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The Role of Administrative Consortia in Promoting Local Businesses

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ABSTRACT: The present study aims to analyze the role of administrative consortia in promoting local businesses, starting from the analysis of forms of association of administrative-territorial units, with administrative consortia being the most recent form in terms of regulation. The one that has already sparked discussions and disputes in doctrine, based on the way its role and responsibilities are established through the Administrative Code. Although the declared role of creating administrative consortia is to serve the interests of local public administration, some specialists believe that there is a risk that, due to the way they are designed, these consortia might affect certain constitutional principles. Rather than delving into these controversies, this study focuses on the contribution these forms of association can make to the development of local communities—a goal pursued at both national and European levels—as well as on the demands of the regulation.

KEYWORDS: forms of association, administrative consortia, local communities, competence, development, local businesses

1. Local autonomy versus territorial autonomy

Contemporary local democracies are built on the pillars of local autonomy and decentralization, the latter being exercised based on five fundamental principles, the first in order of succession and significance being **subsidiarity.** A definition of subsidiarity can be found in Article 76 (a) of the Administrative Code (The Administrative Code was approved by Emergency Ordinance No. 57/2019 and published in the Official Gazette No. 555 on July 5, 2019), according to which it *"consists of the exercise of powers by the local public administration authority located at the administrative level closest to the citizen and possessing the necessary administrative capacity;"*

Referring to the European significance of this principle, defined in Article 5(3) of the Treaty on European Union (TEU), the relevant doctrine asserts that *"The principle of subsidiarity reflects the principle of decentralized governance, which is often present in the constitutional systems of the EU member states. In many European countries, there is a tradition of respecting autonomy and responsibility at the national and regional levels"* (Niţă Dumitraşcu 2023)

It represents a principle in determining and delineating the competences of the European Union in relation to those of the member states, according to which the Union does not intervene in areas that do not fall under its exclusive competence unless the objectives being pursued cannot be adequately achieved by the member states and can be better fulfilled at the European Union level (Diaconu 2007, 37).

Those clarifications were made to highlight the indissoluble connection of vision and practice between the organization and functioning of public administration at the level of the member states, national public policies, and those existing at the level of the European structure. The choice and aspiration have been, and continue to be, to bring public services closer to the citizen, the beneficiary or *user* of these services, as they are also referred to, based on the logical assumption, after all, that they know best the specific needs of a community and can determine the most appropriate ways to meet them.

Local autonomy should not be confused with territorial autonomy. It is defined by Article 5 (j) of the Administrative Code as meaning *"the right and the effective capacity of local public administration authorities to solve and manage, in the name and interest of the local communities at the level of which they are elected, public affairs, under the conditions of the law."* The definition in our national law differs from that offered by Article 3 of the European Charter of Local Self-Government (Adopted in Strasbourg on October 15, 1985, it came into

force on September 1, 1988, and was ratified by Romania through Law no. 199/1997, published in the Official Gazette no. 331 of November 26, 1997), which refers to **an important part of public affairs** (Article 3 of the Charter has the following content: *"Local autonomy means the right and the effective ability of local public administration authorities to resolve and manage, within the framework of the law, in their own name and in the interest of the local population, a significant part of public affairs"*)**.**

We observe the Romanian legislator's desire to include within the competence of local autonomous authorities all the needs and expectations of a community's members that can be classified as *public affairs*. From the very definition that both the national and supranational legislator attribute to autonomy, in our opinion, **the defining features** of local autonomy emerge, as determined in Article 84, paragraphs (3) and (4), in the sense that *"it is only administrative and financial, being exercised on the basis of and within the limits provided by law," and "it concerns the organization, functioning, competence, and responsibilities of local public administration authorities, as well as the management of resources that, according to the law, belong to the commune, town, city, or county, as the case may be."*

These **defining features,** by the way they are formulated, exclude any attempts to transform local, administrative, and financial autonomy into one with a political character. We say this because the two texts make explicit reference to **public affairs,** whose **resolution** represents **the purpose of autonomy.** The notion of **public affairs** However, in Article 10, it enshrines, among the general principles of public administration, a "principle worthy of a 10", we might say, namely **the principle of satisfying the public interest. It defines this as the obligation of public administration authorities and institutions, as well as their personnel, to prioritize the public interest over individual or group interests,** in parallel with **the proclamation of the priority of the national public interest over the local public interest.**

By corroborating all the provisions that we have mentioned, we consider that we can define **the public affairs of local public administration authorities** as representing **the set of means, acts, facts, and operations used by the local public administration authorities through which they act to satisfy the public interest**. This is a proposal that we formulate *de lege ferenda* and which we believe should be included in the Administrative Code, in Article 5 regarding definitions.

2. "Unity is strength"

In achieving these objectives and principles, the legislator has established, on the one hand, local autonomy for local communities, along with its derivatives, decentralization and subsidiarity, as briefly described in the previous section, and on the other hand, to strengthen the efficiency of the actions of autonomous authorities, has provided for **various forms of association between them.**

Individuals have always sought to associate with one another in actions because, as the Romanian saying goes, "unity is strength". Association represents an extremely valuable form of collaboration, as it contributes to the development of the communities in which it takes place and improves the quality of life for citizens. *Whether we refer to the consolidation of resources, where, through association, community members can pool their individual resources and use them collectively in a more efficient manner, or to gaining access to funding, technical support, and expertise, which can accelerate the development of local projects and initiatives"* (Ghencea and Apostolache 2023, 56).

Such significance led the Romanian legislator, after 1990, to include provisions regarding this issue in the regulations on local public administration. While the first regulation, represented by Law no. 69/1991, and did not contain such provisions, the second Law no. 215/2001 (The first law, no. 69/1991, republished in the Official Gazette no. 79 of April 18, 1996, did not contain provisions in this regard. Law no. 215 of April 23, 2001, on local public administration, republished in the Official Gazette no. 123 of February 20, 2007) included provisions on **intercommunity development and the metropolitan area associations**, which

is a specific form of such an association. Moreover, Articles 11-16 enshrined extensive provisions regarding forms of association between administrative-territorial units.

The Administrative Code, in a way, reprises the concept of the previous law, in the sense that it defines, in Article 5, the notions of **intercommunity development** (in letter i) **and the metropolitan area** (in letter qq) **associations**, and develops their legal status in Title III of Part III, Articles 86-93. However, it also adds new forms, including administrative consortia.

3. The creation of administrative consortia

At the time of the adoption of the Administrative Code, the existing forms of association were intercommunity development associations, metropolitan areas, development regions, and the more recent category of the Destination Management Organization, which represents a public utility association with legal personality, established through the association of local public authorities within the destination with special tax payers for tourism promotion (Ghencea and Apostolache 2023, 60), created by Government Ordinance 15/2017 (Government Ordinance no. 15 of August 23, 2017, for amending and supplementing Government Ordinance no. 58/1998 regarding the organization and conduct of tourism activities in Romania, published in the Official Gazette no. 689 of August 24, 2017). The law defines (Article 1 of GO no. 15/2017, which amends Article 2 of GO no. 58/1998) **the destination management organization** as *a legal entity that implements the destination's tourism development policy, including the destination's marketing policy, in accordance with the legal provisions in force.*

Law no. 375 of December 23, 2022, for amending and supplementing Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, published in the Official Gazette no. 1255/December 27, 2022 establishes the possibility for two or more administrative-territorial units to associate in another form of intercommunity development association called **administrative consortia**, which **initially did not have legal personality**. Their legal status was modified by Law no. 387 of December 12, 2023, for amending and supplementing Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, as well as for supplementing Law no. 273/2006 on local public finances, published in the Official Gazette no. 1120 of December 12, 2023, when they acquired legal personality and public utility status by the effect of the law.

The new regulation defines administrative consortia, in Article 89, paragraph (8^1, according to which *"Administrative consortia are intercommunity development associations constituted by two or more neighboring administrative-territorial units with the purpose of integrating the provision of policies and services at their level, reducing development disparities, and increasing functionality at the local level, as well as ensuring that people living in rural areas, including those in marginalized/peripheral communities, have increased access to quality services, such as mobility, housing, and other public services provided at the local level. (8^2) Administrative consortia have legal personality and are of public utility, by effect of the law."*), in Article 89, paragraph (8^1), although, in our opinion, **the definition** should have been included in Article 5, which covers *general definitions*. It expands their **role**, **the competencies** they exercise, and **the objectives** they pursue.

The objectives outlined in Article 89, paragraph (8^4) are of particular interest to our study, including: "***a)*** *improving the efficiency of public services, especially social, educational, and healthcare public services;* ***b)*** *increasing the effectiveness of implementing investments at the local level;* ***c)*** *optimizing the use of specialized human resources to meet the interests of local communities;* ***d)*** *jointly providing certain public services of local interest;* ***e)*** *digital integration of public services provided by the administrative-territorial units that are members of the administrative consortia;* ***f)*** *developing infrastructure and common development objectives of shared interest;* ***g)*** *integrated economic development and increasing economic competitiveness;* ***h)*** *integrated and sustainable development of the territory of all administrative-territorial units that are members of the administrative consortium;* ***i)***

safeguarding natural and cultural heritage; ***j)*** *supporting individuals engaged in independent agricultural activities by facilitating access to markets and increasing cooperation;* ***k)*** *other objectives that contribute to reducing development disparities."*

All these objectives lead to the conclusion that the ultimate goal of each and all of them together is to contribute to the development of local communities. Although referred to as **objectives**, they actually represent the **responsibilities** conferred by law. After establishing the **objectives**, Article 91 of the Administrative Code, as amended by Law no. 387/2023, outlines **the categories of responsibilities** exercised by administrative consortia, which together define their competencies. In a logical sequence, aimed at creating a complete picture of the status of administrative consortia, Article 91^1 regulates the categories of activities that may be carried out by the *"administrative consortium through the board of directors or by one or more member administrative-territorial units, based on the mandate granted by the other administrative-territorial units".*

4. Drafting deficiencies

We cannot help but briefly note the deficient nature of Article 91, which excels in terms of ambiguity and lack of coherence, as well as the other provisions regarding administrative consortia, in complete disagreement with the requirements concerning the quality of the law, as imposed by the jurisprudence of the Constitutional Court, in line with the standards set by the two European Courts, in Luxembourg and Strasbourg. In its consistent jurisprudence, especially after 2010, the Constitutional Court has established that, although the constitutional texts do not explicitly set out requirements regarding the quality of legislation, "following the example of the European Court of Human Rights", "it has established a series of criteria that must be respected in the legislative process" (CCR Decision no. 106/2014, published in the Official Gazette no. 238/April 3, 2014).

The three criteria for **the quality of the law** are clarity, precision, and predictability (Muraru and Tănăsescu, in Muraru and Tănăsescu coord. 2022, 18). If we were to analyze, even superficially, the provisions of Articles 91, 91^1- 91^6 of the Code, as well as those preceding or following them, we cannot fail to notice **the accumulation of provisions through which these administrative consortia have become a kind of distinct administrative units, practically taking over the entire competence of the autonomous authorities at the level of each administrative-territorial unit**. With rules that, in our view, seem to burden more than benefit the budgets of local communities, as well as the national budget, and complicate the exercise of their competencies. It is enough to mention Article 91^3, which provides in paragraphs (5) and (14) allowances for the members of the general assembly and the board of directors of the consortium of 10% and 30%, or Article 91^1, paragraph 17, which refers to the funds granted from the state budget for financing the Multiannual Program for Supporting the Cooperation of Administrative-Territorial Units that are members of administrative consortia, and the examples could go on.

The Constitution states in Article 121, paragraph (1), *that the public administration authorities through which local autonomy is exercised in communes and towns are the elected local councils and elected mayors, in accordance with the law.* To what extent does the constitutional provision maintain its effectiveness when their prerogatives are transferred to all forms of association provided by the Administrative Code? One may wonder what responsibilities remain.

One aspect that raises clear issues of constitutionality is the fact that "the rules regarding the organization and functioning of administrative consortia are established by administrative acts of the deliberative authorities of the administrative-territorial units that are members of the consortium" (Ghencea and Apostolache 2023, 66). This provision is in blatant contradiction with Article 73, paragraph (3), letter o) of the Constitution, *according to which the organization of local public administration, territory, and the general regime regarding local autonomy are matters to be regulated by organic law,* not to mention the countersigning for *legality of*

administrative acts issued/adopted for administrative-territorial units. Such a responsibility, set out in Article 91[1] paragraph (2), letter b), can have dangerous consequences for the legality within an administrative-territorial unit. This responsibility is carried out by the general secretary of an administrative-territorial unit, who attends the meetings of the deliberative bodies, is aware of how they were conducted, assumes, by signature, the summary of the discussions of each meeting, and takes responsibility for what is recorded. In this way, they can evaluate and responsibly countersign for the legality of acts adopted by the local council or issued by the executive bodies of local autonomy, including based on considerations of opportunity. Otherwise, we can imagine that, for objective reasons, a general secretary might refuse to countersign an administrative act, and the administrative consortium, through *the board of directors or one or more administrative-territorial units*, proceeds to countersign such acts. The issue is, **who countersigns**? Because the text is unclear and inadequate in terms of the legal quality requirements. Does the board of directors sign in place of the general secretary of the administrative-territorial unit, the most important public official in local administration?

5. The role of administrative consortia in developing local businesses

As we have shown, all the objectives established by Article 89, paragraph (84) of the Administrative Code lead to the conclusion that the legislator created them to contribute to local development. The categories of responsibilities regulated by Article 91 1 paragraph (2) also support this conclusion, at least those under letters f) (In letter f), we find: "f) activities related to the preparation of tender documentation and the conduct of public procurement, leasing, and concession procedures for achieving local interest objectives"), i) (In letter i), we find: "activities related to the drafting, monitoring, or evaluation of strategies and other similar strategic documents aimed at promoting local development"), j) (In letter j), we find: "activities related to initiating and carrying out investments in the context of Romania's Territorial Development Strategy, the National Recovery and Resilience Plan, or other national or international strategies or funding programs"), k) (In letter k), we find: "the provision of social assistance services") .

However, we question the rationale behind including in the categories of activities performed by administrative consortia those provided in letters a)–c), which refer to: *legal activities, including representation in court, in accordance with the law; countersigning for the legality of administrative acts issued/adopted for the member administrative-territorial units; or activities related to human resources management, including the payment of personnel from public funds? Or those regarding the issuance of zoning certificates and construction/demolition permits, the issuance of a specialized structure's opinion, or the issuance of an opportunity opinion for the development of a zonal urban plan, as applicable, for member administrative-territorial units that do not have specialized structures (letter h); activities related to the agricultural registry* (l); *or civil status activities* (m)?

We believe that even the author of these regulations does not fully grasp the rationale behind the establishment of these norms, and the way they are formulated leads us to have serious doubts about the legitimacy of granting these responsibilities to administrative consortia. In our opinion, the responsibilities of administrative consortia should be strictly limited to those related to local development, the promotion of local businesses, and thus, the enhancement of the economic potential of local communities

6. Brief conclusions

It is undeniable, and we wholeheartedly believe in the need to **unite forces** so that results can grow accordingly. However, **this objective cannot be turned into an end in itself, pursued at any cost and in any way. We cannot sacrifice the Constitution, the principles of the rule of law, and democracy for supposed benefits that may or may not materialize**, and for which **no one can offer any certainty.**

Therefore, we believe that **things need to be reconsidered**. In our view, **rather than establishing so many forms of association, with more or less similar legal regimes and objectives, it would be preferable to simplify matters, reduce their number, and clarify the framework for associations, all while preserving local autonomy.** This should be understood in relation to the principle of subsidiarity, as defined in European Union law and incorporated into the laws of member states, with the aim that local autonomy, including through associations between autonomous authorities and local communities, aligns as closely as possible with the interests of administrative-territorial units, in accordance and harmony with the local interest (Trăilescu in Vedinaș, coord. 2022, 12).

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