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THE TERRITORIAL ORGANIZATION OF PUBLIC POWER: THE SHAPING OF AN ACADEMIC FIELD

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Abstract

The rational territorial organization of public power has a special importance of building a democratic state in the Republic of Moldova. The efficient functioning of the system of public power in a unitary state like Moldova largely depends on its territorial organization and the interaction established between the local and state power.

Although Moldova has gone through several stages of reforming the territorial organization of public power, the experience obtained implementing the administrative-territorial reform in 1998 and the Counter Reformation in 2003 has not been sufficiently analyzed and systematized on a theoretical level.

The theoretical conceptualization of the notion “territorial organization of public power” provides an efficient mechanism of analyzing for theorists, and also a practical tool for practitioners.

Keywords: public power, territorial organization of public power, local collectivity

Argument on the need to develop a unitary concept regarding the territorial organization of public power

The rational territorial organization of public power is important for building a democratic state in the Republic of Moldova. The efficient functioning of the system of public power in a unitary state like the Republic of Moldova largely depends on its territorial organization and the existing interaction established between the local and state power.

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The issues of public power organization in the state are indispensably linked to the state's territorial delimitation because the operation of both the state power authorities and the local ones is achieved within the limits of the territorial spaces.

Although the Republic of Moldova has gone through several stages of reforming its territorial organization of public power, the experience acquired as a result of the implementation of the administrative-territorial reform in 1998 and the Counter Reformation in 2003 has not been sufficiently analyzed and systematized at the theoretical level.² The study of the problems related to the territorial organization of public power was restricted to a circle of aspects that deals only with the political-territorial organization of the state, and this fact limits the possibilities of studying complexly all the aspects of the spatial configuration of public authorities' exercise of power. After analyzing the works that addressed, even tangentially, the problems related to the territorial organization of public power, the following aspects have been found:

- presently, one can attest a growing interest in this issue, particularly in the context of regional development and consolidation of local autonomy, deconcentration, and decentralization;
- the scientific publications do not provide competent answers to the existing problems nor to those problems that may occur in the process of territorial organization of public power;
- the experience gained from reforming the territorial organization of public power has not been systematized;
- for the efficient functioning of the public power system, it is very important to define in scientific terms the notions related to this field.

In order to overcome the existing situation, it is necessary to carry out profound scientific investigations that would:

- identify and solve the created theoretical problems concerning the territorial organization of public power;
- elucidate the influence of the territorial dimension on the functionality of public power;
- generalize the previously gained experience in reforming the territorial organization of public power and include analysis of the existing problems and anticipate new ones that can occur in the process of achieving reform;
- propose alternatives for solving such problems.

² The reform of 1994 has not been mentioned here deliberately since the regulatory framework of the territorial organization of local public power only perpetuated a situation existing in Soviet times.

Advantages of elaborating a unitary concept regarding the territorial organization of public power

- Alongside the political processes of democratization that take place in the Republic of Moldova, the development of a unitary concept on public power and its territorial organization acquires a special significance. Based on this concept, a unitary and proportional system of rational territorial delimitation of public power can be developed, without which it is not possible to operate effectively. The need to develop such a conception is based on the following reasons:
- In democratic societies, due to the eligibility principle applied to the establishment of public authorities, there is a permanent movement of people that participate in local political life and accede to civil service positions in the system of local public authority. These very officials and local elected officials, who in most cases have very vague knowledge about forms of manifestation and realization of public power, would require a theoretical support based on a unitary scientific view of public power that would serve as a useful tool in the process of making decisions and exercising powers;
- In nearly three decades of independence, various visions on territorial organization of public power have been developed and promoted, and due to this fact there appeared an objective need to systematize the ideas, approaches, and acquired knowledge;
- Under the new conditions of social development, marked by the process of reevaluating concepts and values, especially those anchored in the past, there is a need to develop a modern vision on the territorial organization of public power that would reflect and correspond to new realities, without ideological constraints and Soviet propagandistic dogma;
- The realities of contemporary society (political, economic, social) also require the identification of new mechanisms and methods for developing public power both at central and local levels and the institutionalization of civilized, very clearly defined and legally regulated mechanisms that would establish collaboration between levels of public power.
- The experience in terms of territorial organization of public power gained by other countries, especially of those that have been under conditions similar to those in the Republic of Moldova needs to be studied. It is necessary to rationally use the experience of building an effective system for the exercise of public power

taking into account national characteristics and specifications, traditions, history, and not least the Moldovan population's mentality. The blind copying of practices applied in other countries may have adverse consequences on the local system of territorial organization of public power.

- There is a need to study and generalize the results of research studies and analyses of territorial organization of public power carried out by scientists and local experts. It would be a pity not to use the experience gained over time and the scientific research results accumulated by contemporary researchers.
- The study of the theoretical and practical problems concerning territorial organization of public power will allow officials working in spheres of public authority, as well as all those interested and involved to understand the processes that occur in society, thus encouraging civic participation.

Content of territorial organization of public power concept

To solve the theoretical and practical problems related to the efficient territorial organization of public power, one proposes to put at the base of the scientific approach that investigates the phenomenon, the conception of plurality of the public territorial collectivities – the contemporary approach to public power. The concept of plurality of the public territorial collectivities and public power that belongs to them enables us to approach the problem of the territorial organization of public power from the perspective of the democratization of all aspects of social life, a perspective which is closer to the realities of the contemporary world. The multi-level nature of public power, determined by the territorial limits where applicable, involves studying it in all its diversity and developing unitary criteria for analyzing the organization of public power structures. In such an approach, it is very important to study the effectiveness of public power organization in line with the territorial principle and the resources available that will be used to legitimize or strengthen its position. Such a scheme of territorial organization of public power is a logical and unitary construction and could help reduce the discrepancies and ambiguities between the approaches of the two forms of public power: the state and the local one.

The notion of „territorial organization of public power” includes two key components – the territory and the power. The essence of this notion can only be discerned based on the dialectical unity of all constitutive elements (the metaphysical analysis of territory and power will not provide a comprehensive interpretation of the territorial organization of public power). Moreover, in the dominant scientific stream (based on the

traditional classification of countries according to the form of territorial organization), all territorial aspects (territorial organization and territorial delimitation of states, types and status of the component territorial entities, symmetry and asymmetry, centralization and decentralization in the territorial organization of the states) are inextricably linked with the organization and building of power.³

The territorial organization of public power implies rational spatial organization of public power in all its forms of manifestation and at all levels of operation. The notion “territorial organization” can be understood as a set of principles and rules for ordering the component elements of the state territory and the state as a whole in such a way as to ensure the interaction between the component elements based on territorial delimitation. When it comes to the territorial structure of the state, the form of territorial organization of public power is firstly considered.

The territorial organization of the state is, on one hand, the form of territorial organization of public power, and on other hand, a system of relations between the state as a whole and its component parts. The character of these relations determines the configuration of the two essential forms of territorial organization of the state: unitary and federal.

I believe that the examination of aspects related to the territorial administration of the state should be achieved namely from the perspective of the concept of territorial organization of public power, which reflects the actual way of organizing public power in relation to the territory. In such an approach, the territorial organization of public power is treated as a unitary way of organizing power on the level of the entire society, and this fact determines the internal territorial structure of public power. Depending on the forms of public power, one must identify the territorial organization of state power and the territorial organization of local power. From this point of view, the administrative-territorial organization of the state territory is a component part of the concept of territorial organization of public power.

The phenomenon of public power in the contemporary democratic state must be approached not only with regard to the state, but much more widely, in terms of the existence of the public power of the people and the existence and functioning of public power of public territorial collectivities. Such an approach enables one to develop a vision of the public power of various territorial collectivities as power that has the same social nature, but is different in form and content. The society included within state borders is the largest public territorial collectivity, but the sovereign power represents

³ С.Некрасов, *Территориальная организация публичной власти: понятие и сущностная характеристика*, in Конституционное и муниципальное право, №1, 2013, p. 23.

the concentrated and sustained expression of public power. The other public territorial collectivities are component entities of the national public territorial collectivity. The public power of the public territorial collectivities shall be subject to standardization and regulation from the state. In this way, the state limits the powers of other public territorial collectivities. Within one and the same territory, the compatibility of the activities of authorities of different forms of public power is ensured by clearly defining their powers and responsibilities.

The power of public territorial collectivity is not a “small piece” of the state power. It is autonomous, being a consequence of the self-organization of the public territorial collectivity. There is only a certain kind of community where the public power can occur and be performed in various forms – public territorial collectivities. The territorial collectivities established under constitutional or legal acts conduct their own public power in the established fields of responsibility. The “individual” public power operates within the framework of a territorial collectivity that has its own public interests, forms its own bodies of public power, and makes compulsory decisions for those from the respective collectivity. The local power is organized at the level of local authority, and exercises its influence on the population determined within the established territorial limits. This theoretical construction is of great significance in terms of determining the necessity and sufficiency of institutions of public power at different levels, capable to efficiently solve the vital problems of the population at a particular territorial level.

In this approach, there are two equivalent forms of public power – the state power and the local power. Every form of public power has its distinctive peculiarities. The authorities of the state power solve the state problems, but the local public authorities solve the local problems. V. Cirkin mentioned that “at the present time, the public power is not the exclusive prerogative of the state. ... at various levels of territorial organization of the society, the “individual” public power acts, and it is called to solve the vital problems of the respective local territorial collectivity within the limits of the powers established by the state normative acts that express the interests of the society as a whole.”⁴ Apart from the state power, in contemporary world states, the power of local territorial collectivities – the local power – is recognized as an autonomous form. The state power is realized throughout the state territory and, obviously, throughout the territory of each public territorial collectivity, but this is still the state power, not the power of the collectivities. The public power of the territorial collectivity is realized within the limits of a part of the state territory, not the state as a whole, and cannot be considered the state power.

⁴ В. Чиркин *Территориальный публичный коллектив и власть народа*, in *Гражданин и право*, № 5, 2006, p. 10-12.

Both state power and the power of territorial collectivities are powers of the same social type. Both of them are defined by a common term – public power. Among the forms of manifestation of supreme public power is the sovereign power of the people. From a social perspective, this represents the concerted interests of society, formulated as a result of the interaction of various social forces. From the legal point of view, powers are assigned to other forms of public power by the state power, but from the social point of view, they are assigned by the population of the respective territorial collectivity. It is the source of “its own power” within the spatial limits of the collectivity and the exponent of its will.⁵ Thus, every form of public power has its source and its organizational form: the state public power has the people as a source and the state as a shape. The local public power has the residents of the local territorial collectivities as a source and the local authorities as its organizational form.

The system of public power refers to the entire population set within the limits of a specific territory and represents the essential mechanism of the administration of public affairs. The main issue of the territorial organization of public power lies in the rational application of power in this respect.

One of the essential criteria concerning the delimitation of the state public power from the local one is the attributed competence. The issues of the political organization of society fall within the competence of the state power. The problems of economic, social, and cultural development of the local community fall within the competence of local authority.

Further, some clarification on the term “territory” is required. The notion of territory, its essence and its importance in the development of the state, has been analyzed by many researchers. The existing ideas, even if sometimes they are contradictory, certainly reflect the permanent concern of researchers to scientifically substantiate the existing social realities of the territorial dimension of social life.

The territory, in its capacity of spatial foundation of the public, state, or local power organization, cannot be treated arbitrarily, i.e. outside some criteria awarded formally and abstractly, meaning it cannot be outside the connection with the general system of territorial organization of power and without interaction with other elements. The organization of public power must have an ordered structure, and the same applies to its territorial component. Thus, firstly, the territorial organization of public power should be structured to include types determined by territorial entities formally accepted. The second aspect of the issue is related to the correlation of the territorial organizational structure of state power with the structure of territorial organization of local power.

⁵ В. Чиркин, *Современная концепция публичной власти*, in *Russian journal of legal studies*, nr.2 (3), 2015, p.77.

The stability of the activity of state institutions and political life in the state, in general, depends largely on the territorial organization of public power that reflects the territorial structure of the state and the relations between the state and component territorial entities. It is important to specify that the territory is an important element for recognizing the essence of the state as a form of political organization of society and represents the foundation on which the system of state and local power authority is constituted, having the final aim to the rational organization of the state.

It is good to mention that the cohesion of the tasks and functions that achieve public power, regardless of its actual type, unites organs of state power with those of local governance. Effective realization of these tasks and functions is impossible without the harmonious collaboration of the components of the territorial organization of public power. This cohesion in activity can be ensured by forming a unitary structure of the territorial organization of public power. The guiding idea should be the following: to join the local power authorities with the population in order to resolve the whole spectrum of issues of local interest without impeding solving problems under the jurisdiction of state authorities.

From the above reported facts, the following conclusion is drawn: the territorial organization of local power is a component part and is formed on the same common foundation with territorial organization of public power in the Republic of Moldova. Also, it is important to mention the fact that the term “organization” implies the perception and existence of systemic relations arising from the territorial complexity to which this report refers.

The issues of the effectiveness of public power activity are closely linked to its territorial organization, since the operation of state power authorities and that of local power is achieved within some delimited territorial spaces. For state authorities, the territorial basis of their activity is the national territory of the Republic of Moldova, and the territorial basis of local government is the territory of the respective local territorial collectivities.

It is important to note that in order to characterize the territorial dimension of the organization of public power in the state, and thus the system of mutual relations between the state public power and the local public power in the specialty literature, one can use such the terms as “disposition of state”, “the nation-state organization”,⁶ “territorial organization of the state”, “administrative-territorial organization”, “territorial division of

⁶ For example, the term “the disposition of state” formalized in the R.S.S.M. Constitution of 1978 was ambiguous and do not reflect exactly the situation governed, nor does it emphasize the territorial aspect of state power. And the term “the national-state organization” that exists in the U.R.S.S. Constitution of 1977 is not universal, being hypothetically applied only in states composed of local authorities created on the basis of ethnic criteria.

the state”,⁷ “the system of vertical division of power”, “the territorial organization of public power”, etc. Nevertheless, the presented concepts do not provide certainty of their existence within the state and territorial collectivities. They can be used when examining state power in relation to the component territorial entities, but they are not useful in elucidating the role and functions of public power of the public territorial collectivities. Therefore, it is very important to distinguish between the notion of “the territorial delimitation of the state” and “the territorial organization of the public power in the state”. The territorial organization of the public power in the state includes the system of interactions between the levels of public power, i.e. between the state public power and local public power.

According to S.I. Nekrasov, the conception of territorial organization of public power does not deny or exclude the theories of federalism, regionalism, polycentrism, and local autonomy, etc. It includes all of them, and this fact allows a broader approach to this complex phenomenon of the territorial organization of public power. The extent of this approach is reflected in the fact that the territorial organization of the state and local public power, the status of the component parts of the state, the degree and forms of centralization and decentralization of public power, the existence of territorial autonomy (or of another type), and other problems cannot be considered strictly dependent on federal or unitary forms of the state. The conception of territorial organization of public power can operate with such categories as “state”, “sovereignty”, “territory”, “public power”, “state power”, “local power”, “local autonomy”, “public territorial collectivity”, “territorial organization”, “competence”, “federation”, “federalism”, “unitarianism”, “regionalism”, “polycentrism”, “decentralization”, “deconcentration”, “autonomy”, “territorial autonomy”, “subsidiarity” etc.⁸

In particular, the various components of the territorial organization of public power, according to S.I. Nekrasov, may serve as criteria for the classification of states. Thus, depending on the degree of rigidity of the system of public power and the relations between the central and local levels of public power, all contemporary states (both federal and unitary in the traditional sense) can be divided into: centralized states (Kazakhstan, Belarus, Poland, India and Russia) and decentralized states (USA, Spain, UK, and Italy). Depending on the status of the component parts, there are: symmetric states (Germany, Poland) and asymmetric states (Ukraine,⁹ Moldova, Spain, India, and Russia). Depending on the model of public power realization at the local level, there are: a) states with developed systems of self-administration (UK, USA); b) states with administrative systems of state in territories (China, Vietnam, Laos), and c) states with mixed systems – the

⁷ Cr. Dumitrescu, H.Sărăcăcianu, *Autonomia locală*. Craiova: Editura SITECH, 2010, p. 19.

⁸ C. Некрасов, op.cit., p. 23.

⁹ Until the annexation of Crimea Autonomous Region to the Russian Federation

coexistence of the state administrative systems in territories with local self-government (France, Kazakhstan, India, Russia).

There are other possible classifications: 1) according to the number of levels of administration; 2) depending on the degree of integration of the state into the international community and the chosen conception regarding the idea of linking the international and national rules (the participation of public power authorities at various levels in solving the inter-state problems and in the activity of the supra-state structures). Based on the theoretical and legal construction of the territorial organization of public power, it is possible to conduct concrete analysis of the territorial organization of power in every contemporary state. The deductive representation of the contents of the state's essential elements is applicable to the state constitutional models and its exercise of power.¹⁰

Conclusions

The territorial organization of public power is one of the essential components of state organization that determines the organization, operation and interdependence of the public power forms at various levels of the state.

The notion of the territorial organization of public power includes the following elements: a) the organization and system of state public power; b) the organization and the public power system at the subnational (regional) level; c) the organization and system of local public power; d) the delimitation of powers between the state power authorities and the local and regional power authorities; e) the collaboration between levels of public power.

The concept of territorial organization of public power is not just a synthetic and coherent vision that is adequately accessible for perception and implementation, but also a system of knowledge and scientific investigation in full progress since all its components can evolve and can complete each other.

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¹⁰ С. Некрасов, op.cit., p.24.

CONTENT AND EFFECTS OF RECOGNITION OF THE RIGHT TO WATER

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Abstract

Since 2010, the list of fundamental human rights is supplemented with Human Right to Water and Sanitation. From a sociological perspective this law is the expression of individual needs, but also social. Following the recognition of the right to water, rather witnessing the intensification of the conflict between economic and non-economic values, which resolves most of the time in favour of the first. The penetration force of the economics values and force for concretization of material contrasts with the inability of the values, called humanitarian (dignity, solidarity, equality, justice etc.) to decisively influence the international law. A major threat to fairness in the management of water is corruption of the entities that are responsible for setting and enforcing rules and also the stakeholders.

Keywords: right to water, individual needs, citizen initiative, obligations

Recognizing the right to water as a fundamental right

The human right to water is considered the most notable innovation² in the field of fundamental rights. John Warwick Montgomery, holder of eight doctorates in philosophy, theology and law maintain that no one is against human rights. No one is against

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² G.S. Mc Graw, *Defining and Defending the Right to Water and Its Minimum Core: Legal Construction and the Role of National Jurisprudence*, in Loyola University Chicago International Law Review, Vol. 8 (1), 2011, p. 134.