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***THE PREFECTURE - A BRIDGE BETWEEN THE CENTRAL GOVERNMENT  
AND THE LOCAL PUBLIC INSTITUTIONS***

For Romania the 1989 revolution meant a complete change of the old political system and the emergence of a new one, based on the separation of powers in the state, on human rights and individual freedom.

This social and politic system included all state institutions and, of course, the public administration system was affected, too.

In the latest years, through different laws and regulations and because of the new Constitution (adopted through popular referendum in December 1991) the state institutions and the public authorities were restructured, all of them being very necessary for a democratic society.

This process included, as a part of it, the rebirth of the prefecture as an institution of public authority inside the public administration system. The prefecture is an old democratic institution, which functioned in Romania between 1864 and 1938 when it was abolished by the dictatorial regimes that followed. As we can see, the prefecture is not a recent invention of the post-revolutionary society but a reinstatement of a democratic tradition that existed in Romania before 1940. The modifications generated by the new laws intended only to modernize this institution, to put it at the level of the 90's.

The aim of this paper is to study this institution and its fundamental role in the transition from a centralized state and society toward a civil society and a state structure that allows the local autonomy.

The prefecture represents the link between the central and the local public administration, it is a factor that protects the national interests at county level and an authority that supervise the respect the correctness -from a legal point of view- of the activity of the local public administration.

The Romanian legal framework created after 1989 for the public administration is based upon the principles of local autonomy and decentralization of the public services but these principles are not yet fully integrated in the administrative practice thus we consider necessary to briefly describe the characteristics of decentralization of the public services.

The article 119 from Constitution states the basic principles:” The public administration activity of the territorial and administrative units is based on the principles of local autonomy and decentralization of the public services”.

The meaning of the term “decentralization” is twofold. First, it means the transfer of some decision-making authority to the local units. From a political point of view, this process is neutral, its goal being an increase in the effectiveness of the administrative action. The local agents usually are appointed by the central authority; they have a limited decision making authority that applies only for administrative issues; they are the hierarchical subordinates of the central authority that has the power of control over all their acts. The central authority can give indications to the local agent, can cancel or modify its actions (*a posteriori*), can control its activity and even act in its behalf. As one can easily observe, this form of decentralization is merely a “mediate centralization”.

The second meaning of decentralization is concerning the self-administration. This aspect is influenced by several factors: the area of the administrative unit; the range of different prerogatives of the local agents and their reality; the way in which the local authorities are elected; the material means at hand, especially the financial ones; and the form and content of the administrative tutelage. No matter how vast, the prerogatives of the local authorities (local councils and town halls) they can not surpass those of the territorial and administrative unit. This means that:

- a. Even if they have juridical status they can not become entities like a state.
- b. The local authorities do not have political decision making authority for fundamental issues; for instance, they can not adopt a project of social organization different from that of the global society.
- c. The local authorities must act inside the requirements of the law.
- d. The local authorities can not refuse or obstruct the administrative tutelage of the central authority. The consequence of decentralization is local autonomy not independence.

There is “functional” or “territorial” decentralization. Both of them emerge from the fundamental law. Functional decentralization consists of the recognition of a certain degree of autonomy of the institutions or public services from the territorial and administrative units. This form of decentralization has at least two shortcomings:

- it can not be applied for all aspects of society

- it is not a subject for the attention of the political parties (maybe for some pressure groups)

The territorial decentralization represents the admission of the autonomy of the local communities that can self-govern. Such decentralization prevents the overloading of the center and improves the “blood flow” of the entire administrative system. For that there is one fundamental condition: to respect the limits of the local autonomy, not to transform it into voluntarist action. The autonomy exists only because and co-exists with the tutelage of the central authority.

The prefecture, as institutions of the public administration system, is a direct result of the administrative decentralization.

In the years following 1944, the law - the Law NR. 486/1944, nr.217/1945, the Constitutions from 1948, 1952 1965 another laws of the communist regime- dismembered the prefecture as a distinct institution, its attributes being given to several other institutions, such as the Court, all of them under the control of the Communist Party.

The 1989 revolution meant the rebirth of the state of law and its principles among which there are those of local autonomy and administrative decentralization.

Any approach to the problem of these two issues in Romania should begin from the statement of art. 1, paragraph 1 of the Romanian Constitution: “Romania is a national, sovereign and independent state, united and indivisible”, because only if we take into account this feature of the Romanian state - unity and indivisibility- we can really understand the main characteristics of local autonomy and decentralization as basic principles for the function and organization of the public administration system in a state of law.

In such states, the political unity of the state requires a dependency report of the local agents from the central authority; this rapport varies in intensity but exists, nevertheless, because only in such a way the state can control and govern its entire territory in an even manner.

The decentralization of the public services, their organization at county and city level, represents the empowerment of the local agents to accomplish, at their level, all the activities attributed to them by the ministries and other institutions of the central public administration.

The decentralized public services differ from other public services of the ministries not only because they have their headquarters in different cities but also because they perform the operative tasks meanwhile the centralized public services of the ministries perform synthesis activities.

The decentralization of the public services diminishes, in a way, the extent of the local autonomy principle because, normally, local autonomy implies many activities performed by the

local administrative agents; through decentralization, the number of these activities and attributes is reduced. The Law of local public administration nr. 69/1991, republished, states that the whole public administration activity at any local level is performed under the specification of the local autonomy principle; but the great number of decentralized services -approximately 25 - and the content and the area covered by these services reduces, diminishes the impact of the local autonomy principle for the territorial and administrative units.

The present legal acts that define the prefecture as an important institution of the public administration system are the Romanian Constitution and the Law nr. 69/1991.

Immediately after the 1989 revolution, the Law NR 5/1990 was adopted, concerning the administration of counties, cities, towns and villages; this act also re-establishes the prefectures at county level, their internal organization and their attributes. According to this law, the prefect was only an “agent of the state local administration with general competencies” not an institution with its own juridical status and attributions.

The new legal framework established by the constitution and the Law NR. 69/1991 concerning the local public administration, changed this state of facts, investing the prefect with public authority, making him an institution which represents the Government at the local level and rules the decentralized public services of the ministries and of any other central authority in the field of public administration.

We would like to outline the fact that neither the constitution or one of the laws stated clearly and explicitly that the prefect is “an authority of the local public administration”, thus the idea that this position is only the representative of the Government at the local level was given credit.

This theory is not true because of the following reasons: the Constitution discusses the institution of the prefect in the same chapter and section where it discusses the other authorities of the local public administration - the local council, the mayor and the county council; one of the attributes of the prefect is to issue “orders”, acts of authority, sometimes with a normative character, thus it is clear that the person/institution who/which does that must have the authority to do it; the prefect is the head of public authorities and this could not be without him having authority and being a public authority.

We must mention, though, that the institution of the prefect, as a public authority at the county level, has a series of specific characteristics that distinguish it from the other local authorities. Among these characteristics are: the institution of the prefect has the role of protecting the national interest and not the local one, insuring the respect of the regulations issued by the Government by all other institutions of the local public administration; it is the subordinate of the

central authority -the Government- whose representative it is; the Government nominates and fires the prefect, meanwhile the heads of the other institutions of the local public administration are elected by the citizens (through direct or indirect vote); finally, the acts issued by the prefect and proven illegal can be cancelled by the central authority but the equivalent acts emitted by the other authorities of the local public administration can be cancelled only by a different authority of the state - the Court.

The institution of the prefect (or the prefecture) is discussed first in the art. 122, chapter V of the Constitution then in the chapter VII of the Law NR. 69/1991, section I. the Romanian Parliament strengthens this institution, reanalyzing the Law NR. 69/1991 and republishing it in 18<sup>th</sup> of April 1996. In its new form, the law stated (in art. 115, paragraph 2) that the prefect, the vice-prefect and their staff represents the prefecture, institution based in the city that is the capital of the county, in a building considered property of national interest. The same article, paragraph 3, establish the fact the activity of the prefecture's staff are regulated by the normative status of the public servant. These two paragraphs clearly states the fact that the institution of the prefect is a public authority.

It is necessary to present the place of this institution in the Romanian administrative hierarchy. The prefect is the representative of the Government and its role is to supervise the activity of the authorities of the local public administration, to see that it respects the law. The prefect, according with the content of the Law 69/1991, is the head of all decentralized services of the ministries and any other central agencies represented at the local level.

Because of its main characteristics, mentioned above, the institution of the prefect is part of the state administration. But not only that: it is the link, the bridge between the state administration and the autonomous local administration. The administrative decentralization is based on the fact that the state does not administer alone the society but in a sort of joint venture with the agents of the local administration, which have legal status and function autonomously. The result of this situation is the institution of the prefect that represents the link between these two actors, the agent that accomplishes the administrative control over the local authorities.

Studying the chart of the public administration institutions in Romania (Annex 1), one can note that the institution of the prefect is subordinated toward the Government, the decentralized services of the ministries and of the other central specialized institutions are subordinated to the prefecture; the latter co-operates with the elected local authorities, like county councils, local councils, and mayors.

A widely discussed issue in the literature is the dichotomy between the political and the administrative aspect of the position of the prefect: the prefect as a “political man” and the prefect as an administrative position.

This issue has its roots since the inter-war period, when the relation between “ the political” versus “the administrative” prefect started to be discussed.

Asking about the meaning of the concept of “ political prefect” versus “administrative prefect”, professor J. Vermuelen considered that “the political prefect” represents the central authority in the county, and it is nominated by the Government, usually being designated by the Internal Affairs Ministry. The administrative prefect is the career civil servant recruited according to law, being nominated according to his professional, who is permanently leading the county in order to support local interests.

The political prefect, as underlined by Prof. E.D. Tarngul when he discussed the Laws from 1925-1936, was the representative of the political party of the Government at county level and brought with him the party policy in the county administration. The political prefect, subject off al kind of political influences, can not be a good administrator. There is another disadvantage: he does not know the entire administrative mechanism and does not have the necessary experience in order to effectively run the activity of a whole county. The modern administration is a complicated matter that requires skill and knowledge, not only common sense.

Taking into account all these and the content of the Law NR 69/1991 we can say that Romania adopted the “political prefect” solution, the holder of the position dealing only with the implementation of the political program of the Government.

Further step of this process consists of the fact that, every time when there are changes in the composition of the governmental coalition, these changes are mirrored in the ranks of prefects and vice-prefects, in other words, they are “birds of passage”.

We have to underline that, being the representative of the central executive authority at the local level, the prefects has as duty to follow the general interest, according to the political values established by the legislative and the executive authorities. We can state that the prefect is not a political decision-maker, dealing strictly with the implementation process.

We consider as normal situation, in a democratic state, that the leading political party or the leading coalition should have representatives at the local level, which would be in charge to follow the implementation of the governing programs at the local level. We believe that it would be more useful if the Government would nominate the prefects for a group of administrative units (counties), this group could be similar as the one correspondent to the Territorial Appeal Courts. For the county level, law should increase the duties of the vice-prefect, and this vice-prefect

should be a career civil servant, who would be designated for this position because of his professional results, abilities, and skills.

We could draw some conclusions from the study of the institution of the prefect, which existed in our country both during the period between the two World Wars and in post-1989 one. In the latter period, the Constitution and the Local Public Administration Law No. 69/1991 regulated the institution of the prefect.

The institution of prefect is a democratic one, based upon the principles of local autonomy and decentralization of public services. It has a long tradition in the democratic countries, Napoleon Bonaparte founded it, and it functioned with good results in Romania during the democratic period of our country.

We can compare the main duties of the prefect in Romania and France, and the results would be interesting. In the French administrative system, due, of course, to the continuity of the democratic regime, the principles of decentralization of the public institutions and local administration are currently and highly implemented. We can state that, comparing with the French administrative system, the Romanian one is closer to the principle of administrative de-concentration than to administrative decentralization. This is argued, again, by the analysis of the duties and means of action available to the French and Romanian prefects. The former can involve themselves, having possibilities of intervention and implementation of the governmental policies in territory, but the latter, due to the existent legislative framework, can only follow/supervise the implementation of the laws and governmental decisions in the administrative units. We consider that a large majority of the prefects' duties consist in the control of the legal status of the documents issued by local authorities. Because he is not a decision-maker he can not intervene much in the activity of the decentralized institutions at the local level. We could mention here the situation of the prefect of the nomination and lay-off documents for the leaders of the decentralized public services and the other central institutions in the territory. The law does not make clear the juridical situation of this document.

Referring also to these institutions, the Local Public Administration Law stipulates that the prefect is their leader. But, once that these institutions have their own leaders, nominated by the ministry, we can ask how can the prefect lead these institutions? A more clear formulation of this article of the Law would have been to let to the prefect the *co-ordination* of these institutions.

Another unclear duty of the prefect is to make sure the implementation of the national interests in the territory: the lawmaker did not add any details that would help interpret the content of this duty.

Closely connected to this one is the duty of assuring the respect owed to the law and public order. The lawmaker did not put any details here: for instance, who are the subjects of this duty, everybody (the individuals and the juridical persons), those from the public field or from the civil field (the citizens)?

Given being these considerations, for the future would be necessary to re-formulate the content of the Art.110, a), in order to clarify the field of action for the prefect so that him could fulfil the duty of assuring the respect owed to the law and public order, and to state the means of action for him.

Another “cloud” of the Local Public Administration Law is the one referring to the status of the vice-prefect. The Law did not state any special duty for him, only that he is “helping “ the prefect. For this situation the prefect can only establish for him some specific duties, for which he could be directly responsible. In order to avoid for the future possible misunderstandings and wrong implementation of this statements of the Law, we consider as necessary that the law-maker should clarify the sphere of action for the vice-prefect in helping the prefect, the juridical means of action and the relationship with the prefect, including the right for the prefect to delegate some of his duties to the vice-prefect, and the specific duties which can not be delegated.

Because pragmatic reasons we consider that there would be useful, also, some clarifications referring to the status of the prefect, as a politician and career civil servant, after he does not hold this position, because current regulations do not cover the situations that emerged from practice. . Even though the Government Order no.937/1990 stated that, during the period when a person holds the positions of the prefect/vice prefect his/her work contract with the institutions/companies from which he/she comes is suspended, and after he/she does not hold the position, must return at the previous work place. There were situations when the return was impossible, either because he institution/company did not exist, or due to other reasons. On the other hand, we consider that these regulations should have the juridical force of the law, not of the Governmental Order, so that they could be applied to all subjects of the law. There were some cases when the institutions where the prefect or vice-prefect worked before nomination became private companies which refused to hire again these persons on their previous positions.

In spite of all weaknesses, inevitable for a beginning, the institution of the prefect is fundamental for the state of law, it assures the implementation of national interests in all administrative units of the country and the co-operation with the local authorities. In time, once that the experience of democratic administration will become richer and will combine with other democratic states experience, the institution of the prefect will be stronger, assuring the necessary and desired harmony between national and local interests.

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