

Between Eclipse and Sunrise: Abolition and Re-establishment of the Function of General Secretary of the Prefect's Institution in Romania

Teodor Narcis Godeanu

Assoc. Prof. PhD, Spiru Haret University, Faculty of Law, Bucharest, Romania, narcisgodeanu@yahoo.com

ABSTRACT: The study aims to analyze the institution of the Secretary General of the prefecture, which is the highest civil servant in the prefect's institution, found in most states under this name or others that evoke his role as a representative of the central government in the territory, to monitor and to ensure that the law is respected and the government policy transposed in practice at the level of the administrative-territorial unit. In each public authority, central or local, there is a function which has the most important role, which brings stability and which is called the Secretary General. Its role is to ensure compliance with the law in the activity of the public authority in which it is located, but also the continuity of its activity, in case of changes that occur during the election cycles or, as the case may be, appointment of new central and local authorities. It also existed, naturally, within the prefect's institution, but it was abolished in 2005, with the functions of prefect and sub-prefect transformation, from public dignities to public functions, in 2005. By returning, in January 2021, to the status of dignitaries, the function of prefecture's general secretary was re-established.

KEYWORDS: prefect, sub-prefect, civil servant, senior civil servant, governing civil servant, general secretary, function stability, career entitlement

General considerations regarding the institution of the prefect. History, role, status

The prefect is a traditional institution, planted on the "soil" of the Romanian public administration since the middle of the 19th century, more precisely with the adoption of Alexandru Ioan Cuza administrative reforms. It is French-inspired, where it was created by Napoleon Bonaparte by the Law of 28 Pluiose, year VII, February 17, 1800, as an institution that reflects the principle of decentralization in departments, this generating the need for *central* structures to have a public authority implanted in the territory, to exercise an attribution traditionally called *administrative guardianship* (Săraru 2016, 761). This phrase can be defined as **the institution of public law that evokes the specific activity of the prefect, through which he supervises the observance of the law by the local autonomous authorities, and may, in case of finding illegalities, to annul the illegal act itself.**

In the Romanian system, the prefect did not have the prerogative to annul the illegal acts of the autonomous authorities himself, but there are states, such as Germany, where the prefect can cancel such acts himself. In this context, we mention the fact that during a public administration meeting with colleagues in Germany, we could find that in some Länders, although there is such a prerogative of the prefect, he never used it, it was not, practically, put in the situation of appealing to it, because it did not encounter, in the activity of checking the legality of the administrative acts of the authorities elected by the local authorities, violations of the law that would justify the recourse to this prerogative. The information is interesting, especially from the perspective of its comparison with the situation of other states, including Romania, where the violations of the law by the local administration are not exactly non-existent.

The prefect is found in most states, where, in addition to the title of *prefect*, he also has other titles such as the *king's commissioner*, *high representative of the government*, etc., but the role is similar, namely to oversee the application of the law to local public administration authorities, organized on the basis of administrative autonomy (Bălan 1977, 49).

In Romania, it existed uninterruptedly, until the establishment of the totalitarian regime, when it was abolished by it, being considered, along with other institutions, incompatible with the political and legal specifics of this system. After 1990, it was re-established, but its legal situation has changed over time, as we will show below.

The Romanian Constitution (1991/2003) regulates the prefect in art. 123, from the content of which three great qualities of the prefect emerge, respectively: **Government representative in each county and in Bucharest; head of the decentralized public services of the ministries and other bodies of the specialized central administration and body supervising the observance of the law by the local public administration authorities**, being able, in case he finds some violations of the law to **notify the administrative contentious court**, and the action of the prefect attracts **the legal suspension of the contested act**.

As we have shown, **the status of the prefect**, and, implicitly, of his sub-prefect, oscillated between the **political prefect** and the **administrative prefect**, the first of the qualities being dominant. The prefect had the status of civil servant for a short time in the interwar period and then after 1990 until 2005 he was a political dignitary, because, through the amendments made, Law no. 188/1999 on the Statute of civil servants (republished in the Official Gazette no. 365/May 29, 2007), currently repealed by the Administrative Code, approved by Government Emergency Ordinance no. 57/2019 (published in Official Gazette no. 555/July 5, 2019) to be transformed into a senior civil servant.

The adoption of this Administrative Code was a remarkable legislative event for Romania, being among the few states in the world that managed to codify the administration, being, as a rule, the codification of the administrative procedure and the only state that codified the substantial administrative law (Vedinaş 2020, 21). In 2003, it was provided, through the amendments brought to the former law on the status of civil servants, that **starting with 2005**, the prefect and the sub-prefect become civil servants, and through **GEO no. 179/2005** (published in Official Gazette no. 1142/December 16, 2005), article II of this normative act provided that the *prefects and sub-prefects in function on the date of entry into force of the respective normative act will become senior civil servants, following the promotion of a function attestation exam*. Given that the specific political neutrality of absolute civil servants is **absolute political neutrality**, as they cannot be part of a political party under the sanction of dismissal, as well as **the function stability**, the governmental practice contradicted the normative framework, so that a situation was perpetuated over 15 years, stating that prefects and sub-prefects were targeted by frequent political changes, which led to a return to the situation of the **political prefect**, a fact achieved by the recent Emergency Ordinance no. 4 /2021 (published in Official Gazette no. 117/February 3, 2021).

Secretary General of the Prefecture. History and current legal situation

We considered it necessary to provide these aspects regarding the institution of the prefect, as a whole, in order to understand where the function of **general secretary of the prefecture** is positioned. Such a function is found in all central and local public authorities at central level, it is part of the category of **senior civil servants** (in the Romanian system, according to the level of responsibilities, civil servants are divided into three categories, executive civil servants, leading civil servants and senior civil servants), a category which, according to art. 394 of the Administrative Code, *performs senior management in public authorities and institutions*, and **at the local level**, there is the function of **secretary general of the administrative-territorial unit**, which is part of the category of **leading civil servants**.

At the level of the prefect's institution, there has traditionally been the function of **secretary general of the prefecture**, but it was abolished by the GEO no. 179/2005, which provided by art. IV that *“Starting January 1, 2006, the duties of the secretary general of the*

prefecture becomes that of sub-prefect.(2) The Secretaries-General of the prefecture in function on December 31, 2005, following the implementation of the competition organized for the respective public function shall be appointed as sub-prefects, from January 1, 2006. (3) From the date of entry into force of this emergency ordinance, the powers established by the normative acts in force in the competence of the general secretary of the prefecture shall be exercised by one of the sub-prefects, appointed by order of the prefect.”

In other words, **the function of secretary general of the prefecture was abolished**, the holders of that function were theoretically not expelled, their position was transformed into a sub-prefect function and appointed to this function. It was considered that **the prefect and the sub-prefect, becoming themselves senior civil servants, it would be excessive to have three holders of such functions in such an institution**, namely prefects, sub-prefects and secretary general. The solution was to have a prefect and a sub-prefect with this status.

The adoption of the Emergency Ordinance no. 4/2021 by which the prefect and the sub-prefect became political dignitaries again attracted a **paradigm shift in the edifice of this institution of constitutional rank**. We are considering, in the context to which we refer, **the re-establishment of the function of general secretary of the prefecture**. Thus, through art. 1 point 4 of this normative act that amends art. 265 of the Administrative Code, in the sense that four new paragraphs are introduced, which become paragraphs 11-14 and which have the following content: „(11) *At the level of the prefect’s institution, the function of general secretary of the prefect’s institution is established. The general secretary of the prefect’s institution is a senior civil servant and is directly subordinated to the prefect. (12) The general secretary of the prefect’s institution is a graduate of higher legal, administrative or political sciences. (13) The general secretary of the prefect’s institution ensures the stability of the functioning of the prefect’s institution, the continuity of the management and the realization of the functional connections between the compartments of the institution. The general secretary of the prefect’s institution supports the activity of the prefect in exercising the attributions provided in art. 255 and coordinates the specialized structure/structures through which these attributions are performed. The general secretary of the prefect’s institution supports the activity of the prefect in exercising the attributions provided in art. 255 and coordinates the specialized structure / structures through which these attributions are performed. (14) The attributions of the general secretary of the prefect’s institution are established by a decision of the Government at the proposal of the ministry that coordinates the prefect’s institution, with the approval of the ministry with attributions in the field of public administration.”*

The analysis of these new provisions shows the following dimensions of the legal status of the Secretary General of the Prefecture:

a) the holder of the function of general secretary is part of the category of **senior civil servants and is directly subordinated to the prefect**.

We thus understand that **the prefect is the hierarchical head of the general secretary**, with all the prerogatives that derive from this quality;

b) **the person who has completed higher legal, administrative or political education may perform this function**.

In our opinion, **it is not justified to add political studies** to legal and administrative ones, which have traditionally been imposed as a condition of access to this function.

We say this because **the responsibilities of the secretary general of the prefect’s institution directly concern the observance of the law, in general, and the exercise of legal control, in particular;**

c) the secretary-general plays a triple role:

- ensures stability and continuity in the functioning of the prefect’s institution, especially during periods when there are changes in the functions of prefect and sub-prefect, during changes in government. The prefect, being a representative of the Government in the

territory, it is clear that the change of the political structure of the Government attracts changes in the body of prefects and sub-prefects;

- realizes the functional connections between the compartments of the institution;
- supports the prefect in exercising the attribution of controlling the legality of the acts of the public administration authorities at county and local level.

In our opinion, it is one of the most important attributions of the general secretary of the prefect's institution, reason for which we previously appreciated that this function should be held only by persons who have legal or administrative studies, not political studies.

The attributions of the secretary general of the prefect are not provided in the Administrative Code, but in a decision of the Government, which is approved at the proposal of the Minister with attributions in the field of public administration.

We notice a difference of conception and vision compared to the function of general secretary of the administrative-territorial unit, for which the Administrative Code itself provides, in art. 243, the exercising attributions.

Conclusions

We appreciate that the re-establishment of the function of general secretary of the prefect's institution represents a legal-institutional solution that will improve the activity of this fundamental institution of the rule of law and of the public administration in Romania. As far as we are concerned, together with other authors, we have never shared the abolition of this function, which we considered essential for the proper functioning not only of the prefect's institution, but of the entire public, central and local administration. We say this because the prefect is the one who "makes the connection" between the central and the local power, and its proper functioning is beneficial for both types of administration. Therefore, we hope that the temporary abolition of the function of general secretary of the prefect's institution is the first and last "eclipse" in the existence of this function.

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