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The Institution of the Prefect According to the Romanian Administrative Code

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Abstract

A code can be defined as a legislative act that includes in a unitary system the rules of a branch of law. In this respect, the Administrative Code regulates the general framework for the organization and functioning of the public administration authorities and institutions, the status of the personnel within them, the administrative responsibility, the public services, as well as the specific rules regarding the public and private property of the state and of the administrative-territorial units. The paper has as main research objective to make a qualitative analysis of the main amendments made to the Prefect institution by adopting in the Romanian Parliament the first Administrative Code after 1989. In this regard, we will analyze the important steps regarding the adoption of the Administrative Code, as well as the changes brought about in terms of roles, powers and occupation of the prefect institution.

Key words: Prefect, code, public administration, reform.

1. Introduction: steps of adopting the Administrative Code

Currently, Romania is continuing the process of administrative reform². One of these steps in the reform of the public administration system is the entry into force of the Law regarding the Romanian Administrative Code, a desiderate for over 20 years. In this Code, are provisions regarding the functioning of all the public administration system, and between the changes that the Code is proposing to create there is also the clarification of the status of the Prefect and its responsibilities.

A first measure for the adopting the Administrative Code reform was the adoption by the Romanian Government of Decision no. 196 of 23 March 2016³ for the approval of the

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² See more, about the *mountain rouse* evolution of the reform of Romanian public administration in Cristina Elena Nicolescu, *Romanian Public Administration Reform – Between the Modernization Aspirations and Real Possibilities of Achievement*, Proceedings. The 18th NISPAcee International Conference., „Public Administration in Times of Crisis”, Varsaw, Poland, 12-14 May, 2010, NISPAcee PRESS, 2009.

³ Government Decision no. 196 of 23 March 2006, approving the preliminary theses of the draft Administrative Code, published in Romanian Official Gazette. no. 237/31 March 2006.

preliminary theses of the draft Administrative Code. Regarding this document, the Administrative Code seeks to ensure the legal logic in the field of material administrative law, clarification of various regulated concepts currently in legislation, correction of current legal provisions, and reduction of legislation in public administration by bringing together dispersed regulations in various areas of the administration public.

The structure of Administrative Code, as it emerged from the Law project no. 369/2018 includes 647 article which are structured into 10 parts divided in titles, chapters, The main areas of regulation are: the central public administration, the prefect institution and the deconcentrated public services, the local public administration, the statute of civil servants and the legal status applicable to contract staff in the public administration, administrative liability public and private property state and administrative-territorial units, administrative accountability and public services.

Regarding the main steps of the legislative procedure, they are synthetized in the below table. Here it has to be mentioned that in our analysis it wasn't presented the other attempts of the Romanian Legislative to adopt an Administrative Code.

Table 1: Legislative steps in adopting the Administrative Code

<i>Date</i>	<i>Legislative Action regarding the Draft Project of the Administrative Code</i>
12-12-2017	Registered at the Senate for debate under no b649
19-12-2017	sent for opinion to the Legislative Council (deadline: 18.01.2018)
19-12-2017	sent for the Government viewpoint regarding the Draft law
18-01-2018	received an opinion from the Legislative Council - no. 59 / 18.01.2018 (favorable)
19-02-2018	with no. L132 presentation in the Standing Bureau; The Senate is the first Chamber to be notified
19-02-2018	sent for report to the Commission for Public Administration and Territorial Organization (TERM: 20/03/2018)
19-02-2018	sent for opinion to the Legal Commission, appointments, discipline, immunities and validations (TERM: 13/03/2018)
19-02-2018	sent for opinion to the Commission for Human Rights, Cults and Minorities (TERM: 13/03/2018)
02-03-2018	receiving a point of view from the Government - no. 193 / 02.03.2018 (favorable)
12-03-2018	Presentation to the Permanent Bureau no. L132The Commission for Public Administration and Territorial Organization calls for delaying the submission of the report for 17.04.2018
15-03-2018	The Committee on Human Rights, Religions and Minorities delivers its opinion no. 65

	POSITIVE
20-03-2018	The Legal, Appointment, Discipline, Immunities and Validations Commission delivers its opinion no. 47 POSITIVE
07-05-2018	The Permanent Bureau of the Senate approved the dismissal of the Commission for Public Administration and Territorial Organization
07-05-2018	Presentation to the Permanent Bureau with no.L132 The Permanent Bureau of the Senate approved the notification of the Special Special Committee of the Chamber of Deputies and the Senate for the elaboration of the Administrative Code,
07-05-2018	sent for report to the Joint Special Committee of the Chamber of Deputies and the Senate for the elaboration of the Administrative Code (TERM: 08/06/2018)
08-06-2018	The Joint Special Committee of the Chamber of Deputies and the Senate for drafting the Administrative Code files the report with no. 141-FAVORABLE with amendments
11-06-2018	entered on the Senate's agenda
11-06-2018	adopted by the Senate (No votes: YES = 85 NO = 25 AB = 11)
09-07-2018	adopted by the Chamber of Deputies (No votes: YES = 175 NO = 33 AB = 15)
10-07-2018	filed with the Secretary General and announced in plenary session of the Senate for the exercise of the right to refer to the constitutionality of the law
12-07-2018	sent to the President of Romania for promulgation
16-07-2018	a petition for unconstitutionality was filed; author: 44 deputies belonging to the parliamentary group of the National Liberal Party and parliamentary group of the Union Save the Romania Party and six non-attached deputies
01-08-2018	a petition for unconstitutionality was filed; author: President of Romania

Source: www.cdep.ro/ tracking the legislative process

As it can be observed the Law of the Administrative code it is under revision at the Romanian Constitutional Court, and the time of writing these paper, the Court didn't take any decision. Regarding this, the information preseted in this paper, could suffer changes until the Law no.369/2018 will entry into force.

2. The place of the Institution of the Prefect in the public Administration System

The public administration system can be defined as being composed by all the public authorities, bodies, institutions and services that perform the public administration activity, activities between which are established legal relations that ensure the functionality and coherence of the whole system.⁴

⁴ Cărăușan Mihaela Victorița, *Structuri, mecanisme și instituții administrative în Uniunea Europeană*, Tritonic Publshing House, Bucharest, 2012 p.53

As part of this system is also the Institution of the Prefect. The Constitution of Romania states in Article 120 that "The public administration in the territorial-administrative units is based on the principles of decentralization, local autonomy and the deconcentration of public services" principles on which we will come back later. Also the local administration is regulated by Law no. 215/2001 on local public administration, published in the Official Gazette no. 204 of April 23, 2001, but also by the law regulating the central theme of this work, namely Law no. 340/2004 on the Institution of the Prefect, published in the Official Gazette no. 358 of July 21, 2004.

From a functional point of view, it is distinguished between public administration authorities with general competence (Government, Prefect, local and county councils) and public administration authorities with specialized competence (ministries, central regulatory authorities, deconcentrated services of the central government). The functional structure is met both at the central level (through ministries and other specialized bodies subordinated to the Government or autonomous administrative authorities) as well as at the local level where there are deconcentrated public services of the ministries and other central bodies at the head of which the prefect is, the representative of the Government in the territory⁵

The Constitution of Romania places the Prefect in Title III, Chapter V, Section 2: "Local Public Administration", Article 123 entitled "Prefect"; most specialists claim that the prefect is part of the central public administration. Even if the prefect is mentioned in the section of local public administration with the mayor, the county council and the local council, this fact should not induce a confusion that it belongs to the local public administration. The legislator placed the Prefect in this section of the Constitution because the prefect is watching the lawfulness of the local organs' activity through the control of administrative tutelage⁶.

According to the local public administration law (Law 215/2001, initial version), prefect and prefect institution were positioned as part of public authorities operating locally. The modernization of the position is accomplished by Law no. 188/1999 as amended by Law no. 161/2003, in the sense of changing the categorization of the prefect in the category of high civil servants

⁵Alexandru Ioan, Cărăușan Mihaela, Bucur Sorin, *Drept administrativ*, Lumina Lex Publishing House, Bucharest, 2009, p. 125.

⁶Postelnicu Romeo Paul, *Prefectul și Instituția Prefectului în sistemul administrației publice din România*, Ed. Lumen, Iași, 2009, p. 24

The prefect was a state dignitary until 2004, later, through Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and business environment, preventing and sanctioning corruption and amending Law no. 188/1999 on the Civil Servants' Statute, it received the status of high civil servant, together with the sub-prefect and the secretary of the prefecture. At present, the office of secretary of the prefecture does not exist any longer, its attributions being taken over in 2006 by the sub-prefect function, following the entry into force of Government Emergency Ordinance no. 179/2005 for amending and completing the Law no. 340/2004 on the prefect institution. Also, the prefect and the sub-prefect fall into the category of high civil servants, and according to art. 10 of the Law no. 340/2004 on Prefect and Prefect Institution (republished), as amended and supplemented⁷. According to Article 16 (1) of Law no. 188/1999, senior civil servants perform the top management in the central public administration and autonomous administrative authorities.

3. The role of the Prefect according the Administrative Code

The Part IV of the Administrative Code is reserved for Prefect, The Prefect institution and deconcentrated public services and is divided into 2 titles. The first title consists of 6 chapters, 2 sections and 28 articles, and the second title is divided into 2 chapters and 7 articles and refers to deconcentrated public services, specifying that the prefect is responsible for the operative management of public services deconcentrated in the implementation of the government program and in situations involving the urgent intervention of state bodies in the territory. Our analysis is based on the content of the first title.

One of the main changes that the Administrative Code is Providing is the regarding the statute of the Prefect, mentioned in the article 250 of the Code.⁸ The new regulation states that the Prefect and the sub-prefect are public dignity, while at present Law no. 340/2004 states at art. 10⁹ that they are senior civil servants.

As regards the appointment, sanctioning, dismissal of prefects and sub-prefect are similar in the Code with the current Law. The Government appoints one prefect in each county and in

⁷ National Agency of Civil Servants, *Analysis of the Current Legislative Framework governing the Prefect Institution in Romania in terms of its attributions, its administrative instruments, incompatibilities*, p. 5, available online at: <http://www.anfp.gov.ro/R/Doc/2015/Projects/Closed/Project%20cos%20SMIS%2032582/Materials/Analysis3.pdf>, Accessed on 12.09.2018.

⁸Article 250. - Statute of prefect and sub-prefect

(1) The functions of prefect and vice-prefect are dignity public functions.

(2) The wage rights are established according to the law.”

⁹ The republished text of the law was published in Official Gazette of Romania, no. 225 of 24 March 2008.

the city of Bucharest. The appointment and dismissal of prefects and vice-prefects are made by Government decision, at the proposal of the minister who coordinates the institution of the Prefect.

It can be observed also some other consequences regarding the constrictions of appointing a Prefect, which are the result of the changing the statute from a high civil servant in a public dignitary. The conditions to be fulfilled for appointment are reduced in the Code by excluding the seniority condition, the knowledge of the written and spoken Romanian language, the age, the condition of the state of health corresponding to the public office for which he / she is applying, attested on the basis of a medical examination, the condition that she has not been dismissed from a public position or has not terminated her individual employment contract for disciplinary reasons in the last 7 years or that she has not pursued political police activity as is defined by law.

A better systematization of the legal duties of the prefect it is done in the Administrative Code. Thus, in the Law of the Administrative Code the Prefect's duties are grouped in 5 categories and are more numerous than in the Law no. 340/2004 on prefect and prefect institution. Thus, if about 13 attributions are mentioned in the law, the number in the Code reaches about 31. However, in Law no. 340/2004 states that the prefect also performs other duties stipulated by the law and other normative acts, as well as the tasks set by the Government, so that the Project does nothing else than to reunite them. The main duties are with regard to the two constitutional powers of the prefect: the management of deconcentrated public services of the ministries and the verification of the legality of the acts of the local public administration authorities.

Another important change is the reduction of the number of sub-prefects from 2 vice-prefects, respectively 3 for Bucharest, as it is specified in the law in art. 9 of the lawno. 340/2004, to one vice-prefect, respectively 2 to Bucharest. In these regards, the art. 249, paragraph 5 states that: "In order to carry out his / her duties and prerogatives according to the law, the prefect is helped by a vice-prefect. The prefect of Bucharest is assisted by two vice-prefects".

The article 260 of the Administrative Code has a better clarification regarding the attributions of the vice-prefect. The lawno. 340/2004 is stating at the article 9, paragraph 2 only that the attributions of the sub-prefect shall be determined by a Government decision. Instead in the Code, there is a better clarification between the juridical relation and the powers of the vice-prefect with the prefect. In this regards, it is clear stated that the vice-prefect is subordinate to the

prefect and is the substitute of its right. It is also maintained the provision that the duties of vice-prefects are determined by a Government decision and also the fact the prefect may delegate to the vice-prefect by order a part of its attributions.

The Administrative Code introduces the function of the prefect's general secretary who would be a high civil which has to ensure the operative direction of the prefect institution. The secretary general of the prefect's institution ensures stability the functioning of the prefect's institution, the continuity of leadership and achievement functional links between the departments of the institution. The duties of the Secretary General of the Prefect's Institution shall be established by Government decision.¹⁰

4. Conclusion

By passing of the time, the Institution of the Prefect suffered various changes in his status over time. One of the most important change was the moment considered to be the depoliticization of the position by transforming the prefect into a public servant; appointed by Government decision. This measure was considered an important step for the need to improve the quality of the administrative action and service, by increasing the professionalism.

In this regard, the Administrative Code is transforming again the Prefect from a public servant into public dignitary appointed by the Government upon a political decision, as it was before the reform of 2004. It can be considered that by this measure, there are created the conditions for the deprofessionalization of this institution, because the requirements regarding the experience and the studies within the field of the public administration are not the same mandatory which a high civil servant was obliged to fulfill. A positive role this measure is providing the ending of the mobility in office, characteristic of the current status of a high civil servant of the prefect. It has generated a number of effects, contributing to the creation and extension of a distinct professional category (government inspectors) of an insufficiently regulated category.

Also, by re-introducing the function of secretary general of the prefect's institution, the Legislator is trying to give stability and continuity in the functioning of the prefect's institution, creating a clear distinction between the Prefect Institution and the person of the Prefect which can temporarily occupy this public dignity function.

¹⁰Article 265, paragraph 11-14, Law no. 389/2018 regarding the Administrative Code (not promulgated), available online: http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=17174 , accessed: 19.09.2018

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