

# PRINCIPLES OF LOCAL PUBLIC ADMINISTRATION

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## Abstract

*Without a rigorously scientific definition of "principle" concept we emphasize only that it is an idea guiding, with legally binding and priority expressed either directly or through one or a coherent set of legal rules or sheared indirectly, of all legal regulations in a field, an idea that can not be ignored by inferior legal norms or actions (or inactions) concrete. Compliance with the "principle" is a legal obligation of all those who, in one form or another, are connected to the activities in which it is instituted, whether they have or not the the quality of authority (state or private) or are simple individuals or legal entities.*

*It is also relevant and that any principle laid down by law or detached from a set of legal rules must be in strict conformity with constitutional provisions. From this point of view, if we refer to the principles on which the public administration is based itself in administrative units, it is noted that some of these are expressly formulated by provisions of the Constitution, others than stipulated in Law. 215/2001.*

Key words: *principle, legality, decentralization, local autonomy, public services*

**JEL Classification:** [K10]

## 1. Legality principle

Constitution of Romania, Art. 116 para (2).

*Nobody is above the law.*

Local public administration law no. 215/2001.

Public Administration in territorial-administrative units is organized and operates under the principles of decentralization, local autonomy, devolution of public services, eligibility of authorities of local public administration, legality and consultation of citizens in solving the problems of particular interest.

The Administrative act, the main form of public administration activity, should always be in accordance with "the law"<sup>1</sup>.

The Constitution uses some concepts whose content is not defined by the constituent legislator, returning thus those called to interpret the law which must set their content <sup>2</sup>.

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<sup>1</sup>D. C. Dragoș, *Elemente de drept administrativ. Suport de curs universitar 2011/2012*, www.apubb.ro, p.8.

<sup>2</sup>I. Cochintu, *Constituționalizarea principiului loialității constituționale*, Buletinul Curții Constituționale nr.1/2013.

## 2. The principle of decentralization

The term "decentralization" ("descentralizare" in Romanian) – originating from french – *descentralization*<sup>3</sup> – signifies a movement contrary to centralization.

In doctrine, decentralization as one of the processes of modernization of public administration has been defined as "a legal regime where solving local problems is no longer made by officials appointed from center, being made by officials chosen by the electoral body"<sup>4</sup>.

We find the constitutional base of principle of decentralization in art. 120<sup>5</sup> and Local Public Administration Law no. 215/2001 in art. 2<sup>6</sup> lists the principle of decentralization among the six basic principles of local government.

The rules and the institutional framework are set out in the framework law on decentralization - Law no. 195/2006<sup>7</sup>, art. 2 letter (i) which summarizes the definition of decentralization as the transfer of administrative and financial powers from the central government to the Local public administration or to the private sector.

What is new about this definition is that the transfer of competencies can be done not only by local authorities but also by the private sector.

Decentralization is not an end in itself, is a tool to achieve democratization of public administration and provide more efficient public services.

Local authorities know best the needs of communities and are able to satisfy them in the most appropriate way<sup>8</sup>.

Solving problems by authorities which are closer to the citizen leads not only to choose the best solutions but also to reduce bureaucracy involving reducing the time and resources consumed.

So, saving money and celerity in solving optimizes the process of management to local communities affairs, resulting a better governance, local development, raising living standards and therefore local citizen satisfaction.

Art. 3 of Law no. 195/2006, lists six principles on which decentralization takes place.

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<sup>3</sup> See C. Manda, *Drept administrativ-Tratat elementar*, IVth ed. revised and completed, Publishing House Lumina Lex Bucharest, 2007, p.116.

<sup>4</sup> See A. Iorgovan, *Tratat de drept administrativ*, vol. I, Publishing House Nemira, București, 1996, p.52.

<sup>5</sup> Art. 120 from Romanian Constitution, published in *Official Gazette* no.767/31.10.2003.

<sup>6</sup> Art. 2 (1) "Public Administration in territorial-administrative units is organized and operates under the principles of decentralization, local autonomy, devolution of public services, eligibility of local public administration authorities, legality and consultation of citizens in solving local problems of special interest.

<sup>7</sup> Published in *Official Gazette* no. 453/25.05.2006.

<sup>8</sup> M. Voican, *Principiile cadru ale administrației publice locale*, Publishing House Universul Juridic, București, 2008, p. 27.

The most important of these is the principle of subsidiarity which consists of the exercise of powers by local government located at the administrative level closest to the citizen who has the necessary administrative capacity<sup>9</sup>.

### 3. The principle of local autonomy

Local autonomy (or self-government) is the right of administrative territorial units (ATU) to realize its interests, within the limits imposed by the Constitution and laws of the country<sup>10</sup>.

The first step in the implementation of the principle of local autonomy is his stipulation in the Constitution, art. 120<sup>11</sup>.

If the Constitution is limited to enumerating the principle of local autonomy as one of the basic principles underpinning public administration in administrative-territorial units, the definition of local autonomy is contained in Law no. 199/1997<sup>12</sup> ratifying the European Charter of Local Autonomy, in which in art. 3 para (1) is provided: „Local autonomy represent the right and the effective capacity of local authorities to regulate and manage, within the law in their own name and in the interest of the local population, an important part of public matters”.

The principle of local autonomy is taken over also by Law no. 215/2001 on local government with modifications, being stipulated in art. 2, among other principles.

The most appropriate semantic meaning of autonomy concept is independence, while at the opposite pole, we find the concept of subordination.

Local autonomy is not a right of a collective to govern itself in any matter, without taking into account the relationships with similar collectivities or located at the center or at higher levels.

In Romania the right to local autonomy is exercised by local authorities elected through free, secret, equal, direct and universal vote:

- County Council and The County Council President – in counties;
- Mayor and City Council - in cities;
- Mayor and City Council - in communes.

Result that the carriers of local autonomy are: County Council and The County Council President, City Council and Mayor.

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<sup>9</sup> In order to respect the subsidiarity principle as a guiding principle in the allocation of responsibilities, jurisdiction can be taken locally and transferred to a higher administrative level only if those responsibilities it would be more effectively performed by the higher level.

<sup>10</sup> M. Voican, *op.cit.*, p. 50.

<sup>11</sup> Art.120 from *Romanian Constitution*, Published in Official Gazette no.767/31.10.2003.

<sup>12</sup> The amendments made by Law no. 286/2006, published in Official Gazette no.621/18.07.2006.

According with the Constitution, the population of a territorial-administrative unit chooses the City Council, as the organ of self-government, representing the interests of the community and take decisions to better manage local issues.

City Council, respectively County Council are local parliaments, which adopt local laws, Local Council Decisions (LAD) respectively Decisions of the County Council (CCD).

Local Council Decisions are implemented by the mayor, who is head of the local administration and the executive body of the City Council.

Mayor as an executive body, local public authority is, in turn, elected by universal, equal, direct and secret suffrage according to the election law while the county council decisions are implemented by County Council Chairman who is head of County administration and the executive body of the County Council. County Council President is elected indirectly by secret vote by the members of the County Council from among them<sup>13</sup>.

Concerning the application of the local autonomy principle between administrative levels, Constitution points out<sup>14</sup> that between the prefect and the other local authorities (City Council, Mayor, County Council, County Council Chairman) do not exist relationship of subordination.

Local autonomy of local and county councils derives, also, from the fact that the local council may not cancel an administrative act adopted by a local council or issued by a mayor and also the government, much less a ministry or other specialized body of the central government can not cancel an administrative act adopted by an authority issued by the County Council or County Council Chairman.

In order to achieve the requirements of local autonomy principle, illegal acts of local councils and the county can be cancelled only by the administrative courts, upon notification by the prefect or those who consider themselves aggrieved in their rights recognized by law<sup>15</sup>.

Therefore, local autonomy consist in the power of local government to take decisions alone on the services provided to local communities, namely the quality and quantity and the cost and method of payment, but taking into account the provisions of art. 3 of the European Charter of Local Self<sup>16</sup>.

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<sup>13</sup> Law no. 115/2015 - election of local public administration authorities, for amending Law no. 215/2001 - the local public administration, as well as amending and supplementing Law no. 393/2004 regarding the status of local elected officials, published in Official Gazette no. 349/20.05.2015.

<sup>14</sup> See art. 123 para (4) from *Romanian Constitution*, published in Official Gazette no. 67/31.10.2003.

<sup>15</sup> V. Prisăcaru, *Tratat de drept administrativ român. Partea generală*, Publishing House Lumina Lex, București, 2002, pp. 754-755.

<sup>16</sup> According to the Charter, the rights of local public administration authorities can not limit the exercise of the principle of prior consultation with the citizens regarding taking the major decisions for local community interests.

#### 4. The principle of eligibility

The principle of eligibility represents the right of members of a local community to appoint their own leaders, their own governing bodies by universal, equal, direct secret and free vote, according to electoral law.

The legal sources of this principle are found in:

- Art. 121 of the Romanian Constitution <sup>17</sup>;
- Art. 2 (1) of Law no. 2015/2001 - local public administration <sup>18</sup>;
- Law no. 115/2015 concerning election of local governments <sup>19</sup>.

According to the elective principle central authorities have no power to influence and must abstain from any interference in the process of appointing local authorities.

Local powers are: Local council of the commune and town as well as The County Council (decision-making bodies) and Mayor and County Council President (executive bodies).

County Council and City Council are elected on electoral districts, expressed by vote based on the election list <sup>20</sup> and mayors of communes and towns are elected by uninominal vote cast on ballot <sup>21</sup>.

County Council President, County Council vice president, Vice Mayor are elected by indirect secret vote by counselors, according to Law no. 115/2015 <sup>22</sup>.

The terminology used in the field of the elective principle has wide scope and includes various formulations with semantic synonyms such as local elections, uninominal vote, voters, electoral system, suffrage, candidate, and so on.

#### 5. The principle of deconcentration of public services

In doctrine, deconcentration of public services was defined as: "Deconcentration consists of sending in the territory of some representatives of the central power in order to take on the attributes in the respective territory under the central executive hierarchical power<sup>23</sup>.

<sup>17</sup> See art. 121 of the *Constitution*, published in the Official Gazette, Part I, no. 767/31.10.2003.

<sup>18</sup> Art. 2. - (1) Public Administration in territorial-administrative units is organized and operates under the principles of decentralization, local autonomy, devolution of public services, eligibility of local public administration authorities, legality and consultation of citizens in solving local problems of special interest.

<sup>19</sup> Law no. 115/2015 - election of local public administration authorities, for amending Law no. 215/2001 - the local public administration, as well as amending and supplementing Law no. 393/2004 regarding the status of local elected officials, published in Official Gazette no. 349/20.05.2015.

<sup>20</sup> The original meaning of the word refers to method of vote and comes from the Latin *scrutinium* which consists of placing a ballot paper in the ballot box, then count all ballots to find out who won the election.

<sup>21</sup> See E. M., Fodor, *Drept administrativ*, Publishing House Albastră, Cluj-Napoca, 2008, p. 49.

<sup>22</sup> Law no. 115/2015, for amending Law no. 215/2001, as well as amending and supplementing Law no. 393/2004 published in Official Gazette no. 349/20.05.2015.

<sup>23</sup> D. C., Dănișor, *Drept constituțional și instituții politice, vol. I, Teoria generală. Tratat.*, Publishing

Regarding the legislative framework, constitutional foundations of public services decentralization principle can be found in art. 120<sup>24</sup> and art. 117 para (2).

To avoid confusion in terminology between decentralization and deconcentration and clarify the similarities and differences between these two principles – see a detailed analysis in specialty literature<sup>25</sup>.

Although the term public service can have several meanings, public utilities<sup>26</sup> has nothing to do with the principle of deconcentration of public services.

The term "service" ("serviciu" in Romanian) – originating from latin – *servitum* – signifies a slave, namely "make a service", evoking the idea of "public utilities" or "public service"<sup>27</sup>.

According to art. 12 of the Constitution revised, prefect leads decentralized public services of ministries and other central government bodies of administrative-territorial units.

The modalities in which the prefect exerts the leader quality of decentralized services of ministries<sup>28</sup> are stipulated in Law no. 215/2001<sup>29</sup> and Law no. 340/2004<sup>30</sup>.

## 6. The principle of citizen consultation

Romanian Constitution, art. 31:

„(1) A person's right to have access to any information of public interest can not be restricted.

(2) Public authorities, according to their competence, are obliged to provide correct information to citizens in public affairs and matters of personal interest”.

Local government law no. 215/2001, art. 2:

“(1) Public administration in territorial-administrative units is organized and operates under the principles of decentralization, local autonomy, devolution of public services, eligibility of local public administration authorities, legality and consultation of citizens in solving local problems of special interest”.

The principle of consultation of citizens in solving local problems of special interest requires citizens involvement in management decisions and supply services<sup>31</sup>.

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House C.H.Beck, București, 2007, p. 107.

<sup>24</sup> See art. 120 (1) Romanian Constitution, published in the Official Gazette, Part. I, no. 767/31.10.2003 „The public administration in territorial-administrative units is based on the principles of decentralization, local autonomy and deconcentration of public services”.

<sup>25</sup> See E. M. Fodor Mihaela, *op.cit.*, p. 49.

<sup>26</sup> Regulated by Law no. 51/2006 on services of public utilities, respectively: a) water supply; b) sewerage and wastewater treatment; c) collection, sewerage and drainage of rainwater; d) the generation, transmission, distribution and supply of thermal energy in a centralized system; e) sanitation localities; f) public lighting; g) administration of the public and private administrative-territorial units, and so on; h) local public transport.

<sup>27</sup> I. Cosmescu, *Economia serviciilor*, Publishing House University “Lucian Blaga”, Sibiu, 1999, p. 13

<sup>28</sup> For a detailed analysis see R. P. Postelnicu, *Prefectul și instituția prefectului în sistemul administrației publice din România*, Publishing House Lumen, Iași, 2009.

<sup>29</sup> Local public administration Law no. 215/2001, published in the *Official Gazette* no. 204/23.04.2001.

<sup>30</sup> Law no. 340/2004, republished in the *Official Gazette* no. 225/24.03.2008.

Free access to information is not a favor granted the citizen, it is his right. This right is enshrined in the Universal Declaration of Human Rights which in art. 19 provides that: “Anyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

European Charter of Local Self-Government adopted in Strasbourg on 15 October 1985, ratified by Romania in 1997 enshrines the principle of consultation for the first time in art. 3, which stipulates that “Rights incumbent to local authorities can not limit the exercise of the principle of citizens consultation”.

Right to information is stipulated by the Romanian Constitution, as the supreme law of the state, see art. 31.

Public authorities, according to their competence, are obliged to provide correct information to citizens about public problems and matters of personal interest and regulated by Law no. 544/2001 on free access to public information<sup>32</sup> and Methodological Norms<sup>33</sup> of his application.

Further, we present each of the seven forms of consultation, indicating and normative acts regulating them:

## 7. The office information

Legal source:

- article 31 from Romanian Constitution<sup>34</sup>;
- Law no. 544/2001 on free access to public information;
- Government Decision no. 123/2002 approving the Methodological Norms of Law no. 544/2001 on free access to public information.

Law no. 544/2001 on free access to public information establishes detailed procedures and deadlines in which the authorities need to respond to some information.

Example of office information: The activity report. According to Law no. 544/2001, the authorities are required to publish the report at least annually in the Official Gazette of Romania, Part II. Art. 27 from Government Decision no.

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<sup>31</sup> M. Voican, *op.cit.*, p. 174 and so on.

<sup>32</sup> Published in *Official Gazette* no. 663/23.10.2001.

<sup>33</sup> Published in *Official Gazette* no. 167/08.03.2002.

<sup>34</sup> See art. 31- The right to information from the Romanian Constitution, Published in Official Gazette no. 767/31.10.2003 „(1) A person's right to have access to any information of public interest can not be restricted. (2) Public authorities, according to their competence, are obliged to provide correct information to citizens in public affairs and matters of personal interest. (3) The right to information shall not be prejudicial to the protection of young people or national security. (4) Public and private Mass media are obliged to provide correct information to the public. (5) The public radio and television services are autonomous. The organization of these services and the Parliamentary control over their activity shall be regulated by organic law”.

123/2002 approving the Methodological Norms of Law no. 544/2001 on free access to public information, specifies the information that must be included in report.

## 8. Information on request

Legal source:

- Art. 31 from Romanian Constitution;
- Law no. 544/2001 on free access to public information;
- Government Decision no. 123/2002 approving the Methodological Norms of Law no. 544/2001 on free access to public information.

Usually this information are requested by citizens for satisfy and represent interests and individual rights.

Elements of the application are specified in Law no. 544/2001 on free access to public information, art. 60 para (3)<sup>35</sup>.

## 9. Consultation through public debates

The procedure for the consultations on the draft legislation is described in art. 7 of Law no. 52/2003 on decisional transparency in public administration<sup>36</sup>. It refers to the obligation of advertising procedures and organization of citizen consultation in the drafting of the legislation, indicating deadlines.

## 10. Participation of citizens at local authorities meetings

As a form of participatory democracy, advertising of meetings of local authorities, namely the City Council and the County Council, aimed, on the one hand, transparency of decision-making and legislative process, and on the other hand, the possibility for citizens to become co-participants in solving communities local.

As for the right of citizens to participate in meetings of local legislative authorities, local and county councils, it is a topical issue, introduced by Law no. 286/2006<sup>37</sup> amending and supplementing Law no. 215/2001<sup>38</sup> art. 43 and art. 103.

Note: citizens can not interfere in setting the agenda<sup>39</sup> (can make proposals<sup>40</sup>) and can not interfere in the voting process, the only step that allows citizen involvement is the debate stage.

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<sup>35</sup> For details, see M. Voican, *op.cit.*, pp. 204-205 as well as <http://www.prefecturacluj.ro/>.

<sup>36</sup> Republished in Official Gazette no. 749/03.12.2013

<sup>37</sup> Published in Official Gazette no. 621/18.07.2006.

<sup>38</sup> Republished in Official Gazette no. 123/20.02.2007.

<sup>39</sup> See M. Voican, *op.cit.*, p. 190.

<sup>40</sup> See art. 35 para (2) and (3) of G.D. 35/2002 approving the Regulation for organization and functioning of local councils, published in the Official Gazette no. 90/02.02.2002, „(2) The draft agenda is drawn up to the proposal of the mayor, councilors, secretary, specialized committees or at the request of citizens. (3) The draft agenda is subject to board approval”.



The procedure required fulfilled in order to attend meetings is set out in the regulations of organization and functioning of the Local Council<sup>41</sup>.

## 11. The referendum

The referendum is the consultation process by which citizens are called upon to pronounce "YES" or "NO" on the issue submitted to a referendum and deciding by a majority of votes validly expressed.

The normative act governing the referendum is the Law no. 3/2000 on the organization and holding of referendum<sup>42</sup>.

County referendum can take place in all villages and towns in the county or only in some of them, which are directly interested<sup>43</sup>.

The local referendum can be organized in all the villages and localities of the city or municipality or only in some of them<sup>44</sup>.

So, do not exist situations in which the law imposes the obligation for organize the local referendum<sup>45</sup>, except as is stipulated in Art. 13 (3): changing the territorial limits of municipalities, cities and counties where public consultation is required before submitting the draft to parliament.

## 12. The legislative initiative

Exercising of local legislative initiative is regulated by Law no. 141/2004 amending and supplementing local government law no. 215/2001<sup>46</sup>.

Until the adoption of Law no. 141/2004 citizens could have legislative initiative only at national level<sup>47</sup>.

Law no. 141/2004 comes to remedy the omission of the legislature and expressly confers the right of citizens to initiate projects of local council decisions, respectively, county decisions, promotion which require the support of at least 5% of the voting population from administrative-territorial unit.

Therefore, any citizen has the right to promote a legislative initiative provided to be supported by other citizens by adhesion materialized on a list of signatures<sup>48</sup>.

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<sup>41</sup> Compliance with Law no. 52/2003 on decisional transparency in public administration, republished in the Official Gazette no. 749 / 12.03.2013.

<sup>42</sup> Published in Official Gazette no. 84/24.02.2000.

<sup>43</sup> Art. 13 (2) Law no. 3/2000 on the organization and holding of referendum, "... County referendum can take place in all villages and towns in the county or only some of them, which are directly interested".

<sup>44</sup> Art. 13 (2) Law no. 3/2000 "The local referendum can be organized in all the villages and localities of the city or municipality or only in some of them...".

<sup>45</sup> See M. Voican, *op.cit.*, p. 193.

<sup>46</sup> Published in Official Gazette no. 396/04.05.2004.

<sup>47</sup> See art. 74 from *Romanian Constitution și Law on the status of Public Officials* no. 189/1999, republished in Official Gazette no. 365/29.05.2007.

<sup>48</sup> See M. Voican, *op.cit.*, p. 197.

Regulating citizens' right to propose draft resolutions for discussion and approval of their order to be debated and approved by the City Council, respectively County Council is natural because these authorities are elected by the citizens of the respective administrative-territorial unit<sup>49</sup>.

Drafting is done by those who propose, with the support of the secretary of the territorial-administrative unit and services within the mayor's specialized apparatus<sup>50</sup>.

After submitting documentation this is inspected by the secretary of the administrative-territorial and draft resolution will follow statutory procedures work of local or county council, as the case<sup>51</sup>.

### 13. The partnership

If the legislative initiative is promoted by civil society, partnerships are usually promoted by the authorities which in different stages of public policy can engage in collaboration relationship and partnership with various groups holding interests.

Partnerships are a picknick where each participant contributes with something: competence, experience, resources to resolve issues of common interest<sup>52</sup>.

In a partnership may be involved:

- public actors: county or local public administration, autonomous administrations and so on;

- private actors: The NGOs, the firms, and so on.

Building partnerships is supported through funding from the Structural Funds and European Social Fund (ESF)<sup>53</sup>.

For the implementation of projects covering works or public services, of formal point of view Romania had another achievement on 1 October 2010 by adopting what he wants to become the public-private partnership Law no. 178/2010<sup>54</sup>.

This law transpose a number of European directives in the field of procedures for the award of public procurement contracts but experience shows that it is necessary to adopt a new law in the field of public-private partnership.

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<sup>49</sup> M. Preda, *op.cit.*, p. 317.

<sup>50</sup> See art. 45(6), Thesis II - *Legea administrației publice locale* no. 215/2001.

<sup>51</sup> See art.111 – *Legea administrației publice locale* no. 215/2001.

<sup>52</sup> See M. Voican, *Principiile cadru ale administrației publice locale*, Publishing House Universul Juridic, București, 2008, p. 198.

<sup>53</sup> See art. 3 of *Regulation (EC) no. 1081/2006 regarding European Social Fund*.

<sup>54</sup> Published in Official Gazette no. 676/05.10.2010.

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