

THE WIDTH OF THE CONCEPT OF THE LOCAL SELF-GOVERNMENT IN THE CONSTITUTION OF 1975/1986

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1. Introductory remarks

After the restoration of Democracy¹ in 1974, the 1975 Constitution offered a conducive, generally, framework for the modernising of the local self government. The latter, after the second world-war had been under the tight control of the central government. The basic options of the constitutional legislator, that compose the legal basis of the local self-government, allow the common legislator to proceed to a wide restructuring of the institution of local self-government. The common legislator, though, insists on modest and conservative steps that deteriorate the institution and carry on its institutional hybernation.

2. The local self-government organisations

The content of article 102 of the Constitution establish the existence of the local self-government organisations as spatial legal entities of public rights. More specifically, the content of the paragraph 1 of this article orders that «The administation of local issues belongs to the organisations of local self government, of which the first degree are the communities and the municipalities. The rest of the degrees may be defined by law». These definitions establish the communities and municipalities as the first degree of local self-government and let the common legislator define the other degrees.

From the constitutionally established institutions of municipalities and communities undoubtedly stems the civil right of founding and abolishing such organisations, that is a right of their municipal and communal self - determination.

Our constitution allows (does not impose) the foundation of obligatory or voluntary federations of organisations of local self-government that are governed by a council of elected representatives of the municipalities and the communities, according to the

1. The main points of an article. See: REV. OF DECENTR., LOCAL GOVERN. AND REGION. DEVEL., N.1, 1995, p.36-43.

population of each. (article 102, paragraph 3).

For all the degrees of local self-government stands the same constitutional establishment as regards their range of duties and the range of the audit by the State. From the wording of the constitutional article 102, paragr. 1, it comes that, after establishment, the second - degree local self-government organisations have the administration of issues of their level only.

3. The election of the elements of the local organisations

The form of the indirect local self-government is the one in force in the modern States, and among those, in Greece too. The legislating authority cannot substitute the representative system, established by Constitution, with the system of the direct democracy. One ambiguous issue is only if the law can establish some practices of the direct democracy, and specifically the referendum, for some serious issues of the organisations of local self-government. This must be judged positively, given that the Constitutions that establish the representative system do not seem to absolutely prohibit the direct involvement of the people in the local issues.

Our Constitution in force does not include such a possibility and this event has not taken the attention of the Revision Parliament of 1975. The forwarding of institutions of direct democracy is a safe counterbalance to the relentless use of State power by centralist political parties, that like ours, are characterised by lack of internal democracy.

4. The independency of the local organisations

The essence and aftermath of the legal personality of the local self-governed organisations is their independence against the state authority. The independence has the meaning of governing «under their own responsibility», that is the elements of the local organisation freely operate in the framework of the laws, without to be substitute to the orders of the state or any other body of authority. The local organisation decides if and how it will handle any local issue, and acts with its own means.

The independency of the organisations of local self-government is established by the article 102, paragraph 2 of the Constitution. More specifically this defines that «The organisations of local self-government have their own administrative independency».

Our Constitution states in article 102, paragraph 6 that «the state takes care so that the necessary funds are found for the mission of the organisations of local self-government. Law is to define the transfer and distribution among these organisations of the taxes or duties that are imburshed in their name by the state». As can be derived by the wording of the article the constitutional legislator of 1975 orders the state to show concern for the security of the funds necessary for the task of the local self-government organisations. This procedure needs both the economic support of the municipalities and communities and the growth of these organisations so that they become really viable.

5. The state control on the organisations of local self government

The control by the state in its wide meaning includes the state's right to adjust legally the organisation and the operation of the legal entities of public rights (legislating control), and the state's right to control with administrative entities (administrative control) or jurist elements (jurist control) the alignment of these organisation to the laws in force. The legislative and the jurist control are self-understandable since these authorities are the monopoly of the state itself and are not characteristics of the indirect administration.

6. The administration of the local issues by the local organisations

The article 102 paragraph 1 of the Constitution defines that «The administration of the local issues belongs to the organisations of local self-government». As it comes from the clear statement of the article, it delegates the administration of all the local affairs to the exclusive authority of the organisations of local self-government.

The definition of the meaning of a local issue and thus of the extent of the constitutionally established administrative independence of the local organisations is not easy. This is not defined in the Constitution, but this is allowed to the science, the law and the jurists.

For the characterising of an issue as local or general its kind should not be taken into account, that is if it is material or legal deed, if it is a deed of private or public manner, or if it is an issue of cultural or economic or technical manner. Equally, the administrative or economic adequacy of a local organisation to carry the issue out is irrelevant for the previous characterisation. Otherwise the criteria of distinction between local and general issues would not be uniform for the whole country and there would be the paradox of a similar issue to be considered as general by one organisation and local by another. Finally, the local issues are referring to the executive and not the legislative operation, since the local self-government is a form of deconcentration of the executive only, and not the legislative, operation.

7. Conclusions

The previous presentation of the basic preferences of the constitutional legislator for the local self-government composes a rather modern and democratic face for this institution. This in fact has not been realised or built upon. The constitutional framework of the local self-government is not an obstacle for its development. The delays in the development and renovation of this institution is due to the unwillingness of the common legislator and his affiliation to long gone beliefs and conservative views for the institution, as well as the extremely modest position the justice keeps in facing relevant problems.

Finally, it should be noted that up to date the political profile of the local self-government, as well as the profile of the political parties that are involved with it have not managed to persuade the «citizen» that he may expect a lot by his involvement in the frame of the local democracy.