et le Système*) reintroduces the idea of freedom in the sphere of political power. Within the structures of power, the actors play using and often avoiding rules. The power, the game and the rule are facets of the same phenomenon. In fact, the power of an actor is greater if he/she

* Henri Janne, *Le système social*, Éditions de l'Institut de Sociologie de l'Université Libre de Bruxelles, 1968.

† Michel Crozier, *Le Phénomène bureaucratique*, Éditions du Seuil, Paris, 1963.

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masters better the sources of uncertainty (i.e. access to information, relationships with the environment, calculation of theoretically absurd reactions etc.). Crozier's theory on power stresses the fact that the relationships within an organization (including within the administration or rather especially in it) are never strictly mechanical and explainable from a substantialist perspective. The classical scheme of domination/submission or of command/obedience should be reformed by the introduction of instable and less easily controllable variables, such as the actors' interest, the calculation regarding the efficiency of an obedience situation compared to a non obedience situation, rational or irrational defiance, the unforeseen and "pervert" effects of the political environment*.

Beyond the theoretical disputes related to the positive or negative role of bureaucracy, to its relationships with the political power, there are some conclusive features, masterly summarized by Max Weber, in the following terms: a) bureaucracy is formed by individual public servants who comply only with the duties of their position; b) presents a hierarchy of positions established in the long run; c) each position is attributed a specific competency; d) the public servant is employed in the bureaucratic system by a contract, preceded by an open selection; e) the public servant is appointed according to the criterion of skillfulness and professional competency; f) the bureaucrat does not have any profession other than that from the administrative structure; g) as an employee of the administrative structure, the bureaucrat receives a contribution settled by the contract; h) professional evolution is available from bottom to top, according to the evaluations of hierarchical superiors; i) the bureaucrat's activity is carried out without him being the owner of its means of work; j) bureaucrats are subject to a strict specific discipline and to their superiors' control. By virtue of these characteristics, Weber considers that "the purely bureaucratic type of administrative organization is, from a purely technical perspective, capable to reach the highest degree of efficiency (…), being superior to any other type in precision, stability, strictness of discipline and in strength"†. Modern bureaucracy is different from the features of the previous public service apparatus, focusing mainly on *efficiency* and not obedience. Theoretically, the modern bureaucrat should be an infallible "machine" that acts rapidly and appropriately in relation to any administrative situation, always protecting the public interest, avoiding discrimination and misinterpretations.

* Michel Crozier, Erhard Friedberg, *L'Acteur et le Système*, Editions du Seuil, Paris, 1977.
† Max Weber, Theory of Social and Economic Organisation, New York, 1964.

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4. Administrative decentralization

Administrative decentralization is the political and legal process triggered, during the last decades of the 20th century, in democratic states with a centralist tradition, to redefine the relationships between the Government and the local administration, with the purpose of transferring powers to the latter and of consolidating the self-government of local communities.

In modern states, public administration has developed on bureaucratic and centralist bases. The national states of the 19th century shaped their identity and ensured their survival by erasing energetically the entropy and regional peculiarities, to the benefit of unity and general order within political boundaries. Centralism initially had several beneficial effects in what regards administration, giving coherence to the act of governing. Modern societies could develop, owing to centralism, a homogenous network of social services and a stable system of collecting and redistributing community resources. However, in the middle of the 20th century, centralism passed through a "growing crisis", worsened by several factors: the increasingly complicated social life in general, especially after the world war; increasing administrative economic and social pressures on Governments, as a result of demographic booms, economic crises and of the development of information networks; the buoyancy of numerous and contradicting political, ethnical, cultural and religious movements, etc. Having to deal with all these elements of instability, democratic states could no longer rely only on their increasing capacity of reaction to critical issues; even in countries with a strong centralist tradition and with societies marked by etatism, emerged – more as a need than as a desideratum – signs of a transfer of authority and competency from the center to the periphery. This process appeared first as *de-concentration* than as *administrative-territorial decentralization.*

Administrative de-concentration supposes the existence of central authorities and of some state authorities dislocated in the territory, the latter being awarded decision-making responsibilities, implemented under the control of hierarchically superior authorities. Administrative de-concentration is a minimal measure to correct the shortcomings of centralism, the purpose being that of giving to the state more leverage on local communities, along with the increase in their level of satisfaction with administrative activities. Based on administrative de-concentration, it is understood that local administrative authorities representing the state have decision-making powers in some predetermined matters. However, the administrative system keeps its centralized features, because these authorities are "territorial extensions" of central authorities. The decisions made by the authorities of territorial administration are still decision made in the name of the state, but the responsibility of administrative agents derives from hierarchical dependency.

Decentralization represents a process of deep change of the administrative system that allows the local communities or public services to manage

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themselves (under a certain degree of state control). The essence of administrative decentralization consists of transferring some powers of various central authorities to authorities appointed by local communities, in administrative-territorial units (commune, city, county, and region). Through decentralization, public administration becomes more efficient and operational; the issues of interest for the population are no longer piled in ministerial offices but are solved at inferior levels, under conditions of increased opportunity and streamlining.

Decentralization encompasses two forms: *technical* and *administrative-territorial*. The former refers to state public administrative services; the latter is related to the creation and the self-government of local communities.

Technical decentralization is carried out through the creation of public establishments or of establishments of public interest, endowed with legal personality, based on private ownership, be it state or natural person or legal person ownership. Their activities derive from the "delegation" or "concession" of a public service that belonged traditionally to the central authorities of the state. So, the decentralization of public services supposes granting them legal personality, removing them from hierarchical control and placing them under the rules of administrative custody. To the extent to which these standards are not carried out by external services of the central public authorities, we are not dealing with service decentralization but with their deconcentration. The deconcentration of public services is a euphemized form of centralism and it is different from technical decentralization. Under these circumstances, the external services of ministries and of the other specialized establishments of the state administration cannot be seen as decentralized services, but only as de-concentrated services.

Administrative-territorial decentralization is related to the recognition of local communities and of their right to manage themselves. For a local community to be considered decentralized it is necessary that the following requirements be met: the local community must be endowed with legal personality; it must have its own administrative authorities; the legality of the local authorities' acts must be supervised by the state.

The recognition of the local communities' legal personality, seen as elements of the national community, is based on the existence of interests specific to these communities and of specific local issues. However, at the same time, it is also the consequence of the fact that the state does not have the capacity to solve (through the means it holds and under conditions of effectiveness and streamlining) all these problems. This is why the state establishes which of the sectors that it administers at a given time will pass in the scope of local authorities. The delimitation of problems specific to local communities supposes also the existence of material means to carry them out, such as owned property, a body of public servants able to manage public affairs, financial self-government based on the existence of a local budget. On this type of basis, local

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communities are awarded legal personality, being given the possibility to participate in the legal system in their own right. The implementation of the duties held by these legal persons is entrusted to local authorities elected according to the requirements of pluralist democracy.

The local authorities are those that solve, within administrative-territorial entities, the issues specific to the commune, town, city, county and region. For administrative decentralization to exist, it is necessary that local authorities be the representatives of the community and not representatives of the state placed at the forefront of administrative-territorial entities. This means that local authorities must be the result of *free elections* held in the administrative-territorial units. Under these circumstances, we may say that the mayor, the local council and the county council are decentralized authorities because they were produced through elections, while the prefect and the heads of decentralized services from administrative-territorial units (inspectors, directors) are authorities of the executive power or of the state, deconcentrated, central administration.

Administrative decentralization does not suppose the total independence of local communities from the state in which they function. By virtue of their dependency on the state, central public authorities reserve their right to get a certain type of control, which is called *administrative custody*. This name is borrowed from the civil law, where it designated a legal establishment through which the interests of a person who is underage or under interdiction are protected. Nevertheless, in administrative law the concept of custody refers less to the protection of the interests of local communities and more to the *protection of the general interest* that local communities may sometimes contradict, especially through the issuance of documents that do not comply with the law.

Local self-government is the modern form of expression of administrative decentralization. In Europe's evolutions, local self-government represents a codified principle that incarnates administrative decentralization and imposes imperatively its implementation, complying with precise rules. Local self-government is associated with the establishment of a distinct status for local communities, of their authority in relationship with state authorities and with authorities that put in into force its functions in administrative-territorial units.

The essence of this principle is related to local communities, which are defined in the Council of Europe's document entitled the *European Charter of Local Self-government* of October 15, 1985*, taking into account national regulations, as being basic local communities (communes, districts, departments) but also regional communities. According to the same document, local self-government is understood as a principle recognized in the constitution or in domestic legislation that gives to local communities the right and the ability to regulate and manage, within the limits of the law, under their own responsibility and in the interest of the local population, a substantial share of public affairs.

* Council of Europe, European Charter of Local Self-Government, 1985.

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The exercise of this right is conferred upon councils or assemblies composed of members elected by universal suffrage which may possess executive organs responsible to them.

The principle of self-government implies the existence of financial resources owned by local communities. According to the *European Charter*, local authorities are entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. This is where the rule of proportion intervenes, because financial resources must be commensurate with the responsibilities provided for by the law. Financial resources derive from: local taxes and charges, within the limits of the law; revenues from their own activities; state subsidies granted under conditions of fair financial allotment.

The implementation of administrative decentralization and the reinforcement of the self-government principle have registered important advances in European countries only during the last two or three decades, even if these principles had been present in constitutions for some time. The most spectacular process started in France, by the laws on decentralization from 1982 and 1983; it continued with the *New communal law* in Belgium (1989), with the *Law on self-government* in Italy, (1990), the *Law on local public administration* in Romania (1991) etc. The status of local authorities is currently placed either under the sign of administrative decentralization or under that of local self-government, the terms being almost identical. They do not exclude, however, the coexistence of local communities in a unitary state[*].

State centralism – a product of political modernity – is currently registering a strong setback in the European area, for two main reasons: the inability of contemporary states to manage social complexity and the fall of totalitarian regimes based on the so-called "democratic centralism". Under these circumstances, all the states members of the European Union or aspiring to become its members have resorted, on the one hand, to the measure of deconcentrating decision-making bodies and, on the other, to administrative-territorial decentralization.

Decentralization policies are acts of will of State institutions through which administrative powers are transferred from central governance to local public authorities. But decentralization also means, at the same time, the creation of local communities as legal persons endowed with autonomy in terms of managing community resources and developing public policies of local interest.

Two complementary elements must meet in decentralization policies: the central government's decision to grant autonomy to administrative-territorial structures (by transferring to them powers and responsibilities but also the

[*] Xavier Frège, *Descentralizarea (Decentralization)*, Humanitas Publishing House, Bucharest, 1991.

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means to carry them out), and the ability of local communities to become promoters of development initiatives. The former element has a legal content and refers to the institutional changes implied by decentralization; the latter entails the birth of associative structures in society and the configuration of community identities within the various administrative divisions in order of them to be able to define and put in force specific development strategies. From this point of view, decentralization puts into operation the principle of subsidiarity.

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