

THE COOPERATION/ASSOCIATION OF ADMINISTRATIVE-TERRITORIAL UNITS – A POSSIBLE ANSWER TO THE PROBLEM OF ADMINISTRATIVE FRAGMENTATION AND REDUCED ADMINISTRATIVE CAPACITY

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Abstract:

The subject of administrative-territorial reorganization reappeared on the public agenda and, naturally, a series of scenarios thought up by different state or non-state actors were presented. The high number of administrative-territorial units in Romania and the public expenses that are implied by their existence, the tendency of European decision-makers to support, through the programs they approve, more numerous communities located on a wider territory, and also the fact that the current administrative-territorial organization of our country is carried out on the basis of a normative act [1] adopted during the communist period and thus, in many respects, no longer corresponds to the current socio-economic reality, turns this topic into a current one. Despite the identification of the need to reduce public expenses and increase the administrative capacity of administrative-territorial units, the public decision-maker failed to implement measures to reduce the number of administrative-territorial units, the merger of localities remaining at a desired stage. If we refer to the period after 1990, it can be observed that the trend in this field was, rather, to establish new administrative-territorial units, rather than to merge them, many politicians who sought to increase their electoral chances acted in the sense of creating new administrative-territorial units by dividing the existing ones [2]. The alternative solution is the association of administrative-territorial units, a process that seems more attractive for the authorities at the base of the public administration system in Romania, and also for the national political actors, who do not want to jeopardize their political support from the territory. The present paper aims to present the different forms of cooperation of administrative-territorial units recognized by the legislator and the possible implications on the problem of administrative fragmentation and the administrative capacity of administrative-territorial units.

Keywords: *association, administrative-territorial reorganization, administrative-territorial units, authorities*

Introduction

The decrease in the number of inhabitants, determined by the accentuation of the phenomenon of population aging and fluctuation, the precarious state of the economy and infrastructure at local level have a negative impact on the administrative capacity of the administrative-territorial units [3]. Even if one of the rules of the decentralization process required that the transfer of power from the central level to the administrative-territorial units should be done only if the latter had administrative capacity, in many cases this legal requirement was ignored and we ended up in the current situation in which many

administrative-territorial units cannot support their own operating expenses by themselves, let alone the issue of development expenses, of those that must be directed towards investments. The administrative capacity has become a problem in the case of some administrative-territorial units and the cause of poor management of public affairs by the local public administration authorities, a fact that has led to an accentuation of the discrepancy between the different local communities [4]. Administrative fragmentation and the reduced administrative capacity of administrative-territorial units are two topics that have constantly concerned both the political factor and the academic environment. Fragmentation refers to the existence of a large number of administrative-territorial units with a small number of inhabitants, many of which having less than 1,000 inhabitants [5]. Administrative capacity means, according to Article 5, letter o) from the Administrative Code “*the set of material, financial, institutional and human resources available to an administrative-territorial unit, the legal framework that regulates the field of activity, as well as the way in which they are capitalized in their own activity according to the competence established by law*”. This legal definition reveals, as the doctrine emphasizes [6], the economic and legal potential available for local public authorities to effectively resolve problems of local interest.

Because the objective of reducing the number of administrative-territorial units could not be achieved, a measure that would have allowed the reduction of public expenses, the increase of population in an administrative-territorial unit and its surface, as well as the socio-economic potential, the legislator sought to develop the legal framework in the matter of the cooperation of administrative-territorial units, out of the desire to generate an alternative to the lack of concrete results regarding the merging of administrative-territorial units and, implicitly, the reduction of their number. We must mention the fact that administrative fragmentation is not only a Romanian problem, because other European states [7] have also faced such a problem.

The Romanian state tries, through legislative and financial mechanisms, to stimulate the association of administrative-territorial units. The aim of the various associative forms that are established is to attract as many financial resources as possible from the European level, to simplify the decision-making mechanism at local level, to achieve and jointly manage a public service or an infrastructure that benefits several local

communities, at the same quality standards, reducing investment costs and increasing the number of beneficiaries [8]. We find such mechanisms regulated, mainly, in the Administrative Code, but also in other normative acts that come to amend and complete the legal framework in the matter. Such a normative act is Government Ordinance no. 26/2000 regarding associations and foundations, with subsequent amendments and additions. The aforementioned act includes general rules regarding the association of legal persons without a patrimonial purpose. To this regulation we must add Law no. 246/2022 regarding metropolitan areas, Law no. 375/2022 [9] for the amendment and completion of the Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, Law no. 273/2006 on local public finances, Law no. 350/2001 regarding territorial development and urban planning, Law on community services of public utilities no. 51/2006 etc. [10] The modes of association of administrative-territorial units are intercommunity development associations, metropolitan areas, as species of intercommunity development associations, administrative consortia. In the previous regulation, urban agglomeration was also stipulated, as a way of association of administrative-territorial units, but with the entry into force of Law no. 246/2022 on metropolitan areas [11], this type of association was removed from the legislation [12].

Intercommunity development associations

Considered as the strongest and most important [13] associative form of administrative-territorial units in Romania, the intercommunity development association was introduced into Romanian legislation with the adoption of Law no. 286/2006, a regulation that brought numerous changes and additions to the old framework law of local public administration, Law no. 215/2001, the complexity of the legislative intervention requiring its republication [14]. The legal definition of the intercommunity development association can be found in Article 5 letter i) from the Administrative Code. It is regarded as a cooperation structure with legal personality, of private law and of public utility, established, under the law, by administrative-territorial units for the purpose of jointly realizing some development projects of zonal or regional interest or for providing, in common, some services. Article 89 paragraph 1 of the Code recognizes the right of administrative-territorial units to cooperate and associate, taking into account the

competence of the deliberative and executive authorities in each administrative-territorial unit, by establishing inter-community development associations. Even if the subjects of the association are legal entities under public law, the product of their association is an associative entity of private law and of public utility intended to support the public administration of each administrative-territorial unit component, to develop the infrastructure and increase the quality of public services provided for local communities from each administrative-territorial unit involved in the association.

Elements of the legal status of these forms of association can also be found in paragraphs 2-5 of Article 89, as well as in Article 90, dedicated to their financing, and in Article 91, which aims at the organization and operation of intercommunity development associations. From the analysis of the mentioned legal provisions and in accordance with the doctrine [15], the following characteristics of intercommunity development associations emerge: they are the result of exercising the right of association and cooperation of administrative-territorial units; they are legal entities of private law with public utility status acquired through the effect of the law, being located on the border between public and private law; this statute allows them access to public financial resources; their purpose is the joint implementation of regional or zonal development projects or of public services. We must also specify the fact that the association of administrative-territorial units in intercommunity development associations does not affect the local autonomy of the local authorities from the associated administrative-territorial units. The status of these associative structures is also supplemented with a feature contained in Law no. 554/2004 of the administrative litigation, more precisely in Article 2 paragraph 1 letter b), which assimilates to public authorities all legal entities under private law that have acquired a public utility status [16].

The intercommunity development association is regarded in the doctrine [17] as an organization, outside the local administrative structure, to which certain powers of local interest are delegated by the local authorities from the administrative units that have been associated. Many of these associative structures were established to manage activities in the sphere of public utility services, especially water supply and sewerage services or the sanitation service. Examples of such associative structures created by administrative-territorial units are the Intercommunity Development Association Partnership for Prahova

Water Management or the Partnership for Prahova Waste Management Intercommunity Development Association. Other associations aim at zonal or regional development.

Metropolitan Areas

A type of intercommunity development association is represented by the metropolitan area. The Administrative Code defines this form of association as an intercommunity development association established on the basis of a partnership between the capital of Romania or the county seat municipalities or municipalities other than the county seat, on the one hand, and administrative-territorial units located in the metropolitan territory, on the other hand. This form of cooperation has benefited, since 2022, from its own regulation, through the entry into force of Law no. 246/2022 regarding metropolitan areas. It can be observed, thus, that the legislator, instead of adopting a separate normative act for intercommunity development associations, as the doctrine [18] insistently demanded, which would bring together rules regarding the establishment, organization, operation, financing, dissolution and liquidation of these associative structures contained in various regulations, it rather focused on bringing into the Romanian legal order a distinct regulation for a form of intercommunity development association, namely the metropolitan area.

If at the beginning of their introduction into the Romanian legal order, metropolitan areas were entities without legal personality, the legislator's conception has changed, and today they are qualified as associative forms with legal personality. The recognized legal personality of the metropolitan area allows this subject of law to enter into legal relations in its own name, provided that it respects the content of the mandate granted by the local public administration authorities that represent the administrative-territorial units that are components of the associative entity. The association process in a metropolitan area does not lead to the emergence of a new administrative-territorial unit. The component localities, through the administrative authorities, delegate or transfer, in compliance with the legal conditions, part of the attributions, in order to jointly manage some services or run some activities and projects dedicated to the members of the local communities that make up the metropolitan area [19].

Administrative consortia

At the end of 2022, the Romanian Parliament adopted Law no. 375/2022 [20], through which a new association mechanism of the administrative-territorial units in Romania was established. It is represented by administrative consortia. Administrative consortia are voluntary forms of cooperation and association of two or more neighboring administrative-territorial units, without legal personality, which aim to increase the efficiency of public services, the effectiveness of the implementation of investments and to efficiently use specialized human resources in order to satisfy the interests of local communities. Through this new cooperation mechanism, the legislator aims to allow more developed administrative-territorial units to support those with reduced administrative capacity, appreciating, at the same time, that such a solution facilitates a transfer of good practices between the administrative-territorial units that are part of the consortium and will stimulate the associative phenomenon at local level.

We can observe that compared to the intercommunity development associations and their particular form, the metropolitan area, which are associative structures of the administrative-territorial units, with legal personality, the administrative consortium does not have legal personality. Conceived as a more flexible association mechanism, the administrative consortium, at the moment, will not find its reflection in the administrative practice due to the numerous regulatory deficiencies of its legal regime [21]. Even if the central authorities will allocate funds, through national programs, to stimulate local communities to associate in administrative consortia, and even if these neighboring local communities want to associate, the deficient regulation of their legal regime will represent a difficult obstacle to overcome. In order not to remain only simple rules contained in a legal act, we invite the legislator to bring improvements to the legal framework in the matter, the association in administrative consortia representing another way to solve the problem of the reduced administrative capacity of administrative-territorial units.

Conclusions

The process of association of administrative-territorial units in intercommunity development associations or in metropolitan areas, as particular forms of the former,

proved to be, at the beginning, a difficult one, due to the lack of a culture of association, and also the deficient normative framework.

Today, however, the association of administrative-territorial units is seen more and more as a solution to the problem of administrative fragmentation and the reduced administrative capacity of many administrative-territorial units. Its attractiveness has increased as a result of the improvement of the legislative framework and the testing in administrative practice of the new legislative solutions, as well as of the awareness by local actors of the importance of joint action and the financing of certain objectives in partnership, and, on the other hand, of the diversification administrative tasks and changes in the social, demographic and economic reality at local level. At the same time, projects designed jointly and targeting a wider territory and involving European funding have increased chances of obtaining this funding because they address multiple beneficiaries. By association, a legal possibility is created for local public administration authorities to manifest themselves beyond the territorial limits of the administrative-territorial unit in which they operate. If we look at other European states that have experienced the mentioned association models, we will notice that an efficiently managed metropolitan area has positive implications on economic competitiveness [22], the development of basic infrastructure, the increase of interdependence between the component localities and the integrated development of the territory.

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