SOCIOLOGIC AND ADMINISTRATIVE ASPECTS ON ADDRESSING THE REGIONALISATION OF THE PREFECT INSTITUTION

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Abstract : The Institution of the Prefect is highly important for the Romanian administrative system, because it represents the link between the central and territorial administration. Its position is essential for the coherence and the uniformity of the administrative action, for applying the law unitarily in the entire territory, in other words, for maintaining the unitary character of the Romanian state. Its organisation and the functioning have changed during the last years, as a consequence, on one side, of the depoliticisation and professionalization of the function, and on the other side, of the decentralisation tendency from the administration. Moreover, there are expected new changes to emerge, once with the constantly mentioned regionalisation. Nevertheless, the prefect has enjoyed, until nowadays, little attention on behalf of the researchers form the juridical and administrative sciences.

Key words: sociologic, administrative, prefect, regionalisation, law.

The perspective of regionalisation in Romania

Through the last years, there has been mentioned, in the Romanian public space, the idea of an administrative-territorial organisation, which stands for the creation of some regions, superior as surface, to the actual counties. Up until nowadays, there has been discussed only the number, and, occasionally, the division of the expected regions. The concrete and detailed projects are missing, for the time being.

The idea is not new in the history of the Romanian state. It has emerged repeatedly, along the modern and contemporary ages, and was even put into practice between 1938-1940 (during the authoritarian regime of Carol II, when there were 10 regions) and 1950-1968, an idea taken from the Soviet model (28, 18 and, finally, 16 regions, divided into districts).

Recently, the regionalisation has been brought forward as a way of making the public administration more efficient, even more necessary after the adhering to the European Union. As it can be seen from *The Report of the Presidential Commission Analysing the Romanian Political and Constitutional Regime*, the first preoccupations regarding the regional development in

Romania, appeared after 1996, being concretised in the *Law no 151 from the 15th of July 1998 on the regional development in Romania*, which created the eight "development regions"[1]. Later, after the negotiations for the adhering to EU, the normative framework suffered modification through the *Law no. 315 from the 28th of June 2004 on the regional development in Romania*[2]. This established the "institutional framework objectives, competences, and instruments specific to the regional development in Romania". According to art.2, section 3, the basic principles for the regional development are: the subsidiary, the decentralisation and the partnership. The objectives provisioned in art. 3 are: the diminishing of the existent regional disparities; the correlation of the governmental sector policies; the stimulation of the internal and international inter-regional cooperation and the participation to European structures and organisations, for their socio-economic and institutional development. The law clearly mentions that the regions are not administrative-territorial units, do not have legal status, being set up upon conventions concluded between the representatives of the county councils. Their role is that of "a framework for elaboration, implementation and evaluation of the regional development policies" and to collect statistic data, according to the EUROSTAT regulations for NUTS 2 level of classification (art.6). In each region there is a Regional Development Board (made up of the presidents of the county councils, and a representative of each category of councils: municipal, city and communal), also without legal status (art.7). In each region, there are also organised the regional development agencies, as non-governmental, non-profit, of public uses, with legal status bodies. (art. 8).

The law does not refer explicitly to role of the prefects in the regional development policy, but because it is defined as "an entirety of the policies elaborated by the Government etc." (art. 1), it might be deduced that they are involved, through the eventual tasks received from the specialised central administration bodies.

The Report of the Presidential Commission was constituted of "the failure of the development regions", whose functioning "did not have a positive economic impact", due to the fact that they are confusedly and inconsistently regulated, lacking legitimacy and historic, political and economic coherence. Briefly, it has been appreciated that they are "dysfunctional" and that "the

[1] *The Report of the Presidential Commission Analysing the Romanian Political and Constitutional Regime, 2009*, pp. 26-27 (http://cparpc.presidency.ro/upload/Raport_CPARPCR.pdf).
[2] *O.G.*, 1st Part, no. 577 from the 29th of June 2004.

operation for partially solving the issue regarding the local governing rationalisation is prone to fail"[1].

The variants proposed are: the federalization (less probable, but with advantages, therefore it should not be ignored), the regionalisation (either "as administrative strategy that lacks political dimensions", as in France, or as "political regionalisation", according to the Spanish model), or only the rationalisation of the existent background, by defining new criteria to delimitate the counties[2].

As regarding the prefect, the Report advanced the idea of creating "a new constitutional state" for the institution. Because they exercise two categories of political attributions (representative of the Government and head of the deconcentrated territorial entities), along with technical-juridical attributions (when controlling the legality of documents), there are requested better-defined stipulations, for the clear separation of the two. One of the options might be "the qualification of the Prefect as a clerk", by eliminating the role of leader of deconcentrated territorial entities. Another one suggests, on the contrary, "the maintaining of the prefect in the political area", which means preserving only his attributes of leader of the ministries' services (having, after the decentralisation, only powers of control and monitoring) and of the different local and county authorities, in cases of emergency. Under these circumstances, the actual attributes that enable the checking of legality, would consequently be incumbent on the governmental inspectors. In all the above depicted options, and even if it is chosen the preserving of the actual organisation of the Prefect Institution, it is considered as useful the substitution of the lawful suspension of the documents subjected by the prefect to the court, being suspended upon request by the previously informed administrative court[3]. On the same direction, it is also registered the legislative proposals for constitutional revision from 2014, which stipulates that "The Prefect can subject, to the administrative court, a document of the regional, county or local council, of the county council president, of the regional council president or of the mayor, if they consider the document as being illegal", with the specific mention "that the document can be suspended only by the competent court, according to the law"[4]. Nonetheless, the Constitutional Court appreciated that the second proposal is "useless" and "redundant" and recommended its elimination, motivating that "it does not evidence any specificity of the effects

[1] *The Report…*, pp. 26-27.
[2] *Ibidem*, pp. 55-57.
[3] *Ibidem*, pp. 61-62.
[4] *Decision of CCR no. 80 from the 12th of February 2014…*, p. 41.

drawn by the action brought by the prefect, as compared to any other similar actions brought by any other person" [1]. We consider that it is not the introduction of any kind of specificity that represented the intention of those who initiated the procedure, but the maintaining of the central authority's possibility, through its representative, to control the performances of the central authority, accompanied by a constitutional guarantee against their arbitrary suspension.

Since the details regarding the expected regionalisation are still unknown, in order to prefigure the appeared transformations in the Prefect Institution somehow, it is necessary the research of similar patterns in the other countries of the European Union. The most certain thing to say is that they will concern, on one hand, the territorial area for exercising the competences, which will be extended, and, on the other hand, the sphere of attributions, which will be a reduced one, due to the fact that regionalisation is associated with decentralisation.

Very important, for our theme, would be to know if the actual counties are supposed to disappear, once with the emerging of the regions, which is an idea mentioned in *The Report*, or, if they are still preserved, as subdivisions of them, as the responsible factors from the political scene have made assurances in the last years, and as it is provisioned in the proposal for the revision of the Constitution: "The territory is organised, from the administrative point of view, in communes, counties, towns and regions" [2].

Because we consider that a federal type of organisation is out of the question, and a "political regionalisation" (which is actually a "quasi-federalisation") is less probable, we must focus our attention especially on the French type administrative regionalisation – referring only feebly to the Spanish and Italian models – and on the examples provided by some central-east-European states, which have recently met processes of regionalisation/decentralisation. The French inspiration regionalisation is considered "a more cautious solution, from the constitutional point of view, providing that […] it does not introduce an authentic self-governing element in the regions", but it corresponds to certain measures "that the Romanian local administration is already exploring, with the difference that it brings, unlike the present formula, more rationality and the premise of a reliable governing" [3].

[1] *Ibidem*, pp. 153-154.
[2] *Ibidem*, p. 6.
[3] *The Report…*, p. 56.

Possible transformations of the Prefect Institution under the circumstances of regionalisation

Since the Romanian Constitution only indicates the administrative-territorial units, but it does not provide, as the French one, the possibility to create others, according to the law, the manner in which the reform can be done is debatable. It can be operated a constitutional revision, it can be commenced a simple retracing, which means the creation of wider counties, accompanied by decentralisation measures, or, it can just be created a new area, with a new name, considering that the enumeration of the constitutional text is not limitative.

Few things can be certainly mentioned as regarding the future of the Prefect Institution. Firstly, the fact that it will continue its existence, regardless the manner in which the administrative reorganisation will be done. Secondly, the constitution of a new administrative-territorial unit, the region, triggers the necessity of including a governmental representative. Beyond these aspects, the way in which the institution will be organised and will function, depends on more than a few factors.

Before trying a small number of possibilities, we must mention that, provided that the competence of the prefect to control the legality in the documents of the local authorities – and for preventing the complication of the administration, we consider the maintaining as necessary –, then the suspension of the lawful actions has to be replaced by the suspension upon request, in court. It is the proposal from the *Report of the Presidential Commission*, it is the same situation as that from the French system, and would be comprised in the already declared intention of decentralisation.

It is essential that, if the actual counties disappear, as proposed in the report, or if they are maintained, as provided in the proposal of constitutional revision, as an area inferior to the regions, as in the cases of French, Italy, Spain or Poland.

In case the counties are abolished, without analysing the opportunity of such a measure, the situation of the prefects seems rather simple. Actually, they would exercise the same attributes as they do presently – maybe with some unessential modifications – at the level of the regions. They would control the legality of the regional authorities' documents (being able to subject them directly to the court, as presently in Romania and France, or only to inform the Government, as in Italy), and would manage the activity of the deconcentrated services from each region, which would become the main level of deconcentration.

The maintaining of the present counties, along with the expected regions, would open more possibilities. It firstly emerges the question of the

counties' status in this situation. Will they be only simple divisions of the regions, exclusively areas of deconcentration (as the French arrondissements), or will they remain administrative-territorial units (as the French departments or the Italian, Spanish or Polish provinces)? In the first variant, it is highly probable the existence of some (deputy)-prefects of the counties. They would have a status and a role similar to that of the French deputy-prefects or Spanish deputy-delegates. They would be strictly subordinated to the region prefects, being maybe appointed by, or at their proposal, and acting (mainly) on the basis of a delegation. There will not be the case of having the job to control the legality of the county authorities, because they will not exist anymore, and as regarding the local documents, it is probable that their action will be limited to informing the regional prefect. It would remain the possibility to lead some deconcentrated territorial entities from the counties, also with the strict control of the regional prefect. The latter one would exercise, if not entirely, almost the highest share of the present attributions, the others being his auxiliary staff. There is not excluded the preserving, in the counties, of some simple agents or services, external to the regional prefecture, similar to the present prefectural offices.

The most probable variant – considering the desire to maintain the administration close to the needs of the citizens, and the European models – is the preserving of the county administrative-territorial status. It is hard to believe that, in this situation, there will be only a regional representative of the Government (possible with county offices), as in Poland. The issue that should be discussed is represented by the reports between the regional prefect and the county prefect. Will the first one be the prefect of the capital city, or a completely different person? The decision has to be made according to the balance of the competences given to the two areas and the manner of territorial organisation of the deconcentrated services. The occurrence would therefore correspond to a weak regionalisation – in which the region would receive less competences – or, on the contrary, to a very strong one – in which the counties would remain with few competences. Will the regional prefects have total authority on the county prefects (as in Spain or France, before 2010), a partial one (as in France, at present), or a simple role of coordination (as in Italy)? Again, the answer depends on how profound the regionalisation and decentralisation processes are supposed to be, on the relation of the competences between the areas.

It is noticeable the fact that, the revising proposal mentions the possibility of the prefects to control the legality of the regional, county and local authorities' documents, but it makes no differentiation between the

prefects[1]. The provision that "the Government appoints, in the administrative-territorial units, the prefects and the deputy-prefects, under the provisions of the law", is not explanatory, as long as, on one side, the towns and the communes are also administrative-territorial units, beside the regions and the counties, and, on the other side, the reports between the prefects and the deputy-prefects are not pointed out (will they be as the present Romanian organisation, or as the French one?).

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[1] *The decision of CCR no. 80 from the 12th of February 2014…*, p. 6