

Theoretical and practical aspects concerning budgetary autonomy of local collectivities

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Abstract

The financial (budgetary) autonomy consists of the autonomy of communes, towns, cities and counties budget, meaning the local authorities' right to approve budgets of revenues and expenses, and to establish or levy local taxes, within the law. The work of local authorities to manage the resources regards the local interest. In all cases, it implies the existence of a patrimony, namely financial resources, land, material resources, public enterprises, buildings of education, culture, healthcare, social assistance institution, owned by territorial collectivities. The financial resources available to local public authorities should be correlated with the powers and duties provided by law.

This study has an interdisciplinary character, enrolling both in legal and economic sciences because the object of investigation is the legal frame of budgetary autonomy, and also the economic and financial issues raised by resource management by local public authorities.

Key words: resources, local authorities, budget, local interest, public fund.

1. The budgetary autonomy and the management of territorial communities' interests by local authorities

Budgetary autonomy is manifested through the autonomy of the budgets of communes and towns, municipalities and counties. Thus, under the local government law, local authorities have the right to approve the income and expenditure budgets and to establish or levy local taxes, within the law.

Article 3 paragraph 1 of Law no. 215/2001 defines the concept of local autonomy and assigns to local public administration authorities the “right and actual capacity (...) to address and manage, on behalf of and in the interests of the local communities they represent, *public affairs* (our underlining), in accordance with the law”, and art. 4 par. 2 specifies: “The local autonomy implies organizing, functioning, powers and duties, as well as the *management of resources* (our underlining) which, by law, belong to the commune, town, municipality or county, as applicable”.

From the point of view of its terminology, the term “management” can have several meanings, among which “the administration of a heritage or of property belonging to a person by its representative; the totality of operations carried out by a manager/administrator concerning receipt, storage and issue of material goods or money values from a commercial company or institution; the totality of the assets entrusted to a person in order to preserve them and enhance their value” (Popa, 1999: 85).

Beyond the usual meanings of the term, the Romanian legislature considers that management regards the resources and the interests of local communities. In all cases, the activity of management presupposes the existence of a patrimony, which consists of the financial resources and goods owned by the respective communities.

It is worth noting that Law no. 215/2001 associates the term “management” with the one of “interest” that, at the level of local communities, translates into “a certain socialization of the interests of individuals that make up the community, meaning that the public authorities are to promote what is beneficial and useful for the human collectivity in question” (Popa, 1999: 86-87). Thus, managing

the interests of territorial communities lies in more than just the administration activity of patrimonial goods and local finances, filed by local public administration authorities with the “concern (...) to achieve what is advantageous, necessary, useful for the collectivities they represent” (Popa, 1999: 87). The law refers to “administrative-territorial units’ interests” (art. 92), “local interest” (art. 36, paragraph 1), to “the county’s interest” (art. 87, par. 1, art. 91) and to the “national public interest” (art. 120), the criterion of distinction between general/national interest and local/county/particular interest being “the way it’s felt and the nature of the means to be satisfied” (Dissescu, 1891: 849).

It is true that the management mainly consists in the activity of the administration, as art. 10 of Law no. 215/2001 states: “Local public administration authorities shall administer or, where appropriate, dispose of the financial resources and of public or private property assets of communes, towns, municipalities and counties, in accordance with the principle of local autonomy”. The same law also mentions that the administrative-territorial units are holders of rights and obligations arising from contracts relating to the administration of property belonging to the public and private domain in which they are parties, as well as from relationships with other natural or legal persons, in accordance with the law.

Beyond the common meaning of property’s conservation, evidenced by art. 120 par. 2 of Law no. 215/2001 according to which “the goods forming part of the public domain are inalienable, imprescriptibly and imperceptible”, the Romanian legislator has expressly recognized in art. 27 and 121-124, the competence of local and county councils to decide “as goods belonging to public or private domain, of local or county interest, as applicable, to be placed in administration of autonomous public corporations and public institutions to be leased or to be rented”, as well as to decide on the purchase of property or the sale of products forming part of the private sector of local or county interest, in accordance with the law”, to accept donations and related tasks, to give “for free use, for a limited period, movable and immovable goods from public or private

property at local or county level, as appropriate, to non-profit-making legal entities that carry out charitable activity or public utility activities or to public services, the right to establish and to levy local taxes, to establish and approve local budgets of communes, towns, municipalities and counties, according to the law” (Preda, 2007: 366-378).

As outlined in the Romanian jurisprudence, “the specific manner in which the local Council decides on management of property assets, including those belonging to the private domain of the village, is an exclusive attribute of the will of local elected officials, delivering the principle of local autonomy” so that “non-granting the difference of 98 square meters land does not affect the exercise by the S.C. M. S.R.L. of the right to ownership of constructions purchased and the decision not to lease the difference of land is justified by the public utility for the purposes of annexing this area to the adjacent cultural home court” (Vrancea Tribunal, Commercial and Administrative-Fiscal Department, Sentence nr. 19/15 February 2007). Moreover, “the right (...) to decide on the functioning of public institutions, such as the plant protection and plant health quarantine, and the right to decide on the heritage affected to this institution is not, in these circumstances, an absolute right; the action of local authorities should be included in the scope of some national interest, as well as in the normative framework approved” (Iași Court of Appeal, Administrative-Fiscal Department, Decision no. 81/CA/11 February 2008).

In a particular case, the Constitutional Court held that: “By removing the possibility of local governments to dispose freely of goods contained in the private property of administrative-territorial units, in the sense of whether or not to opt for selling them, it obviously violates the right of territorial administrative units to exercise the prerogative of the disposition, such as that attribute which is the essence of ownership. Being so, the Court found that the criticized act is detrimental to constitutional dispositions contained in art. 44, par. 1, that is the first thesis on guaranteeing the right to private property” (Constitutional Court, Decision no. 871/ 9 October

2007). In the same way, the Tribunal of Bacău held that the local council cannot be “forced to sell the land owned by him, forced transfer of property right being inadmissible, because it would violate the administrative-territorial units’ right to exercise the prerogative of disposition, as an attribute related to the essence of ownership, property rights being enshrined by the Constitution of Romania which, in article 41 par. 1, guarantees the right of private property” (Bacău Tribunal, Commercial and Administrative Department, Civil Sentence no. 169/19 March 2008).

Likewise ruled Romania’s Constitutional Court (Constitutional Court, Decision no. 870/9 October 2007) and the European Court of Human Rights which stated in its case law that a deprivation of property must be provided for by law, pursue the public interest, comply with the national rules and respect a relationship of proportionality between the means employed and the aim sought.

Beyond the financial aspect, the notion of managing the interests of local communities has also a non-legal and non-financial aspect which concerns “the organization of cultural life, of science, sport and leisure, the establishment of public services to meet certain collective needs, the specific economic life, determined by the structure of production and trade, of the geographical area in which the locality is situated etc.” (Popa, 1999: 88).

Thus, the notion of managing the interests of local communities requires a complex approach, its many senses being revealed in an ontic plan – “the existence of a collective need, of a necessity to be satisfied”, in the gnoseological plan – “the knowledge of the collective needs, through their awareness on both the community level and on the local public administration authorities level, in the praxiological plan – “the active orientation, satisfaction of needs, through legal and material means placed at the disposal of local authorities” (Popa, 1999: 88).

Another important aspect is that the national public interest takes precedence over the local. It has thus been emphasized in the case law of the courts, in a decision handed down by the Court of Appeal in Iași, “how the obligation to ensure the necessary space in

which this institution must conduct business has been and remains the responsibility of local authorities, the legality of the decision adopted by the intimate should be investigated through the angle of preservation of national public interest and not just through the prism of the defendant's right to dispose of the goods contained in the patrimony, public interest prevailing in this case, local autonomy cannot be invoked as a pretext in order to have the public interest unachieved" (Court of Appeal in Iași, Department of Administrative-Fiscal Litigation, Decision no. 81/CA/11 February 2008).

We must emphasize that the management of the patrimony of local communities may not be an isolated action, but it must be organized in the framework of a comprehensive system of management control within which the evaluation of public actions, reporting and adaptation of means used for the purposes intended are primordial, within which the "managerial innovations" are healthy, and the investment projects should be selected and organized by the criterion of profitability (Mazière, 2013: 163).

2. Availability of financial resources necessary for the exercise of the powers of local authorities

The allocation of the resources necessary for the exercise of the local powers, in particular, and local self-government in general "are guaranteed by the existence of economic and financial base managed by local powers" (Voican, 2011: 205). The principle of local autonomy has a material support, which outlaws from the area of abstract content. Revenues from local budgets, non-budgetary revenues, public ownership of the municipalities (communes, cities, counties) comprised of land, material resources, public enterprises, buildings of educational, cultural, medical care institutions etc. constitute physical basis of local autonomy.

Local autonomy has, in consequence, as its economic foundation, its own patrimonial sphere managed by local authorities "as an authentic owner", according to law (Preda, 2007: 21). Heritage available to each community is "the fount of development and prosperity," of "solving requirements and needs of inhabitants"

(Preda, 2007: 21), representing the source of income and means of guaranteeing loans they incurred to.

The general legal framework of financial and budgetary process in Romania has been and is secured by the Constitution of Romania (since 1991, with amendments in 2003), the Law on public finance no. 72/1996, the laws on local public finances nr. 189/1998 and no. 273/2006, with subsequent amendments, annual budgetary laws (i.e. the State budget law and the law on State social insurance budget), special laws on setting up special funds (which are approved as annexes to the annual budgetary laws) and by other specific regulations (Avram, Pîrvu, Radu & Gruescu, 2007: 221).

In accordance with art. 137, par. 1 of the Constitution, the State bears an important responsibility for financial domain, embodied in "formation, administration, use and control of the financial resources of the State, of the administrative-territorial units and of public institutions". Holding the monopoly of legislative initiative in the field of the budget, including in terms of rectifying laws, the Government has the "exclusive jurisdiction to develop the draft of the State budget". Accordingly, "no public authority can predetermine the budgetary allotment in the draft budget, thus substituting the Government in its drafting" (Constitutional Court, Decision No. 36/1996). On the other hand, the Government, as the Central Executive authority, through its specialist bodies, is "responsible for the fulfilment of those budgets, for taking measures to ensure financial equilibrium, for the application of financial policies and for efficiently spending of financial resources" (Enache, 2011: 126).

According to art. 27 of Law no. 215/2001, in order to ensure the local autonomy, authorities of local public administration have the right to establish and to levy local taxes and duties, to draw up and approve local budgets of communes, towns, municipalities and counties, according to the law, which shows two areas where local authorities have exclusive jurisdiction: on the one hand, the setting up and collection of local taxes and fees, on the other hand, the development and approval of budgets of revenues and expenditures (Preda, 2007: 92-93).

Budgetary process is held each year on the basis of a methodology developed that prescribes financial policy priorities, phases and rules of budgetary process, as well as main printed forms to be used by authorising officers for the submission of their proposals. Relevant institutions shall analyse and evaluate the draft budget of the authorizing loans officers and negotiate with them over those projects.

Art. 3 of the Government Emergency Ordinance no. 53/2006, Government Emergency Ordinance no. 45/2003 and Law no. 273/2006 on local public finances regulate the setting up and collecting of the amounts to form a separate account opened on behalf of each of the county councils. The elaboration, approval, execution and reporting of the local budgets of communes, towns, municipalities, counties, sectors of Bucharest municipium and the city of Bucharest, of the budgets of public institutions financed wholly or partly from local budgets, as well as of foreign non-refundable grants budget and of budget of the internal and external loans constitute an important pillar in the basic governance of local self-government in the country.

The financial resources available to local public administration authorities must be correlated with the powers and duties prescribed by law. Therefore, according to art. 14 of Law no. 273/2006 on local public finances, “no item of expenditure may be included in local budgets or can be committed to this budget if there is no legal basis for that expense”.

Regulations in the field of local public administration, plus the Tax Code - Law no. 571/2003, constitute also the support of the legal regime in which central authorities and the administrative-territorial units' bodies act. Financial resources, represented through money, human resources, consisting of people, and the material resources represented by the buildings, equipment, machinery, restrict or extend the right to decisions in favour of the community local authorities. Real local autonomy needs its own revenues to local budget, local experts and logistics in order to be viable.

Law no. 273/2006 specifies that the revenues and expenditures of local government are composed of own revenues consisting of taxes, fees, other payments, contributions, other revenues and quota taken from the income tax, from amounts broken down from some of the revenue of the State budget, of grants received from the State budget and from other budgets, donations and sponsorships (art. 5). Finding and evaluating the taxable matter and tax base, as well as the evaluation of the provided services and of the revenues obtained by these are the basis on which the revenues of local budgets are built. Sizing and allocation of expenditures by loans officers, on destinations, activities, programmes, projects and objectives shall be carried out taking into account the priorities determined by the interests of the local communities concerned. Within the budget-finance sector, decentralisation is supported by the passage from the Government in the administration and financing of local public administration authorities, of public expenditure by providing the necessary financial resources in the first year and in subsequent years (art. 6). In legal documents are included principles, rules and responsibilities as follows: the principle of universality concerns incomes and expenses included in gross sums and not affecting directly the budgetary expenses excepting donations and sponsorship; the principle of transparency and publicity (publication in the local press, on the website of the public institution, displaying at residence of the local public administration authority of the local budget and the annual account, public discussion of the draft budget and the presentation of the annual account of the local budget execution in open session), the principle of unity (registration in a single document of revenue and expenditure, and the interdiction of using revenues under extrabudgetary regime, as well as the creation of local public funds independent of the budget if the law does not stipulates it), the principle of the monetary unit (budgetary operations denominated in the national currency), the principle of annuality (budgetary revenue and expenditure approved for a period of one year), the principle of budgetary specialisation (approval by sources of origin and category of expenditures), the principle of

balance (expenditure shall be covered entirely from the revenues of the respective budget) constitute the essence of functional and fiscal administrative autonomy (articles 7 to 13). To the principles listed it is added that of solidarity (the assistance of administrative-territorial units and of individuals in difficulty from the reserve fund set up in the local budget), the principle of local financial autonomy (the right to sufficient financial resources, the competence of establishing the level of taxes according to the law, amounts deducted with special destination, balancing the budget through the allocation of financial resources), the principle of proportionality (financial resources commensurate with the responsibilities of the authorities), the principle of consultation (local public administration authorities consulted on the process of allocation of financial resources from the State budget to local budgets), principles which give jurisdiction and responsibility in the budgetary process (articles 15 to 18).

Approval and correction of local budgets, of foreign and domestic loans, of budgets of foreign non-refundable funds by local councils of communes, towns, municipalities, counties, sectors and the General Council of Bucharest, of budgets of the public institutions are made according to art. 19 of Law no. 273/2006. Article 20 of the above mentioned law presents the legal framework of the competences and responsibilities of the local public authorities in the field of finance as follows: elaboration and approval of local budgets, the establishment, ascertainment, control and tracking of local taxes and fees collection, of the execution of local budgets and rectification thereof, and tracking of method of performing activities in the field of public services constitute the duties incumbent upon those local entities. Direct contracting of external and internal loans on medium and long term, guaranteeing them, and the administration of local public funds and implementation of development programmes also constitute powers and responsibilities established by law. The provisions of the above mentioned law apply also to Presidents of County Councils. The law on local public finances establishes also the three categories of loans officers (main, secondary, third) which are

responsible for carrying out the annual budget, mainly, and local financial resources in the secondary.

In order not to “induce the idea that the principle of local autonomy excludes the administrative and financial control upon the activity of local public administration authorities” (Preda, 2007: 65), art. 18 of Law no. 215/2001 specifies: “The administrative and financial control of the activity of local public administration authorities shall be exercised within the limits and under the conditions prescribed by law”. Thus, exercising administrative control rests with the prefect and the administrative courts, as well as other administrative structures with control attributions, and the exercise of financial control enters in the competence of specialised administrative bodies and of the Court of Auditors.

Management-Economics-Finance relationship represents the Western model of administration, characterized by the subordination of economic and financial courts against administrative courts. The new budgetary concept will facilitate demonstration by the Romanian State of its ability to broaden the base of democracy through decentralization, deconcentration and local autonomy.

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