

THE ROLE OF THE LOCAL GOVERNMENT IN ENSURING THE ECONOMIC FREEDOM

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Abstract

The study aims to examine the role that local government plays in ensuring the economic freedom. It briefly examines the status of local authorities, deliberative and executive, and also the powers that they have to create the conditions for the exercise of economic freedom. The study also examines the constitutional regime of this fundamental freedom which is part of the rights and freedoms of the first generation. The purpose of the research aimed both identifying the role of local government in ensuring this basic freedom but also to determine possible means of action to be considered by the government within the territory.

Keywords: economic freedom, local government, deliberative authorities, executive authorities, local government units, roles, responsibility, role.

JEL Classification: K23

I. Preliminary considerations

One of the elements that distinguishes the rule of law from the totalitarian one is the recognition for the territorial administrative unit, components of the state and the actual capacity and right to solve public needs through authorities established by direct vote to represent their interests. The quintessence of this right is found in the *principles of local autonomy, decentralization and deconcentration* of public services, which are enshrined in most the Member States of the European Union and also in an European document², including the Constitution³, in Article 120.

The philosophy of consecration of the **local autonomy**, also as a leading principle of public administration from territory, lies in the **principle of subsidiarity**, of European origin, according to which solving people's problems must be given to the authorities who are closest to them. The investment with authority regarding the local communities involving other categories of authority may be made only if and to the extent that they may provide a more appropriate achievement, more adequate than the authorities closest to the citizens⁴ may carry out.

The Romanian Constitution places by art. 120, at the bottom of the organization and functioning of public administration in territorial-administrative units, the principle of **local autonomy, the deconcentration and decentralization of public services**.

To this text should be added the one provided by Article 73 para. (3), under which, among the matters reserved to the organic law, is found also "*the regime of local autonomy and the organisation and functioning of the local government*".

Within the Romanian constitutional system, the organic laws are an important category of laws, which the doctrine states that are extensions of the Constitution of particular significance, regulating the institutions with a special relevance for the rule of law⁵. Hence, the conclusion of the special significance that the constituent legislator attaches to the regulation of the local government and to the place of the authorities that exercise it among the Romanian system of authorities. The

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² It is the *European Charter of Local Self-Government*, ratified by Romania by Law no. 199/1997, published in Official Gazette nr.331/1997.

³ Constitution was revised by Act 429 of 2003, published in the *Official Gazette* and republished in the Official Gazette nr.758/2003 nr.767/2003

⁴ For details on the principle of subsidiarity, see Manuel Guțan, *History of public administration in modern Romanian state*, ed All Beck, Bucharest, 2005, p 44.

⁵ I. Muraru, E. S. Tănăsescu in I. Muraru, E.S. Tănăsescu (coord.), *Constitution, comment on articles*, ed.CH Beck, Bucharest, 2008, p 689.

law that the Constitution sends to is the Law no.215/2001 of local government. The area of public authorities through the local autonomy is performed into communes, towns (municipalities) and counties is determined by Articles 121-123⁶. It is the *city council* and the *county council*, as deliberative bodies of local self-government, the mayor and the president of the county council, as executives organs .

Regarding the **president of the county council**, the Constitution only mentions it in the Article 123, in para. (4), which establishes the absence of subordination between the prefect and local autonomous authorities, deliberatives and executives, rule which was introduced by Law. 429/2003 on revision of the fundamental law. This "*appears as a developing of the art. 122 para. (2) rising to the rank of constitutional term the president of the council*"⁷.

However, we subscribe to the criticism formulated in the doctrine, rightfully seized according to which "*it is not clear if the County Council was established as a public authority*"⁸ and the proposal that the distinguished author made "to amend or to supplement the Art. 122, making an explicit statement about the President of the County Council"⁹.

Despite these regulatory deficiencies, rightfully seized within the doctrine, interpreting the constitutional rules in relation to those of the organic law no. 215/2001, results in no doubt that public administration in territorial-administrative units is made according to the current legal system existing in Romania, by the following public authorities :

- a) **at the level of villages, towns and municipalities** by the **local councils**, as deliberative bodies and the **mayors**, as executive bodies ;
- b) **at the county level** by the **county councils**, deliberative authorities, and **presidents of county councils** and presidents representing the county government executive .

In this material, we will analyze which is the role of these public authorities in ensuring a fundamental freedom, that is **the economic freedom**.

II. Constitutional economic freedoms

It is one of the fundamental freedoms recognized to the Romanian citizens by the Article 45 of the Constitution, analyzed by the doctrine within the category of **rights and social-economic and cultural freedoms**¹⁰.

It was introduced in the Basic Law by the Law no. 429/2003. The Constitutional text provides a brief statement that "*the free access of a person to an economic activity, free initiative and exercising of these under the law are guaranteed.*"

The provisions of Article 45 should be read in conjunction with other constitutional provisions, of which, a special significance in our opinion , has **the Article 44**, which regulates **the right of private property** and **the Article 135** (paragraph (2) a), according to which the **state should provide free trade, the protection of fair competition, the creation of the favorable framework for the use of all factors of production**.

Relevant to understanding the legal status of these freedoms, which is part of **the category of rights and freedoms of first guarantee**¹¹ , is also the first paragraph of the **Article 135**, stating the nature of the market economy, which is **that system of organization and functioning of the economy, in which the ratio of supply and demand determines the priorities in the**

⁶ Although Article 123 regulates the prefect, we consider par. (4) that also mentions the President of the County Council amongst the authorities to which the Prefect is not in subordination relationships.

⁷ A. Iorgovan in M.Constantinescu., A. Lilac, I.Muraru, E.S. Tănăsescu, *Constitution reviewed, comments and explanations*, ed. All Beck, Bucharest, 2004, p 123.

⁸ Rodica Narcisca Petrescu, *Proposals for constitutional regulation of local government* , Public Law Magazine no.1/2013, p 82.

⁹ *Ibidem*, p 82

¹⁰ Ion Muraru, Elena Simina Tănăsescu, *Constitutional Law and Political Institutions*, All Beck Publishing House, Bucharest, 2005, Vol. I, Ed 2012, pp. 171-179.

¹¹ Flavius Baias, Milena Tomescu in Ion Muraru, Elena Simina Tănăsescu (eds.), *The Romanian Constitution, comment on articles*, CH Beck Publishing House, Buc. 2008, p 468.

production of goods, methods of organizing and combining inputs, and individuals and groups of people have access to the goods produced using the level and price dynamics¹².

Given that, in the 1991 version, the Constitution establishes provisions regarding the **character of the market economy status** and the ones regarding the obligation of the state to ensure freedom of trade, it can be argued that the root of the economic freedom have been found since its adoption, and the express consecration of this fundamental freedom, by the reviewing law, has proved to be one of the most inspired choices of constituent legislator¹³.

The economic freedom is that fundamental freedom of the Romanian citizens, under which they are entitled to pursue an economic activity, and the state has the obligation to provide the legal and institutional framework through which it can be exercised.

The term "economic activity" is found defined in Article 2 a) of **GEO No.44/2008** on economic activities by authorized individuals, sole proprietorships and family businesses¹⁴.

According to the above provision, the economic activity is *"the agricultural, industrial, commercial activity, that is performed to obtain goods or services whose value can be expressed in money and which are for sale or exchange in organized markets or to determined or determinable benefits, for obtaining a profit*.

The access to an economic freedom is the first component of the freedom guaranteed by the Article 45 of the Constitution. The second component is the **access to free enterprise**, a phrase which means, in our opinion, **the calling that a person has to initiate and develop in a competitive environment guaranteed by the state, an economic, commercial or otherwise activity, that would give the satisfaction to get income and the fulfillment of individual personality in the collective context**.

This fundamental freedom can not be exercised unlimited, so the law is the one who sets its limits, content, procedure, the constitutional text, referring **explicitly to the law**.

III. The economic freedom - target for local government

One of the laws to which the constitutional text sends to is, in our view, **the local government Law**. From the letter and spirit of this organic law emerges the conclusion that the local authorities **have general material jurisdiction** in all solving social needs of public interest of all territorial communities that they have chosen and the interest they affect.

Among the powers that the law therein contained to the autonomous authorities are also found responsibilities related to the economic freedom, which the Constitution guarantees.

Therefore, the local Council's powers under Article 36 of Law no. 215/2001. Among the five categories of functions that it provides, there are also found responsibilities for **economic and social development and the environment of the locality, the ones regarding the administration of public and private domain of the locality or the management of public services provided to citizens**.

The article 91 of the same law provides in a close sensitive form, similar functions for the County Council. It is undeniable that **the implementation of these functions is achieved through the activities of citizens in the economic freedom which the Constitution guarantees**. In respect of **the mayor and the President** of the County Council, under Articles 63 and 104 of Law no. 215/2001, they are also invested with tasks covering all categories of needs that the administration of a local authority requires, including those relating to economic, social, cultural or environmental development.

Moreover, Article 5 para. (2) of the framework law of the local government establishes the principle that *"the local autonomy gives to the local authorities that, under the law, taking*

¹² Ion Gavrilă, *Market economy* in Nicolae Dobra (eds.), *Economic Dictionary*, Economic Publishing House, Bucharest, 1999, p 185.

¹³ Flavius Baias, Milena Tomescu in Ion Muraru, Elena Simina Tănăsescu (eds.), *op. cit.*, page 460.

¹⁴ Published in *Official Gazette* no. 328 of 25 April 2008.

initiatives to all areas, except those which are given explicitly in the jurisdiction of other public authorities. "

It follows that, *in the absence of legal rules that establish responsibilities to other public authorities, the public social needs of citizens that make up these local communities are carried out by the deliberative and executive authorities of local autonomy.*

The fundamental rights and freedoms of the citizens are guaranteed by local government actions, including one on the exercise of economic freedom, guaranteed by Article 45 of the Basic Law.

The concrete ways that can ensure the intake of local authorities in the implementation of economic freedom are:

a) **issue¹⁵** or where appropriate, **the adoption¹⁶ of administrative acts approving, consenting, authorizing economic activities undertaken by the citizens of a locality.** Thus, according to Article 63 para. 5 letter g) of Law no. 215/2001, **the mayor is the one who issues permits and authorizations required by law.** This task, according to Article 103 para. 6 letter d) of Law no. 215/2001 is also provided for the President of the County Council;

b) **awarding, by meanings provided by law** (lease, rental) of **real estate, constructions and lands**, in order to pursue economic activities by those who have their domicile or residence in a village.

c) performance of economic activities through public-private partnership under the law governing this type of partnership¹⁷.

Equally, the citizens can provide support to public authorities in their duties. One of the principles that art. 2 places at the bottom of the organization and functioning of local government is the **consultation in solving local problems of special interest.** Public consultation may take the form of a *referendum*, and *other means of consultation* through which citizens can express themselves on how to be solved some of their problems **through meetings between them and the autonomous authorities, submission of projects for public debate participation in the meetings of deliberative bodies, reporting by those citizens and other such means.**

The citizen and the administrative authority should be a binomial in which both components must be an active and effective. Only in this way is given a real efficiency to the activity that the administration performs and the fundamental rights and freedoms of citizens, including economic freedom, are actually implemented in practice and, thus, effectively guaranteed.

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¹⁵ The term "issue" is used in the unipersonal administrative bodies. Example: the mayor or county council president issues provisions.

¹⁶ The term "adoption" is used in the pluripersonal administrative bodies. Example: local and county council makes decisions.

¹⁷ Is about the Law no. 178/2010 on public-private partnership, published in *Official Gazette* no. 676 of 05.10.2010.