

THE STIMULATIVE OR INHIBITOR IMPACT OF THE ASSOCIATIVE STRUCTURES OF LOCAL AUTHORITIES ON LOCAL FINANCIAL AUTONOMY

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Abstract:

This paper attempts to emphasize the effects generated by different forms of association of local authorities upon the local financial autonomy. This empirical analysis we put forward highlights the extent to which we can speak about a legislative support and agreement in relation to the process of association of several local authorities and the financial impact such associations may have upon the local budget of a local authority.

The data set we used highlights the particular case of a local community which became member of an intercommunity development association of Timis County (contracts with operators before and after accession in ADID, budgetary planning and the amount of local taxes sanitation). The empirical results we got underline the financial impact such association may have upon the town hall and the extent to which the town hall and the decisions of the local council may effectively apply the principles of local autonomy conferred and supported by the law no. 215/2001.

Key words: *local autonomy, local communities, intercommunity development associations, local authorities.*

JEL Code: *H72, H76.*

Introduction

In Romania, the intercommunity development associations (hereinafter referred to as “IDAs”) represent a brand new concept which has been approached by far too few studies. Due to the fact that the legislation is too fuzzy concerning some aspects related to the association of local communities and seeing that the local budgets are insufficient in terms of making investments or supplying different community services, most of the territorial-administrative entities often associate with each other in order to make such investments or to supply certain community services in compliance with the EU standards.

It is essential that every local community which decides to join an IDA clearly understand the implications such associations may have upon the local budget, the autonomy in terms of decision-making process and most importantly, upon the various changes at the level of every implementation phase of all projects designed and coordinated by IDA. The concept of forms of association has rapidly spread in Romania. However, this concept will be mandatory for all counties in relation to the management of certain community services, such as the waste management services.

Today there are quite a few intercommunity development associations which are completely operational in terms of a full implementation of the integrated management systems they manage, even in relation to the perfect concord with all governmental agencies and authorities. This is the explanation for the limited number of relevant analyses and studies addressing these aspects.

This study is composed of four sections, respectively: the opening part, the related studies and legislation are analyzed in the second part, the third part comprises the methodology of the study and evaluation of the findings and finally the conclusions, limitations of the study and recommendations for further research in the final section of the paper.

Reference literature

In order to underline the effects of IDA-based associations upon the local autonomy, we have to clearly define a series of concepts specific to local administration, such as the local financial autonomy and the intercommunity development associations. It is also highly important to make an

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exhaustive analysis not only of the laws and regulations applicable to the local financial autonomy and the intercommunity development associations but also of the various interpretations thereof.

The constitutional guarantee of the local financial autonomy is conferred upon the local government authorities under the Law no. 215/2001 (art. 2) which entitles all public administrations from the territorial-administrative units to organize themselves and to operate under the principles of local autonomy, decentralisation of public services, eligibility of local government authorities, legality and consultation of citizens in terms of solving the local matters of a particular interest.

In light of the provisions set out by the Romanian Law no. 286/2006 (art. 38), we point out the importance of duties and powers assigned to the local government authorities, at the level of the local councils which: i) are responsible for the proper organisation and function of the specialised body within the Mayor's office, the local public institutions and services, the trade companies and the government business enterprises of local interest; ii) are actively involved in the social, economic and environmental development of townships, towns and cities; iii) manage and control the public and private real estates of townships, towns and cities; iv) manage and control the services supplied to the community, and v) set up the bases of internal and external inter-institutional cooperation.

In exercising their powers, local councils are also responsible for supplying certain public services of local interest for the community, such as: water supply, natural gas supply, sewer and sanitation services, heating services, public illumination and local public transportation, if applicable.

The supply of community services, particularly in the countryside has become a much more difficult and complex task for the local councils once with Romania's accession to the European Union in 2007 and the gradual alignment of all such services to the European standards. The impossibility of using the local budgets as exclusive financing sources for the investments required for setting up, upgrading, management and designing proper infrastructures needed for the supply of community services has determined the local councils to join forces and set up an associative structure characterized by a bigger budget and much more possibilities to access the European funds. However, such association of local authorities has often been a prerequisite in terms of eligibility of the projects that have been put forward.

The associative structures (generically referred to by the lawmaker as intercommunity development associations) set up by the local government authorities are clearly defined by article 2 of the Law no. 286/2006. Therefore, the intercommunity development associations represent "cooperation structures with legal private law personality, established under the Romanian law, by the administrative-territorial units with a view to jointly carry out several development projects of area or regional interest or to jointly provide certain public services".

The administrative-territorial units are entitled to cooperate and to join forces, within their decision-making and executive limits and under the legal conditions, setting up private-law and public utility intercommunity development associations with legal personality. Although such entities are set up by the association of several public entities (e.g. townships, cities and counties), the IDAs are in fact private-law structures. By derogation from the Government Ordinance no. 26/2000, the lawmaker has considered and defined the IDA as structures that serve the public interest.

One of the first and most popular attempts to theorize the local autonomy is the theory offered by Clark (1984), by means of which the author substantiates the premises according to which the actions taken by local governments are exclusively governed by their purposes, as these local governments are nothing but rational players striving to maximize their powers. Clark (1984) defines the local autonomy taking into consideration two principles: the *power of initiative*, which basically refers to the capacity of local governments to act starting from the rights and privileges to which they are entitled, in order to pursue their interests, and the *power of immunity*, which basically refers to the capacity of such local governments to act without being supervised; in other words, the local government benefit from a certain degree of immunity towards the higher governmental authorities. Correlating Clark's theory with the concept of association identified in IDAs, we find that the power of initiative is fully satisfied in terms that the administrative territorial unit pursues its interest and voluntarily becomes an IDA member in order to make certain investments or to implement certain projects of regional interest, in strict compliance with its legal rights and privileges. On the other hand, the power of immunity is slightly losing its validity. According to the Romanian Government Ordinance no. 26/2000, IDAs are governed by certain rules regarding their operation. Consequently,

the following elements are compulsory for the proper operation of an IDA: its memorandum and relevant articles of incorporation and well as its Shareholders' General Assembly which is the IDA's supreme executive body. The Shareholders' General Assembly determines, among others, the association's strategy and objectives as well as any changes of IDA's memorandum and articles of association. As every shareholder is entitled to express one vote within the Shareholders' General Assembly, it is obvious that such shareholder is no longer able to act without being supervised and this translates into the fact that IDA basically becomes a higher-level authority than the local government concerned, which, in its turn should obey to the SGA's majority. To sum up, it is obvious that the power of immunity is breached.

The definition of the concept of local autonomy is also found in the European Charter of Local Autonomy (self-government), signed in 1985 at Strasbourg and prepared at the initiative of the Standing Conference of European Local and Regional Powers. The European Charter sets the contents, operation and structure of local self-government as well as the duties and the proper management of the resources pertaining to administrative territorial units.

The European Charter of Local Self-Government (1985: art. 3) defines the concept of local self-government as: *"the right and the effective ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them."*

Krisztina Beer-Tóth (2009), after a thoroughgoing analysis of the local financial self-government, argues that, compared to the previous attempts to define local self-government, the definition put forth by the European Charter incorporates *three new elements*:

- The right to regulate and manage certain public affairs should be complemented by some of the most efficient means; (for most of the countryside communities, joining the IDA is the single opportunity to make certain technical and urban planning investments or to secure the supply of public community services at the European standards);
- This right may be defined more clearly and comprehensively by the legislation in force; (law no. 215/2001, article 11 par. 1);
- Local authorities should not be restricted to act as agents of the higher-level authorities (by setting up an IDA in order to jointly establish, organise, use, supervise or manage a community service, the IDA, seen as a whole, becomes a higher authority compared to each of its members). Therefore, these new elements incorporated in article 3 of the European Charter are also valid for the associative structures.

Goldsmith and Page (1990) put forward a new approach of the local self-government, as a response to the legal and political statuses of the local governments. A high level legal status takes into consideration several aspects which virtually make references not only to the existence of a constitutional guarantee regarding local self-government and the clear delimitation of competences and responsibilities but also to a more permissive financial regimen based on a general support system and several minor restrictions applied to the local taxation conditions. As for the political status or the capacity to influence political decisions, this concept assumes the fact that the local governments may exercise a direct influence over the higher level authorities.

The capacity to influence political decisions assumes the fact that local governments are able to exercise a direct influence over the higher level governments. After several studies and thoroughgoing analyses, Goldsmith and Page (1990), identified the following *typology* of local self-government:

		Legal status	
		Low	High
Political status	L ow	Type 1	Type 3
	H igh	Type 2	Type 4

Statutul legal

Figure 1-Political status of local self-government

Goldsmith and Page (1990) put forth a *classification of the municipal governments* of the Western European countries:

The local governments pertaining to Type 1 would be characterised by several aspects such as: low legal and political status, limited access to the political decisions of the central government, no constitutional recognition of autonomy, limited possibilities to develop political functions and powerful intervention capacity, being completely different from those pertaining to *Type 4* which benefit from a higher political and legal status.

The local governments pertaining to Type 2, with no recognition of local autonomy would characterize a political system which is opened to the requirements of the local authorities, indicating the relevance of the negotiation processes and strategies developed by the municipality to give a relevant content to all jurisdictional and economic aspects of the policies that have been applied.

The local governments pertaining to Type 3 are characterized by a higher legal status as defined by the constitutional guarantees, assuming at the same time, a higher level of competence and participation in the management of national finances.

Fully adhering to the study signed by Goldsmith and Page (1990), we consider that the authors have prepared one of the most relevant and significant approach / description of the local financial autonomy. Their study is a description that reflects a practical dimension of such an abstract concept. By balancing the local budgets of townships, towns, cities and counties directly through the Ministry of Finances and by cancelling the powers and prerogatives of the County Councils to that effect, the Law no. 186/2014 does nothing else but to repeal the political component that affects the local Romanian communities and about which the two authors are talking in their study. Consequently, the political component becomes weaker and weaker for the IDAs too. The managing body within an association is the shareholder's general assembly which gathers up the legal representatives of each and every shareholder. Almost all Romanian IDAs have been set up as a result of implementing several European funds through which there has been provided the necessary infrastructure to supply certain services. Customarily, IDAs play an important role in supervising and sometimes in assigning the management of a particular service, through public procurement procedures, to an economic agent, acting thus as an assignor. Moreover, the IDA's budget, which frequently derives from the membership fees, is used to provide a proper function and operation of IDA's technical body. Therefore, we find no justifications whatsoever for a political component. On the other hand, the legal component is clearly stipulated by the Law no. 215/2001 and therefore, we consider that IDA can be classified as a Type 3 extended form of municipality, as per the aforementioned model.

One of essential objectives pursued by the intercommunity development associations is to support the financially weaker local communities and to eliminate the discrepancies between the services provided for the urban and rural communities. A successful operation of IDAs would automatically void the concept of "tax competition" and the implications thereof, which was

introduced for the first time by Charles M. Tiebout (1956). The tax competition between the lower level public authorities assumes the fact that the citizens are free to move to a jurisdiction which is able to offer public facilities as per their needs and preferences; a local jurisdiction works better than the central government because it can accurately perceive the citizens' individual utilities, needs and preferences. In other words, taxpayers may choose those residences which offer the best combination between public facilities and utilities and acceptable taxes which satisfy their preferences. In their turn, the fiscal authorities will attempt to attract taxpayers to their own jurisdictions by offering their targeted tax/public facilities combination up to the point the optimal taxation basis is reached, minimizing thus the costs of all public facilities that are being offered.

Consequently, joining the IDA and absorption of European funds provide a unitary supply of public utilities and services while assignment of community services under concession contracts awarded based on public procurement procedures will determine the charge of the same rates for the services supplied to the rural communities and the charge of higher rates for the services supplied to the urban communities. These measures are very useful to eliminate not only the efforts to balance the costs for public services but also a potential competition regarding the quality of such services. Consequently, the single component that accepts the fiscal competition is the component that provides for the local financial collections by means of local taxes and charges.

Methodology and data

This empirical analysis attempts to highlight the effects of affiliation of the Township of Jebel (Timis County) to Timis County Intercommunity Development Association for Waste Management. We have analyzed the extent to which the township manages to preserve its local financial autonomy, paying a special attention to the costs generated by the collection and transport of wastes outside the township before and after its affiliation to Timis County Intercommunity Development Association for Waste Management, as well as to the changes occurred in the contracts entered into with the waste collection operator due to such affiliation.

The European Accession Treaty provided for Romania a series of transition measures related to the implementation of the EU legislation on waste management, which mainly referred to the EU Directive on waste storage and the EU Directive on packaging and packaging waste. At the local level, the implications of the obligations undertaken by Timis County have been addressed and clarified through a set of documents that regulate the waste management process: The National Waste Management Plan (NWMP), the Waste Management Plan for the Development Region 5 West (PRGD) and the Master Plan for Waste Management in Timis County (MPWMJB).

Thus, it is imperative to build a single landfill for non-hazardous waste at the county level, several transfer stations or collection centres and to observe the waste flow according to the collection area. The "Integrated waste management system in Timiș county" (SIMD) is here to answer these requirements, being financed from European funds, by the Sectoral Operational Program for Environment 2007-2013, Priority axis 2 –Development of the integrated waste management systems and rehabilitation of historical contaminated sites. The Beneficiary of the project, in total amount of 162,201,736 ron, is the Timis county, by the Timiș County Council.

Table 1-Investment made under the „SIMD” Project

The main investments of the Integrated waste management system funded under the Project
Building a transfer station in Timișoara and three collection centres in Jimbolia , Faget and in Deta
Building a central waste storage in Ghizela (Zone 0);
Building a waste selection centre within the waste storage already built in Ghizela
Building a compost centre for vegetal wastes from public gardens and parks
Building a TMB plant within the waste storage already built in Ghizela

Closing 6 non-compliant urban storages

The Intercommunity Development Association for Waste Management of Timis County was established for the purpose of founding, organizing, regulating, exploiting, monitoring and jointly managing the sanitation service for the localities from the range of competency of the member administrative-territorial units, as well as accomplishing in common some public investment projects of zonal or regional interest intended for founding, modernization and/or development, as the case may be, of the public utilities systems pertaining to the Service, based on the development strategy. Its members are the Timiș County Council and all the Local Councils from the county (2 municipalities, 8 cities, 89 communes). Each associate by means of its representative, has an equal vote in the General Assembly of the Association.

The most important objectives of the Association concern: i) ensuring an interface in the discussions with the public administration authorities; ii) active partner in these discussions in order to coordinate the general interest policies and actions; iii) responsibilities in the process of contracting/delegation with the operators, on behalf of and for the involved member administrative-territorial units; iv) monitoring the execution of the delegation contract/contracts and informing its members about them; v) supervision of the fulfilment of the obligations undertaken by the operators; vi) enforcing the contractual penalties according to the mandate received and to the contractual provisions.

The most important aspects of the implementation of this system are the clearance of the irregularities from the provision of the sanitation service from the rural as well as the urban environment, providing some collection equipment (euro-waste bins, barrels for collecting glass, individual compost units), closure of the non-conforming landfills, creation of a healthier environment, selective waste collection.

The manner in which the waste collection, transport and storage process took place in the Timiș county was non-conforming to the European standards. In order for it to be in conformity, investments were needed, that no local authority had the financial capabilities to accomplish. Thus, we got to the implementation of SIMD. The project is not fully implemented, and the representatives of the town halls were reluctant in giving me information about the impact that the Intercommunity Development Association for Waste Management of Timis County had over the locality and the community that they represent.

A milestone in the analysis that is to be made, is given by the identification of the number of inhabitants because the public services are organized and supplied according to this number, and the taxes pertaining to these services are established either per inhabitant, or per household.

Jebel has a population of 5000 inhabitants, a number of 1500 homes and is located at a distance of 20 km from Timișoara. Before becoming a member of the Intercommunity Development Association for Waste Management of Timis County, the Jebel local council outsourced the sanitation service of the locality by contract with direct award. The town hall as contracting authority would pay the service provided by the operator, levying a sanitation tax from the population in amount of 3 RON / household / month. The tax collection rate was 95% and in this manner the Town hall was collecting monthly from the population the amount of 4,275 RON. In the end, the Town hall was sustaining additionally from its own budget the money difference up to the amount of 5,000 RON / month, approximatively 700 - 800 RON / month. I must emphasise the fact that the sanitation operator did not have to make investments in collection equipment, all being provided by the Town hall (120 L waste bins, one for each household).



Figure 2- cash flow before accession in ADID

After the moment it adhered to the Intercommunity Development Association for Waste Management of Timis County and created the infrastructure pertaining to SIMD, the Town hall in its member capacity had to observe the conditions imposed in the Position Document and the Articles of

Association of the Intercommunity Development Association for Waste Management of Timis County. Thus, the waste collected at the level of the locality could no longer be stored in the same location, the old landfill being declared non-conforming and closed by project, and in compliance with the new flux the Town hall had to sign contracts with the operator delegated by bidding by the Intercommunity Development Association for Waste Management of Timis County of a collection centre and with the operator of the Central landfill for non-hazardous waste from Ghizela. The cumulated value of the two contracts is 145 RON / ton of waste stored VAT excluded as compared to 10 RON/ ton what it paid before, a tariff included in the price of 5,000 RON/ month directly to the local operator. In this stage of the SIMD implementation, the Timiș Local Council together with the Intercommunity Development Association for Waste Management of Timis County delegated the management of the operation of the collection centers and of the landfill, and the bidding for delegating the area operator for waste collection-transport is under way. Thus at this moment, the Town halls members of the Intercommunity Development Association for Waste Management of Timis County, including the Jebel Town hall, function with the old collection operators, with whom they renegotiated their contracts and adapted them to the current operating conditions, among which selective waste collection on three fractions: wet, dry and glass and a higher collection frequency than before. The previous contract with a total value of 60,000 RON/ year, 5,000 RON/ month became one of 132,000 RON/ year and 11,000 RON / month without VAT. In correlation with the tariffs paid by the Town hall to the two operators of the centre and the landfill, calculated to a monthly average of 60 tons of waste generated, of 8,700 RON/month there results a monthly cost of the service of 19,700 RON/month, 4 times the price that was practiced before entering in the system. Nevertheless, the Town hall spared its citizens and increased the sanitation tax to 10 RON/household, resulting a total of 15,000 RON, but the tax collection degree decreased to 70%, therefore the Town hall recuperates only 10,500 RON each month from the population, sustaining the rest of approximately 9,000RON from its own budget.



Figure 3- cash flow after accession in ADID

Once the system is fully implemented, the operator delegated by the Intercommunity Development Association for Waste Management of Timis County for waste collection, will sign individual contracts with each citizen individually. However, the problem of waste is a particular one compared to the other community services. All the citizens are waste generators and the law 101/2006 obligates the waste operators to collect the waste from all the citizens, regardless if they signed an individual contract or not. The same law 101/2006 (art. 26) obligates the Town halls to sustain from the local budget the costs for collection of waste from those that do not have a contract signed with the operator. In this manner, even though they chose to outsource the management of the service, the Town halls will not be exonerated from the problem of paying the waste collection in full.

The tariff that the delegated operator shall provide will be of 5 RON / month / person in the rural area, thus also in Jebel. If we keep the current collection rate and we assume that 70% of the inhabitants of the commune will sign a contract with the operator and 30% will not sign, it means that the Town Hall must pay $30\% \times 5000 \text{ inhabitants} \times 5 \text{ RON/month} = 7,500 \text{ RON}$ per month from the local budget, 90,000RON per year for the citizens that do not sign a contract with the delegated operator and it must also establish a tax for these larger than the tariff charged by the operator in order to force all the citizens to sign an individual contract with the operator.

Results

The results show us a reality where we find excessive growths of the operation costs. The increments are reflected both in the fees paid by the population and the amounts covered by the town hall from its own budget.

Table 2-Costs prior and after affiliation to IDA for Waste Management

Moment	Price of contract(s) entered into with the operator	Amount paid by population	Amount covered by the town hall from its own budget	Fees applied by town hall to population	Rates paid by town hall for waste storage/tonne
Prior to affiliation to IDA for Waste Management	LEI 5,000.00	LEI 4,275.00	LEI 800.00	LEI 3.00	LEI 10.00
After affiliation to IDA for Waste Management	LEI 19,500.00	LEI 10,500.00	LEI 9,000.00	LEI 10.00	LEI 145.00

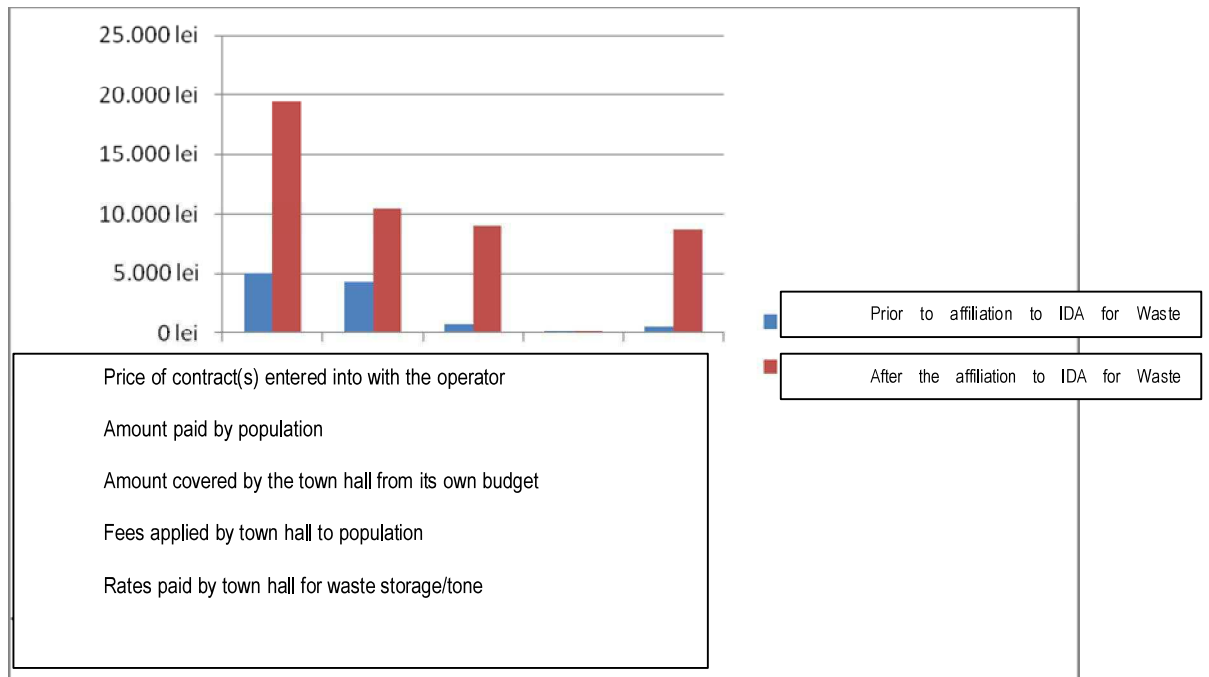


Chart 1-costs prior and after affiliation to IDA for Waste Management

The monthly costs pertaining to this public service grew from RON 5,000.00/month to RON 19,700.00/month, resulting thus a growth rate of 394%. The costs covered by the town hall from its own budget grew from RON 800.00/month to RON 9,200.00/month, resulting thus a growth rate of 1150%, while the fees paid by the population were increased from RON 3.00/month to RON 10.00/month (growth rate: 333%).

Nowadays the town hall is no longer entitled to reduce such costs. Timis County Council has assigned and the IDA for Waste Management has accepted the management of the waste collection centres and landfills for a period of 10 years and consequently the rates cannot be changed unless they are adjusted according to the inflation index. Moreover, the public procurement procedure regarding the waste collection and transport contracts is organised by IDA for Waste Management which is also the party responsible for entering into the relevant contracts with the citizens. The town hall cannot

leave the IDA for Waste Management unless it pays a fine equal with the share of the investments made in the county. However, no town hall in the county can afford to pay such fine.

The monthly royalties paid by the waste collection operators are cashed in by Timis County Council as the beneficiary of the SIMD Project.

In light of these aspects, we consider that the affiliation to IDA for Waste Management is contrary to both the local financial authority and to the principle of financial decentralization. At the time of affiliation to IDA for Waste Management, no town hall was aware of the rates that were going to be charged by the waste collection operators as the public procurement procedures have not been organised by the town halls.

The outrageous growth of costs for these services is not welcomed by the representatives of the local councils who are now able to see the system flaws. Moreover, these representatives argue that it is impossible for a rural town hall to affiliate to several associations for every community service under the same or similar terms and conditions as those practiced for the waste collection and transport services.

Conclusions

This analysis brings to light a reality that may general contrary opinions and positions. The local governments are the only entities which may decide whether the affiliation to IDA serves their best interests and implicitly the local communities they represent. Nevertheless, the decision is made after a thoroughgoing evaluation of several studies such as a feasibility study, an opportunity study and an institutional analysis, all developed prior to the project implementation by IDA. In spite of the fact that the local government knows the price schedule estimated over the concession period of that particular public service, it is fully unaware of the costs implied by the various phases related to the project implementation process. This was the case of the Township of Jebel which, at the time of affiliation, considered it has managed to outsource the community sanitation service, saving thus significant funds from its own budget. However, after the affiliation and until the completion of the public procurement for the award of the waste collection and transport contract, the local authorities had to cover additional costs that exceeded the pre-affiliation expenses by 11 times or more. As for the matter of waste management, during the following years all Romanian counties will have to implement an integrated waste management system. Under these circumstances, all local governments will have to join forces and set up intercommunity development associations in order to provide the services at the EU standards, even if such services impose some technical and urban planning investments at the regional or county level and not at the local levels.

The associative structures are a new concept that has began to spread in Romania as the laws in force encourage and support such structures but, on the other hand, do not provide for any additional financing possibilities to support the increased costs deriving from such associations.

From the local financial autonomy perspective, after the affiliation to an IDA, we may speak about a setback which the local governments should anticipate from the very beginning. As this is a quite new concept and process, as we mentioned earlier in this paper, it is somehow understandable that the potential suppression of the local financial autonomy has not been fully foreseen. However, we strongly believe that in the near future, the local governments (in this case the town halls) will be able to overcome and eliminate the flaws of this system and will find the best solutions to preserve their decision-making rights within the IDAs.

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