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Articles

Studia Iuridica Lublinensia vol. 32, 5, 2023
DOI: 10.17951/sil.2023.32.5.105-115

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The Legal Framework for Local Government Coordination in Romania*

Ramy prawne koordynacji działalności samorządu lokalnego w Rumunii

ABSTRACT

This scientific paper aims to fill the gap in intergovernmental coordination in Romania by assessing the strengths and shortcomings of the corresponding legal framework. Methodologically, it employs the doctrinal legal research of institutions involved in the vertical and horizontal coordination of local government. In essence, local government coordination occurs both within and beyond a complex framework of institutional structures dedicated to cooperation. Local councils may engage in town twinning and join national or international local government associations, while county councils and prefects exist for the very purpose of local intergovernmental coordination: local councils

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* The article is based upon work from COST Action CA20123 – Intergovernmental Coordination from Local to European Governance (IGCOORD), supported by COST (European Cooperation in Science and Technology). An earlier draft of the paper was presented at the 1st IGCOORD Conference – "Political Actors in Intergovernmental Coordination: Perspectives and Priorities", held on 18 and 19 May 2023 at the Faculty of Law of the Eötvös Loránd University of Budapest, Hungary.

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are coordinated by county councils in the pursuit of county-level goals, whereas prefects head the deconcentrated public administration and may foster vertical coordination with the central government. However, coordination amongst local governments may also occur by setting up or joining intercommunity development associations or administrative consortia, especially if they are unable to secure EU funds on their own. The authors argue that the complex institutional framework of the Romanian legislation both fosters and hinders coordination.

Keywords: intergovernmental coordination; local government; local governance; Administrative Code of Romania; intercommunity development association; administrative consortium

INTRODUCTION

Intergovernmental coordination is emerging as an important research topic, particularly in the fields of law, politics, and economics.[1] However, this subject is scarcely explored within Romanian legal literature, and even less so when it concerns local government. This paper aims to fill this gap by assessing the strengths and shortcomings of local intergovernmental coordination within the corresponding Romanian legal framework. Our approach follows the methods of doctrinal legal research: the sources of law making up said framework require identification and interpretation, combining rigorous analysis with creative synthesis. Our research is divided into four sections examining the prospects of local government coordination through its actors, both classical (the bodies of local self-government and the prefect) and novel (the intercommunity development associations, administrative consortia, as well as other forms of collaboration between territorial administrative units).

RESEARCH AND RESULTS

1. The tiers of local government

As is the case in most European polities, Romanian local governance is organized in a two-tier non-hierarchical administrative system. In essence, both tiers comprise directly elected bodies, yet the upper tier includes a central government

[1] See recent literature, e.g., N. Xhindi, N. Bessa Vilela, *Central Public Administration Authority at the Regional Level in Albania*, "Studia Iuridica Lublinensia" 2022, vol. 31(4), pp. 59–74; C. Person, N. Behnke, T. Jürgens, *Effects of Territorial Party Politics on Horizontal Coordination among the German Länder – An Analysis of the COVID-19 Pandemic Management in Germany*, "German Politics" 2023, pp. 1–26; L. Gönczi, I. Hoffman, *The Sui Generis Nature of Legal Protection in the Case of Regional Development Aids in the Hungarian Legislation and Legal Practice – Focused on Irregularity Issues*, "Studia Iuridica Lublinensia" 2023, vol. 32(2), pp. 117–132; F. Castro Moreira, *Governance of the Portuguese Sea – from Political Actors to Intergovernmental and Sectorial Coordination: A Legal Approach*, "Studia Iuridica Lublinensia" 2023, vol. 32(3), pp. 305–324.

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representative (i.e. the prefect), tasked with overseeing both local self-government authorities and deconcentrated public services. The following subsections examine the rules of Romanian local government, as well as the legal framework of its lower-level and upper-level bodies.

1.1. The principles of Romanian local government

The principles which apply to Romanian local government are legally enshrined at both national and international level. In respect of national legislation, relevant provisions are to be found in the Constitution of Romania,[2] as well as in the Administrative Code.[3] The core principles, however, stem from the European Charter of Local Self-Government (1985), which has been in force since its ratification through Law No. 199/1997.

According to Article 120 (1) of the Constitution of Romania, local government is founded on the principles of local self-government, decentralization, and deconcentration of public services. A fourth principle is enshrined in Article 120 (2), which concerns the use of national minority languages in dealings with the local public authorities. Further principles are enumerated in Article 75 (1) of the Administrative Code, including the consultation of citizens on issues of special local interest, cooperation, responsibility, and budgetary constraint.

Constitutional principles of Romanian local government

The principle of local self-government is of utmost importance since it forms the basis of all other principles of local government.[4] As a constitutional principle, local self-government consists of "the right of administrative-territorial units to satisfy their own interests free from the interference of central authorities, which in itself involves administrative decentralization".[5] The principle is advanced in the Administrative Code, with a legal definition given in Article 5 (1) (j), formal enshrinement as a principle of local government in Article 75 (1) (b), as well as a detailed legal regimen in Articles 84 to 94.

The principles of decentralization and deconcentration are rooted in the very notion of local self-government. Prior to the amendments of 2003, the then-Article 119 of the Constitution of Romania enshrined local self-government and decentralization

[2] See Article 120 of the Constitution of Romania.

[3] See Article 75 of the Emergency Ordinance No. 57 of 3 July 2019 on the Administrative Code (consolidated text, Official Gazette of Romania no. 555 of 5 July 2019, as amended), hereinafter: the Administrative Code.

[4] See V. Vedinaș, *Codul administrativ*, Bucharest 2020, p. 70.

[5] See F.L. Ghencea, *Drept administrativ*, vol. 1, Bucharest 2021, p. 198.

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of public services as principles applicable to the local public administration. Hitherto, the notion of deconcentration had only been implied under a broad interpretation of decentralization,[6] with this explicit addition serving to confirm its applicability.[7]

Nevertheless, the distinction between decentralization and deconcentration has since been emphasised in their corresponding legal definitions. Decentralization is described as "the transfer of administrative and financial powers from the level of central government to the administrative-territorial level of public administration, together with the financial resources necessary for their exercise",[8] while deconcentration refers to "the distribution of administrative and financial powers by ministries and other specialized bodies of the central government to specialized structures in the administrative-territorial units".[9]

While both concepts involve a shift of power towards local bodies, they employ different means to achieve this. Decentralized decision-making involves a transfer of power to local government, as opposed to the central government dealing directly with matters of local public interest. However, the deconcentration of public services involves a delegation of power from the central bodies of government to their local subordinates.

As for the use of mother tongues in dealings with the local government, provided for by Article 120 (2) of the Constitution of Romania, its introduction in the constitutional revision process of 2003 sought alignment with the European standards in the field of national minority rights.[10] Wherever such groups comprise a significant share of the local population, the oral and written use of their mother tongues in dealings with the local government or the deconcentrated public services shall be provided for by means of organic legislation.

The ambit of the significant share, as well as the procedural specifics, were left for the subsequent legislation to elucidate.[11] The corresponding rules were initially provided by the Law of Local Government No. 215/2001, with the Administrative Code taking over the bulk of said provisions.[12] Presently, the use of national

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[6] See A. Iorgovan, [in:] M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, F. Vasilescu, I. Vida, *Constituția României comentată și adnotată*, Bucharest 1992, pp. 269–270. The constituent power "had in mind not just the strict sense of the word (…), but also the sense of deconcentrating the public services of ministries or county councils in administrative-territorial units, especially at local level, which requires only the exercise of administrative tutelage of the center over these services and the configuration of an area of self-government".

[7] Idem, [in:] M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *Constituția României revizuită. Comentarii și explicații*, Bucharest 2004, p. 253.

[8] Article 5 (x) of the Administrative Code.

[9] Article 5 (u) of the Administrative Code.

[10] See F.L. Ghencea, *op. cit.*, p. 203.

[11] See A. Iorgovan, *op. cit*., 2004, pp. 253–254.

[12] See V. Vedinaș, N. Godeanu, *Dreptul minorităților naționale de a-și utiliza limba maternă în administrație, potrivit Codului administrativ*, "Revista Dreptul" 2020, vol. 149(1).

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minority languages is guaranteed if at least 20% of the population inhabiting the administrative-territorial unit belongs to such a group.[13]

Legal principles of Romanian local government

Other principles, while not enshrined at a constitutional level, still apply to Romanian local government by virtue of explicit provisions being made in the Administrative Code. The principle of legality is of paramount importance since it establishes the primacy of the law in the operation of the entire public administration.[14] The principle of eligibility accentuates the notion that the powers of local government are rooted in its democratic mandate, with local elections serving as the very basis of local self-government.[15] The principle of consulting citizens in solving special problems of local interest, while explicitly enshrined,[16] is currently mandated only for referendums concerning "any change in the territorial limits of communes, cities or counties" or "consultation on issues of special interest for administrative-territorial units", which may be held pursuant to Law No. 3/2000 concerning the organization and conduct of referendums.

The principle of cooperation is a novel addition to Romanian local government, but its application is significantly reduced by the lawmaker's option not to define it. As a result, the collaboration or cooperation between bodies of local government is ambiguously permitted without any legally imposed limits to this possibility.

1.2. The lower tier of local governance

Communes, cities and municipalities form the lower tier of Romanian local government. These territorial units govern themselves through two kinds of directly elected authorities, which are expressly enshrined in the Constitution of Romania: the mayor and the local council, respectively. This institutional design pairs an executive (unipersonal) body (the mayor) with a deliberative (collegiate) counterpart (the local council). As for their structural relationship, any question of subordination is ruled out by their designation as "autonomous administrative authorities" in Article 121 (2) of the Constitution of Romania. As a result, the mayor and the corresponding local council are required to coordinate.[17]

The position of mayor is, by virtue of its executive role, directly involved in the activity of the local council, with the former preparing and then implementing the decisions adopted by the latter. The local council wields powers on matters of

[13] See Article 135 (5), Article 138 (3), Article 195 (2), Article 198 (3) and Article 199 (3) of the Administrative Code.

[14] See Article 6 of the Administrative Code.

[15] See V. Vedinaș, *Drept administrativ*, Bucharest 2020, p. 232.

[16] Article 75 of the Administrative Code.

[17] See F.L. Ghencea, *op. cit.*, p. 234.

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domestic and foreign interinstitutional cooperation.[18] First, the local council may decide to cooperate or associate with Romanian or foreign juridical persons with the aim of financing and implementing actions, works, services and projects of local public interest.[19] Second, the local council may engage in town twinning with local communities in other countries.[20] Third, the local council may decide to cooperate or associate with other Romanian or foreign territorial units or join national and international local government associations with the aim of promoting common interests.[21]

1.3. The upper tier of local governance

The county is the intermediate level of the Romanian administrative system. Each county serves two functions, hosting both the upper tier of local self-government and the decentralized public administration. As with the lower tier local authorities, county-level self-government is carried out through a pair of directly elected bodies: the collegiate body (i.e. the county council) holds legislative (nominally "deliberative") power, whilst its unipersonal counterpart (i.e. the county council president) holds executive power.

The county council is meant to coordinate local councils with the purpose of providing county-level public services. In the field of domestic and foreign interinstitutional cooperation, county councils hold similar powers to those of local councils.[22] The sole distinction would be that actions, works, services and projects of county-level public interest may also be financed and implemented by engaging civil society partners.

2. The prefect

The prefect is the appointed local representative of the central government, acting as a liaison with local self-government. In essence, the prefect serves two functions: overseeing the conduct of local self-government, as well as heading the decentralized public administration. Because counties (and the Municipality of Bucharest) are the basic unit of decentralized public services, the prefect was established at this level. Article 123 (4) of the Constitution of Romania explicitly states that there is no subordination between the prefect and the local authorities.

[18] Article 129 (2) (e) of the Administrative Code.
[19] Article 129 (9) (a) of the Administrative Code.
[20] Article 129 (9) (b) of the Administrative Code.
[21] Article 129 (9) (c) of the Administrative Code.
[22] Article 173 (7) of the Administrative Code.

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3. The prospects of local intergovernmental coordination

The institutional framework for local intergovernmental coordination goes beyond the counties of Romania. On the one hand, efforts to reduce regional disparities resulted in the establishment of development regions and regional development bodies. On the other, two or more territorial units may establish intercommunity development associations with the aim of providing public utilities in common.

3.1. Regional development

Initiatives aimed at mitigating regional inequalities led to the formation of development regions and regional development bodies, established through Law No. 315/2004. Their primary objective is to facilitate and promote regional advancement, managing policies and projects that transcend county boundaries while actively engaging local authorities. Entities responsible for regional development are instituted at both regional and national level, with each region housing a Regional Development Council and a Regional Development Agency, all operating under the supervision of a National Council for Regional Development.[23]

Notwithstanding, any prospect of achieving said results is arguably hindered by a flawed institutional setup. A significant setback is that development regions are not administrative units *per se*, but purely statistical NUTS-2 level divisions. While regional councils and agencies fulfil functions resembling the deliberative-executive partnership found at the local and county tiers, both were denied the status of self-government authorities: the former lack legal personality, and the latter are designed as NGOs.[24] Elevating development regions to administrative division status would, however, be challenging, as it requires constitutional revision, and regionalisation itself is a sensible topic, seeing as it brings into question the unitary nature of the state, which is protected under an eternity clause.[25]

Another major shortcoming is the artificial composition of the eight regions, created in anticipation of EU membership, with disregard for traditional affinities and growth poles. Since genuine progress in regional development depends on the

[23] Article 11 (1) of Law no. 315/2004 defines the National Council as a nationwide partnership structure with decision-making authority in formulating and carrying out regional development policies. This body consists of the presidents and vice-presidents of each regional development council, in equal numbers with representatives of the central government, which include its President.

[24] A recent amendment clarified that regional agencies are treated akin to public institutions, subjecting their actions to judicial review. See Article 8 (14) of Law no. 315/2004, introduced by Emergency Ordinance no. 88/2022).

[25] See Article 152 (1) of the Constitution of Romania.

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voluntary involvement of local self-government bodies, the focus of this "pseudo--regionalisation" remains to secure EU funding.[26]

3.2. The intercommunity development association

Intercommunity development associations (IDAs) are private associations with legal personality which comprise two or more administrative territorial units for the purpose of implementing common projects of local or regional interest, or to provide certain public services in common. Although some authors proposed the adoption of a distinct regulation for intercommunity development associations,[27] the lawmaker ultimately opted to integrate them within the Administrative Code.

3.3. The metropolitan area

Metropolitan areas are a form of association between administrative territorial units which aim to secure common infrastructure and development goals. Conceptually speaking, such areas are on the road to maturity since their legislative journey began in 2001. Initially, Law No. 351/2001 defined this structure as a form of intercommunity development association which results from the free association of urban areas and the surrounding urban and rural settlements, up to a distance of 30 km, which have developed cooperation on many levels.

The initial regulation was later incorporated into the Administrative Code, amended, and then furthered by Law No. 246/2022, which also correlated its provisions to those of Law No. 350/2001 (on landscaping and urbanism), and extended eligibility for such areas to include all municipalities in Romania. The latter amendment holds the distinction of opening up new avenues for sustainable development in areas of common interest (e.g. urban mobility, to provide services, to attract funding).

Said law defines metropolitan territory as "the territory surrounding municipalities, delineated according to the present law, in which mutual relationships of influence had been generated in the communication, economic, social, cultural and urban infrastructure sectors" (Article 5 (3) of Law No. 246/2022). It is worth mentioning that a special legal regime exists for municipalities which border county seats. Such a settlement has the option of joining the metropolitan area built around the county seat municipality or to establish its own metropolitan area.[28]

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[26] C. Iftene, *Procedura reorganizării administrativ-teritoriale a României pe criterii geografice*, [in:] *Procedura administrativă necontencioasă*, eds. E. Bălan, C. Iftene, M. Văcărelu, Bucharest 2016, p. 246.

[27] D. Apostol Tofan, *Legea zonelor metropolitane. O noutate legislativă pentru sistemul de drept român. Conexiuni cu Codul administrativ*, "Revista de Drept Public" 2022, vol. 3, p. 106.

[28] L.E. Cătană, *Regimul juridic al zonelor metropolitane din perspectiva modificărilor aduse Codului administrativ prin Legea nr. 246 din 2022*, [in:] *Codul administrativ, prezent și perspective în spațiul administrativ românesc*, ed. E. Bălan et al., Bucharest 2023, p. 135.

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Nevertheless, some shortcomings persist within the aforementioned legislation. For example, it provides an Annex listing the administrative territorial units which comprise the metropolitan territory of each municipality in Romania. This solution is amendable if one considers that some settlements may very well decide to leave the metropolitan area or even vote against joining in the first place.

Another potential weakness concerns the lawmaker's reluctance to grant metropolitan areas the status of administrative territorial units. While settlements may join and transfer certain powers to the metropolitan area, any such arrangements are based solely on their free association. Since membership can be rescinded and powers withdrawn, the endurance of metropolitan structures is far from guaranteed.

4. The administrative consortium

The latest form of association between Romanian administrative territorial units, the so-called administrative consortium was created by Law No. 365/2022, carrying out certain obligations assumed under the National Recovery and Resilience Plan. The introduction of administrative consortia aims to increase the local public administration's capacity to interrelate and accelerate investments at a local level, for the purpose of providing citizens with quality public services.

Administrative consortia are a form of voluntary cooperation between administrative territorial units and, as a result, the latter retain their own identities and powers. Unlike intercommunity development associations, however, consortia are meant to streamline the usage of specialised human resources by pooling them for the common use of its members.

The legal framework of administrative consortia presents certain shortcomings by virtue of its controversial nature. Raising serious constitutionality issues and comprising provisions which are said to be faulty and lack clarity,[29] said legislation creates confusion with regard to the extent of powers belonging to the deliberative bodies of local government, with profound implications for the principle of local self-government.

At any rate, the legislation governing consortia is quite bold in permitting association between neighbouring units, regardless of county boundaries or tier. It then follows that such structures may be agreed among smaller settlements in different counties, just as well as between counties themselves. This associative versatility is in stark contrast to metropolitan areas, which are not allowed to form beyond county borders. The ensuing questions may or may not find a suitable answer in the administrative tutelage of the prefect and the judicial review of their constitutive acts (i.e. the decisions adopted by local or county councils).

[29] See I. Alexe, *Particularităţile juridice ale consorţiilor administrative*, [in:] *Codul administrativ…*, p. 169.

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CONCLUSIONS

Development has always been an incentive for cooperation among local authorities. In Romania, while collaborative efforts are met with a plethora of dedicated forms of association, the institution-building capacity is hindered by regulatory clumsiness. Local intergovernmental coordination occurs across varied and disparate structures which suffer from poor institutional design (e.g. lack of legal personality, simulated decentralization, compelled participation in the artificially-composed development regions as opposed to voluntary participation in other forms of association). The current framework appears to trial several options all at once, out of fearful indecisiveness.

In our view, the Romanian institutional framework for intergovernmental coordination requires major rethinking. The overcautious approach of the legislator, while common to young democracies, ought to be replaced by one, overarching vision of how local governments should pool their resources together. A reform of the Romanian administrative divisions, which is long overdue, may offer a window of opportunity for designing better forms of association. In this respect, countries with similar history and demographics could offer solutions compatible with the Romanian national identity.

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ABSTRAKT

Niniejszy artykuł ma na celu wypełnienie luki w przedmiocie koordynacji działalności jednostek samorządu terytorialnego w Rumunii poprzez ocenę mocnych i słabych stron obowiązujących regulacji prawnych. Metodologicznie obejmuje on badanie dogmatycznoprawne instytucji związanych z pionową i poziomą koordynacją działalności jednostek samorządu terytorialnego. Co do zasady koordynacja działań samorządu terytorialnego następuje zarówno w ramach, jak i poza złożonymi instytucjami służącymi koordynacji. Samorząd lokalny może angażować się w proces twinningu między miastami oraz przystępować do krajowych i międzynarodowych związków samorządu terytorialnego, podczas gdy jednostki samorządowe poziomu wyższego oraz prefekci (przedstawiciele administracji rządowej w terenie) mają na celu koordynację jednostek samorządowych – samorząd lokalny jest koordynowany przez samorząd poziomu wyższego w zakresie realizacji zadań tego poziomu, a prefekci kierują zdekoncentrowaną administracją publiczną i mogą wspierać pionową koordynację z administracją rządową. Koordynacja pomiędzy jednostkami samorządu lokalnego może jednak następować także poprzez ustanawianie lub przystępowanie do stowarzyszeń międzygminnych czy konsorcjów administracyjnych, zwłaszcza w przypadku niemożności samodzielnego zapewnienia funduszy unijnych. Zdaniem autorów skomplikowane rumuńskie ramy prawne z jednej strony sprzyjają koordynacji, a z drugiej ją utrudniają.

Słowa kluczowe: koordynacja działalności jednostek władzy publicznej; samorząd lokalny; zarządzanie na poziomie lokalnym; rumuński kodeks administracyjny; stowarzyszenie międzygminne; konsorcjum administracyjne