

DECENTRALIZATION OF PRIMARY AND SECONDARY EDUCATION - EMERGENCY DURING THE PANDEMIC

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Abstract:

One of the hard-fought areas during the pandemic due to the SARS-CoV2 coronavirus is primary and secondary education. The paper analyzes a short history of the decentralization process of this field, a process that has been going on for 30 years and is considered a decisive factor in creating these problems and proposes, based on conclusions appropriate to this analysis, some solutions to accelerate this decentralization process.

Keywords: *public administration, primary and secondary education, decentralization, principles, pandemic, primary and secondary education units, education*

1. Introduction

Both the central public administration and the local public administration were put to the test in 2020, given the pandemic period due to the SARS-CoV2 coronavirus. One of the fields of activity most affected by the effects of this pandemic is that of primary and secondary education, an area within the sphere of material competence of both types of public administration. If in the beginning of the mentioned period, due to the specificity of the pandemic, it was placed on a secondary place, the first place being mandatory occupied by the field of public health, after a short time, the problems in the field of education required due attention back to this field.

The problems faced by primary and secondary education in the pre-pandemic period have worsened, new problems have arisen, unknown and, unfortunately, unforeseen in some theoretical or practical way.

Thus, one of the problems that influenced the particularly serious state of primary and secondary education during this period is the dichotomy of coordinating this education by the central and local public administration, a dichotomy due to an insufficient, ambiguous and wrong legislative framework implemented by actors involved: central public administration authorities, local public administration authorities and primary and secondary education units.

Another problem, like the one mentioned above, prior to the pandemic period, is that of the material base, of the financial resources always insufficient to ensure a primary and secondary education at least decent, normal, equal for all beneficiaries of education and capable of correct results.

Last but not least, the way in which the problems resulting from the pandemic are managed at national level by both the central public administration authorities and the local public administration authorities, has contributed decisively to the aggravation of the existing problems in primary and secondary education, as well as to creating other new problems.

2. Decentralization of primary and secondary education - a process without an end

The process of decentralization of primary and secondary education began in 1991, with the adoption of the new Constitution, a process in which a number of stages have been completed over time, but it has not ended today, which creates many problems in the process, education issues, which are clearly exacerbated during 2020. Although the political position of all parties that have ruled during this long process of decentralization of primary and secondary education has reflected a quasi-unanimous agreement on the decentralization process, beyond the exaggerated long time period, suffered numerous syncope, and sometimes even regressions.

On a theoretical level, the decentralization of primary and secondary education represents the transfer of the decision from the competence of the central administration, the specialized ministry, the school inspectorate, to the local authorities, respectively county councils, local councils, presidents of county councils and mayors. The management of primary and secondary education units is to be achieved through principals and boards of directors, which would make decisions for development, change of educational paths, employment of new teachers, ensuring the conditions for carrying out the activity within the educational units. All these decisions would be found in the policy of the primary and secondary education unit, a policy that would no longer be implemented at the central level, but at the local level. However, what the student learns, the curriculum, the type of subjects, they would remain in the competence of the

Ministry of Education and Research, and the financial and administrative components would be transferred to the material competence of the local public administration authorities. Decentralization would move from a tripartite to a bipolar leadership: half - the primary and secondary education unit, half - the local public administration authorities.

If until the date of Romania's integration into the European Union, the progress of the process of decentralization of primary and secondary education was not only insignificant but also declarative, without producing practical effects, after this date, we actually see the real beginning of the process.

Thereby, the steps in the field of decentralization of primary and secondary education targeted the system and the way of financing by the local public administration authorities, being established rules and principles, together with their new attributions, each new government considering administrative and financial decentralization as the expression of a major commitment, but part of a larger chapter, namely "continuing the reform in public administration, with an emphasis on increasing the autonomy of local authorities by triggering the real process of decentralization, while respecting the principle of subsidiarity." [1]

The first important step that exceeded the series of declarative stages in the process of decentralization of primary and secondary education is represented by the Government Emergency Ordinance no. 30/2000 for the amendment and completion of art. 166 of the Education Law no. 84/1995 [2], through which the lands and buildings in which the primary and secondary education units carry out their activity - kindergartens, general schools (primary and secondary), high schools, school groups, theological seminaries, vocational schools and post-secondary schools, passed into the public domain of communes, cities, municipalities and sectors of the Bucharest municipality, in whose territorial area they carried out their activity.

With a delay of more than one year, the Government Decision no. 538/2001 on the approval of the Methodological Norms for financing the state primary and secondary education [3], normative act by which it is established that "Starting with 2001, the expenses regarding the financing of the public primary and secondary education institutions are ensured from the local budgets of the administrative-territorial units. they

carry out their activity, except for the expenses incurred from the state budget” [4]. However, this represents a complementary funding from the administrative-territorial units and the establishment of the human resources policy and the number of staff necessary for the proper conduct of the educational process remains the exclusive competence of the Ministry of Education and Research, school inspectorates and primary and secondary education institutions, under the conditions provided by the Education Law no. 84/1995, republished, with subsequent amendments and completions.

As an intermediate stage, in 2004, by Government Decision no. 1942, eight pilot counties were designated to apply the provisions of Law no. 354/2004 amending and supplementing the Education Law no. 84/1995 and Law no. 349/2004 amending and supplementing the Teaching Staff Statute, regarding the decentralization of the school financing and administration system.

The following year, through a Memorandum, the Government approves the Strategy for decentralization of primary and secondary education, with the aim of creating an organized education system, administered and financed according to European rigors in terms of ensuring the quality of the educational process, free, equal and providing full access to all children and young people to the educational act, the adequacy of the educational offer to the interests and needs of direct and indirect beneficiaries, by ensuring a clear, equitable and well-defined distribution of decision-making power between bodies and institutions representing local and regional communities, on the one hand and those from national level - the Ministry of Education and Research, the Ministry of Internal Affairs, the Ministry of Public Finance, on the other hand.

The next stage of this process is represented by the adoption of the Framework Law on decentralization no. 195/2006 [5], a law establishing the general rules of the decentralization process, as well as aspects concerning the stages necessary for its realization, which demonstrates the importance that the legislator must give to the decentralization process, as well as its concern to ensure standards of decentralization. quality of the administration's work and the necessary financial resources. Therefore, “The transfer of competencies is based on impact analyzes and based on specific

methodologies and monitoring indicators, developed by ministries and other specialized bodies of the central public administration, in collaboration with the Ministry of Internal Affairs and associative structures of the authorities. local public administration” [6]. It is provided that a real, authentic, efficient and effective decentralization means that most of the services planned to be transferred to the local public administration will be the responsibility of the local public administration authorities with the transfer of specific resources, but only after developing and approving standard specific costs, as well as after the modification of the relevant legal provisions. This law requires the substantiation of the transfer of competencies within the decentralization process on impact analyzes but also its realization based on a specific methodology, which should include pilot phases in order to test and evaluate the impact of the proposed solutions.

Many years after adopting this law, respectively at the end of 2013, the Government motivates the urgency of adopting a normative act by the need to have "a firm guarantee that in 2014 local authorities will have the necessary financial resources to exercise in good conditions of the powers taken over following decentralization", as well as the fact that from 1 January 2014 a new financial year of the European Union began, which represents a new period of allocation of European funds in the period 2014-2020 times, or "in these conditions it is essential that the transfer of competence and related resources from central to local government takes place before the start of the new programming period so that decentralized structures are operational and ready for the development of projects to absorb European funds, based on the new competences" [7].

In this regard, the Ministry of Regional Development and Public Administration has prepared the Strategic Document on measures needed to accelerate the regionalization-decentralization process in Romania 2013-2016, which, in 114 Annexes presents: the context, the mission, the principles of the regionalization-decentralization process (local autonomy, decentralization of competences, subsidiarity and proportionality, transparency, legality, regional development, equity, ensuring the full resources needed to exercise transferred competencies, accountability, ensuring a stable, predictable, transparent decentralization process based on objective criteria and rules, participatory democracy, efficient spending of public financial resources), problem

definition, general and specific objectives, legal and impact implications, transparency and consultation, results and indicators, monitoring and evaluation.

The Government has assumed responsibility for the Law on the establishment of measures to decentralize some powers exercised by some ministries and specialized bodies of the central public administration, as well as some measures to reform the public administration, a law that will be challenged in the Constitutional Court and declared as unconstitutional as a whole, a file in which the Strategic Document mentioned above will also be considered as not having “the legal significance of a study / impact”.

With the obvious intention of accelerating a process that has been dragging on for over 20 years and to achieve a correlation of a segment of incident legislation in the areas subject to the decentralization process, amid an urgency and speed of the Government's accountability procedure, due to the need adoption of the state budget for 2014 but also the beginning of a new budget year in the European Union, the law will be repealed by the arguments of the Constitutional Court, criticizing "the vague and imprecise nature of the consequences of current regulations on these agreements" inaccurate”, “the said text of law does not respect either the rules on express repeal or those on implicit repeal, inducing, through an improper legal expression, the idea of a comparative test that the interpreter of the law - whatever it may be - must take, among several special laws in the same matter, to identify applicable law and the areas in which it applies. This is a source of deep instability and lack of predictability of the regulation, being the premise of creating divergent interpretations", "it is an improper regulation, which exceeds the framework established by Law no. 24/2000, republished, with the subsequent modifications and completions”, “The Court finds an obvious violation of the requirements of art. 1 para. (5) of the Constitution”, “a subject of law cannot be required to comply with a law that is not clear, precise and predictable” [8].

Also regarding the regulation of the curriculum, the provisions are not coherent, currently the national curriculum is composed of two components: curriculum-core, which corresponds to the common trunk of curricula and curriculum at the decision of the school (called local development curriculum for vocational education and technically), but the relationship between the two is too often modified by changes in

curricula. The weight of the curriculum in the school's decision has been substantially reduced, being established, in many cases, according to the "needs" of maintaining/vacating teaching positions and not in accordance with the options of students/parents, economic agents or development policy of the area, there being no clear logic of distribution according to the level of schooling.

The school curricula is elaborated by the National Commissions set up and approved at the level of the Ministry of Education and Research, their endorsement being made by the National Council for Curriculum, while the approval is given through the order of the respective minister.

On the other hand, while the law stipulates that the school is an institution of the local community and that the latter, through its representative and authoritative bodies, exercises the quality of owner and administrator of the patrimony, the director of the educational unit, respectively the credits authorizing officer is appointed by the County School Inspectorate or the Ministry of Education and Research. Another factor that diminishes the participation in the decision of social actors outside the school is the composition of the board, whose president is the school principal and most members are teachers whose main concern established by law is the fulfillment of professional duties of training and education, not management, administration and financing of the educational unit.

3. Conclusions and proposals of *lex ferenda*

Given that the decisions on the decentralization of primary and secondary education were not coherent and consistent during the 3 decades and the transfer of the decision from the central public administration to the local public administration took place at different rates in various areas of the system - curriculum, resources, the administration of educational institutions, personnel policies, in a legislative framework in which contradictory provisions persist that generate dysfunctions in the system, the measures adopted and implemented by the public administration, both central and local, during 2020, oscillated between numerous and contradictory solutions, the negative effects of these approaches will occur in the coming years.

Decentralization cannot be achieved without strengthening legislation on public accountability and without protecting educational institutions from political interference. Such measures are aimed at strengthening the commitment of local communities to the activities that take place in the school, ensuring the stability of teachers and school management teams and increasing the degree of transparency.

Guaranteeing both the autonomy of primary and secondary education units and the professional autonomy of teachers can be achieved by:

- institutionalization of school autonomy, assuming public responsibility for school performance;
- professional autonomy of teachers in the personalized transposition of school curricula;
- encouraging the formation of school consortia and professional associations;
- establishing the legal framework for the school's partnership with local authorities and interested economic agents;
- participation of schools and teachers in programs and projects that benefit the teaching process;
- establishing partnerships for the exchange of good practices with schools inside the country and abroad;
- participation in professional training programs for personal development and increasing performance in the teaching career;
- encouraging private initiative in primary and secondary education.

From the perspective of sustainable development and globalization of education, in order to create the necessary premises for quality assurance in education and efficient use of resources, decentralization must be a dynamic approach that involves the involvement and accountability of all authorities involved, on the one hand. as well as strategic thinking and control, on the other hand. As a proposal, a decentralization model that would give primary and secondary education units the role of main decision maker, but also ensure the participation and consultation of all interested social actors, would be a solution to many problems, both legislative and especially practical.

In this sense, the elimination of existing contradictions by creating a legislative framework to provide school management, board of directors, decision-making capacity

/ autonomy in relation to employment, dismissal, motivation and evaluation of teachers, under the strict criteria of quality assurance according to the methodologies developed by the Ministry of Education and Research, would follow the example put into practice by university education, where this solution has proven its effectiveness.

In this sense, the following should be done:

- highlighting, at local and national level, examples of good practice in education, which have brought measurable and scalable benefits to the education system and / or contributed to improving the quality of teaching-learning-assessment activities, improving school results, reducing the risk of repetition, preventing/reducing situations of absenteeism and dropping out of school, increasing the chances of continuing studies in higher education, creating an inclusive educational space in school, in which each student feels encouraged, motivated, supported and safe;
- disseminating examples of good practice identified at system level and in the public space, presenting and promoting these examples;
- pursuing, in particular, the identification of innovative practices of teachers who teach in educational institutions located in disadvantaged communities, with a high number of students at risk.

Far from being able to cover the complexity of problems in primary and secondary education, we also mention the proposal to focus the central authorities on developing and monitoring the implementation of educational policies in parallel with relieving them of current administration tasks, increasing accountability of the local community and education. to be achieved together with the consolidation of their autonomy and capacity in the management of financial and human resources.

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