CONTROL ACTIVITY CARRIED OUT BY THE PREFECT. ROLE, MISSION, PERSPECTIVES

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Abstract

The prerogative of the control constitutes an efficient instrument in achieving managerial objectives at all levels and in all fields of activity and, by virtue of the professional experience that I have acquired, I have chosen to tackle one of these components, namely the control activity carried out by the prefect.

Bearing in mind the professional interest sparked by this theme, I have elaborated this article starting from the premise that the manner in which one deals with the subjected relating to the control activity carried out by the prefect will contribute, on the one hand, to a better understanding of the general control prerogatives of the prefect and, on the other hand, to raising awareness of the role held and/or to be acquired by the Prefect's Supervisory Body – as a structure specialised in implementing this attribute of an institution management.

Therefore, I have dedicated a section of this article to a concise presentation of the types of control exerted by the prefect, while in another section I will analyse this structure in detail. I consider that this analysis is useful both in terms of its applied character and for a better knowledge of the role of the Prefect's Supervisory Body.

The relevance of the subjected chosen for this article as well as the manner in which I have decided to approach it reside, in particular, in the relating conclusions which, once transposed in new normative acts/additions to the current legislative framework, will certainly trigger a better efficiency of the control activity carried out by the prefect.

Keywords: *control activity, Supervisory Body, managerial objectives, administrative instruments, efficiency.*

1. Evolution of Regulations on the Prefecture and the Control Exerted by the Prefect

1.1. Introductory Considerations. Identification and presentation of the main legal provisions regulating the prefect and the Prefecture

The prefect's position is regulated in the Constitution of Romania, republished, in Chapter V, Section II, dedicated to local public administration, article 123, entitled the "The Prefect": "(1) The government appoints a prefect in each county and the municipality of Bucharest. (2) The prefect is the local representative of the Government and manages the deconcentrated public services of the ministries and other bodies of the central public administration in the administrative territorial units. (3) The prefect's tasks are set by organic law. (4) The prefects, on the one side, the local councils and the mayors as well as the county councils and their presidents, on the other side, are not in a subordinate relationship. (5) The prefect may bring before a contentious-administrative court all and any act of the county council, local council or mayor in case the former deems such act to be illegal. The act challenged is rightfully suspended."

We can note that the "prefect" is defined in the section on local public administration. Nevertheless, the fact that the prefect is regulated in the section on local public administration, alongside with the mayor, the local council and the city council, does not mean that the former represents an authority of the local public administration.

The prefect and the prefecture form part of the central public administration, conducting activities at local level, notion which includes, according to par 2 article 123 of the Constitution, the deconcentrated services of the ministries and other bodies of the central public administration in local administrative units.

In Law no. 215/2001- Law regarding Local Public Administration, initial version, the "prefect" and "the prefecture" are defined as part of the ensemble of the public authorities carrying out local activities. Some changes were introduced by Law no. 188/1999, as amended by Law 161/2003, in the sense that it includes the prefect in the category of the high officials. Law no. 340/2004 regarding the prefect and the prefecture, by article 9^1, article 17^2, article 22^3, acknowledges the

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[1] Art. 9 (1) In performing tasks and exerting prerogatives set by the law for this position, the prefect is helped by 2 subperfects. The prefect of the municipality of Bucharest is helped by 3 subprefects.

(2) The subprefect's tasks are set by Government decision.

[2] Art. 17 According to the law, the prefect and the subprefect cannot be members of a political party or organisation falling under the same legal regime as political parties, under the sanction of their dismissal from such public positions.

[3] Art. 22 (1) In each county there is a prefectural college composed of the prefect, subprefects and heads of the deconcentrated public services of the ministries and other bodies of the central public administration under the Government, of which headquarters are in the respective county.

(2) Other persons whose presence is deemed to be necessary may be invited to the works of the prefectural college.

(3) The prefectural college is convened by the prefect, minimum one time a month and at any time necessary.

tendency to depoliticise the position of the prefect. Therefore, the prefect becomes a career public servant, subject to the general legislation on public servants and specific legislation on high officials.[4] In accordance with provisions of Law no. 340/2004 regarding the prefect and the prefecture, article 1"(1) The Prefect is the local representative of the Government. (2) The Government appoints one prefect in each county and the municipality of Bucharest, upon proposal of the Minister of Internal Affairs and Administrative Reform. (3) The Prefect is the guarantor of the respect for the law and order at local level. (4) The ministers and the heads of the other bodies of the central public administration under the Government may delegate the prefect some of their managing and controlling responsibilities in relation to the activity of the deconcentrated public services under them. (5) The responsibilities which may be delegated according to par (4) are set by Government decision [5].

In reference to the need of professionalizing the category of prefects and subprefects, one may see that it is currently difficult to do so, due to frequent replacements of the people holding this position. In fact, this reflects a profound instability in exerting positions (contrary to the legal provisions which require application of the principle of stability), the administrative incapacity to support continuity in exerting the position of local Government representatives and also lack of appropriate use of the skills and expertise of the persons appointed in such positions. It is important to respect the statute of the high official in correlation with application of the principle of mobility laid down by the Government Decision no. 341/2007 regarding inclusion in the category of high officials, career management and mobility of the public servants.

The body of high officials represents a means towards ensuring continuity and coherence of the administrative decisions required to implement the public policies, and the existence of a clear and constant will at superior levels of public service.[6]

Professionalisation of the functions of prefect and subprefect was promoted and endorsed as part of the commitments to modernising the public administration and depoliticising the public positions[7]. Due to the complex tasks set in the Constitution and the legislation and as a consequence of the important role played by a prefect in representing the executive power at local level, it was necessary to amend the statute and to integrate the prefect into the category of high officials, with implications on all criteria of access, in line and compliance with a series of technical prerequisites which should qualify these persons to fill in such an important position.

We may conclude that, in terms of the prefect's career management, there has been no unitary strategy. Arguments exist both for politicisation and depoliticisation of this position.

As a personal opinion and taking into consideration that the degree of accountability and responsibility is higher for the career prefect, who lacks political endorsement, than for the political prefect, we may state that the career prefect will be able to get involved in long-term projects and will find it easier to gain the trust of the institution's own apparatus. On a long-term, the potential changes of the Government should not lead to replacement of the prefects, who, in their capacity of professionals, should not have to face up to issues relating local monitoring and implementation of the governing programmes of various Governments. This is undoubtedly possible providing that the prefect, as High Official, has a sound professional background required to achieve the tasks laid down by the law as efficiently as possible and will prove to be beyond any suspicion in relation to potential political likes or preferences.

However, the reform of the Prefecture does not rely only on the attempts to depoliticise it. It also relies on the scope of responsibilities which are or will be included in the jurisdiction of this body of public administration. In terms of territorial jurisdiction, we may see that there is no overall model in the European Union states. Therefore, in Italy, for instance, the Government appoints a prefect as their representative in each large city, whereas in France, the territorial jurisdiction of the prefect is wider and circumscribed to a region. In addition, there are essential differences in reference to material jurisdiction. While some European Union states limit the prefect's prerogatives to monitoring the compliance of the acts of the local public administration, others, for example France, grant the Prefect extremely generous powers.[8]

Returning to the politicisation of the position, by the Draft Bill regarding the Administrative Code,

(4) The tasks of the prefectural college focus on the harmonisation of the activities of the deconcentrated public services located in the respective county, as well as the implementation of the programmes, policies, strategies and action plans of the Government at the level of the county and its localities and shall be regulated by Government decision.

[4] At present, the prefect and the prefecture are regulated by Law no. 340/2004, as amended by Government Emergency Ordinance no. 340/2004 regarding the prefecture. Government Emergency Ordinance no. 179/2005 was approved by Law no. 181/2006 and amended by Law no. 262/2007.

[5] No. 460 of April 5 2006 to enforce some provisions of Law no. 340/2004 regarding the prefect and the prefecture.

[6] Postelnicu, R.P., Proposals on Professionalizing the Position of Prefect, in Local Public Economy and Administration, no. 12/2002, page 30.

[7] An important step in the professionalisation of the prefect's position was taken in 2006, when, according to Article II of Government Emergency Ordinance 179 of 14 December 2005, "the prefects in office upon entry into force of the present emergency ordinance and also the ones who are to fill in vacancies after entry into force of the present emergency ordinance, but no later than 31 December 2005, may be appointed as prefects providing they sit for and pass an examination to attest this public function".

[8] Munteanu, C., Considerations on Organising and Developing the Prefecture in Romania, Transylvania Magazine for Administrative Law, no. 16/2006, pages 88-90

declared unconstitutional[9], the legislator intends to return to the politicisation of these two positions (prefect and subprefect), while the continuity of the activity within the Prefectures should be provided by the Secretary-General of the Prefect's Office. Nevertheless, the Draft Bill regarding the Administrative Code maintains the obligation of the prefect/subprefect to belong to the category of High Officials.

1.2. Control activity exerted by prefects in other European Union member states

In most European Union countries, there are state representatives at local level. They primarily hold positions of administrative police, general administration and monitoring compliance of local authorities' acts.[10]

In ***Belgium,*** the governor of the province is an organ of both the federal government and the province; he/she is appointed and revoked by the king, represents the federal government and chairs the meetings of the permanent delegations and the works of the interministerial commission which coordinates the deconcentrated services of the ministries. The governor is responsible for enforcing the federal, community and regional normative acts. It is generally admitted that he/she shall follow the instructions of the federal government and the governments of the communities and regions, within the limits of his/her powers. In this respect, he/she is supported by a clerk who is somehow the secretary-general of the province and therefore the highest official. As to conclude, in Belgium we can speak of a politicisation of the position of province governor.

In ***Germany,*** the president of the district is a public servant, politically elected, with a dual capacity: president of the district Assembly and head of the administrative apparatus in the district. As head of the administrative apparatus in the district, the president accounts for carrying out relating tasks. In terms of hierarchy, he/she is superior to district public servants and area state public servants at district level, considered as administrative constituency in charge of their activity. The administrative monitoring of the compliance of district acts is exerted by a deconcentrated intermediary body of the area state under the Minister of Internal Affairs of the Area State. In general, the compliance monitoring in Germany focuses on the compatibility of the municipalities' acts with the hierarchy of the legal norms arising from the federal state or the area state. This means a stricto sensu monitoring of compliance, which is concerned neither with the expediency nor with the discretionary power of the local authority acts.

In ***Luxemburg,*** the district commissioner is a state servant appointed by the Great Duke and reports to the minister of Internal Affairs. The district commissioners shall follow the instructions outlined by the members of the government. All commune administrations, except the city of Luxemburg, which is under the minister of Internal Affairs and the Government, are controlled by the district commissioners. Their tasks are varied and multiple. Thus, they pursue enforcement of laws and general and commune regulations and maintenance of order, safety and public peace.

In ***Portugal***, the civil district governor is appointed by the government within the council of ministers; he/she represents the government and exerts powers delegated by the minister of Internal Affairs. It is a tutelage authority and holds police and regulating positions.

In ***Denmark***, there is a surveillance office operating in each region. This office is composed of a prefect, the government's representative, and four members of the regional council, appointed by the former, and exerts a general administrative control, a posteriori, over the municipalities' acts.

In ***Finland***, there are six provinces organised at regional level as administrative and territorial constituencies of the state. Every province has a deconcentrated body entitled the provincial state office, managed by a governor who is appointed by the president of the republic. The governor manages the state services in the province and exerts administrative control over local communities, in accordance with the legislation in force. The provincial state office represents the most important executive and police authority of the province. It is in charge of maintaining law and order, in general, and enforces administrative decisions and court decisions. The provincial state office forms part of the state administration hierarchy, seeks to inform the local administration with regard to the central government's policies and supervises the impact that the implementation of such policies has at local level.

In ***France***, the prefect is categorised as commissioner of the republic and is appointed by decree of the council of ministers signed by the president of the Republic. In the French doctrine[11], it is considered that the prefect holds the following positions: representative of the state; representative of the government; general administration authority and head of the state services in the department. In their capacity of government representatives, "the prefects are expected to be politically loyal to a higher degree than other categories of public servants. This does not mean that they are recruited on political bases. If the government often takes into consideration the elective

[9] Decision no. 681/06.11.2018 sentenced by the Constitutional Court of Romania unpublished in the Official Gazette.

[10] Apostol Tofan, D., "Jurisdictional Control over the Romanian Public Administration. Comparative Analysis with Other European States (II)", 2009, Studies on Romanian Law, vol. 4, pages 351-381.

[11] J. Rivero, Droit administratif (ed. a XII-a), Paris, Dalloz, 1987, p.431-434. 101 J. Rivero, J. Waline, Droit administratif (16th edition), Paris, Dalloz, 1996, page 318 and following

affinities when assigning them to different positions, the prefectural body is, above all, a body of public servants[12]. The dual nature of the position of prefect, i.e. political and administrative, who is both "government's representative" and in charge of large administrative issues, imposed, in terms of its statute, an initial option: either the government could decide to keep such representatives at their "discretion", which would have implied refusal of all and any guarantee in terms of career; or, inversely, the government could choose to consider such representatives as experts in administration, which would have implied a certain professional background and guarantees for stability.

In ***Austria*** **-** federal state, at the district level – an administrative-territorial constituency which represents a level of deconcentration for both the area state and the federation, there is a prefecture, body of the area state and the federation, which performs their administrative tasks and supervises the activity of the commune administrations. Appointed by the head of the area state government, the prefect represents the area state and the federation and exerts administrative monitoring of compliance, a posteriori, over the acts of the commune authorities.

As to conclude, there is no unitary policy in the European Union states either, while the politicisation/depoliticisation of the prefect's position/relating similar bodies in various states resides in the administrative stability/instability.

1.3. The Prefecture in the context of Romania's integration into the European Union

After the integration into the European Union, on 1 January 2007, Romania entered a new stage of institutional development, as the European Union generated a certain type of institutional and administrative relationships for which the Romanian state was forced to create new procedures and even new institutions. Romania became part of a political and economic union of which member states were built in compliance with some firm principles regarding: existence of a democratic framework, compliance with the common legislation, underpinning of some autonomy principles and the principle of subsidiarity. Romania had to build institutions and amend regulations so that the time of the integration should not catch the state institutions unprepared. [13]

The reforms in the public administration, improving the relating rights, responsibilities and jurisdiction, may be deemed as key elements in the efforts made to increase the degree of performance of public administration and to harmonise them with the requirements imposed to Romania by its status of member state of the European Union. Special attention has been attached to the process of implementing the legal norms, initially abstract and included in various regulations. The measures to prepare, organise enforcement and actually enforce the law, which are obligations incumbent on the public administration, have therefore been enhanced.[14]

To achieve a modern system of public sector management and to accelerate the reform process, the reform of the public position was also required, and implicitly reform of all public positions managing the public administration at higher levels, including the prefect and the subprefect, towards increasing their role and refining harmonisation of such role with other constitutional and legal constraints: the relationship between the government and the local authorities, i.e. relationships which emerge in exerting governmental functions, the manner in which the prefect perform his/her control of compliance by challenging the administrative acts of local public authorities in courts of law. Within this framework of preparation for the adhesion to the European Union, it became urgent to update the norms regarding the prefect and the prefecture. By 2004, the prefect was a high official of the Romanian state, political position intended to locally represent the Government. Turning the position of prefect into a career public servant was initiated by amendments and supplements brought to Law no.188/1999 regarding the Statute of the Public Servant, which materialises the provisions of Law no. 161/2003 regarding some measures to provide transparency in exerting public offices, public positions and in the business environment, prevent and sanction corruption. They refer to setting forth a new category of public servants, i.e. high officials. Therefore, Law no. 161/2003 set forth in article 11 letters d), e) and f) that the prefect, the subprefect and the secretary general of the prefecture were considered to be as of that time high officials of the state. This category of public position was to be regulated at a later date, and, effective 2006, the persons were to be appointed in the positions abovementioned. The amendment focused on the substance and the need to turn the prefect into a career public servant.

It should be noted that, in reality, the status of high official has never materialised to its real value set forth in normative acts. The status was rather a formal one. The access to the category of high officials, though regulated by law, was steadily obstructed by governments between 2016 and 2018, when the National Institute of Administration was re-established. In addition, the arguments and the criteria considered by the legislator in relation to accessing the body of high officials stopped representing a standard to those interested in having access to the highest category of

[12] Vedinaș, V., Cristea, S., Structure of the Public Position in Romania. Comparative Study with France, in "Public Law Magazine", no. 1, 2003, page 34.

[13] Analysis on the Legislative Framework Regulating the Prefecture in Romania in the light of the Tasks, Administrative Instruments Held, Incompatibilities, ANFP, January 2013, page 4, available at www.anfp.gov.ro

[14] Manda, C.C., Implementation of the Acquis Communautaire – Essential Coordinate for Implementing the Criterion of Administrative Capacity in the Process of Romania's Integration into Europe, Legislative Newsletter, no. 1, 2005, page 8.

public servants, precisely due to the instability of such positions. Irrespective of the position we refer to, namely secretary general, deputy secretary general, prefect, subprefect or governmental inspector[15], the capacity of high official was only a requirement for appointment, the criterion being in fact political.

Still in relation to the position of prefect, we enumerate below some relevant situations for a better understanding of the fact that appointment in or dismissal from this position has always been related to politics, whether the governments at power admitted it or not. In 2009, the Boc Cabinet brings back an older practice of the governments: tens of prefects, heads of deconcentrated institutions, managers of state-owned companies and employees of ministries, are replaced on political criteria. Although these positions had been depoliticised by PD-L in 2006, in accordance with a law furthered by Vasile Blaga, Prime Minister Emil Boc publicly declared that the prefect should be a politician, a person that the party could trust. The second wave of replacements aimed at management positions within deconcentrated institutions.

In 2016, the Cioloș government reviewed the activity of the prefects and conducted an analysis of their behaviour, both in terms of their capacity to react and their desire not to get involved in political campaigns. Following this assessment, a significant number of prefects were replaced. The spokesperson of the Cioloș government, Dan Suciu, explained that "Considering the short timeframe, the Government will not be able to prepare a contest-based employing procedure. Therefore, the new prefects will be appointed based on a selection from among the high representatives of the Government or the persons who have had good results in their activity as managers in public administration and who will not be politically active in the future. Thus, in the shortest timeframe possible, a significant number of prefects will be replaced".

We may conclude that, even though part of the European Union, Romania has continued, through the governments in power, to make an assessment based rather on political criteria and in line with the best interests of their local representatives, and developed a "chaotic" reform of the public administration.

In the context of Romania's holding the rotating presidency of the Council of the European Union, January - June 2019, as well as through the adoption of the Administrative Code assumed in the Governing Programme, the reform will certainly continue its course. Some changes with regard to the prefect and the prefecture as part of the central public administration are already visible.

2. Role and Mission of the Control Activity Carried out by the Prefect. Theoretical and Practical Aspects

2.1. Presentation of organisational structure of the prefecture in terms of control-related tasks

In accordance with the provisions of the Constitution of Romania, Law no. 340/2004 regarding the prefect and the prefecture, republished, as amended and supplemented by Government Decision no. 460/2006 for enforcement of some provisions of Law no. 340/2004 regarding the prefect and the prefecture, as amended and supplemented**, the Prefecture is organised and functions, in each county, as a public institution with legal personality, intended to carry out duties and prerogatives legally-established for the position of prefect.**

The activity of the institution is managed countywide by a managerial team composed of the County's Prefect and Subprefect. In this exercise of his/her duties, the prefect has a specialised apparatus organised by prefect's order into services and departments broken down by activities.

The staff of the institution is represented by public servants, public servants with special status and contract staff. The Prefecture's services/departments conducting control activities are:

Contentious Department, Compliance Monitoring, Apostile which exert control over:

- enforcing and observing the Constitution, laws and other normative acts,
- compliance of administrative acts adopted by the local public administration authorities,
- compliance with measures taken by the mayor and the president of the County Council, as state representatives in local administrative units.

Governmental Programme Service, Management of Deconcentrated Services which exert control of:

- compliance with measures taken by the mayor and the President of the City Council, as state representatives in local administrative units,
- implementation of measures taken to prevent emergency situations or adoption of some emergency measures in case of occurrence of emergency situations.

Additionally, this structure conducts thematic and unannounced checks within deconcentrated institutions of the county.

Public Relations, Secretariat and Land Registry which checks compliance with measures taken by mayors or secretaries of the local administrative units with regard to compliance with and enforcement of the legal provisions on land issues.

The Prefect's Supervisory Body. The control activity carried out by the Prefect's Supervisory Body

[15] This category of high officials has been massively developed due to the mobility of the function of prefect. The category of governmental inspectors has proven inefficient in the light of the administrative needs; their activity was formal within the General Secretariat of the Government. As former prefects and subprefects replaced from their functions, they had been assigned doubtful tasks, being difficult to be trusted by the government.

will be enlarged upon in Chapter III of the present paper.

2.2. Types of control exerted by the prefect

2.2.1. Control regarding enforcement and compliance with the Constitution, laws and other normative acts

With regard to control of enforcement and compliance with the Constitution, laws and other normative acts, it should be stated that the prefect carries out this activity by virtue of provisions laid down in article 19 par 1 letter a) of Law no. 340/2004, according to which the prefect seeks enforcement and compliance with the Constitution, laws, Government ordinances and decisions and other normative acts, as well as maintenance of law and order at county level. The monitoring procedure is carried out both through monitoring of compliance of administrative acts submitted to the prefecture and checks at the headquarters of the local public administration authorities.

2.2.2. Control regarding implementation of Government Programme objectives at county level

As local Government representatives, the prefects shall ensure compliance with policies included in the Governing Programme and appoint control commissions to check how such Government-assumed objectives are implemented countywide.

In partnership with the deconcentrated public services and structures of other bodies of the central public administration, autonomous administrations and national companies represented in the county, the Prefect draws up and approves, on an annual basis, the County Action Plan to implement the objectives included in the Governing Programme.

The action plan prepared by the Prefecture comprises chapters and actions for the following sectors of activity: Taxation, Budget, Consumer Protection, European Funds, Tourism, Work and Social Justice, Education, Health, Public Administration, Agriculture and Rural Development, Environment, Waters and Forest Protection, Internal Affairs, Culture, Youth and Sport, Miscellaneous. The Prefecture undertakes some control activities with a view to implementing the objectives included in the Action Plan. The Prefecture reports to the Ministry of Internal Affairs, on a quarterly basis, the performance ratios applicable to this Plan, which, due to its public nature, is posted on the website pages of the Prefecture.

2.2.3. Control regarding the monitoring of compliance of administrative acts adopted by local public authorities

The control exerted by the prefect over local communities is closely related to the already-established principle of local autonomy:

a) At European level, in article 8 point 2 thesis I of European Charter of Local Self-Government, ratified by Romania in Law no. 199/1997, which provides that:

"1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities. 3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect"[16]

b) At national level, it is regulated in article 123 (5) of the Romanian Constitution[17], as republished and defined in article 3 (1) of Local Public Administration Law no. 215/2001, as republished and supplemented, as being *"the right and the actual capacity of local public administration authorities to settle and manage, on behalf of and to the best interests of the local communities which they represent, the public affairs, in compliance with the legislation in force"*. The autonomy of the local authorities is contingent on the legal framework in which they evolve, namely the skills and resources they have, as well as the control mechanism applicable to them.

Furthermore, the administrative tutelage exerted by the prefect is regulated in: article 115 (7) of Law no. 215/2001– Local Public Administration Law[18], republished, as amended and further supplemented, article 19 (1) letter e) of Law no. 340/2004[19], article 3 (1) of Contentious-Administrative Law no. 554/2004[20], as amended and supplemented. The subjected matter of the legal action grounded on provisions of article 3 (1) of Law no. 554/2004, refers to the type of juridical acts subjected to the monitoring of compliance exerted by the prefect, on the one hand, and, annulment, in full or in part, of the act deemed illegal and forcing performance of tasks as provided by the law, on the other hand. The prefect may not claim damages, as the

[16] The European Charter of Local Self-Government, ratified by Romania in Law no. 199/1997

[17] Constitution of Romania, revised in 2003, republished in the Official Gazette of Romania, Part I, no. 767 of 31 October 2003.

[18] Local Public Administration Law no. 215/2001, republished in the Official Gazette of Romania, Part I, no. 123 of 20 February 2007, as amended and supplemented.

[19] Law no. 340/2004 regarding the prefect and the prefecture, republished in the Official Gazette of Romania, Part I, no. 225 of 24 March 2008, as amended and supplemented.

[20] Contentious-Administrative Law no. 554/2004, republished in the Official Gazette of Romania, Part I, no. 1154 of 7 December 2004, as amended and supplemented.

law - article 8 (1), grants this right only to natural or legal persons.

In the Romanian regulations, monitoring compliance of the administrative acts is seen as a liberal form of supervising the local communities, in which the tutelage authorities are not entitled to annul the act; they may only challenge it before Contentious-Administrative Courts, which are the only institutions which may apply such sanction. The local self-government may not be interpreted as representative of sovereignty and independence, whereas the local communities are neither outside nor independent from the state, which continues to fully exert its sovereignty over local territorial communities. Although the purely administrative nature of the local autonomy is visible in our country, in reality, this is regulated as a counterweight of the central autonomy, representing the key, direct link between the citizen and the state.[21]

The Constitutional Court has constantly stated[22] that the principle of local self-government does not imply a full independence and an exclusive jurisdiction of the public authorities in the local administrative units, which are further forced to comply with general regulations, applicable throughout the country, and legal provisions adopted in order to protect the national interests, as the legal framework is generally mandatory. If local autonomy represents a right, the administrative decentralisation represents a system implying such autonomy. The administrative decentralisation cannot exist in unitary states without an oversight by the state, oversight which the doctrine denominated as "administrative tutelage". This regards only compliance with the administrative acts, and not their expediency.[23] In the organisational and functioning system of the local public administration authorities applicable to Romania, the administrative tutelage materialises in the correlative right and obligation of the prefect, as local Government representative, to challenge in contentious-administrative courts the acts deemed illegal.

The subjected matter of the legal action grounded on provisions of article 3 (1) of Law no. 554/2004, as amended and supplemented, refers to the type of legal acts subjected to the monitoring of compliance exerted by the prefect, on the one hand, and, annulment, in full or in part, of the act deemed illegal and forcing performance of tasks as provided by the law, on the other hand. The prefect may not claim damages, as Law no. 554/2004 – article 8 (1), as amended and supplemented, grants this right only to natural or legal persons.

With regard to the category of acts appealed by the prefect in contentious-administrative courts as part of his/her right to exert administrative tutelage, the jurisprudence of courts in this matter has been different for a long time, despite the fact that, as early as 2008, the Constitutional Court had ruled in this respect[24]. In a first jurisprudential sense, the courts acknowledged that the prefect may appeal before contentious-administrative courts only the acts falling under the scope of those regulated by article 2 letter c) of Law no. 554/2004, as amended and supplemented, grounded on the fact that the prefect may not appeal administrative acts concluded by public local administration authorities with other subjects of law, which entail some civil rights and obligations, without exercise of public power. In another jurisprudential sense, the courts considered that the prefect is entitled to challenge before contentious-administrative courts all and any illegal acts issued by local public administrative authorities such as decisions made by the mayor with regard to waging of the contractual staff, remunerated from public funds. The issue was settled by the High Court of Cassation and Justice, which had been addressed on grounds of article 519 of Civil Procedure Code, which ruled that "in accordance with article 3 of Contentious-Administrative Law no. 554/2004, as amended and supplemented, corroborated with provisions of article 63 (5) letter e) and article 115 (2) of Local Public Administration Law no. 215/2001, republished, as amended and supplemented, and of article 19 (1) letter a) and letter e) of Law no. 340/2004 regarding the prefect and the prefecture, republished, as amended and supplemented, and of article 123 (5) of Constitution, the prefect is acknowledged to have the right to appeal before contentious-administrative courts all administrative acts issued by local public administration authorities, within the meaning of provisions of article 2 (1) letter c) of Contentious-Administrative Law no. 554/2004, as amended and supplemented"[25]. In ruling so and by virtue of the jurisprudence of the constitutional contentious court[26], the High Court acknowledged that, pursuant to article 1 (3) of Law no. 340/2004, republished, as amended and supplemented, the prefect is the guarantor of the respect for the law and order at local level. In addition, only the administrative acts may be issued as public power, which gives them the attribute of being appealed by the prefect, providing that the latter deems them to be illegal; if the act relates to civil law, commercial law or labour law, it will be impossible to censor it in contentious-administrative court; in this case, the act

[21] Voicu, B., Șuța, Șt., Subsidiarity and Local Self-Government – Principles of Administrative Organisation, Transylvania Magazine for Administrative Sciences no. 14/2000, page 99.

[22] Constitutional Court, Decision no. 573/04.05.2010, Official Gazette of Romania, no. 410/21.06.2010, Constitutional Court, Decision no. 558/24.05.2012, Official Gazette of Romania, no. 382/07.06.2012

[23] Dragoș, D. C., "Debates on Annulment of an Administrative Act due to Lack of Expediency", 2004, Transylvania Magazine for Administrative Sciences, no. 1(10), pages 30-33.

[24] Constitutional Court, Decision no. 1353/2008, Official Gazette of Romania, no. 884/29.12.2008

[25] High Court of Cassation and Justice – Panel for settling some law issues, Decision no. 11/2015, Official Gazette of Romania, no. 501/08.07.2015

[26] Constitutional Court, Decision no. 1353/2008, Official Gazette of Romania, no. 884/29.12.2008

may be challenged only before courts with jurisdiction in these matters. The court also stated that article 123 (5) of the Constitution refers to "an act of the county council (the case under discussion), local council or mayor", without referring to such acts as falling under a certain category. Nevertheless, the text may not be read or interpreted in a truncated manner, namely without taking account of the fact that it also provides that "the prefect may appeal an act in a contentious-administrative court, (the case under discussion) (…)". As a consequence, the administrative tutelage exerted by the prefect relates to the contentious-administrative, as laid down in Law no. 554/2004, as amended and supplemented. Or, the provisions of law no. 554/2004, as amended and supplemented, limit the oversight exerted by contentious-administrative courts in relation to the administrative act, as it is defined in article 2 (1) letter c) of this normative act. Therefore, one may unequivocally conclude that the prefect may appeal in contentious-administrative courts, by virtue of article 3 (1) of Law no. 554/2004, as amended and supplemented, only the acts issued by public administration authorities, as these are the only acts issued on grounds of exerting a public power, in order to meet a public legitimate interest, within the meaning of article 2 (1) letter b) of Law no. 554/2004, in performing the administrative jurisdiction for which a public authority is responsible.

A first analysis could help us to conclude that only the prefect had the active capacity to stand trial in the legal action filed pursuant to article 3 (1) of Law no. 554/2004, as amended and supplemented. However, in the court practice, there were some attempts to enlarge the scope of the plaintiff's capacity in relation to a certain legal action, with the main reference to the mayor of the administrative-territorial unit. In 2002, the Constitutional Court ruled in relation to the fact that, according to article 123 (5) of Constitution, only the prefect, and not the mayor, has the standing to appeal the acts of the local council which he/she considers to be illegal. Moreover, according to the law, "the mayor is authorised to represent the administrative-territorial unit in court, but this provision aims only at relationships between local communities and third parties, and not the ones with the local council, which is a body of the administrative-territorial unit, as the mayor is, and has the same legitimacy as the mayor"[27]. Nevertheless, the courts required to settle such litigations have ruled differently, which determined the High Court of Cassation and Justice, addressed in accordance with article 519 Civil Procedure Code, to set that "pursuant to Local Public Administration Law no. 215/2001, republished, as amended and supplemented, and Contentious-Administrative Law no. 554/2004, as amended and supplemented, the administrative-territorial unit, by virtue of its executive authority, respectively the mayor, is not entitled to challenge before the contentious-administrative courts the decisions adopted by its deliberative authority, i.e. the local council or, where appropriate, the General Council of the Municipality of Bucharest"[28] . The High Court has also ruled that it is presumed that both the deliberative authority (local council) and the executive authority (mayor) aim at the pre-eminence of the public interest and the compliance with the local community's needs, a purpose which is presumed to be served by exercising the exclusive and shared jurisdictions of the two local public authorities, as regulated by Law no. 215/2001, republished, as amended and supplemented. The compliance of the acts issued by the two public authorities is ensured through performance of the tasks of the secretary of the local administrative unit and the monitoring of administrative tutelage exerted y the prefect. As already asserted in the jurisprudence of the supreme court, "the acts issued by the local council and the mayor have an independent nature, neither of these two authorities being allowed to directly file an appeal against the other symmetric authority; the only public authority authorised to do so is the prefect"[29]

As the administrative tutelage control is set forth to be express and limitative, as a prerogative of the prefect, the court does not however have the possibility to interpret and therefore assign some public authorities prerogatives which were not laid down by the legislator. The Constitutional Court considered that, in case a litigating party criticises the manner in which the contentious-administration court interpreted and enforced the law which entitles the prefect to exert control of administrative tutelage in relation to the legal action taken to court, the latter is "to analyse and assess, depending on the nature of the administrative act subjected to compliance, as well as other concrete circumstances, whether the prefect has a an active legal standing in the respective situation or not". [30]

In its jurisprudence, the Constitutional Court has steadily asserted that the action of the prefect, regulated by article 123 (5) of the fundamental Law, is constitutionally subjected to no conditionality or limitation, and is therefore essentially different from the legal action in contentious-administrative court

[27] Constitutional Court, Decision no. 66/2004, published in Official Gazette of Romania, no. 235/17.03.2004; Constitutional Court, Decision no. 356/2002, published in Official Gazette of Romania, no. /03.03.2003.

[28] High Court of Cassation and Justice - Panel for settling some law issues, Decision no. 11/2015. In the litigation which led to this decision by the High Court, the plaintiff Municipality of Bucharest, by general mayor, requested annulment of a decision made by the General Council of Municipality of Bucharest. In the grounds of the decision, the supreme court acknowledged that, although the mayor is entitled to act and may be summoned to court as representative of the public law entity, namely the administrative-territorial unit, on the one side, neither the provisions of Law no. 215/2001, republished, as amended and supplemented, nor the ones of Law no. 554/2004, as amended and supplemented, set forth expressis verbis the right of the administrative-territorial unit to challenge before the contentious-administrative court the resolutions adopted by its deliberative authority, and the acknowledgment of such right may not be concluded by way of interpretation, on the other side.

[29] Supreme Court of Justice – Mixed Departments, Decision no. IV/2003.

[30] Constitutional Court, Decision no. 1369/2011, published in the Official Gazette of Romania no. 14/09.01.2012.

initiated by an aggrieved citizen or a legal person, in which case the organic law may set forth exercising conditions and limits [31].

According to the law and in relation to the legal action taken to court by the prefect, the preliminary complaint is not mandatory, as regulated by article 7 (1) of Law no. 554/2004, as amended and supplemented. Moreover, this is exempted from the stamp tax. In line with the opinions expressed in the doctrine, we consider that, for the legal action to be admitted by the court, the prefect should provide evidence of a legal interest in the matter as, for instance, the former would have no interest in having an administrative act which is no longer enforceable (such as a demolition permit) annulled[32]. In terms of the timeframe within which the prefect may challenge the administrative acts which he/she deems illegal, article 3 (1) of Law no. 554/2004, as amended and supplemented, makes references to a six-month timeframe set forth in article 11 (1) of the same normative act, without outlining a distinction between individual administrative acts and normative acts. We mention that we acquiesce to the statements expressed by several specialists[33], according to which the time limits for filing a complaint is six months or, where appropriate, one year from acknowledging the act as illegal, in case of some individual administrative acts. The provisions of article 11 (1) are to apply to normative acts as well, given that the law includes an exclusive reference to this paragraph, which is thus different from the option of any entity whose legitimate rights and interests were aggrieved to appeal the normative administrative act at any time, by virtue of article 11 (4) of Law no. 554/2004, as amended and supplemented.[34]

Bearing in mind that an important component of the prefect's control activity is represented by the compliance monitoring, on a half-year basis, the Prefectures remit the Ministry of Internal Affairs – General Department for the Relations with the Prefectures, the report on the monitoring of compliance of acts issued by local public administration authorities.

2.2.4. Monitoring of compliance with measures taken by mayors and presidents of the County Council, as representatives of the state in local administrative units

When monitoring the administrative measures issued by local public administrative authorities, the prefect seeks:

- compliance with procedures and deadlines for convocation of the local council (in writing, minimum 5 days in advance, in case of ordinary meetings, and minimum 3 days in advance, in case of extraordinary meetings) according to provisions of Law. 215/2001, as amended, prerequisites of Law no. 52/2003 and provisions of Government Ordinance no. 35/2002, as amended;
- compliance with legal provisions on quorum provided by the law for adoption of resolutions, as follows:
- majority of counsellors in office in case of adopting resolutions regarding the local budget and local taxes, resolutions on contracting loans, in accordance with the law, resolutions on taking part to county or regional development programmes or cross-border cooperation programmes, resolutions on urban organising and developing of localities and urban planning or cooperation with other public authorities, Romanian or foreign legal persons.
- duly majority (2/3 of counsellor in office) when adopting resolutions regarding patrimony;
- provided the resolutions adopted by the local council are countersigned, for compliance, by the secretary of the local administrative unit, and when the secretary considers that the resolutions made are not legal he/she shall submit written resolutions;
- communication of the administrative acts adopted by the local council and the mayor to the prefecture: the resolutions adopted shall be promptly remitted to the prefect, within maximum 10 working days of adoption. Should the secretary deem the resolutions to be illegal, remittance shall be supported by his/her written objections. The mayor's decisions endorsed for compliance shall be remitted within maximum 5 working days of the day the prefect signs them. In the event that decisions are deemed illegal, the remittance shall be supported by the secretary's written objection.

The secretaries of the local administrative units will be assisted by Supporting Commissions established within Prefectures so that they should ensure compliance with legal provisions concerning all administrative actions taken by the mayor and the president of the County Council, as representatives of the state in the local administrative units.

2.2.5. Monitoring implementation of prevention measures relating to emergency situations or adoption of emergency measures in the event of occurrence of such emergency situations

The County Committee for Emergency Situations is a supporting interinstitutional body of emergency situations management at county level.

The County Committee reports to the National Committee for Special Emergency Situations, is the head of municipal, town/city/village committees for Emergency Situations and cooperates with the Crisis Action Teams established by companies which are exposed to hazard in case of disasters.

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[31] Constitutional Court, Decision no. 314/2005, published in the Official Gazette of Romania no. 694/02.08.2005; Constitutional Court, Decision no. 74/1995, published in the Official Gazette of Romania no. 220/16.03.2005; Constitutional Court, Decision no. 137/1994, published in the Official Gazette of Romania no. 23/02.021995.

[32] Dragoș, D.C., Contentious-Administrative Law. Comments and Explanations, 2nd edition, Bucharest: C.H. Beck, 2009, page 149.

[33] Apostol Tofan, D., Administrative Law, 1st vol., 3rd edition, Bucharest: C.H. Beck, 2014, page 368; Dragoș, D.C., Contentious-Administrative Law. Comments and Explanations, 2nd edition, Bucharest: C.H. Beck, 2009, page 143; Iorgovan, Treaty on Administrative Law, 2nd vol., Bucharest: Nemira, 2006, page 158

[34] High Court of Cassation and Justice – Contentious-Administrative and Fiscal Department, Decision no. 3836/2010.

The County Committee for Emergency Situations is set up and operates in accordance with the legislation in force, under the direct coordination of the prefect, as president, and two vice-presidents, i.e. the president of the County Council and the Chief Inspector of the Inspectorate for Emergency Situations of the county. [35]

3. The Prefect's Supervisory Body

3.1. Legal Framework

With regard to the legal framework applicable to the activity carried out by the Prefect's Supervisory Body, we have taken into consideration as relevant the prerequisites of the article 1 par 2 which establish, by way of example, the tasks relating to management and supervision which, according to article 1 par 4 of Law no. 340/2006, the ministers and heads of the other central public administration bodies under the Government may delegate to the prefect. Therefore, the prefect may be delegated tasks and responsibilities pertaining to verification of how public funds allocated to deconcentrated public services are used or implementation of objectives comprised in the sectoral strategies.

Following analysis of the provisions of Government Decision no. 460/2006 and comparing them to provisions of Government Decision no. 1019/2003 regarding organisation and functioning of the prefectures, normative act in force until the publication of the norms set forth in Law no. 340/2004, we can see that they no longer enlarge on the activities carried out by the specialised structures in performing the prefect's tasks.

At present, the enumeration of the tasks of the specialised structures within the Prefectures is not explicit when referring to the tasks of the Prefect's Supervisory Body. These tasks may be generically found in article 6 par 1:

1. in terms of enforcement of and respect for the Constitution, laws and other normative acts:

a) they participate, alongside representatives of deconcentrated public services, to actions of verification, in line with their prerogatives, of how normative acts are enforced and complied with at county level, respectively the Municipality of Bucharest, within some joint commissions established by prefect's order;(...)

2. in terms of compliance of administrative acts adopted or issued by local public administration authorities and contentious administrative:

a) they conduct, in accordance with the law, verifications on implementation of the measures taken by the mayor and the presidents of the country council, respectively the president of the General Council of the Municipality of Bucharest, as representatives of the state in the local administrative, including verifications at the headquarters of the local public administration, and submit the prefect, where appropriate, proposals on referrals to competent bodies;
b) they conduct activities intended to guide mayors in relation to performance of the tasks delegated to and executed by them on behalf of the state."

Additionally, article 7 stipulates that "the prefect may order further tasks intended to the specialised structures of the prefecture."

Pursuant to provisions of Government Decision no. 416/2007 regarding organisational structure and the resources of the Ministry of Internal Affairs, as amended and supplemented, the prefecture is an institution reporting to the Ministry of Internal Affairs.

As a consequence, it should be noted that the provisions of Order no. 138/2016 apply to all categories of staff within the Ministry of Internal Affairs, including the Prefect's Supervisory Body. This normative act sets forth general rules regarding the jurisdiction and stipulates norms regarding organisation and conduct of controls.

The Prefect's Supervisory Body within the Prefecture of Dâmbovița County, equipped with two public execution functions, is constituted as a structure under the direct subordination of the Prefect, with a view to exercising the prefect's prerogatives laid down in the normative acts.

Chapter III of the Internal Rules and Regulations entitled "Supervisory Body" presents the main responsibilities of this department:

a) conducts in accordance with the law, activities of verification, support and guidance relating to the sphere of competence of the prefect;
b) cooperates with the local public authorities and competent public institutions;
c) checks the referrals remitted to the prefect in relation to which the settlement of the matters referred imply a high degree of difficulty;[36]
d) prepares reports to inform the prefect on the actions taken;
e) carries out all and any other tasks assigned by the prefect.

[35] By way of example, in 2018, the County Committee for Emergency Situations within the Dambovița Prefecture was convened in 20 meetings (2 extraordinary and 18 ordinary) with a view to discussion prevention and management of emergency situations. As a consequence, 18 actions were adopted. In relation to management of emergency situations and as president of the County Committee for Emergency Situations, the prefect issued 3 orders and approved 2 action plans.

[36] In 2018, the Prefect's Supervisory Body - Dâmbovița conducted checks which may be grouped as follows:

- Checks focused on aspects regarding the activity of the local administrative unit de control. They checked measures taken by the mayor, as representative of the state in the local administrative unit. They also sought to guide the mayor in performing his/her tasks delegated and executed on behalf of the state and to check aspects regarding petitions.
- Checks focused on aspects of the activity of the deconcentrated institutions in Dâmbovița County.
- Checks focused on aspects regarding activity of some economic operators in Dâmbovița County, as a result of some issues petitioned.

Following an overall analysis of Law no. 340/2004 and Government Decision no. 460/2006, we may conclude that the current normative acts no longer regulate the activity of the Prefect's Supervisory Body in a distinct manner. His/her prerogatives are established by comparison to the general norms which we have outlined above.

3.2. Activity of the Supervisory Body

In conducting their activities, the Prefect's Supervisory Body shall comply with the Order of the Ministry of Internal Affairs no. 138/2016 regarding organisation and conduct of monitoring within the Ministry of Internal Affairs, as amended and supplemented, normative act which lays down general rules on the jurisdiction and sets forth norms on organisation and conduct of checks. This leads us to a detailed approach of such rules and norms. It is equally important and opportune to pinpoint the relevant aspects arising from the current activity of such supervisory structure.

To begin with, it is important to bear in mind the types of checks which may be organised and conducted. Therefore, according to article 4 par 2 of the order, these are:

a) inspection – which means the general check ordered, at a higher level, by the minister of internal affairs which seeks a complex, multidisciplinary examination of the activity carried out by the entity under the Ministry of Internal Affairs, with a view to assessing how the tasks outlined by strategic or own plans are performed and how the objectives planned are implemented. In addition, it seeks to evaluate the skills and the capacity of the leader of the entity under the Ministry of Internal Affairs or other persons in leadership positions, who are directly appointed by the management of the Ministry of Internal Affairs or by persons at higher levels, and to identify and correct all and any deficiencies, dysfunctions or irregularities found;
b) background check – which means the check ordered by the leader of the entity under the Ministry of Internal Affairs, with a view to assessing the activity of the reporting structures or the structures coordinated and controlled in accordance with the methodology, the skills and the capacity of the persons in leadership positions within such structures, identifying and correcting deficiencies, dysfunctions and irregularities found;
c) thematic check – which means the verification seeking to find, analyse, evaluate, guide and/or support a certain activity/certain activities;
d) unannounced check – which means the fully operational verification aiming at identifying some potential deficiencies in relation to compliance, accuracy and correctness of tasks performed at the level of an entity under the Ministry of Internal Affairs"

3.2.1. Jurisdiction

In terms of jurisdiction, we mention that the monitoring structures, defined as "direction, service, office or department with control tasks, established at the level of an entity under the Ministry of Internal Affairs, except the Minister's Supervisory Body" – art. 3, letter c) – are structures of which jurisdiction is to conduct checks at the level of both an entity under the Ministry of Internal Affairs within which they are organised and the structures reporting to, coordinated and controlled by them, in line with methodologies in force. By virtue of provision of article 8 par 2, "the monitoring structures conduct background checks, thematic checks and unannounced checks at the headquarters of the entity under the Ministry of Internal Affairs to which they belong and the ones reporting to them."

3.2.2. Procedure

In reference to the procedural aspects, in accordance with provisions in Chapter IV – "Organisation and conduct of checks" of Ministerial Order no. 138/2016, we highlight the following:

- The checks are conducted in line with a plan entitled **Plan for background checks and thematic checks**, approved by the prefect, on an annual basis, by January 31. Some unplanned checks may also be conducted providing that unforeseen events occurred require such checks.
- Each check is conducted in line with a plan which is approved by the prefect and is generically entitled **control plan**. The structure of this plan is the following:

a) aim and objectives of the check;
b) activity timeframe taken into consideration for checks;
c) structure of the control commission and sub-commissions;
d) estimate time for completion of check.

An exception is represented by the **unannounced check** which may be initiated without a control plan, according to the **order of the head of the entity under the Ministry of Internal Affairs**. In this case, there is no structure of the control plan and no estimate time for completion.

- The check is conducted by a control commission composed of staff of the control structure, and, where appropriate, specialists of other structures. The members of the control commission are set by the control plan or, in case of an unannounced check, by written order of the person requesting such check. In any of these situations, the control commission is chaired by a president.

The order stipulates that the president of the control commission notifies the head of the entity under the Ministry of Internal Affairs taken into consideration for a check with regard to this action, minimum 5 days prior to suck check. In his/her turn, the head of the entity notified starts preparing the staff for this check and draws up a status report covering the timeframe prior to initiation of the check.

By exception to this rule, the **unannounced thematic check** and the **unannounced check** may be conducted without notification of the head of the entity subjected to such checks.

- At the beginning of the check, the head of the entity under the Ministry of Internal Affairs which is subjected to the check provides the commission with the status report. This report is a document bearing the letterhead of the entity and is presented in the structure comprised in Annex 2 to this paper.
- Throughout the check, the members of the control commission prepare statements of findings. They include the main conclusions drawn by the members of the commission after checking each field of activity, each structure of the entity under the Ministry of Internal Affairs subjected to such check. The structure of the statement of findings is presented in Annex 3 to this paper.

The statements of findings are signed and remitted to the heads of the entity under the Ministry of Internal Affairs subjected to the check and the employees directly involved in the field of activity where the deficiencies were found. In addition, the commission prepares an official report on potential observations, objections and standpoints of these employees.

The report and the objections made in writing are enclosed to the inspection report and form part thereof.

- The findings made throughout the check, the conclusions and measures proposed by the control commission are included in an inspection report prepared by this commission and subjected to approval by the person who requested the check, within 30 days from completion of such check.

The inspection report will contain: a) main accomplishments; b) deficiencies, dysfunctions and measures of organisational, administrative and disciplinary nature; c) conclusions of the control commission in relation to the observations, objections and standpoints expressed on the content of the statements of findings; d) other aspects which may improve efficiency and efficacy of the activities carried out.

The Action Plan to remedy the deficiencies and improve activities will be enclosed to the inspection report.

The inspection report approved will be remitted to the president of the control commission, within 5 days from approval, i.e.:

a) the person to whom the head of the entity under the Ministry of Internal Affairs subjected to check reports to, with a view to taking necessary measures towards remedy of the negative aspects found and disseminating the positive aspects – good practices;
b) the head of the entity under the Ministry of Internal Affairs subjected to check, with a view to implementing the measures ordered.

The control structures within the entities under the Ministry of Internal Affairs may check how such measures are implemented within 6 months from submitting the inspection report.

The analysis of these general rules on jurisdiction and main procedural aspects regarding organisation and conduct of checks leads us to the conclusion that the order represents at least an imperfect normative framework and, therefore inefficient. in comparison with all aspects specific to this control activity carried out by a specialised structure within the Prefecture.

In support of this statement, we present the following two arguments:

A. In fact, the control activity carried out by the Prefect's Supervisory Body may aim at any aspect and law matter in relation to which the Prefecture was notified and is not limited only to monitoring the accuracy of some referrals and petitions of which settlement involve a higher degree of difficulty. It also focuses on thematic checks of the activities carried out by deconcentrated institutions of the ministries and other central public administration bodies or mayors. To provide further information and therefore better understand the framework of their activity, one should note that the control teams may be composed of both staff of specialised structures and employees of other departments/divisions and other institutions, which are set up in joint commissions.

B. Throughout its content, the normative act refers to entities under the Ministry of Internal Affairs which conduct checks or are checked, implicitly excluding therefore from its scope the checks conducted by the Prefectures at the headquarters of the deconcentrated institutions, city/town/village halls or other legal persons. Consequently, in order to initiate, conduct and complete such checks, the Prefect's Supervisory Body should provide further legal grounds than just the Ministerial Order no. 138/2016. On the other hand, when conducting such checks, all control structures within the entities under the Ministry of Internal Affairs shall abide by provisions of this order, shall remit the Minister's Supervisory Body all and any inspection reports prepared and shall also remit the synoptic list of all checks conducted in the previous year and the ones planned for the current year.

As a consequence, we may see that there is no *erga omnes* opposable legal framework regulating such checks in terms of limits of powers and procedures to follow, which in practice entails a genuine challenge, mainly starting from the potential lack of knowledge/acknowledgment of the mandate granted for controlling purposes and ending with the possible ways to exploit findings and measures ordered as a result of conducting such checks. Such regulation is all the more important as, in many cases, the results of such checks lead to identification of some acts which caused damage to some entities' patrimony and may be deemed as crimes. In addition, the regulation would be important in cases when an entity subjected to a check is not satisfied with the measures imposed as a result of the check and intends to contest them, as there is no procedure in this respect.

In order to ensure the legal framework and in the absence of such a regulation, the procedure to follow may be summarised as follows:

- The prefect shall take the initiative and order a check whenever the issues brought to his/her attention are serious and require a thorough check. The prefect shall also order checks to control and analyse the current activity carried out by deconcentrated institutions of the ministries or other bodies at the level of central public administration. The proposal to start a check may also be presented by the Supervisory Body in case they are assigned a complex petition which require such a check in order to understand and settle it.
- The decision to execute such control action is in particular transposed when constituting a joint commission composed of representatives of other structures or experts from other institutions, in issuing by the prefect of an order setting forth both the structure of the commission and, where appropriate, the themes and/or the goals of the check, as well as certain elements of procedure and deadlines.
- Upon completion of a check the control commission prepares a report on the findings, conclusions and, where appropriate, and depending on how serious the acts are, proposals, recommendations, measures, deadlines for implementation. This report is subjected to the prefect's approval.
- The inspection report or an excerpt of it, in particular when it includes measures and deadlines for implementation by the entity subjected to check, will be remitted to the latter and/or to the criminal prosecution authorities.

3.2.3. Administrative instruments in exerting control. Goal of checks

As presented in the previous section, according to provisions of article 22 of Ministerial Order no. 138/2016, the findings, conclusions and measures proposed by the control commission are included in an inspection report. This report is elaborated by the control commission and is subjected to the approval of the person who ordered the check, within 30 days from completion.

The inspection report consists of:

a) main accomplishments;
b) deficiencies, dysfunctions, irregularities and measure of organisational, administrative and disciplinary nature;
c) the commission's conclusions on the observations, objections and standpoints expressed in relation to the content of the statements of findings;
d) other aspects which may contribute to enhancing the efficiency and efficacy of the activities assessed.

The Action Plan to remedy the deficiencies and improve activities will be enclosed to the inspection report.

- the inspection report approved will be remitted to the president of the control commission within 5 days from approval, as follows:

a) the person to whom the head of the entity under the Ministry of Internal Affairs subjected to check reports to, with a view to taking necessary measures towards remedy of the negative aspects found and disseminating the positive aspects – good practices;
b) the head of the entity under the Ministry of Internal Affairs subjected to check, with a view to implementing the measures ordered.

In reference to the nature of the inspection report, we understand that this may be considered an administrative act as it is a "technical – legal act" (it is therefore a legal act which takes legal effects), which includes the measures to implement. In other words, this report sets the obligations (legal effects) for the legal persons subjected to check. By virtue of this qualification, we think that the inspection report may be challenged as any other administrative act, in accordance with Contentious-Administrative Law no. 554/2004. As there is no unitary opinion in the current doctrine as to including the inspection report in the sphere of the administrative acts, we believe, *de lege ferenda*, that it is necessary to have an express and unambiguous regulation on the legal nature of the inspection report and implicitly, the appeal which may be exerted against it.

4. Perspectives on Improving the Control Activity of the Prefect in the context of the New Administrative Code and Other Normative Acts. De Lege Ferenda Proposals.

With a view to streamlining the control activity of the prefect, we will present a short analysis of the causes which reduce the prefect's control prerogatives and will formulate some lege ferenda proposals.

One issue which relates to the compliance of the administrative acts is represented by the capacity to check of the specialised structures, which, according to Government Decision no. 460/2006, article 6, shall keep records of all administrative acts, shall check the compliance of the contracts concluded and shall make the prefect proposals on notifying, where appropriate, the issuing authorities with a view to reanalysing the act deemed illegal, or referring to contentious-administrative courts, providing them with grounded reasons thereof. In addition, they shall prepare the documentation, draw up the statement to refer to court and present the statement filed before the court. This activity is therefore multiple and requires a lifelong professional training. Consequently, it would be appropriate that the state should support, through specialised bodies, the training and improvement programmes intended for public servants within prefectures.

Another issue refers to the fact that, effective 2006, another human resource involved in the process of supervising the compliance of acts – the secretary general within the prefecture, was lost as a result of

turning this function into the function of subprefect, public office for which it is not mandatorily required to have a legal background, as it was the case of the secretary general. By amendments to the Local Public Administrative Law no. 215/2001 and Law no. 393/2004 regarding local elected representatives, the secretary of the local administrative unit was therefore taken out of the authority of the secretary general of the prefecture and implicitly of the prefect. This is how one of the institutional mechanisms which would have enabled an enhanced efficiency of the control, even by the potential refusal of the secretary to countersign the administrative act issued by local and county public administration authorities, was eliminated. Therefore, the subprefect becomes a methodological guide attending the secretaries of the local administrative units. Nevertheless, the subprefect does not have direct responsibilities in the process of monitoring the compliance of the acts, as he/she is only responsible for organising the activity of the prefecture so that the tasks may be carried out appropriately.

The causes for the lack of direct communication are: a. The subprefect is forced to apply the principle of mobility and may not implicitly build long-term communication institutional relationships; b. There are no obligations in terms of specific requirements regarding filling in the public office of subprefect (position which falls under the category of high officials) in the sense of holding a long-term law education degree; c. Correlated with the previous statement and with the fact that the monitoring the compliance of acts falls under the prefect's scope of responsibilities, the methodological assistance of the secretaries may prove to be rather difficult; d. The impact of turning the secretary general of the prefecture into subprefect was not minimised by other measures so as to ensure institutional capacity, at least in relation with the task of compliance monitoring.

As de lege ferenda proposals[37] concerning the activity of the Prefect's Supervisory Body, we may enunciate: (1) setting exclusive prerogatives – reserved to the Prefect's Supervisory Body, as well as the ones shared with other services/departments within the Prefecture, (2) control of the enforcement of and the respect for the Constitution, the laws and other normative acts should be included in the scope of exclusive prerogatives of the Supervisory Body, being by far the most comprehensive and full prerogative, in harmony with the tasks set forth for the Prime Minister's Supervisory Body, (3) regulating the entities which may be the subject matter of a check and the objectives considered by such a check, (4) clearly setting the legal nature of the inspection report, the ways to exploit the conclusions and the measures resulting from the check conducted, the ways to contest way as well as the sanctions in case of failure to implement such measures.

To improve the control activity carried out by the prefect and to enhance the authority of this institution at local level, these conclusions and de lege ferenda proposals should be taken into account by members of the parliament in reviewing the provisions of the Administrative Code, given that the Constitutional Court of Romania declared it unconstitutional by Decision no. 681/06.11.2018.

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