

A Proactive Perspective on Reform in Local Public Administration

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Motto:

*“ The most important thing is not where we are,
but where we go”*

Oliver Wendell Holmes (1809-1894)

Abstract. *The local communities from Romania and those from Eastern Europe have become important public services suppliers carried out in the interest of their citizens. Public services such as pre-university education system, culture, assistance and social protection, but also public lightening, water supply, and sewerage are examples of services which are assured by the public local authorities. Consequent to the principles published in the European Charter of the Local Autonomy, the local authorities had fully benefited from the provisions of the Chart. The right to dispose by own resources, the right to collect them, the right to benefit by partition of tax incomes, the right to contract loans have transformed the local communities in important entities with financial power capable to carry out efficient public services in terms of quality and operational for the citizens. Which is the financial and decisional mechanism for functioning of the local communities? These are some questions for which we tried to formulate an answer within this present work beside the research of the main reform elements implemented in the European Romania.*

Key words: local communities; reform of local public administration; locale public authorities; public services; financial mechanism of functioning; decisional mechanism of functioning.

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JEL Clasification: H71 H77

1.1. Introduction

The local communities are, today, witnesses to ample processes of reform carried out under different forms with the goal of consolidating the financial and decisional autonomy of the local communities involved in the ample process of delivery of local public services.

The components of local public administration reform are varied, this following, mainly, the evolutions which took place at the European and international level: the local autonomy, declared in the European Charter of the Local Autonomy, but also application of the principle of

subsidiary which had as result bringing closer the public services to the needs of the citizens and also a massive decentralization of public services.

The approach to group the reform typology in the public local administration brings into light, in our opinion, its three components:

- The reform of the public administration at local level;
- The reform of the public finance;
- The reform of the public property.

The first component of the reform, started since 1991⁽¹⁾, had to change radically the function of the administrative mechanism at the local level, despite the fact that the local autonomy at that time was a concept declared just theoretical, as long as the local communities were not detaining financial resources or properties (public or private) to fulfill their mission.

The law stipulated a series of theoretical concepts which stayed at the base of reforming the public administration, in this category being included:

- *the local autonomy*, representing the right of the local communities to dispose of their own resources and to use them in provision of public services, cannot be implemented without a financial and patrimonial autonomy. The delay in time between the theoretical declaration of the concept of local autonomy and its effective implementation brought a series of detriments to the beneficiaries of public services and to the science of public management, as well;
- *the establishment of the type of relationships between the local and central authorities*, excluding the principle of insubordination, on the above mentioned law; based on it there were substantiated the relationships between the local, county and central authorities as being collaboration relationships with the final goal to the implement of the public services system, very complex, carried out in the interest of the citizens;
- *delimitation of the sphere of interest between the central and local authorities regarding the delivery of public services* respecting the principle of subsidiary, of convenience of the public services towards the citizens; this was for the first time, through the attributions of the Local and County Council, stipulated by law, when there were delimited the public services on which the responsibility was belonging to the local authorities from those of which was the responsibility of the county authorities;

- *authorities the right* of the local communities to choose by vote their deliberative and executive, expressed by universal, secret and freely vote expressed together with the local elections organization.

The administrative local system has a functional structure whose basis were settled in the year of 1990, as was illustrated in the figure presented below (figure 1) and as results from the actual legal framework⁽²⁾:

In spite that the local authorities are in cooperation relations with the county authorities, we have to remark the fact that the social cohabiting norms and those of economic development are established at the central level by the Parliament. The local norms are established by the local or county authorities, and the control of legality regarding their integration in the general norms is realized by the prefect even if his main attribution is to represent the government in territory.

The prefect had maintained this „task”, even if the new law regarding the institution of the prefect consolidated and increased his attributions.

For the moment, even if important steps were realized in the administrative reform, the risk for not implementing the decisions of the Councils remains, as long as the prefect can have a right of „veto” over them.

The Reform of the public finances, the second component of the reform, started in 1998⁽³⁾, implements for the first time in Romania the principle of fiscal federalism, which its main coordinates of public finance architecture restructuring consist in:

- The right of the local communities to dispose, emit and establish their own resources (taxes);
- The right of the local communities to collect partitioned taxes and amounts transferred from the state budget, under the form of conditioned and unconditioned transfers;
- The capacity of the local authorities to contract long term loans for realization of investments (or municipal bonds).

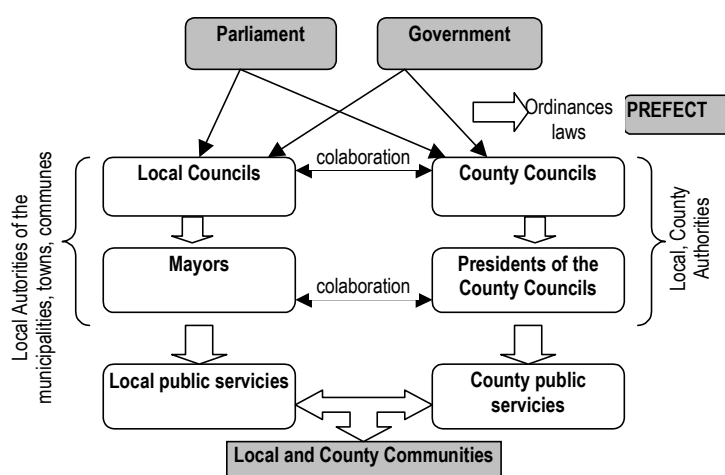


Figure 1. The organization of the local administrative system, according to the law of local public administration

Despite the fact that the problem of the financial management and, implicitly, of the local communities finance is treated separately in different specialized papers⁽⁴⁾, we have to mention that the financial reform had, beside implementation of fiscal federalism, two major consequences:

- dichotomization of the public finances and emergence of a new specialization of public finance, respectively the local public finances;
- the consolidation of the financial capacity of the local communities based on their own and borrowed resources, collected at the local budget.

The last component of the local administration reform appeared, as well in 1998, as an addition to the financial reform, together with the public property law adoption⁽⁵⁾. It's the moment in which the local communities become owners of certain goods, delimiting the public domain of the state from that of the administrative-territorial unit.

The public property delimited in the field of public or private domain of the communities will constitute, from now on, the base for local economic development and for obtaining of some revenues through valorization of those goods in accordance to the law (sale, concession or rent).

These components of the reform are justifying us to research the impact that these had over the science of public management and which in our opinion consist in:

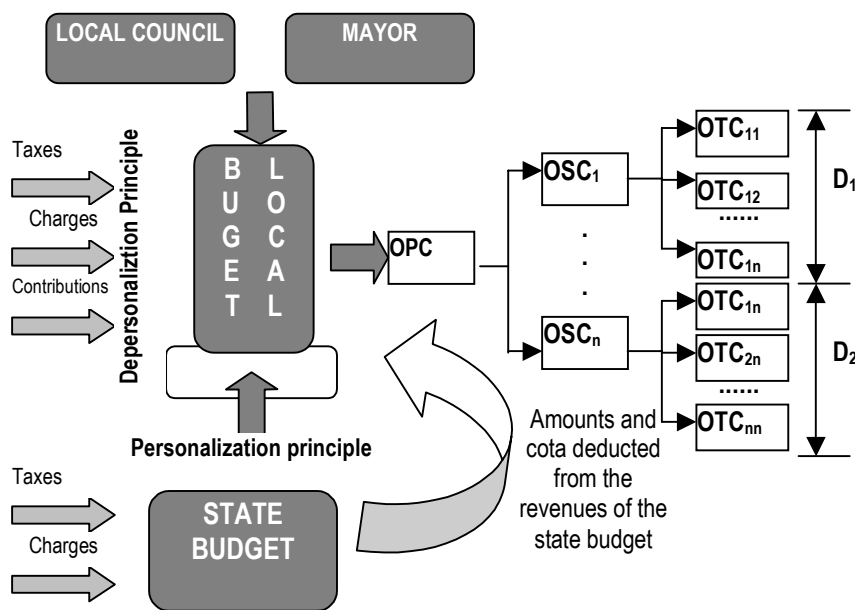
Implications of the reform over the Local Communities' public management

Table 1

| Componence of the reform | Implications over the public management of the local communities |
|-------------------------------------|---|
| Reform of the administrative system | <ul style="list-style-type: none"> – delimitation of the <i>sphere of the local public services from those of county public services</i> – establishment of the relationships of cooperation between the local and central authorities – change of the decision making mechanism |
| Reform of public finances | <ul style="list-style-type: none"> – change of the resource management mechanism |
| Reform of public property | <ul style="list-style-type: none"> – the right of the local communities to collect own revenues – privatization of some public services |

1.2. Financial mechanism for functioning of the local communities and its impact over the public management

Complex and delicate, the financial mechanism is described and illustrative presented in the figure 2:



Legend:

- OPC – main funds coordinator
- OSC – secondary funds coordinator

- OTC – tertiary funds coordinator
- D₁,.....,D_n – functional domains for classification of the budgetary expenses

Figure 2. Financial mechanism for functioning and financing of the services in the public sector

Description of the mechanism in order to quantify the impact over the public management of the local communities is relatively simple:

- The taxes collected for the taxpayers under the form of fiscal revenues, in the condition of the present legal regulations, are subjected to the principle of

depersonalization (are losing their source of provenience) to finance the portfolio of public services, which are obliged to maintain within the local communities, on the basis of decentralization of public services between local, county and central authorities;

- The amounts which constitute prelevations from the state budget are supplementing the shortage of resources, following practically the same invariable route of depersonalization and financing of the public services. These are the result of the delay in the budget model of the Continental Europe between the transfer of responsibilities which happened before the transfer of resources towards local authorities;
- Main credit/funds co-coordinators arranged after the architectural model of the branch network, disciplined, are authorizing one to another the access to the resources of the local budget, using as instrument the “unknown” budgetary credit, in order to give life to the functional domains D_1, \dots, D_n which have to correspond to the public services which, in the interest of their citizens, the local communities must deliver.

Before studying the impact of this mechanism over the public management of the local communities it is necessary to add that both collection of revenues and engagement of expenses are governed by a series of strict rules from which we are mentioning:

- *Collection of revenues* which supposes crossing over some stages of the budgetary execution determined by the settlement, liquidation, emission of the titles for collection and raise of the taxes, known also under the name of ALEP norms;
- *Engagement of the expenses* has different route from the revenues, its stages of budgetary execution are comprising: engagement, liquidation, passing for payment and payment, the final goal being the final discount of the bets regarding the delivered goods and services, the norms being known as ALOP.

The explication of the content of the mechanism presented before, known in the specialized literature, supposes also the identification of its involvement over the public management of the local communities, presented in the table below:

Implications of the financial mechanism over the public management of the local communities

Table 2

| No. crt. | The content of the financial mechanism | Implications over the public management |
|----------|---|--|
| 1. | Collection of the fiscal revenues (taxes and charges) | - identification of some communication relations between the local authority and the taxpayer - management of fiscal informations regarding the taxable values |
| 2. | Prelevation of some amounts from the State budget | - establishment of some relations between the local and central authorities, influenced sometimes by the political environment - management of the financial plans in accordance with their dependency from the state budget |
| 3. | Engagement of resources from the local budget | - development of cooperation partnerships between the deliberative and executive authorities (Local Council and the Mayor) - development of markets for public services - identification of possibilities for modern management of public services |

The knowledge of all these particularities are offering to the public manager the possibility to develop a public management system which should “put into motion the resources” governed by the theory of the 3E, and the credit/funds coordinators and the citizens may use clearly and ordered the resources resulted from the taxes and charges, or resources development some goods which belong to the public or private domain of the administrative-territorial unit.

1.3. The decisional mechanism of the locale communities – “the third stop” in studying the implications over the public management

The decisional process in the field of public management is a very complex one, and the decision at the level of local communities no matter is a tactical or strategic decision, is embracing the form of the decisions for the deliberative authorities (local council) and dispositions for the executive authorities (mayors).

Shaded by law, both decisions and dispositions are following an informational cycle of the decision as represented in the figure below:

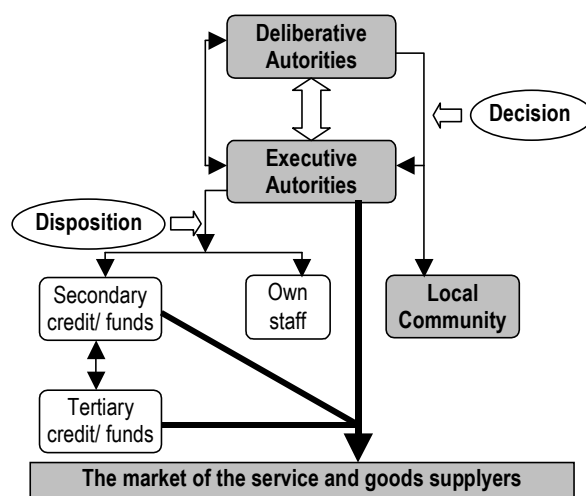


Figure 3. The informational flow of the decisions in the public management of the local communities

The researched informational flow emphasizes the following:

a) *The types of decisions* taken at the community level are splitted in two categories:

- *strategic decisions*, adopted by the Local Councils, of the nature of the social-economical development strategies, budgetary or fiscal strategies, at the proposal of specialized offices within the Mayor’s own staff;
- *daily decisions*, adopted by the credit/funds coordinators in order to implement the strategic decisions, at the proposal of the same specialized offices.

Practically, the specialized offices from its own staff are contributing with proposals for adopting the tactical and strategic decisions, being in the position to delimitate the attributions, tasks and competences which are belonging to the authorities (deliberative and executive) in order to fulfill their mission.

It is interesting to study the form which the decisions are embracing at the level of the local communities, namely:

- *Decisions for the Local Councils* which are mandatory for all the citizens from the local community, a segment of population or just for certain citizens;
- *Dispositions for the mayors* which usually are concerning the execution either of the Local Council decisions or provisions of some legal documents emitted by the Government or the Parliament.

It is established some sort of communication system of the decisions especially for the Local Council Decisions which are embracing the form of publication in the local mass-media.

It should be mentioned the fact that all the decisions of the Local Councils have to respect the obligations stipulated in Constitution, but also the general norms emitted by the Parliament and the Government, the mayor dispositions have the lowest degree of hierarchical authority, being necessary to respect the norms approved by the Local Council, Government and Parliament.

The inequality of the form $N_c \subset N_p \subset N_G \subset N_{HCL} \subset N_p$ is the best illustration of the decisional process which shows that the constitutional norms N_c are including the parliament norms (laws), while the government norms (ordinances or decisions) N_G subordinated to the parliament norms are superior to the decisions of the Local Council N_{HCL} . Finally, the mayor's dispositions with the lowest rank of authority must obey to the previous mentioned norms.

That's why the decisions, regularly in the public sector, have a pronounced legal character, any deviation from respecting the inequality presented above being subjected to legal control realized in Romania by the institution of the prefect.

Each decision has on its basis the combinations of the attributes, competencies and responsibilities in order that the action which will take place will respect two basic principles:

a) *legality* – no decision will be taken if it not based on a norm emitted by the central or local authorities;

b) *justness* – the decisions taken will have to take into account the capacity of those which implement the decisions and realization of the proposed public goal.

The combination of attributions, competences and responsibilities taking into account the two declared principles (legality and justness) will result in the optimization of the decisional process so that the degree of satisfaction and public utility would be maximum.

1.4 Techniques for adoptions of the decisions at the level of the deliberative authorities and the impact over the management in local public administration

The fact that the deliberative authorities (local councils) may adopt decisions like a local council decision is from now on a reality, reflected at least for the moment by the law⁽⁶⁾. Also, these decisions have a normative or individual character, mandatory to be respected by the citizens of a administrative-territorial unit or for a certain category of persons is, as well, a reality.

But let's analyze, for the beginning, the technique of adoption the decisions and the way are created the majorities in the local councils, being known that local alliances (between different political parties) are, from now on, a way to gain the majority of votes in the "local parliaments".

Each of the local councils have a certain number of council established depending on the numbers of inhabitants of the city or commune, as it's shown in the table below:

The structure of the local councils in function of the number of population

Table 3

| Number of inhabitants of the commune or city | Number of councilors |
|--|----------------------|
| Till 1.500 | 9 |
| Between 1.500 – 3.000 | 11 |
| Between 3.001 – 5.000 | 13 |
| Between 5.001 – 10.000 | 15 |
| Between 10.001 – 20.000 | 17 |
| Between 20.001 – 50.000 | 19 |
| Between 50.001 – 100.000 | 21 |
| Between 100.001 – 200.000 | 23 |
| Between 200.001 – 400.000 | 27 |
| Over 400.001 | 31 |

Source: Art. 29, from Law no 215/5/2001 regarding the public local administration.

But each councillor is elected since he was registered onto a list of a political party or in quality of independent if he complies to the conditions foreseen in the legislation in force⁽⁷⁾. It is interesting to research the way in which are formed the local councils from the point fo view of the affiliation to a political party and the future political alliances as an alternative to determine the majority of votes – as basis for adoption of the future decisions.

The steps for councils formation, accounting for the above mentioned observations, are supposing:

- determination of the *electoral coefficient* as a ratio between the total number of valid expressed votes for the political parties and independent candidates which passed the electoral limit and the numbers of councilors established in function of population, with a relationship like:

$$Cel = \frac{N_{tv}(pp, ci)}{N_c(p)}$$

where:

- Cel – electoral coefficient;
- Ntv (pp, ci) – total number of valid expressed votes;
- Nc – number of the councilor mandates .

- determination of the *number of mandates for each political party* (Nm) by reporting the electoral coefficient (Cel) to the total number of valid expressed votes for each party’s list Ntv (lp) after a relation with the following form:

$$Nm = \frac{Cel}{Ntv (lp)} \text{ or } Nm = \frac{Ntv (pp, ci)}{Nc \times Ntv (lp)}$$

The result of applying the two stages, after the attribution of the mandates corresponding to the not-distributed votes, is represented by formation of the local council, respecting the number of the councillors stipulated by the law, and a certain structure from the point of view of the political affiliation with the goal of obtaining the majority of votes, stipulated by law, for adopting decisions.

Why is necessary majority? The majority in the local councils is needed because it is a mandatory condition imposed by the law.

The article 46, line (1) from the Law no. 215/2001 regarding the local public administration is very clear in this manner: „*The Local Council Decisions are taken with the majority of the present members except the cases stipulated by Law and by the Internal Council.*”

It should be remarked that the voting procedures for adoption of local councils’ decisions are special when they concern:

- a) *loans and patrimony*, being necessary the “yes/positive” vote of 2/3 from the numbers of councillors in function;

b) *budget and fiscal policies*, being necessary, as well, the „yes” vote, from the majority of the councillors in function.

In conclusion, from procedural point of view, the techniques of adoption of the Local Council decisions are grouped in two categories, as it’s seen from the table below:

Techniques for adoption of the decisions from procedural point of view

Table 4

| No. crt. | Criteria | The object of the decision | Adoption Technique |
|----------|-------------------------|----------------------------|--|
| 1 | Present Councillors | All decisions | Majority of vote from the councillors in function |
| 2 | Councillors in function | Loans and patrimony | Two thirds of the votes from the number of councillors in function |
| 3 | Councillors in function | Budget and fiscal policies | Majority of vote from the councillors in function |

In consequence, the majority of votes is a regulation stipulated by law, in order to the decisions, which legally are embracing the form of the Local Council decisions, can be taken.

That’s why, the executive authority (the mayor) will try to form political alliances when the political formation from which he is proceeded didn’t won the majority in the Local Council – as deliberative authority, in order to implement the political program of the mayor, based on the adopted local council decisions.

Naming FP the political structure which enters in the pattern of the Local Council, the relation between the executive authority (mayors) and deliberative authority (Local Councils) may be represented like in the figure below:

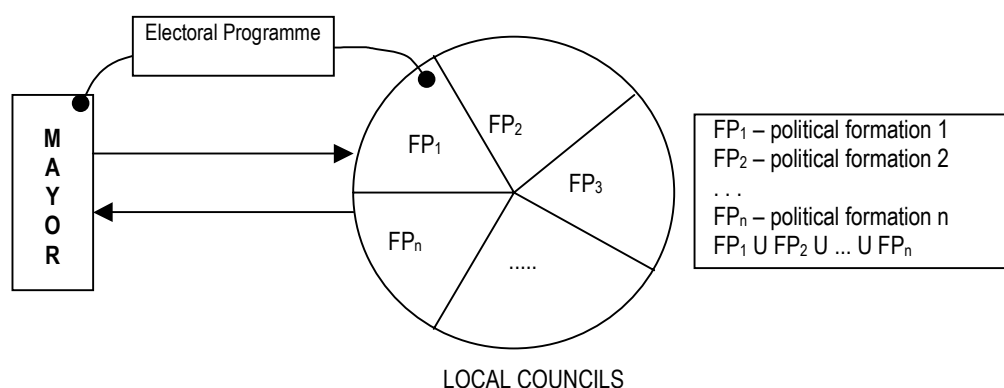


Figure 4. *The executive public authority–deliberative public authority relationship according to the Law no. 215/2001 regarding the public local administration*

From the analysis of the above figure it results that the mayor, for implementation of its electoral programme, needs a majority of votes assured if FP 1 detains minimum 50% from the total mandates of the Local Council or if the political alliance formed by FP 1, FP 2....FP n detains the majority of mandates from the Council.

The following situations are possible:

- a) the mayor belonging to the political formation no.1 (FP 1)

is implementing his electoral programme if $\frac{FP1}{\sum_{i=1}^n FPi} > 50\%$

b) the mayor belonging to the political formation no.1 (FP 1) is not implementing his electoral programme when

$$\frac{FP1}{\sum_{i=1}^n FPi} < 50\%$$

c) the mayor is implementing his electoral programme

in the situation $\frac{FP1 + \dots + Fp_{n-1}}{\sum_{i=1}^n FPi} > 50\%$

In conclusion, it can be asserted that the way in which the political alliances are formed or if the formation from which the mayor comes, detains the absolute majority in the Local Council will determine the efficiency of the manner in which the administrative system will function at the local level.

1.5. Conclusions

The reform of local public administration is one of the most important categories of reforms which were implemented in European Romania and had as goal delivery of high quality and operational public services, in the interest of the citizens. The reform had three major components: the administrative reform based on the principle of local autonomy which determined the establishment of relations based on cooperation between local and central public authorities. The second was the reform of local public finances based on which the local communities have the right to detain own and borrowed

resources and the third is the reform of the public property which regulated for the first time the property right over the goods in favor of local communities.

In parallel with these three categories of local public administration reforms it was consolidated the financial mechanism of functioning of the local communities. It should be mentioned the fact that this mechanism is governed by the manner in which the grants are allocated between the two levels of administration, and a part of which being conditioned and other unconditioned. The grants have also a particularity regarding their distribution respecting several criteria among which the most important are number of inhabitants, the area of the administrative-territorial unit and others.

The reforms were not enough if to them the maturation of the decisional process at the level of local communities is not added, which has as a characteristic the fact that the numbers of necessary votes for adoption of a decision depends on its nature, which can be with a patrimonial or financial character. The way of adoption of the local council's decisions depends, mostly, on the development of the local councils in function of the affiliation of the members to a political party. In any situation the mayor, as the executive public authority, is forced, in order to implement his electoral program, to form a comfortable majority in the council. That's why the rules of functioning for the two categories of local authorities are similar with that of the central governments, analyzed from the perspective of the relationship between the government and parliament.

Notes

- (1) Law no. 69/1991 regarding the local public administration published in Monitorul Oficial al României no. 238 from 28th November 1991 regulates for the first time the relationships which take place between the central and local public authorities. The local autonomy, unfortunately, was declared just theoretical, the steps for its implementation were done quite late once were adopted other complementary laws which were needed for the process of reform.
- (2) Law no. 215/2001 regarding the local public administration, published in Monitorul Oficial al României no. 204 from 23rd April 2001, redefines the relationships between the levels of authority (central and local) and consolidates the role of prefect as the representative of the government in the territory.
- (3) Law no. 189/1998 regarding the local public finances, out of force today and replaced by OG no. 45/2003, published in the Monitorul Oficial al României no. 431 from 19th of June 2003. The law establishes the right of the local communities to collect partitioned taxes and to contract loans as part of the local public debt.
- (4) One of these works refers to the problematic of the budgetary process and the financial interferences which are taking place between the local and central public administration authorities. A special attention being conferred to the grants from the central to the local budget and the modality of equilibration of the local budgets.
- (5) Law no. 213/1998 regarding the public property and its juridical status published in Monitorul Oficial al României no. 448 from 24th November 1998. The public property is reformed in 1998.
- (6) Art. 46 from Law no. 215/2001 regarding the local public administration, published in Monitorul Oficial al României no. 204 from 23 aprilie 2001, establishes the right and obligation of the local councils to adopt decisions which become mandatory for the local communities.
- (7) Law no. 67/2004 for election of the local public authorities, published in the Monitorul Oficial al României no. 271 from 29 March 2004, establishes the conditions for formation of the local councils.

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