

THE EVALUATION OF THE PROCESS OF DECENTRALIZATION IN MOLDOVA: ACHIEVEMENTS AND CHALLENGES

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Abstract: This article gives a brief analysis of the evolution of decentralization in Republic of Moldova. Decentralization policy at this stage is governed by a legal framework, including the Decentralization Strategy. The decentralization process is a government priority and is expressly provided for in the work program of the government for the period 2015-2018. It describes four steps in the realization of the decentralization process and specific issues faced by local authorities. There are analyzed the challenges facing local authorities in the implementation of the decentralization strategy at this stage.

Keywords: decentralization policy; local autonomy; local authorities; administrative capacity; financial decentralization.

Developing and implementing an effective and efficient public administration is a necessary priority of modern governance. To meet the challenges this domain of public life requires a continuous process of reform, which is closely linked to the problems and prospects of the development of democracy in general, both at central and local levels. Decentralization of power and local autonomy are indispensable to the democratic process. These goals are necessary, especially in states in transition from a closed society to an open society, based on pluralistic democracy. One example is Moldova, which until 1991 was part of a state with the most centralized form of public administration – USSR. The decision making process was the exclusive prerogative of the state and central authorities. Decentralization and local autonomy as principles of organization and functioning of the local government were totally excluded from the legal practice and the relations between different levels of public administration were based on a hierarchy and direct subordination (“vertical of power”, “democratic centralism”).

Thus, from its the independence (25 years), Moldova has been seeking to implement a system of local public administration which combines the existing traditions and customs and which corresponds to principles and international standards that the state has accepted and has undertaken to implement.

During these years several models of local government were experienced. The changes that were made have focused on two issues: changing the territorial structure and the *tutelage* of local authorities, which unfortunately pursued mainly political ends (electoral) and were poorly supported in terms of economic

and social aspects. Public administration still remains influenced by political factors. Thus, the influence of the political factor on reforming local public administration was present every time a new political party came in power.

As mentioned by Professor V. Popa (2008) developments in this period did not naturalized the spirit and values of administrative decentralization, because they have not determined the emergence of a new model of local autonomy, recognized throughout Central and Western Europe, by accepting and ensuring the achievement of the principles stipulated in the European Charter on Local Autonomy.

Political influence, excessive bureaucracy and low capacities of local authorities have made it difficult to implement a new system of local public administration. Inconsistent results, in some areas even lack of results led to population disappointment, for a population that had the hope of a decent living after each election cycle.

In numerous studies and researches carried out in this respect it has been shown that the local public administration system in Moldova is unstable because it is subject to various unjustified interventions by the government and to excessive tutelage over local authorities (Popa 2003 V, Furdui 2003).

Over time, under various forms and methods, enhancing the “vertical hierarchy” between central and local authorities was intended, which is explained on the one hand by the need for increased control and loyalty of local authorities to central political power and, on the other hand, by the low level of capacity and responsibility to self-administration of local communities.

In this regard, even the experts of the Congress of Local and Regional Authorities (CLRAE) of the Council of Europe in charge of monitoring the developments of the local public administration in Moldova have repeatedly presented their opinion. For example, the Report prepared by prof. John O’Loughlin stated: “suppressing the counties and the metropolitan area of Chisinau, restoring the districts and the interpretation given by the Moldovan authorities on the basis of the principles of ‘the vertical of power’ and ‘the interaction of the representative and executive parts of the power’ show clearly that the new law marks a step backward in the transition of Moldova to democracy and they are difficult to be reconciled with the Charter” (John O’Loughlin, 2002)

Claude Casagrande and Yavuz Milden, (2002) in “Draft recommendation on the situation of local and regional democracy in Moldova”, prepared for consideration by the Congress of Local and Regional Authorities of Europe, indicated: “There is no evidence that local communities were consulted properly as required by Article 5 of the European Charter on Local Autonomy, which states: ‘changes regarding the deadline for the exercise of the function by local authorities should not be made before consulting the local communities affected by the matter, which is possible through a referendum in cases where it is

prescribed by statute.’ It is unacceptable that in a democratic state such reform to be decided without a transparent, formal and authentic consultation of concerned institutions”.

Thus, the path of decentralization can be divided into four phases:

1) The period 1994-1998. With the adoption of the Moldovan Constitution, the principle of local autonomy through administrative and financial decentralization was raised at a constitutional status, being recognized the right of local communities to self-administration within the administrative-territorial units to which they belonged.

Of major importance for the future of local government system was art. 109, which establishes the principles governing the organization of local public administration: local autonomy; decentralization of public services; eligibility of local public authorities; public consultation on issues of local importance.

During this period Moldova ratified a number of international agreements, thus assuming the responsibility for ensuring local autonomy and administrative decentralization.

But after more than 50 years of rigid centralization in the Soviet administrative system, local communities lacked not only the specialized human resources for the new system but also the institutional memory, the regulatory framework and skills for self-organization.

Excessive administrative-territorial fragmentation specific to the Soviet administrative system remained in force, with changes only to the form and not to the content. Amid political crisis and deplorable economic situation, the administrative decentralization established in the administrative units was poor and created more destabilization than solving the local issues.

In these years, the communities, mainly villages have lost most of the economic infrastructure, and public services have been minimized. Towns and villages were facing problems in all spheres of public interest – supply of electricity, gas, water, sewer, heat, road maintenance, medical institutions, culture and education. Basically in all localities, including the city of Chisinau, street lighting, public transportation and maintenance of green areas lacked partially or totally. Central specialized public services of that time did not leave space for local decentralized services by virtue of the fact *the ministry of municipal services* was kept, which was responsible to the government for the municipal services provided to the population.

Local authorities turned out to be lacking administrative capacity and leverages, including financial ones. This has undermined the very principle of local autonomy and induced to the local communities a feeling of distrust and made them more dependent on the center.

The biggest error committed by the legislature in 1994 was not accepting the project on administrative-territorial reform, and keeping the old Soviet

structures of districts (*raioane*) and villages, with a high degree of centralization of power and massive bureaucracy in small administrative units

The period 1994-1998 has shown that administrative units of level 2, being too small and with a weak economic potential, could no longer be self-managed, they were totally dependent on the state budget. In terms of 2/3 cut down in GDP and the depreciation of the national currency, the state could no longer give subsidies to the districts that lacked the capacity and the necessary legal status to survive in the free market economy (IDIS "Viitorul" 2003). In this way, the administrative-territorial reorganization was firmly necessary not as political ambition dictated from outside, but as an objective necessity for the development of local communities in terms of economic, urban and social. (Popa 2008)

2) The period 1998-2001. On December 30, 1998 the new Law on administrative-territorial of the Republic was adopted, which abolished old districts as administrative units level 2 and introduced in their place 10 counties.

The new administrative-territorial structures were better equipped (than the old districts – *raioane*) in terms of economic and social needs, having a stronger infrastructure and even an emerging identity. This time we could talk about the development of regional centers, whose main task was to achieve economic social and cultural needs of the population, which had to differ radically from the potential of former districts (*raioane*).

The law on local public administration, adopted in December 30, 1998 was fully connected to the European traditions and constitutional principles stipulated in Article 109 of the Constitution and the European Charter: autonomous exercise of local power, and attempted to avoid the negative experience in local government, gained over the recent years.

In this context, what was especially welcomed was the establishment of the institution of the prefect, the representative of the Government in the territory, which provided an actual administrative decentralization, as the prefect was endowed with concrete powers of management of the devolved county public services, without interfering in the sphere of activity of local authorities.

The existence of the institution of the prefect responsible for the devolved public services has enabled the actual achievement of local autonomy, of decentralization of public services. In this regard the most important issue of the administrative reform that took place was the process of administrative decentralization and devolution, *i.e.* the establishment of the domain managed by the prefect (devolution) and that which is transferred to the responsibility of local authorities – local councils of all levels (decentralization).

The principle of local autonomy and decentralization of public services has made this institute necessary in the local public administration of the republic, being a tool that the Government could legally use in its developments

in the territory, respecting the principles of local autonomy and decentralization of public services.

By the territorial-administrative reform of 1998 the basis of an actual decentralization was established and, therefore, a favorable framework for strengthening local autonomy was shaped. But the reform was stopped before the communities felt the effects of decentralization through the improvement of the quality of public services.

3) The period 2001-2008. Due to the change in the power balance, the new communist parliamentary majority returns to the administrative-territorial organization that existed until 1999.

The Law 764-XV/2001 of 27.12.2001 reestablished the districts (*raioane*), therefore it eliminated the key element of decentralization – the institution of the prefect. With the disappearance of the prefect, also disappeared the function of the management of devolved public services in the territory and the function of administrative tutelage or, better said, legality review of the acts issued by the public authorities. In seeking a solution, in December 28, 2001 the Parliament adopted the Law no. 781 on local public administration, which abolished the institution of the prefect, transmitting its former functions and duties to the president of the District Executive Committee.

As Ion Creanga (2005) stated, in this way the district-system became a semi-governmental structure, free of the principle of local autonomy. Thus the central government set as the foundation of public administration the principle of “vertical power in state” that will generate a whole avalanche of problems – from overlapping tasks of authorities at different levels to conflicts between levels and flagrant violation of the principle of local autonomy as preserved by the Constitution

After multiple objections and debates, this provision was declared unconstitutional and, seeking for new solutions, the Law No. 123 of March 18, 2003 on local public administration, eight Territorial Offices of the State Chancellery were established in the former county centers. They were empowered to verify the legality of the acts issued by the local authorities, therefore only with administrative tutelage functions, and not leading functions with the devolved public services.

On their turn, the Territorial Offices of the State Chancellery by the Government Decision no. 992/2003 were transformed into Territorial Offices of the Government, holding the same powers and territorial ramifications.

The administrative-territorial anti-reform from 2001 determined the eradication of the achievements of local public administration in the period 1998-2001, linked to the consolidation of local communities’ capacity to self-administration and made impossible the development of quality public services at the local

level given the excessive fragmentation of administrative-territorial units and their low human resources, financial and administrative capacity.

In December 26, 2006 a package of laws on local public administration was adopted. But these laws have not led to an immediate improvement of the administrative process, primarily because of the imperfections in the administrative-territorial organization of the country and the excessive politicization of the administrative activity, including the personnel policy and also because of the tendencies of keeping at any price the “vertical power”, which is unacceptable in a democratic society.

4) The period 2009-present. After changing the balance of forces in the legislative, the new government took into account the suggestions and calls of the experts in the field and tried, gradually, to stabilize the situation and return to the national and constitutional rules, promoting the idea of developing local autonomy and administrative decentralization.

In this regard a number of laws were subjected to changes and new laws and decisions aimed directly to local public administration were adopted. Thus the Ministry of Local Public Administration was abolished; the functions of administrative tutelage of the local authorities were transferred to the Territorial Offices of the State Chancellery. Local authorities from the first and second levels are given by the law the right to cooperate with the private sector under public-private partnership contracts which aims at increasing the financial capacities of local authorities.

Regulations were drafted aiming at decentralization and transmission of tasks, objectives, patrimonial complex etc., to the local public administration. The local public authorities were charged with public services for utilities, heat and water supply, management of local roads, local transportation, management of the patrimony of the educational and health institutions, etc.

In the process of decentralization some objectives and public services were being privatized or their provision was taken over by representatives of the private sector (electricity and gas, water supply and sewerage, notaries, dental care etc.).

In 2010, by a Government Decision the Joint Commission on Decentralization is created, in order to study, promote and monitor the decentralization process.

In April 5, 2012 the Government of the Republic of Moldova approved the National Decentralization Strategy and the Action Plan for the implementation of the National Decentralization Strategy for 2012-2015, which were subsequently approved by law. The development of the strategy has emerged from the need for strategic planning of the decentralization process, to enhance the capacities of local authorities, to improve the management and quality of public services delivered to citizens

The strategy takes into account the current legal and the policy frameworks, the achievements and gaps of the previously implemented strategic policies, the requirements linked to the European integration process, the principles of good practice relating to the criteria for accession to the European community and, simultaneously, the specific features of development of the local authorities in Moldova. Strategy provisions were linked to documents of relevant policies, to the central public administration reform, to other reforms, which offers an operational continuity of the actions of the National Development Strategy.

This strategy became the main policies document on local public administration, which determined the national mechanisms in the fields of decentralization and of ensuring a genuine local autonomy for local public authorities. In this context we mention the local public finance reform which started in January 2015.

Principle changes were made in fiscal decentralization, and the local public authorities are encouraged to expand the tax base, to generate their own income and use these revenues to their proper discretion

The implementation of the Decentralization Strategy was planned for the period 2012-2015. The large volume of envisaged measures and also the political and economic instability of that period have undermined the realization of the Strategy on time. We note that in the period 2012-2015 five governments changed, which has jeopardized the implementation of the decentralization reform, ensuring the achievement of only 57% of the planned activities

The Extension of the decentralization reform is provided in the Government Action Program (2015-2018) and in the Public Administration Reform Strategy 2016-2020. Decentralization is also reflected, directly and indirectly, in the Association Agreement to the European Union.

Although there is a legal support, the decentralization reform still remains a reform with many controversies and a great involvement of the political factor. The challenges facing the decentralization reform in Moldova currently lists: financial decentralization, patrimonial decentralization, local administration capacity. Financial decentralization is under implementation and for achieving the expected results, at the moment, the development of effective mechanisms of functioning of this policy are needed. Improving financial management and partnerships with civil society, the review of the manner of administration of taxes, special funds would expand the tax base of local communities.

One of the components of the decentralization reform is the patrimonial decentralization. Currently about 60% of patrimony from the territory of the administrative-territorial units belongs to the Moldovan state. There is no clear delineation of goods in private and public domain of the state.

Sectorial decentralization is another constraint in implementing the decentralization reform. Ministries continue to retain their competencies and delay the transfer of powers / attributions at local level.

For a successful implementation of the decentralization reform the capacity building of local public administration is needed. At this moment local authorities are facing a number of problems in this area. One problem is the inadequate structure of local authorities (states-type imposed by the government, fixed budget for staff maintenance). The number of employees, according to the flowchart, does not cover entirely the achievement of local authorities' attributions stipulated in the legislation. Poor infrastructure in rural areas and low level of motivation generate a high level of staff turnover in local public administration. The lack of financial resources also influences the professional development of employees in local public administration. Problems that should be addressed by local authorities are complex and require high quality level from the local councilors. The weak level of knowledge and the low skills of the local elected officials in the field of administration create impediments to good governance at local level. In this context the training of mayors and elected councilors is an urgent necessity.

In countries with democratic traditions, the relationship between the administration authorities of different levels is based on cooperation, solidarity and loyalty. In the exercise of powers conferred by law, local government authorities of various levels are provided with conditions for an efficient and mutually beneficial cooperation. Thus, local authorities are consulted by the central authorities when the actions taken by the latter affect the interest of their sphere of competence or the individual interests.

Moreover, the powers conferred to the local public administration authorities are full and they cannot be limited by a higher public authority, but only according to the law. However, in Moldova a greater or less dependence on transfers from the state budget is typical of most local authorities in the country. This situation reveals the low level of autonomy of local public administration and the reduced capacity to meet the needs of local citizens. It is already a practice by which the government determines the priorities for investment in infrastructure, education and health, and the local public administration remains a passive observer of this process.

The administrative-territorial organization remains a topic of discussion in society. We note that the Republic of Moldova, in terms of administrative-territorial organization is a very fragmented state. Thus at the moment there are 898 administrative units of first level and 34 administrative units of the second level. Most of the administrative-territorial units do not have an adequate potential for development, nor the capacity and resources to organize quality public services. Water supply, disposal of household waste, street lighting, green space management and public transportation are services that require

large investments and ongoing maintenance. In this regard, it has increased lately the debate that a solution for local authorities could be the inter-municipal cooperation and joint organization of public services between two or more localities

Although there are a number of problems in implementing the decentralization policy, the existence of the legal framework and the assumption of the decentralization strategy reveal, finally, the emergence of a systematic approach to decentralization, giving a consistent and responsible characteristic to the processes of decentralization and of local autonomy in Moldova.

In conclusion, the theory and the practice of public administration offer a wide range of concepts, forms and tools which, being studied and applied appropriately, can allow finding the most optimal and efficient decisions in the processes of decentralization and of improving the functioning of public services in various fields. However, in order to fulfill the decentralization process, it is necessary the compliance with the following conditions:

- A coherent and transparent legal framework, which should clearly define the attributions and the decisional responsibilities of the different levels of the public administration, the mechanisms for achieving them and the necessary financial resources to cover their effective exercise;
- The political will and the interest of the central authorities to fully implement the decentralization process, as an attribute of the rule of law;
- Setting a realistic and coherent set of objectives in key areas by which the decentralization policies to be implemented;
- Training the qualified and motivated staff in accordance with the assigned responsibilities in the decentralization process;
- The existence of a favorable ambience and of facilitation which ensure the creation of partnerships between various actors in the decentralization process.

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