

THE ROLE OF THE ASSOCIATIVE STRUCTURES OF THE LOCAL AUTHORITIES IN THE GOVERNANCE PROCESS

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Abstract

In most countries in the European Union, the associative structures of local authorities were formally recognized in the early 1990s of the last century. Their establishment and strengthening is a process associated with decentralization. The role of associative structures is to facilitate the dialogue between central and local authorities and to contribute to the assertion of local autonomy. The data on the involvement of associative structures of local public authorities in Romania in the governance process shows that they meet the criterion of legitimacy and, to a lesser extent, the criterion of functionality. We are rather seeing a stimulated participation in order to respond to the implementation of a law than a civic involvement in its true sense. The limited performances of the involvement in the governance process are attributed to the socio-political context.

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JEL Classification: H76, H83, K23

1. Introduction

The classifications regarding the efficiency of governance in the states member of the UE places Romania among the last. By being placed on the latest places in such classifications is argued for either by means of excessive conservatism, the lack of courage, and the insufficient ability to initiate fundamental changes², or by adopting certain paradigms that are specific to change without matching them with the real needs of the Romanian society, such as contextual issues and the ignoring of the evaluation of the results and of the effects generated by the new paradigms. It is appropriate to mention at the beginning of the present study that conceptual classifications and terminological dilemmas will be omitted in regards to the concepts of governance, governing, or good governance, the last term being labelled as a non-popular academic concept because of its imprecision and its normative implications³. We shall retain a minimal, but explicit definition as Neill Nugent⁴ has formulated it by which governance represents an “operational activity of elaborating the public policies in which the government involves its social partners” and J. Rosenau’s mentioning that “Governance is not synonymous with government. Both refer to purposive behaviour, to goal-oriented activities, to systems of rule; but government suggests activities that are backed by formal authority, by police powers to ensure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance. Governance, in other words, is a more encompassing phenomenon than government. It embraces governmental institutions, but it also subsumes informal, non-governmental mechanisms whereby those persons and organizations within its purview move ahead, satisfy needs, and fulfil their wants”⁵.

2. The legislation and institutional context of governance

The passing from governing to governance is supported by the establishing of some institutional formula of social dialogue and the public consultation. Starting with the year 2000 in

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² Armenia Androniceanu, *Impactul Noului Management Public asupra administrației publice din România*, „Administrație și management public”, no. 6, 2006, p.15.

³ Alina Mungiu Pippidi, *În căutarea bunei guvernări: Cum au scăpat alte țări de corupție?*, Iași, Polirom, 2017.

⁴ Nugent, N. *The Government and Politics of the European Union*, Duke University Press, 1999, p. 12.

⁵ James N. Rosenau, Ernst-Otto Czempiel (eds.), *Governance Without Government: Order and Change in World Politics*. Cambridge University Press, Cambridge, UK., 1992, p. 4.

Romania the normative context is adopted and the institutional context that brings under regulation the processes of public consulting with the non-political actors. These elements have developed within the context of the reform of the public administration and the lining with the European and international standards given the fact that the civic organizations were very active in this sense⁶.

Regarding the Romanian legislation, the public participation is allowed and encouraged. There are laws that establish principles and laws and that establish in detail the terms of such consulting⁷. The decentralization of the competences and the increase in the number of the actors involved in formulating the public policies is the key element of the paradigm of governance. The typical entities that appear as partners of the government in the process of governance are the non-governmental organizations, the associations, and the foundations, as well as the associations among them called federations. These are brought under regulation by the Ordinance no. 26/2000 of the Government approved by Law no. 246/2005, with later amendments⁸. The NGO National Registry, administered by the Ministry of Justice, shows that at the level of the year 2015 in Romania there are 70.194 registered associations (including the mutual aid funds), 16.613 foundations, 1.195 federations and 649 unions. The associations continue to dominate the scene of the non-governmental organizations in Romania, having with little exception – the years 1996, 1997, and 1998 – the highest importance among the annual rate of enlistment. The index of associativity in Romania if calculated as the number of organizations registered as having 1000 inhabitants has been kept at a pretty high level and grew in 2015 for 3.9 organizations up to 1000 inhabitants, comparatively to the year 2008 when 2.9 organizations were registered as having 1000 inhabitants. At the international level, Romania presents a higher level of associativity compared to The United Kingdom which in 2014 had 3 organizations with 1000 inhabitants⁹. The most important field of activity where the non-governmental Romanian organizations activate is the social/ charitable, cumulating 23% of the total incomes of the sector, 30% of the employee, and 24% of the total of the permanent capital. Although in a relatively smaller number, the professional organizations cumulate 17% of the total incomes of the sector and 18% of the total number of employee, as well as 19% of the full permanent capital.

Although in Romania a high index of associativity is confirmed the involvement of the associative structures in the process of governance is reduced. The barometer of the NGOs leaders in 2016 shows that only 15% of the ONGs succeed in a certain degree to lead the public decisions in the desirable/ right direction.¹⁰ Almost half of the organizations (46%) consider that they do not stand for either of the actual politics of the Government, 19% are those who auto evaluate themselves as having critical opinions, and which are in decline compared to the statistics of the research corresponding to the year 2010 (32.6%). As an extreme expression of the critical attitudes, 7% of the organizations declared having initiated legal actions against the central authorities, and 9% against the local once, at least once¹¹.

The involvement of the associative structures in the process of governance is considered to be a paradox. On the one hand, the NGOs are invited to be partners in the elaboration of the public politics, and, on the other hand, starting with 2016 accusations against these have developed; according to which these could be foreign agents who work against the interests of the Romanians.¹² Multiple central public institutions consult the associative structures rather formally and avoid their involvement even since the stage of substantiating decisions.

⁶ Irina Bujder, *Societatea civilă românească între performanță și participare publică*, <http://www.sferapoliticii.ro/sfera/144/art02-bujder.html>, consulted on 1.05.2018.

⁷ See The Law of the local public administration no. 215/2001, The Law no. 52/2003 regarding the decision transparency in the public administration, The Law no. 350/2001 regarding city planning and urbanism, The law of the protection of the environment no. 137/1995 etc.

⁸ Published in the Official Journal no. 39 of 31st January 2000.

⁹ Mircea Chivu (coord.) *România 2017. Sectorul neguvernamental - Profil, tendințe, provocări*. Fundația pentru Dezvoltarea Societății Civile, Bucharest, 2017, pp. 19-21.

¹⁰ Andrei Pop, *Participarea sectorului neguvernamental în procesul politicilor publice*, in Mircea Chivu (coord.), *op. cit.*, 2017, p. 108.

¹¹ *Ibidem*, p. 105.

¹² *Idem*.

3. The reasons for associating the local public authorities

The creating and consolidating the professional associative structures of the public administration represent processes associated to decentralization¹³. In the majority of the countries within the region, the local authorities were formally admitted at the beginning of the 90s in the past century, and their associative structures are considered the unique adequate actors for the presenting of the common opinions and in order to influence the process of preparing and adopting legislative norms in the interest of all the local and/or regional authorities¹⁴. James N. Rosenau associates the big proliferation of the organizations at all the levels of community, in each field of activity with a “revolution of the competences”. The result of these extended competences is given by the preoccupations and the common objectives of the people that reunite in order to ensure the attaining of the formulated objectives.¹⁵ The local public authorities associate in order for men individually are not enough endowed with the exercise of negotiating one’s public interest. The motivation of this association suggests or anticipates somehow the existence of the divergent interests of the state and of the local collectivises that they represent; otherwise there would be no point in supporting the cost of the association in order to influence the plural and so complex process of governance.

M. Callanan & M. Tatham distinguishes two fundamental reasons that are the fundament of the associating in non-governmental organizations: the mobile is determined by the financial transfer willingness (“the financial mobilization”; and the mobilization determined by the desire to influence the EU politics and their results upon regulation (“the mobilization of the regulations”). By the mobilization of regulation, we make reference to a proactive and dynamic process within which the interests of the local and regional administrations tend to influence the EU politics and their legislative results. For short, the accent comes to those activities meant to influence the legislative process of the EU in the case where such legislation has an administrative or financial impact on the under-national government. The representation of the interests can be realized either directly with the institutions and the EU actors, or indirectly by means of the national government and of other intermediate entities such as the sectorial chains or the geographic Pan-European ones, the members of the European Parliament or of the firms offering private consultancy. By financial mobilization we make reference to the chasing and collecting information in order to access the EU funds for certain regions, places, or specific areas. This is defined as a more reactive process, emphasizing upon the gaining of rewards or the awarding of aids for the collectivises that represent them on the basis of the financial schemes of the EU¹⁶.

The same authors distinguish between strong and weak associations of the local administration. The strong associations of the local administration are the representative organisms of the local administration well organized and well trained that combine the political resources (legitimacy, the control of the implementation) and the informational resources (including the technical expertise) evaluated by the factors of decision making in the EU and at the national level. Such associations are usually involved in the institutionalized forums or semi-institutionalized ones having their own national government, as well as the chains of informal contacts in order to discuss matters of the order of internal politics and of community politics that fall under the incidence of the local government. Through non-governmental weak associations, the representative organisms of the local authorities that are poorly financed, these associate with situations in which the interests of the local administration are fragmented into series of different organizations, often in competition (frequently representing different levels of the local administration or different actors in the local administration) that sometimes segregate and dissolves the political and informational resources. Usually, the relations between such associations and the national governments are more informal

¹³ Lucica Matei, *Romanian Public Management Reform: Theoretical and Empirical Studies*, Economic Publishing House, Bucharest, 2009, p.157

¹⁴ Ion Beschieru, *Mecanisme de consultare și dialog între Guvern și autoritățile publice locale*, Chișinău. IDIS “Viitorul”, 2009, p. 20.

¹⁵ James N. Rosenau, Ernst-Otto Czempiel (eds.), *op.cit.*, p. 91.

¹⁶ Mark Callanan & Michaël Tatham, *Territorial interest representation in the European Union: actors, objectives and strategies*, „Journal of European Public Policy”, February 2014, p.192.

and poorly institutionalized. The examples imply the local governmental associations in France, Ireland, and Romania. The authors underline that “weak” is not equated to a complete lack of influence. Moreover, it is supposed that “strong” associations are those that are better integrated into the decision-making contexts at the national level, and they will be able to exercise an additional influence towards the decision-making factors at the national level, and some of the EU actors¹⁷.

In Romania the new types of dialogue between the central and the local administrations are supported by the Romanian Federation of the Local Authorities (FALR), by administrative and professional organs, or other associative structures of the local authorities of governance (ACoR – The Association of the Romanian Villages, The Association of Romanian Towns, AOR, The Association of Romanian Municipalities, AMRA, The National Romanian Union of the Romanian County Council, UNCJR¹⁸).

In order to harmonize the procedure of consulting, the Romanian Government has adopted Decision no. 521/2005 regarding the procedure of consulting the associative structures of the authorities of the local public administration when it comes to elaborating the projects of the normative acts. This decision shows the actions that are about to be fulfilled by the institutions of the central public administration and by the associative structure of the authorities of the local public administration along with the process of consulting. In this way, Romania, just like Bulgaria, Poland, Czech Republic, Slovakia etc. establishes procedures of consulting strictly defined by law. The detailed and laconic regulation of the procedure of consulting, in addition to the constitution of certain effective mechanisms of control offers the general context for the uniform applying of the procedure consulted by all the authorities of the central public administration that initiate projects of normative acts that regard directly the public local authorities¹⁹. The institutionalized type of consulting was elaborated with the purpose of offering the possibility to express one’s opinion and to gather information about the future legislative amendments.

4. Legitimacy and functionality

So that the associations become partners in establishing an efficient process of consulting and negotiation with the authorities of the central public administration, they have to correspond to at least two criteria: a. the criterion of legitimacy, and b. the criterion of functionality²⁰.

The criteria of legitimacy. The criteria of legitimacy is ensured by the degree of representativeness of the authorities of the local public administration in associative structures, meaning the associative structure has to have a representative number of authorities of the local public administration as members. The associative structures in Romania are legitimate, considering the number of the affiliated members.

AMR includes all the 103 Romanian municipalities, as well as the 6 sectors of the Municipality of Bucharest, in total 109 members²¹. At the moment when the Association of the Romanian Towns numbered only 21 members, as many as the effective law provisioned for the enlisting, progressively their number grew bigger, reaching 185 members²². The number of the A.Co.R. members is of 1750 villages, all of which belonging to the Romanian counties. The association covers 87% of the territory and 48% of the population activate within the territory through the county branches (39 of which are legal entities)²³. The Union of the Romanian County Councils are members of the Romanian county authorities.

¹⁷ Mark Callanan & Michaël Tatham *op.cit.*, p.191.

¹⁸ Lucica Matei, *op.cit.*, p.157, Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 734, 735.

¹⁹ Ion Beschieru, *op.cit.*, p. 17.

²⁰ *Idem*, p.22.

²¹ <http://www.amr.ro/ro/despre-amr/prezentare.html>, consulted on 1.05.2018.

²² <http://www.aor.ro/despreAOR.html>. 185 is a representative number, given that in Romania there are 216 small towns, consulted on 1.05.2018.

²³ <http://acor.ro/acor/prezentare-acor>, consulted on 1.05.2018.

The criteria of functionality. According to this criterion, the national associations have to dispose of enough capacities and resources in order to ensure a real and prompt consulting of its members. The association has to establish the internal procedure of consulting its members in order to formulate a common opinion. Depending on the available time and the importance of the decision, as well as the intensity of the debates, the consulting of the members can take place through sending enquiries, publishing the project of decision on the webpage of the association, by including it within the information bulletin of the association, organizing round tables and meetings etc. It is important that the Association should establish and adhere to a practice that, as a consequence of certain preliminary discussions, a common point of view could be established, aiming at attaining an agreement, surpassing the contradictory interests of the municipalities of different sizes. The whole process has to involve the participation of a big number of experts and representatives chosen among the local authorities, an efficient interaction with the ministries and the governmental branches being maintained, by addressing and discussing with the members of the Parliament, as well as by making partnerships with the civil society. Such an approach of the criterion of functionality has two meanings – a normative one and a descriptive one²⁴. The normative meaning refers to the mechanisms of interaction between the state power and its non-state partners. The dispersion of the state power is ensured by establishing roles and responsibilities, settled by laws and regulations. The descriptive meaning refers to the types of interactions and interdependencies, oriented towards the solving of issues regarding society.

The analysis of the legal context and of the orders of the associative structures show the fact that they are created in order to fulfil the assignments that regard activities of information, consulting, and coordination. Decision no. 521 of 09.06.2005 regarding the procedure of consulting the associative structures of the authorities of the local public administration in order to elaborate the projects of normative acts expressly mentions the roles and responsibilities of the associative structures. The projects of normative acts that directly regard the authorities of the local public administration are transmitted to the presidents of their associative structures. The associative structure motivates the points of view expressed, and they are remitted to the authority initiating a normative act within 5 or 10 days depending from one case to another. De facto, practically the method does not offer the local authorities the possibility to have a major impact on the adopted decision. The consulting takes place on the ground of the already prepared projects which allows it to propose only minor amendments, and the deadlines provided are considered to be too short. A surprising provision of Decision no. 521 of 09.06.2005 is that in the first decade of each trimester the associative structures have to transmit to the special compartment within the Ministry of the Regional Development and the Public Administration an information note regarding the respecting of the procedure of consulting the associative structures of the authorities of the local public administration during the previous trimester. The information note has to present the normative acts approved without the consulting of the associative structures or within which proposals and observations as communicated by these were unjustifiably included, as well as the consequences that such situations generate on the field that regard the activity of the authorities of the local public administration²⁵.

An indicator of the purely formal collaboration is the involvement of the associative structures within the process of consulting the Law of decentralization. The CCR judges considered that the Law of decentralization is not constitutional in its entirety or, firstly, because it is not based on analyses bearing a certain impact, certain standards of cost and quality, it was not tested through pilot phase, it is not clear, precise and predictable, all these breaking the provisions of the Framework Law no. 195/2006 and, implicitly, the Constitution. Or, the elaboration of the analyses bearing an impact is precisely the role attributed to the associative structures, as well. The studies and analyses bearing an impact “were edited in time within a more or less organized context” and

²⁴ Anghel, Ionuț, *Guvernanța multinivel și rolul statului în era (post)modernă*, in: Stănescu, Iulian; Zamfir, Cătălin, *România la răscruce: opțiuni pentru viitor*. Pro Universitaria, Bucharest, 2015, p. 241.

²⁵ Decision no. 521/2005 regarding the procedure for consulting the associative structures of the local public administration authorities in drafting normative acts. Text published in the Official Gazette of Romania. In force since 22 June 2005.

they “under no circumstances” would represent the analyses bearing an impact required by the law, “but on the contrary show a lack in correlating them with its provisions”.

The order of public utility, admitted to the associative structures, allows them to develop audit related activities. The activity of audit develops on the ground of an “agreement of collaboration”. Besides the activity of internal public audit, the county branches exercise other activities as well through cooperation, as well as the financial and accountant activity, the activity of public relations, urbanism, and city planning etc.²⁶.

Although it appears from time to time, the opposition is not the main type of interaction between the central authorities and the associative structures. I explain this type of an attitude through the fact that the associative structures risk to lose their status of public entity. The Romanian Senate adopted on the 21st of November 2017, as an Emergency Procedure, a legislative proposal regarding the amendments of the Ordinance 26/2000 regarding the associations and foundations. In the name of transparency, the text of the proposal establishes that any NGO has to publish twice a year a declaration of incomes and expenses in the Official Journal; the declaration has to include separately, for each income, the person or the activity that generated the respective income, as well as its value. In the case of not publishing this declaration the punishment is the rightful dissolution of the respective association or foundation. The same legislative proposal also introduces the limitation of the freedom of speech of the organizations that constitute public entities. Under the rightful reason that forbids these organizations to engage into political activities, the ambiguous formulation of the text creates the possibility of falling from the quality of “public utility” if the organization organizes “campaigns of... opposition against a political party or a certain candidate to a public function that one can get by being appointed or chosen”. More than 70 non-governmental organizations sign an open letter addressed to the board of the party with the highest weight in the Parliament, mentioning that such provisions can block, for instance, the critic addressed by a certain organization to a legislative initiative²⁷.

In March 2018, the Commission of Venice adopted a provision according to which the proposals regarding the new obligations in terms of reporting included within the Plesoianu project regarding certain amendments of the legislation for the NGOs should be eliminated²⁸. None of the associative structures of the local public authorities contested the Plesoianu project regarding the amendment of the NGOs legislation.

5. Conclusions

The role of the associative structures within the process of governance is to become partner in the elaboration of the public politics. At the ground level, there are three different ways in which the associative structures can exercise this role: through information, consulting, and coordination. The details regarding the involvement of the associative structures of the Romanian local public authorities in the process of governance are far from being uniform. The majority nourish relatively conservative ambitions to be involved only in specific fields. The administrative ability and the force of the four associative structures of the authorities of the local public administration are not enough in order to build a partnership of authentic discussion for the structures at the central level in order to be able to offer consultancy of specialty to the administrative and territorial member entities, in order to be able to elaborate studies and analyses with consistency and to identify and promote good practices that are useful for both the members of the associations and the underlying of the policies at the central level. Rather, we assist to a stimulated participation in order to respond to the transposing into practice of a certain law than to a civic engagement in its true meaning. Moreover, there is the tendency, coming from numerous central public institutions, to consult the

²⁶ <http://acor.ro/activitati-prin-cooperare>, consulted on 1.05.2018.

²⁷ <https://www.stiri.org/ong/civic-si-campanii/scrisoare-deschisa-a-societatii-civile-organizate-catre-conducerea-psd>, consulted on 1.05.2018.

²⁸ Opinion on the Romanian Draft Law no. 140/2017 on Associations and Foundations as adopted by the Senate on 20 November 2017.

associative structures more formally and to avoid their involvement even since the stage when the decisions that regard the local authorities. By placing the associative structures in the role of “rapporteur” of the initiatives of the central authorities tends to turn the process of governance into an instrument of control and a pusher towards centralization.

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