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Insolvency of the Romanian administrative - territorial units. Novelty and challenge for the public administration

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Abstract

This study analyzes the introduction impact, for the first time in the Romanian legislation, of the possibility of entry into a state of financial crisis and even financial insolvency/bankruptcy, with all the social and economic implications, of the Romanian administrative - territorial units (communes, cities, municipalities, counties).

The scientific approach starts with a direct manifest on the accountability of decision makers involved in the local and central administration (both those in the legislative and the executive area), continues with brief technical considerations on the administrative-territorial units (beneficiaries of the new legislation regarding insolvency), and finally, analyzes the rationale of adopting the Regulations before treating its weaknesses, to conclude that “...*The insolvency proceedings for debt recovery under the tutelage of the normative imposed by the Government Emergency Ordinance no. 46/2013 by respecting a financial recovery plan are difficult, costly, lengthy and unpredictable, which can be considered at one point, inefficient...*”.

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1. About accountability in governing

Over the years many have looked into precisely the human nature through the multitude of social situations filter in which they could find in, notable among them are: Jean de La Bruyere, Jean-Baptiste Poquelin (aka Moliere),

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Michel de Montaigne, Rene Descartes, Blaise Pascal, Francois de La Rochefoucauld.

One of the largest known moralists was La Bruyere, who, through a fine sense of observation and a consummate art of writing, noted in his monumental work “Les Caracteres ou Les moeurs de ce siecle” (1688) in Chapter X “On sovereignty or on government”: “What a **happy job** is that which gives a person at any time the opportunity to do good to so many thousands of people! What a **dangerous position** is that which gives a person the possibility to harm, at any time, a million people!” (De La Bruyere, J., 1968). “...If he is good (n.n. the King), he must know the most lasting and the purest of pleasures in laboring for virtue” (De La Mothe - Fenelon, F. de S., 1699, quoted in De La Bruyere, J., 1968).

These ideas, expressed more than 300 years ago, are marked by a timelessness of hypotheses. Thus, the two values of a function involving the state authority exercise are emphasized.

For the purpose of acquiring a character specific to exercising the ownership by the fulfillment of the governing act testifies a maximum attributed to King Louis the XIVth (Sun King): “*L'état, c'est moi*” (*I am the State*). This, along with the phrase “*la grace de Dieu*” (“*the grace of God*”), represents the abstract of the ordinary painting of French royalty in the centuries before the Revolution of 1789 (Rowen, H.H., 1961). Thus, it is undeniable the preference for a democratic system, in which *virtually everyone*[†] sufficiently popular and respecting the laws can be elected to protect the interests of the community, the latter having the sanctioning power of a weak management of public affairs by **voting**.

However, from the everyday realities perceived, we cannot stop from asking ourselves the following rhetorical question: **The voters are created for the elected or the elected for the voters?**

One of the best poets and most devoted people to the Romanian nation, Mihai Eminescu (1999) (quoted in Mazilu D., 2013), noted:

*“The surest way to subordinate a country is to impoverish it...
A State is like the person... has as much freedom and equality as wealth. And the poor is always slave and unequal to the one standing over him.
He who has nothing... give him all the possible freedoms, he is still a slave, the slave of his needs, the slave of the first, who holds a piece of bread in his hand. For it is the same if you close a bird in a cage or you gathered from everywhere the grains on which it feeds!”*

Nothing more true that the sustainable development of a local, regional or national community is done through the good governance and long-term debt; the reliable credit received by the political and administrative power from the voter, as long as it is well managed by them, can be a real “fuel” for a frugifer mechanism designed to work in the interest of the society.

2. About the Romanian administrative-territorial units

The Romanian Constitution[‡], in the article 3 reserved to the territory, provides by the dispositions of the paragraph 3 that the territory is organized, administratively, into communes, cities and counties, and that “according to the law” some cities can be declared municipalities. This provision was also taken by the text of the article 1 paragraph 2 of the Law no. 215/2001 (Local Public Administration Law).

According to the article 21 paragraph 1 of the Local Public Administration Law, the administrative-territorial units are legal persons under public law with full legal capacity and private patrimony. The administrative-territorial units are holders of the rights and obligations arising from the contracts regarding the administration of assets belonging to the public and private domain of which they are parties, and the relationships to other individuals or legal persons, but in the same time, obligations and responsibilities on ensuring a minimum of public services to citizens of that community.

Statistically speaking (the Directorate for local fiscal and budgetary policies of the Ministry of Regional Development and Public Administration 2014a), Romania is organized in 3228 administrative-territorial units and sub-divisions, of which: 103 municipalities (including the Municipality Bucharest), 217 cities, 2861 communes, 6

[†] Limitations of the right to be elected mayor, local adviser, county adviser, we find in the article 5 paragraph 2 of the Law no. 67/2004.

[‡] As amended by the revision Law of the Romanian Constitution no. 429/2003 published in the Official Gazette no. 669 of 22 September 2003 and republished in the Official Gazette no. 767 of 31 October 2003 with the updating of the names and giving the texts a new numbering.

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