

THE ROLE OF THE PREFECT AND THE SUBPREFECT IN THE LOCAL PUBLIC ADMINISTRATION

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Abstract

The notion of prefect comes from Latin, where it means the one who was put in charge ... and he was an official from ancient Rome who was appointed by the state in a precise position with well-defined attributions. In our country, a prefect is the government's representative at the county level, and the institution led by him is called the prefecture and has the role of fulfilling the duties and prerogatives conferred on the prefect by the Romanian Constitution and the Administrative Code.

In a democratic state, the institution of the prefect must be particularized by the existence of a statute, which will ensure the fulfillment of his role professionally and within apolitical limits.

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According to art. 249 of the Administrative Code, the Prefect is the representative of the Government locally, being the one who leads the decentralized public services of ministries and other central public administration bodies in administrative-territorial units and ensures the leadership of county committees for emergencies and legality administrative acts of the local public administration authorities and may challenge before the administrative court their acts which they consider illegal.

In order to fulfill his attributions and prerogatives according to the law, the prefect is assisted by 2 sub-prefects. The prefect of Bucharest is assisted by 3 sub-prefects. The functions of prefect and subprefect are functions of public dignity.

The government appoints a prefect in each county and in Bucharest. The appointment and dismissal of prefects and sub-prefects are made by a decision of the Government, at the proposal of the minister who coordinates the institution of the prefect.

The person who fulfills cumulatively the following conditions may be appointed as prefect, respectively as subprefect:

- a) is a Romanian citizen and has his domicile in the country;
- b) enjoys the exercise of electoral rights;
- c) has full exercise capacity;
- d) has not suffered criminal convictions, except for the situation in which the rehabilitation took place;
- e) has a bachelor's degree with a bachelor's degree or equivalent;
- f) has graduated specialized training programs in order to be appointed to a position of prefect or subprefect, organized by the National Institute of Administration, in accordance with the law.

The condition provided in let. f) is considered fulfilled in the situation where the person who can be appointed as prefect or subprefect has completed specialized training programs for holding a public position corresponding to the category of senior civil servants, as well as if the person has held at least one full term senator or deputy.

The law also establishes an exception from letter f), in the sense that a person who has not graduated the specialized training programs may be appointed to the position of prefect, respectively sub-prefect, provided that within a maximum of 1 year from the date of issuance of the act of appointment he can graduate such of the program. At the end of the term of 1 year from the appointment, the person appointed in the position of prefect, respectively

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subprefect in the above conditions and who has not graduated the specialized training program is released by right from the position of public dignity held¹.

During the exercise of the function of prefect or sub-prefect, the employment contract is suspended, respectively its service relationship, except for the situations provided by law.

Upon appointment, the prefect and deputy prefect take the following oath before the Government, respectively the Prime Minister or a designated minister, in Romanian: «I swear to respect the Constitution and the laws of the country and to do in good faith everything in my powers and my skill for the good of the inhabitants of the county ... / Bucharest municipality. May God help me! ».

The religious formula for concluding the oath will respect the freedom of religious beliefs, the oath can be taken even without the religious formula.

The refusal to take the oath entails the revocation of the administrative act of appointment.

The prefect fulfills the following categories of attributions:

A) attributions regarding the ensuring the implementation at local level of the governmental policies and the observance of the public order;

B) attributions in exercising the constitutional role of leading the deconcentrated public services of the ministries and of the other bodies of the central public administration from the administrative-territorial units;

C) attributions regarding the verification of the legality of the administrative acts of the local public administration authorities and the attack of the administrative acts of these authorities that they consider illegal;

D) guidance attributions, at the request of the local public administration authorities, regarding the application of the legal norms in the sphere of competence;

E) attributions in the field of emergency situations.

A) Duties on ensuring the implementation at local level of government policies and respect for public order. In exercising these powers, the prefect:

a) ensures the monitoring of the unitary application and observance of the Constitution, laws, ordinances and decisions of the Government, as well as other normative acts by local public administration authorities and decentralized public services, at the level of the county, respectively of Bucharest;

b) analyzes the fulfillment in the county, respectively in Bucharest of the objectives included in the Government Program and informs the Government, through the ministry coordinating the prefect's institution, on the stage of their realization, in accordance with its attributions according to law;

c) monitors the implementation activity in a coherent and integrated way in the county, respectively in Bucharest of the public policies promoted by the ministries and the other authorities of the central public administration subordinated to the Government and informs the Government, through the ministry coordinating the prefect's institution theirs;

d) acts to maintain the climate of social peace and permanent communication with all institutional and social levels, paying constant attention to the prevention of social tensions;

e) monitors the actions for the prevention of crimes and for the defense of the rights and safety of citizens, carried out by the legally empowered bodies;

f) verifies the application of the legal norms governing the use of the national minority language in the relations between the local public administration authorities and the deconcentrated public services, on the one hand, and the citizens belonging to the national

¹ Art. 251 paragraph 2 of the Administrative Code of 03.07.2019. In force from July 5, 2019. The consolidation of June 6, 2021 is based on the publication in the Official Gazette, Part I no. 555 of July 5, 2019 Includes the amendments brought by the following acts: GEO 63/2019; GEO 1/2020; GEO 44/2020; GEO 61/2020; DCZ 240/2020; L 84/2020; GEO 164/2020; GEO 226/2020; OUG 4/2021. Last amended on 5 March 2021.

minorities, on the other hand, in the administrative-territorial units. they have a share of over 20%, according to the latest census.

B) Duties in exercising the constitutional role of leading the decentralized public services. In exercising these powers, the prefect:

a) verifies the manner in which the decentralized public services of the ministries and of the other bodies of the central public administration fulfill their monitoring and control attributions in the field in which they operate;

b) approves the draft budgets and financial statements regarding the budgetary execution of the decentralized public services of the ministries and other bodies of the central public administration subordinated to the Government and sends them to the head of the institution hierarchically superior to the decentralized public service. The opinions are consultative;

c) may propose to the Minister, respectively to the head of the public administration body under whose subordination these public services carry out their activity the disciplinary investigation of the head of the decentralized public service if he considers that he has committed, in connection with the performance of duties, a disciplinary offense; , as the case may be, may notify directly to the competent disciplinary commission;

d) appoints by order a representative of the prefect's institution in the competition commission for the position of head of a decentralized public service in the county.

C) Duties regarding the verification of legality The prefect verifies the legality of the administrative acts of the county council, of the local council and of the mayor, being able to attack the acts of these authorities that he considers illegal, before the competent court, under the law of administrative contentious.

D) Guiding attributions, in the exercise of which the prefect:

a) receives the requests for guidance sent by the local public authorities and, as the case may be, consults the other authorities of the central public administration in order to issue a point of view;

b) issues views as a result of requests for guidance received from local public administration authorities;

c) communicates to the applicant the points of view thus issued.

E) Duties in the field of emergency situations. In exercising these powers, the prefect:

a) orders, as president of the County Committee for emergency situations, the necessary measures for their prevention and management;

b) uses, as head of civil protection, the funds specially allocated from the state budget and the logistical base of intervention in crisis situations, in order to carry out this activity in good conditions;

c) watches over the development in good conditions of the interventions and other activities necessary to restore the normal situation locally.

In cases that require the adoption of immediate measures for crisis or emergency management, the prefect may request the mayor or president of the county council, respectively the mayor general of Bucharest to convene, as appropriate, an extraordinary meeting of the county council, the general council of the municipality. Bucharest or the local council.

In case of declaring the state of alert, in accordance with the law, in order to resolve the interests of the inhabitants of the administrative-territorial units, the prefect may request the immediate convening of the county council, the General Council of Bucharest or the local council, as appropriate.

In emergency or crisis situations, the military authorities and the components of the structure of the Ministry of Internal Affairs have the obligation to inform and support the prefect to solve any problem that endangers or affects the safety of the population, goods, values and environment. According to art. 258 of the Administrative Code, "The Prefect also fulfills other attributions, such as:

- a) supports, upon request, within the limits of its competence, the local public administration authorities for highlighting the priorities of territorial economic development;
- b) supports, upon request, the actions carried out by the decentralized public services, respectively by the local public administration authorities in the field of European affairs;
- c) decides, in accordance with the law, the cooperation or association with similar institutions from the country and from abroad, in order to increase the degree of professionalism of the prefect's institution;
- d) fulfills the attributions established by special laws in the field of organization and conduct of local, parliamentary, presidential elections, elections for members of Romania in the European Parliament, as well as national or local referendums;
- e) ensures the development in good conditions of the activity of the community public services for the issuance and registration of simple passports, respectively regime of driving licenses and registration of vehicles, as well as of the activity of issuing the apostille for official administrative acts;
- f) other attributions provided by law, as well as the tasks established by the Government ”.

According to art. 259 of the Administrative Code “The ministers and the leaders of the other bodies of the central public administration subordinated to the Government may delegate to the prefect some attributions of management and control,

such as:

- a) checking the use of public funds allocated to decentralized public services;
- b) verifying the way of achieving the objectives included in the sectorial strategies;
- c) analyzing the manner of carrying out interministerial actions aimed at increasing the quality of public services;
- d) representation before the courts, in case the subordinated decentralized public services cannot be mandated;
- e) other attributions established by order of the head of the institution hierarchically superior to the decentralized public service ”.

Regarding the subprefect, art. 260 of the Administrative Code states that it is subordinate to the prefect and his legal substitute.

The attributions of the subprefects are established by a decision of the Government, but the prefect may delegate to the subprefect, by order, a part of his attributions.

If several sub-prefects are in office, the prefect issues an order designating one of the sub-prefects as a legal substitute, and if this order has not been issued, the legal deputy of the prefect is appointed by order of the minister who coordinates the prefect's institution.

It should also be mentioned that, between the prefects, on the one hand, the local councils and mayors, as well as the county councils and the presidents of the county councils, on the other hand, there are no relations of subordination, but only of collaboration.

In order to fulfill his duties, the prefect may request from public institutions, decentralized public services of ministries and other bodies of central public administration and local public administration authorities in the county or in Bucharest, as appropriate, documentation, data and information, and they they are obliged to provide them to them quickly and free of charge.

The prefect may notify the disciplinary commission if he considers, following a control of the prefect's institution or at the written and motivated notification of an authorized authority or institution, that the general secretary of an administrative-territorial unit / subdivision has committed in his performance an act that constitutes misbehavior.

Bibliography

1. The administrative code of 03.07.2019. Effective July 5, 2019.

The consolidation of June 6, 2021 is based on the publication in the Official Gazette, Part I no. 555 of July 5, 2019. Includes the amendments brought by the following acts: GEO 63/2019; GEO 1/2020; GEO 44/2020; GEO 61/2020; DCZ 240/2020; L 84/2020; GEO 164/2020; GEO 226/2020; GEO 4/2021. The last amendment on March 5, 2021.