

DECENTRALIZATION IN TUNISIA: CHALLENGES AND PROSPECTS

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INTRODUCTION

The Tunisian constitution of January 27th 2014 has opted for a decentralized Republic. The Article 14 imposes on the state an obligation to strengthen and implement decentralization throughout the territory as part of the unity of the state. One of the major contributions of the Constitution is to reserve an entire chapter to "local authority". Therefore, decentralization is no longer a simple administrative organization or a pure territorial management by the state. It is, in fact, the recognition of a real local power which is separated and different from the central government through a strong autonomy. This major change occurred after the revolution of 2011 that led to a constitutional and political break of the old regime. The separation of powers cannot only be seen horizontally in the classical way between the three traditional powers: legislative, executive and judicial, but also vertically between central and local authorities who, by definition, should govern themselves within the framework of a unitary state whereas until that time, communities were reduced to a simple relay of the central government. They were affected by its illegitimacy.

Once it becomes democratic, the central government no longer imposes, it proposes. It must seek to convince enormously and find acceptable solutions. It must have the ability to adapt its proposals and to deal with diversity. But will the central government be able to break with its inherited habits that exist since many years that

were shaped by despotism? It will have to deal with citizens and no longer with subjects as it was used to. Its agents must get used to renounce their privileges and admit that they have no longer the unique position to realize the public interest. Furthermore, they are asked to make concessions, sometimes painfully, especially when it comes to government funds, in other words financial issues. At the regional level, the elected president of the local community will have the priority, including in terms of protocol.

Nevertheless, the fast democratization brutally awakened social tensions that are only a reflection of the cumulating failures of ruling authorities, including the aftermath of the revolution. Furthermore, even the politics of social transfers monitored by the independent state led to the evolution of a broad middle class that guaranteed stability for half a century despite the notorious democratic deficit and severe repression of the opposition. At least, successive governments have not been able, until now, to design a consensual manner of a system socially acceptable for tax and allocations of public funds even if that requirement is much easier to profess than to achieve.

The financial crisis in Tunisia is certainly related to exogenous factors but it is also the product of a policy that became, at least, irrational for three decades. The economic, financial and administrative reforms to introduce transparency and rational management have been slow down to give the ruling forces the credit of confidence they need. The tax incivility is increasingly shared which does not surprise the public opinion. From the perspective of a large selection of the population, it is "legitimate". Among other things, the financial crisis results from the behavior of the taxpayer. This has an influence on the decentralization process that is constitutionally and politically necessary to obtain a society that is independent from cultural assistance, including both, individuals and communities. This culture is burdening the country.

More generally speaking, the process of decentralization already initiated by the constitution, has to face a lot of challenges concern-

ing the institutional, legal and financial systems, which are related to political, economic and social difficulties. The regional geopolitical environment and terrorism make the equation even more complex. Meanwhile, present local authorities are far from satisfying local citizens who, for their turn, are dissolved the duty to contribute and follow the law. Although the local organization dates back to the nineteenth century,¹ practiced decentralization since independence, established in 1956, is just pure fiction. Centralization was a political choice which addressed the need of rebuilding a united state which was able to fight against an ancient tribal system. In the Constitution of the June 1st 1959, decentralization was not a priority. The concept was not even used. On the contrary, the constitution of 2014 has been very generous in terms of decentralization.

However, as generous as it is, the constitutional text by itself is not enough. It needs to be translated into a consistent legislative system within the new constitution. The reform of the legal system alone is insufficient; it has to be reconsidered which is far from being assured concerning the issues and habits obtained by the officials with regard to the reform. More important than the revision of the legal framework, its implementation implies the deployment of human and financial resources that the country needs to mobilize with all necessary precautions to avoid possible excesses. Especially as in the collective imagination, responsibility of the central government will not disappear with the election of local governors.

CONSOLIDATION OF LEGAL FRAMEWORK

The State established a real project in order to reconsider the legal framework to govern future local communities. While the constitution of 1959 had declared, (in a unique and deliberately incomplete article²), municipal councils and regional councils as entities responsible for the management of local and regional affairs, the Constitution of 2014 contains, apart from its aforementioned Article 14, 12 Articles providing enough rules and principles relating to local power. This chapter introduces three local authorities

who are superimposed for each part of the territory: the town, the region and the district. Each of the three covers the entire national territory. The ambition is great and may seem excessive if one considers the financial resources and cultural heritage of the country that is not favorable to decentralization.

Having the results of decentralization during the last five decades in mind, the creators of the constitution of 2014 were aware of the abuses under which the local authorities suffered during the old regime, among others, caused by the laconic text of the 1959 constitution even if the generosity of that text cannot prevent alone centralism and its corollaries. The new constitutional device is used to place a series of principles and rules that dictate a mandatory revision of the current legislative framework which concerns the method of leading authorities as well as prerogatives and means of decentralized entities. The texts, governing decentralization, cannot remain immune to these profound changes concerning the dialectic issue between the two modes of organization and government of the territory.

The new principles and rules included in the supreme text:

- The principle of free administration of local authorities (Article 132)
- The principle of democratic election of local leaders (Article 133)
- The principle of participatory democracy and good governance (Articles 137 and 139)
- The principle of financial independence (Article 132)
- The principle of subsidiary and its progressive implementation by means of a scheduled transfer of skills and resources (Articles 135 and 136)
- The principle of granting own means and resources to local authorities in line with the powers assigned to them (Article 135)
- The principle of the transfer of resources to deal with any transfer of new powers (Article 135) and the principle of balance between revenue and expenditure (Article 136)

- Equalization rule to reduce inequalities between communities under the principle of solidarity (Article 136)
- Recognizing the benefit of decentralized authorities a regulatory power in the area of their jurisdiction (Article 134)
- The recognition of a right to court proceedings against the State for the benefit of local communities to assert their prerogatives and rights and to protect their lives and their territory (Article 142)
- The removal of guardianship and control a priori of the legality of their acts (Article 138)³

The town and the region will be led by councils elected by direct universal suffrage, free, secret, honest and transparent. With regard to the districts, they will be directed by elected councils who are members of municipal and regional councils. Especially mentioned is the need for the electoral law in order to guarantee, in addition to the equality between women and men, youth representation in local councils. A draft code supplementing the electoral law of May 26, 2014 was presented in January 2016 in front of the Parliament and should be examined as soon as possible⁴ to enable the organization of local elections in 2016.

Nevertheless, the objective of organizing local elections before the end of 2016 seems to be compromised. Due to the delay of the parliamentary work that result from the Assembly's composition and the lack of a homogeneous majority which is able to adopt the text within a reasonable time without blocking the legislative renewal process imposed by the new constitution that concerns almost all of the legislation. Even though they remain unavoidable, compromises require negotiations that take time, sometimes unnecessarily long, but they are irreplaceable in a democracy.

Meanwhile, Tunisian authorities have established a much more important site in order to develop a code of local government whose objective is to unite almost all texts governing local authorities in one single code in the light of the new constitution.⁵ This code will

have the advantage to facilitate the access to the legal system and thus break the fragmentation of texts that unfortunately characterizes the Tunisian legal system in most areas.⁶ The legislature itself needs this codification in order to deal with possible revisions while maintaining the coherence of the legal system. Its adoption by the Parliament is a challenge considering the tensions within the institution. Even for texts that are much shorter than the code of local authorities, the Assembly debated for months.⁷ We will see how the Parliament will proceed with such a heavy project, containing many sensitive issues.

The draft code to be presented to the Cabinet in the coming weeks put the constitutional principles in concrete terms while taking into consideration the reality of communities that lack of financial and human resources. Similarly, the inequalities between existing communities have to be considered with regard to the disparities in resources disposed by the decentralized entities. Therefore, one of the adopted principles is the progress in the implementation and consolidation of decentralization, even though it is not explicitly mentioned by the constitutional power; it becomes evident in the general constitution. The State will have the sensitive task of transferring both the prerogatives inherent in the management of local affairs, but above all sufficient financial and human resources capable of managing local affairs. However, the progress should not become a pretext to postpone the implementation of decentralization. That's why the code establishes a five-year plan of decentralization approved by the Parliament. The government will submit annual reports to the Parliament on the implementation of the decentralization program.

The Code provides an asset management plan, local public services and the local public policies setting methods in social and economic development. The community has to cope with the difficult task of adopting, with the assistance of the State and the competent public entities, its own local development plan and its own urban planning while respecting environmental requirements.

The social issue, including many factors (employment, childhood, women, and social classes without support), as well as culture will be priorities to be observed by the local authorities who must satisfy the local people. The participation of local citizens is, meanwhile, a real challenge because the tradition has turned them subjects that must obey.

The division of powers between the three categories of communities (municipalities, regions and districts) that will interfere in the same territory will be based on the principle of subsidiary required by the constitution. The generalization of municipalities on the entire territory will be subject to the extension of the scope of those located in the provincial capital of the delegations because these decentralized districts cover the entire territory. However, the description of the institutional framework is easier to have on mind than to realize.

THE RESTRICTIONS FOR THE IMPLEMENTATION

The constitution promised to be an auspicious project of decentralization. However, the provision of the decentralization process runs through the mobilization of institutional, human and financial resources. Following the local elections, institutions designed to guarantee the effectiveness of decentralization will be first of all established as the representative body of decentralized entities: the Board of Governors of local communities. The constitution established the representative structure of the councils of local government with headquarters outside the capital, called "The High Council of Local Communities".⁸

To introduce decentralization, the code of the project envisages, under Article 135 of the constitution, a revision of the financial system of the communities. This reform is the key to achieve effectiveness of decentralization but also the most difficult to approve because, by nature, the Ministry of Finance will not give up its prerogatives especially in times of crisis and local citizens resisting the payment of their taxes. The constitution did not grant the power

to levy and collect taxes to the communities but the project code provides them with the competence to set the amount of royalties, taxes and other amounts in exchange for benefits. The code determines the list of charges and taxes whose amounts would be fixed by the elected local councils. At the same time, the code has set up a High Authority of local finance chaired by a magistrate at the Court of Auditors and including MPs, including the opposition, as well as experts and officials of the departments concerned to ensure the fair distribution of funds mobilized for decentralization and equalization. The distribution must stick to the principle of solidarity and get away from partisan considerations. It will be based on objective criteria and ensure to reduce inequalities between different areas of the country.

The existence of marginality was found out long time ago.⁹ The financial problem is chronic for local authorities in Tunisia despite the changes recorded since independence.¹⁰ The financial position of local authorities is far from meeting the minimum requirements of the local people. It deteriorated after the revolution of 2011.¹¹ The state subsidizes about 25 % of resources by using the common funds of the communities, represented until 2010. The dependence of communities on the state has increased after the revolution because their own resources decreased to about 49 % in the course of 2011. The State has been obliged to subsidize municipal budgets by 51 % compared to the global competition. Within the year 2012 there was a slight improvement thanks to the adjustment of ceilings of certain tax deductions for the communities, which allowed the communities in 2014 to achieve 64 % of their total resources with great inequalities from one municipality to the other.¹²

The financial deficit characterizes a significant number of municipalities. In 16 municipalities, the volume of wages represent 138 % of own resources and to 34 other cities, the volume of wages exceeds 75 % of their own resources. For only 111 of the 264 municipalities, payroll is less than 50 % of their own resources while it is between 55 and 60 % for 104 municipalities. Since 2012, the

deficit has forced the state to establish a new section of exceptional assistance for cities that are not able to balance their spending, if the amount of public remunerations they provide exceeds their approved budget a lot. Local taxation has not allowed communities to take the resources to cover the main burden they must support.¹³ Even today, its reform is difficult to realize with regard to the multiple restrictions to be noticed. The recovery of local claims is one of the difficulties that communities will have to overcome with.

Moreover, the local government debt was the subject of provisions in the code to impose a minimum of discipline and good management. These provisions prohibit borrowing funds to finance the operating budget and require its dedication only to investments. Equally, public salaries are limited in order to avoid the flooding of decentralized entities by officials. The local government code aims the consolidation of the current local government debt so that it can fit into the logic of financial autonomy which is the basis of decentralization.

The rational exploitation of public property is a source that will be given back to the community's significant resources. In this context, the fees for occupying public domain communities need to be fixed as well as a substantial revision of their rates. Their periodic updating is part of good management.¹⁴ A considerable number of people occupies with impunity the municipal or state or area without paying royalties or without any authorization. Furthermore, the heritage of local communities can be enriched by the transfer to local authorities as part of the state area seeking for a better management. Empowering local authorities and transparency regarding the conditions for the granting of this occupation by the use of competition are likely to guarantee the operation of optimizing the domain for the benefit of local communities that are concerned.¹⁵

Based on the idea that local democracy cannot be established overnight, especially in an economic and geopolitical unfavorable context, the Parliament is expected by the code to adopt a five-year planning law (duration of a parliamentary mandate) of implemen-

tation and periodic evaluation of decentralization which must ultimately develop effective capacity to manage local affairs. The inability of the central government to meet the development needs of regions paradoxically creates an opportunity for local authorities to entrust the management of their matters through mechanisms that try to encourage both, the participation and responsibility of local citizens. The modalities of participation of citizens concerning the management of local affairs are organized by several provisions of the code. This is a bet that must be won to motivate people and encourage their cooperation.

The development of local capacities to govern requires the mobilization of capable technical and administrative staff in almost all decentralized communities by the use of good management which is necessary to ensure the control of local matters while mastering the staff's remuneration. The flexibility of this scheme will allow to employ new personnel and to avoid the overcharging of local budgets. The state must encourage the mobility between headquarters and communities through flexible financial offers depending on the distance from the capital. For executives, the texts may provide a bonus of decentralization to encourage them to serve local communities. The state may, according to the code of communities, affect in the past a team of staff and encourage the establishment of a sort of "central services" to assist and support the decentralization program. This institution will be in charge of the training of personnel and communities as well as the conception of the organization management with the assistance of international cooperation. The National School of Administration shall, in agreement with academic institutions in the regions, relocate part of its business and create 3 or 4 regional offices to provide training and staff development programs that will help the regions. In this regard, the support of international cooperation could be valuable.

To sum up and make the point, decentralization is a challenge for Tunisia especially as the political dividends of decentralization are not made immediately.¹⁶ Local authorities cannot win the trust

of the citizens if they become tools for development which the local population can identify with. However, immediate equation is complex: how to cope with the impatience of the people, particularly in disadvantaged regions, whereas decentralization is a process that, for its implementation, requires patience, conviction and considerable resources. There is a high risk of abuse and slippage, including corruption and embezzlement of funds. However, administrative and financial courts that must ensure control which replaces guardianship, already abandoned, do not exist in the regions. The authorities do not seem in a hurry to install these jurisdictions at least in five "large areas" of the country and without which, decentralization will remain restricted in the texts. Presumably, the transition to decentralization will be longer and more complicated to realize that the so-called democratic transition at the national level and that the country has just completed successfully.¹⁷

For its concretization, decentralization needs a political will and the conviction of the leaders. The moment of truth has arrived and the next months will show us if the leaders will treat this issue seriously.

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NOTES

¹ The Municipality of Tunis was created in 1858. The first text governing the municipalities of the Regency, enacted by the decree of 1 April 1885, had applied the principle of the appointment of members of the city council by the decree (Article 3) even though it was inspired by the French law of 1884. The second text governing the communities, undertaken by the pro-

rectorate (Decree of January 14th 1914), confirmed, in its second Article, the principle of the appointment of municipal councils whose creation was reliant on the importance of the European population and whose effective management was entrusted to a person of French nationality, the vice president who benefited from a delegation. Considering their authorities and privileges, municipalities seemed to be more like decentralized structures (as well as other regional and local structures) than the decentralized structures.

- ² During the discussion of the draft of the constitution of 1959, the former government has opposed the inclusion of the principle of election of members of the local council in the constitutional framework.
- ³ Local authorities are currently the subject of strict rules controlled by the central government and its representatives in the districts. Even though it is necessary for respecting the law and the unity of the state, the supervision exercised over the communities is stifling. Municipalities are subject to dual supervision: administrative supervision exercised by the minister of interior and its agents and financial supervision exercised by both the Finance Minister and the services of prior control of public spending depending on the first ministry. The control over the communities can take several forms. Therefore, council meetings are controlled by the presence of the governor or his representative who can even arrange or demand meetings in camera (p. 33); the control over the consultation of the board by the process of filing proceedings, by the express approval of the proceedings listed in Article 25 (although since 2006 the silence of the Governor during 2 weeks needs an implicit approval) or by authorization (p. 25 of the organic law of the Community budget); the approval of the municipal budget by the Governor except for the municipalities whose budget exceeds a certain threshold or those that have a deficit and increase the number of ministers of interior and finance. This approval also covers financial accounts of the municipality and the budget of Regulation (p. 33 and 34 of the LOBLC); control over court actions against municipalities (Article 133); controls over orders made by the President of the municipal council; control over municipal staff through the visa of the minister of interior for any recruitment, transfer (Article 97 ff.) and the Governor's staff management (Article 101).
- ⁴ Since the Constitution 2014 explicitly includes the elections of municipal councils and regional councils, one of the most urgent tasks of the Parliament is to pass the electoral law of 2014. The challenges are especially significant for the political parties. The concern to ensure the stability and

effectiveness should lead the Parliament to adopt a voting system that, while ensuring parity and "representativeness of youth" (Articles 46 and 133 of the Constitution), promote the emergence for majorities that are capable of governing. Small political parties, whose number is abnormally high (approximately 150) will then be encouraged to come together to build representative political formations in order to convince a wide range of voters. Considering the progress made by Tunisia regarding the elections since the Revolution of 2011, the election of local governments at the earliest moment is the only way to ensure a legitimacy that would be likely to reduce tensions and restore gradually the authority of public power.

⁵ The main law, known as the organic law of the communities, was the subject of four fairly substantial changes successively in 1985, 1991, 1995 and 2006. The one of 2006 is the most important, at least legally. It renewed the text, including the numbering of its articles. Similarly, the legal framework for local taxation was the subject of a reform in 1997 in the course of the promulgation of the code of local taxation. But it remains true that local government plays only a marginal role in financial and tax matters. The lack of skilled personnel (including managers) in most of the communities has often served as the *Leitmotiv* to keep all the privileges at the central level. Equally, the Organic Law of the regional councils of February 1st 1989 and several other laws on local government finances will be affected by the revision.

⁶ Codification meets the principle of accessibility of the law, described by the French Constitutional Council as an objective of constitutional value: Decision of July 27th 2006.

⁷ The Parliament has devoted several months to adopt the law in the fight against terrorism. The legislation governing the Supreme Council of Magistracy, submitted by the government on the 8th of March 2015, was resumed twice by the constitutional court, while constitutionally; this law should have been passed in May 2016. We are still waiting for this law.

⁸ It was not possible for the legislative assembly to determine the seat of the Association Council with regard to the competition between the regions that claim this privilege and who consider themselves to be the cradle of the revolution. It will not be easy for the Parliament which is dealing with this project code to resolve this issue.

According to Article 141 of the Constitution, the High Council of local authorities examines issues relating to the development and regional balance. It gives its opinion on draft laws relating to planning, budget and local finances. The law will have to ensure the representativeness of com-

munities through an elective procedure for appointing members of the three categories of communities and across the country. The institution will not be born without any difficulties.

- ⁹ Belaid, Najib: Local Government and recent changes in local finances. Tunis: CREA, 1999.
- ¹⁰ In 1975, the legislature sought to act on local taxes to provide communities with minimal resources since local taxes, established under the French protectorate by the Decree of September 16th 1902, had become too insufficient to meet expenses that increased more and more as a result of the rapid urbanization. The reform of 1975 led to the bursting of the rental tax in three samples: the rental tax on buildings for housing and administration, the tax on institutions with an industrial, commercial and professional character, and the hotel tax. The reform of 1975 has certainly improved the local government revenues, but growth of financial needs of these entities imposed a new reform of local taxation embodied in the code of the local tax of the February 3rd 1997. This has renewed some old samples and replaced them with new taxes. However, this reform, developed without any real consultation of local taxpayers did not improve substantially the resources of local communities. Certainly, if we consider the year 1996, which preceded the reform, as a reference, we will see that there has been an improvement of the own resources rate in the Community budget from 68 % in 1996 to a average that, since 2006, is around 75 % until 2010. However, on one hand there has been a decrease of the rate during the period 2006-2010. On the other hand a fall since 2011 that won't be easy to overcome with for economic and political reasons.
- ¹¹ Compared to "governorates", municipalities seem to be in a better position. However, it has to be noted that the part of own resources, from 2006 until 2010, represented about 75 % of resources.
- ¹² Information provided by the General Direction of Local Authorities as part of the Ministry of Interior.
- ¹³ Municipal affairs are not used properly; they are even underused or wasted. Neither the economic, nor the political system has encouraged a tax reform which is significant enough to strengthen community resources.
- ¹⁴ The anti-corruption commission created after the revolution noted the modest sums and the low rate of the rise of the fees concerning the occupation of domain for several reasons. One of the most important is the lack of a local authority that is jealous of local interest and responsible for the local people.

- ¹⁵ Providing the public and supervisory authorities with information relating to operating conditions is necessary to prevent corrupt practices and embezzlement that unsettled the country and discredited public authorities.
- ¹⁶ The development of seats out of 24 regions is obligatory to separate the region and the governorate and to avoid confusion inherited from the history of both entities. This development constitutes a heavy financial burden for the state whose financial situation is already difficult.
- ¹⁷ Being honest to the public opinion, even if the operation might be politically counterproductive for now, it is the first step of the long road of decentralization. In this context, the exemplary nature of the local leaders will be decisive in order to regain the increasingly demanded confidence of citizens.