

Perspectives Regarding the Prefect Institution in Romania

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Abstract

The article highlights the key moments during the evolution of the prefect institution in Romania and it analyses the recent proposals of reorganization that aim to transform the prefect statute from high ranked civil servant to dignitary.

In addition, the principle of deconcentration is detailed and a scenario of reforming the prefect institution is proposed, by analyzing the applicability of this principle within the administrative practice of Romania.

The article analyzes the duties of the prefect institution, the possibility of transferring them to other entities and the appropriateness of maintaining this institution.

Keywords: Prefect; horizontal deconcentration; vertical deconcentration

JEL Classification: H1, H83.

1. Historical landmarks of the prefect institution in Romania

The name “prefect” comes from Latin (*prae-fectus*), being translated as “to put ahead”. In the ancient Rome, the term “*Praefectus*” was the formal title of the military or civilian officials of average rank whose authority was delegated by a senior authority. The “*Praefectus*” had the power to manage a constituency and his duties were of civil, legal and military nature¹. The French-inspired law for the creation of the county councils, dated 2nd of April 1864, marks the appearance of the prefect institution in the Romanian administration, specifying that “***the prefect, head of the county administration, controls all the works of this administration and puts into practice all the decisions of the county council***”.

On 27th of March 1936, a new law of administrative organization² was voted according to which the country territory was administratively divided into *counties and communes* vested as legal entities with own patrimony and management institutions, based on the provisions of the Constitution of 1923.

The communes were managed by a commune council, as the deliberative authority and by the *mayor*³ and *deputy mayor* as the executive authority. The *county management* was entrusted to the *county council*⁴ as the deliberative authority of the county delegation and to the prefect. At least once a year, the prefect, as the government county representative and *head of the county administration*, supervised and inspected all the public services and public establishments in the county, reporting its findings to the ministry. The prefect was the chief of the police and the gendarmerie, with the right to take all the measures to ensure the security and public peace, having an armed force for this purpose.

After 1989, the Law no. 5/1990 on the administration of the counties, cities, towns and communes until the organization of the local elections stated by art. 4 that the "Prefectures are organized at county level and are composed of: 1 prefect, 2 deputy prefects, 1 secretary and 7 members". According to this law, the prefectures and town halls legally resolve the issues concerning the economic and social development of the territorial administrative units, pursue the compliance of the economic activity with the legal framework, ensure the management of the local budgets and solve the urban problems and the problems related to other areas within their jurisdiction given by law. In addition, the prefectures and the town halls ensure the maintenance of public order, the protection of civil rights and freedoms by legally constituted public order bodies.

The above-mentioned legal act marked the transition from a centralized administration to a decentralized system without clearly delineate the responsibilities and powers of prefects and mayors. The consecration of the constitutional principle of decentralization implementation came with the first law of local government - Law no. 69/1991 published in the Official Journal no. 238 of 28 November 1991, and reissued in April 1996.

Articles 11 and 12 stated that: "The Government shall appoint a prefect in each county and in Bucharest. The prefect is the local representative of the Government. He directs the decentralized public services of the ministries and other central bodies of the public administration, organized within the territorial administrative units. The prefect may appeal, in the administrative court, the acts of the local authorities, if they are considered illegal".

Because the 1991⁵ Constitution did not regulate the deconcentration principle, the Law 69/1991 erroneously use the term decentralization instead of deconcentration, confusion that was maintained until the Constitution revision of 2003. The article 130 of the Law no. 215/2001 on local government states that the Government shall appoint a prefect, as its representative in each county and

in Bucharest. A deputy prefect assists the prefect. In Bucharest, two deputy prefects assist the prefect.

The Law no. 340 regarding the prefect institution, published in the Official Journal no. 658 of 21 July 2004 clarifies the role of the prefect and eliminates the confusion of decentralization/deconcentration. According to this Law, the conditions to be met by the prefect are:

- At least 30 years of age;
- High education, graduated with a bachelor's degree or equivalent;
- 5 years of accumulated service in the specialty of the graduated studies;
- Completion of professional training programs in public administration, organized by the National Institute of Administration or other specialized institutions (or a PhD in law /administrative sciences/ or perform at least one full term as member of the parliament).

It is clearly stated that the prefect directs the deconcentrated public services of the ministries and of the other bodies of the central public administration subordinated to the Government, organized at the level of the territorial administrative units.

Subsequently, by amending the Law on the status of civil servants, the prefect becomes high-ranked civil servant, a measure aimed at depoliticizing the Romanian public administration. This way, the creation of an elite corps of the administration, as a special career, was tried. In fact, every change of the government led to the implementation of the principle of mobility for the prefects on service and their transition to positions of governmental inspectors. In addition, many posts of prefects were occupied through temporary exercise of the duties by management or execution civil servants, detached from any public institution. However, there were cases of prefects who were not subject to mobility and a nucleus of professionals recognized by the Romanian administrative environment was created, with no significant impact though if the legislative effort or funding allocated to this subject is considered.

The transformation of the prefects from political officials into civil servants only partially took effect, but the constraint of a seniority in the specialty graduated studies and the completion of the professional training program organized by the National Institute of Administration, created the premises for a minimum of professionalism.

2. Projects regarding the prefect institution reform in Romania

Now, there is under debate the draft of the Administrative Code of Romania and the amendment draft of the Law no.188/1999 on the status of the public servant. Both documents contain similar references to the prefect institution. Thus, the amendment draft of the Law no.188/1999 does not include anymore the prefect function within the category of high-ranked civil servants: „**Art. 12.** – The category of high-ranked civil servants includes the persons that are appointed in one of the following public services:

- a) general secretary and deputy general secretary within the public authorities and institutions;
- b) general secretary of the prefect institution.”

Also the draft stipulates the following:

Art.118² – (1) The public functions of prefect, deputy prefect and governmental inspector shall be canceled within 60 days of the entry into force of this law”. Therefore, the prefect is intended to be removed from the civil service category.

The draft of the Administrative Code proposes in the third part:

Art. 94

Role of the prefect and deputy prefect

- (1) The prefect is the local representative of the Government and the guarantor of law and order at local level.
- (2) The prefect shall manage the deconcentrated public services of the ministries and of the other central government bodies within the administrative-territorial units.
- (3) The prefect shall ensure the management of the county committees for emergencies.
- (4) The prefect shall review the legality of the acts of the local authorities and may appeal to the administrative court the acts considered illegal.
- (5) In order to accomplish the duties and powers conferred upon it by law, a deputy prefect shall assist the prefect. Two deputy prefects shall assist the prefect of Bucharest.

Art. 95

The statute of prefect and deputy prefect

The functions of prefect and deputy prefect are public functions, similar in terms of rights and obligations with the duties of Secretary of State and Deputy Secretary of State.

Art. 96

The appointment and dismissal of the prefect and the deputy prefect

- (1) The Government shall appoint a prefect, as its representative in each county and in Bucharest.
- (2) The appointment, disciplining and dismissal of prefects and deputy prefects shall be made by Government decision based on a proposal of the Interior Ministry.
- (3) The person that meets all the following conditions can be appointed as prefect or, respectively, deputy prefect:
 - a) is a Romanian citizen and resident in the country;
 - b) has electoral rights;
 - c) has full legal capacity;
 - d) has not undergone a criminal conviction, unless rehabilitation occurred;
 - e) is not found in the cases of incompatibility provided for state secretaries and deputy state secretaries by this Code;
 - f) graduated long term university studies;
 - g) graduated professional training programs to be appointed as prefect or deputy prefect.

Thus, the prefect becomes again a political servant, but there is a premiere in the Romanian public administration to be witnessed. For the first time, there is the requirement of high education studies and graduation of professional training in order to obtain a public dignity. In other words, the prefects will be appointed on political grounds, but they will have graduated high education or professional training!

With these proposals, ten years of efforts to professionalize the prefect institution are deleted from the history of public administration. Maybe it was an unsuccessful effort and the return to the model existing by 2004 is justified. Perhaps the depoliticization has never worked in real terms and a regulation of the de facto situation is tried. Whatever the reason, there is the need for a political decision assumed in terms of opportunity: the political power wants its representatives in the territory to be political appointees. Such a decision cannot be measured or assessed in terms of "good" or "bad".

3. Opinion on the prefect institution

I do not consider that the analysis of the prefect institution in Romania, with a history of over 150 years, should be resumed to the public/political function, the appointment by contest or on political grounds, but more profound: its existence should be brought into question. Given the fact that all the government programs and reform strategies support the accentuated and accelerated decentralization of the administration, is there the need for a

"watchdog" of the government in the territory, inspired by the French model institution, known for its centralism? In order to answer to this question, the duties of the prefect and the extent to which their existence is justified need to be analysed.

3.1. The prefect shall manage the deconcentrated public services of the ministries and of the other central government bodies within the administrative-territorial units

The principle of deconcentration has been mentioned in many published papers, especially administrative law literature, but the first paper in Romania that the types of deconcentration have been mentioned in was published in 2000 (Matt, Crabrot, & Dincă, 2000). The paper details the experience not that similar of France in terms of deconcentration.

Starting from the French experience, the authors noted that the administrative deconcentration represents the movement in the territory of a large part of the central public administration activity, involving thus a diminished form of the centralization system. The deconcentration is classically defined as a transfer of "the exercise of power by the central authorities to other hierarchically subordinated authorities" (Diederichs & Luben, 1991, p. 3). In France, the deconcentration is seen as a less bad centralization, as a closeness of the local entities to the central decisions. Thus, the deconcentration is a tool of the conservative regimes⁶.

The authors distinguish between the horizontal and vertical deconcentration. The first one entrusts a single representative of the State (the prefect) the responsibility of the decentralized services of different ministries, while the second classifies these services based on a direct hierarchy that depends only on the minister in charge. The two systems correspond to a projection of the administrative decision on the periphery, but based on a different approach: the concentration of the local authority in the hands of the prefect, the sole representative of the government, strengthens its power and applies on the territory a national administrative system whose consistency tends to efficacy, while the vertical deconcentration preserves a certain administrative continuity, but acts directly on the space of the ministerial sectoral application. Both types of deconcentration exist in Romania, so the managerial principle of the control unit is breached. The prefect manages a deconcentrated service, but this service is also accountable to the superior central institution. There are dozens of counties with deconcentrated services. It is hard to believe that the prefect may manage them all (I have noticed that

sometimes the prefects have difficulties even to list them). On the other hand, there are cases where the representatives of some deconcentrated departments do not know that the prefect has management duties (survey conducted within the project **“Standards and performance indicators to assess the institutional capacity in the environmental national system – SIPEVAL”** to which representatives of the county environmental agencies and county commissioner’s offices participated).

From my own observations, I have found that the prefects show a special interest in deconcentrated services in areas such as public finance, education, labor relations.

3.2. The prefect shall ensure the management of the county committees for emergencies

This responsibility is materialized in the coordination of different entities of the deconcentrated local and state administration during exceptional situations of emergency. I believe, however, that this responsibility can be put in practice by the president of the county council or, simply, by a civil servant as the governmental inspector, without requiring an institution with such duties.

3.3. The prefect shall review the legality of the acts of the local authorities and may appeal to the administrative court the acts considered illegal

The Romanian local public authorities function based on the principles of eligibility, legality, local autonomy and decentralization. They are legally responsible for the performed acts and deeds and the secretary of the administrative-territorial unit, civil servant with legal or administrative studies, endorses for legality, the directives of the mayor and of the president of the county council, the local council or county council decisions (Article 117, Law 215/2001 as amended, republished). On the other hand, any citizen or civic organization may appeal the acts considered as illegal to the administrative court.

4. Conclusions

There are laws regulating the management of the deconcentrated public services by the prefects, but in practice, this leadership is almost non-existent due to the overlap of the two types of deconcentration and the large number of existing deconcentrated services.

The prefect responsibilities as manager of the county committees for emergencies can be taken over by the county council president.

The legal control over **the acts of the local authorities is the reminiscence of a centralized system, as long as the local authorities are accountable to the law for their own actions or inactions, and the secretary of the administrative-territorial unit** approves, in terms of legality, the provisions of the mayor and the president of the county council, the decisions of the local council or, respectively, of the county council.

Therefore, the main duties of the prefect may be taken over by another entity or they are no longer justified. In these circumstances, I consider that the existence of the prefect institution is no longer justified although it has a rich history and belongs to the administrative tradition of Romania.

References

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- [3] Law no. 215/2001 republished, of the local public administration.
- [4] Law no. 188/1999 regarding the Statute of public servants, republished, as subsequently modified and completed.
- [5] Law no. 340/2004 regarding the prefect institution.
- [6] Matei L., Cristoph, C., & Dincă, D. (2000). *Colectivitățile teritoriale - experiența franceză (Territorial collectivities – French experience)*, București: Economica.

Endnotes

¹ Analysis of the historical evolution in time of the prefect term and powers and of the many forms of function exercise, ANFP 2013, p.5.

² The law was promulgated by High Royal Decree no. 569 of 1936 and published in the Oficial Journal no.73 of 27 March 1936, part I.

³ The mayor was elected by the commune council, from the elected councilors; he was the leader of the commune administration and, as such, he appointed and dismissed the civil servants, based on the forms provided by law; he managed the interests of the communes; he represented the commune in justice issues; he was an officer of the civil state and chief of the police of the commune.

⁴ The county council was made up of the elected members and members by law. The number of the elected members was determined by reference to the county's population, namely between 24 and 36 for a larger population; some members were chosen with deliberative vote, and another part with a consultative vote.

⁵ The Constitution devoted to art. 122 the prefect function in each county and in Bucharest. The prefect was defined as a representative of the local government, and managed the decentralized public services of the ministries and of the other central bodies of the administrative-territorial units.

⁶ Olivier Diederichs and Ivan Luben stated: “the model by which the democratic regimes favors the decentralization, while the authoritarian regimes prefer the deconcentration”, op. cit. pag. 15.