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LEGALITY CONTROL BY THE PREFECT – A MECHANISM TO PREVENT THE ABUSE OF RIGHTS IN LOCAL PUBLIC ADMINISTRATION

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Abstract

The Romanian state established the institution of the prefect, who, among other responsibilities, monitors the organization and ensures the proper functioning of local public administration within the limits set and imposed by the legislator. The legal representative of the institution is the prefect, constitutionally entrusted with verifying the legality of local administrative acts. Through legality control, the prefect can identify potential abuses of power by local public authorities in exercising administrative rights and competences. The preventive role of the prefect contributes to strengthening the rule of law and the constitutional order. The local administrative act, as an instrument for the functioning of local administration, must be certified by the prefect as being legal, which implies conformity with the higher regulatory framework and the elimination of any abuse of rights by local public authorities. In this context of the legality of the local administrative act, local autonomy coherently integrates into the activity of local public administration authorities. The correct exercise of local autonomy underpins the appropriateness of initiating local administrative acts.

Keywords: prefect; legality, appropriateness; local autonomy; local administrative act.

JEL Classification: H83; K10.

1. INTRODUCTION

The Romanian administration has a well-defined purpose: to serve the public interest by delivering quality services across various fields of interest. An important pillar in achieving this goal is the prefect, who, among other duties, oversees the legality of local administrative acts by ensuring alignment between higher-level legislative provisions and those enacted at the local level.

In Romania's administrative system, the prefect exercises what doctrine defines as administrative tutelage. The prefect's duty to verify the legality of local administrative acts issued or adopted by local authorities implicitly arises from the provisions of art. 123 para. 5 of the Romanian Constitution, republished. "The prefect may challenge, before the administrative contentious court, an act of the county council, the local council, or the mayor, if he

considers the act illegal. The challenged act is suspended by operation of law” (Romanian Constitution, 2003). To reach the stage of challenging a local administrative act, the prefect carries out a specific and unique activity at the county level, namely verifying the conformity of local regulations with higher-level law — more precisely, the legality control exercised over local public administration acts, whether executive or deliberative.

The same doctrinal elements highlight that local autonomy grants local public administration authorities the competence to issue or adopt local administrative acts in exercising their duties established by the national legal framework in order to achieve the interests of local communities. The prefect’s intervention through legality control exclusively concerns the legality of local administrative acts, without evaluating the appropriateness of the acts, which remains within the realm of local autonomy. Nevertheless, if the prefect finds an abuse of power in adopting or issuing a local administrative act, they are entitled to request the act’s revocation through the preliminary procedure or to directly notify the administrative contentious court. Consequently, the prefect will not censor the appropriateness of local administrative acts but will identify violations of the legal limits of authority competences. Referring a potential abuse of power to the court does not equate to the prefect exercising a control of appropriateness; rather, it reinforces the idea of a meticulous legality control since exceeding the legal competence limits of local public authorities, whether executive or deliberative, may be ascertained through the effective exercise of the prefect’s legality control.

2. DOCTRINAL ASPECTS

2.1. Defining Abuse of Power

Abuse of power by local public authorities arises when the authority exercises a right by exceeding its legal competences in a manner that goes beyond the purpose for which these competences were granted by the legislator, causing harm to local communities or the local public interest in general. Acts adopted by deliberative or executive authorities that pursue purposes unrelated to the public interest or that violate the rights and obligations of citizens within a particular local community may fall within the notion of abuse of power. The manifestation of abuse of power may stem from disregarding the hierarchy of legal norms or jurisprudence when local authorities, under the pretext of exercising local autonomy, ignore the authority of the central executive, the legislator itself, or judicial decisions. The discretionary use of resources can also result in abuse of power, such as local council decisions regarding the approval of local taxes and duties or the use of public or private patrimony in contradiction with legal provisions solely to satisfy particular interests.

2.2. Limits of Local Autonomy in Exercising the Appropriateness of Local Acts

Local autonomy is not absolute. It is not untouchable. It is subordinate to the rule of law and therefore must function in a direct and necessary connection with the entire higher regulatory framework and in accordance with the national interest. The correct exercise of local autonomy underpins the appropriateness of initiating local administrative acts.

It is noteworthy, in the context of the appropriateness of local administrative acts, that well-known schools of thought in Romania outline differing viewpoints. “One of these is that supported by the Bucharest School, according to which appropriateness is itself a condition of legality... The second is that considered by the Cluj School, according to which appropriateness is a separate condition from legality that should be respected by the administrative act for it to be valid...” (Transilvania University of Braşov, 2018, p.5). For the prefect, appropriateness will represent an obstacle only insofar as the regulatory framework is not respected, without constituting a condition of legality for the local administrative act.

Appropriateness of administrative acts involves two dimensions: the usefulness and the adequacy of the measure adopted by the local public authority. These dimensions are based on the freedom of judgment of local public authorities in adopting or issuing administrative acts, a freedom guaranteed by local autonomy in order to realize the public interest. Therefore, appropriateness means that the local administrative act is suitable, useful, and necessary in a given context.

3. IDENTIFYING ABUSE OF POWER IN THE EXERCISE OF ADMINISTRATIVE TUTELAGE

In a narrow sense, the administrative tutelage exercised by the prefect over local administrative acts implies their conformity with the national legal framework in force at the time of issuance or adoption. As Law no. 554/2004 defines in art. 2 lit. n) the term “abuse of power” as “the exercise of the right of appreciation by public authorities by exceeding the competence limits provided by law or by violating the rights and freedoms of citizens” (Law no. 554/2004), and the mechanism for verifying the legality by the prefect involves, among other things, verifying the competence of the local public authority, it can be concluded that the condition of not exercising abuse of power through the adoption or issuance of local administrative acts can be assessed within the procedure of legality control exercised by the prefect.

One aspect that must be emphasized relates to the fact that the prefect is responsible only for verifying the legality of local administrative acts in the first, mandatory stage. Subsequently, the responsibility lies with the administrative contentious court. Therefore, the holders of administrative legality control and

judicial review under the current legal provisions each have specific competences and intervene in stages that are well-regulated by law. Appropriateness control does not have a legally regulated holder, in the sense that neither the prefect nor the administrative contentious court has the competence to verify the appropriateness of adopting or issuing a local administrative act. Nonetheless, indirectly, appropriateness may be the subject of legality control by the prefect or the court, insofar as an abuse of power is concealed by the administrative act. And the purpose of the administrative act is also significantly affected in this variant.

Appropriateness is not completely discretionary; it must be exercised within the limits established by the legislator, and in this way it becomes a genuine condition to be verified in the exercise of administrative tutelage and must be respected when adopting or issuing local administrative acts.

In recent practice, the trend in the exercise of the prefect's legality control appears to extend beyond the strict verification of the legality of the local administrative act to include assessments of appropriateness — merely evaluations within an extended approach to legality control, determined by correlating the administrative act with the local public interest or with the concrete circumstances in which the local act is adopted. The social, economic, or administrative context existing at the time of the act's issuance must also be considered. Nevertheless, the margin of appreciation recognized to local public authorities, regardless of the causes that led to the issuance of the act, will always respect legal provisions and the national interest in order to withstand the prefect's legality control.

The prefect will not conclude that the act under review is inappropriate, as this would equate to substituting the judgment of local public authorities, but will limit his analysis to whether that judgment is oriented toward the purpose of the law. He will not decide, following the legality control, on the usefulness of the local administrative act; however, when appropriateness exceeds legal limits or has been exercised abusively or arbitrarily, he will intervene by verifying the legal provisions that correspond to the condition of appropriateness without censoring it.

If the prefect finds that, in evaluating appropriateness, the executive or deliberative authorities have issued local administrative acts without respecting the purpose of the law or in violation of basic principles, he will request that the issuer revoke the local administrative act or will notify the administrative contentious court for the annulment of the act. "In all cases, the administrative contentious court verifies only the legality of the challenged act, not its appropriateness. Therefore, an action for annulment based on considerations of the act's inappropriateness will be dismissed as inadmissible. If, following the introduction of an action in administrative contentious court, the judge finds that the defendant public authority issued the act with intentional overstepping of its discretion, or being in an error of judgment of the factual situation that led it to

act in a certain way, the act thus issued will be annulled on grounds of illegality, not inappropriateness” (Grigoraş, 2013, p. 42-49).

Thus, the prefect will not find an administrative act to be inappropriate but will request its revocation or annulment as a result of the legality control regarding the overstepping of the margin of appreciation by the local public authority.

If the prefect decides to challenge a local administrative act directly in the court of law for abuse of power, the first and most important step is the suspension of the challenged act. The suspension operates by law without the need for a court decision or conclusion and the act no longer produces any effect until the final resolution of the case. In practice, the suspension maintains the existing state of affairs. Illegal taxes will not be collected or abusive measures regulated by the act challenged by the prefect directly in court will not be executed. The local community will thus be protected from the illegal effects of a local administrative act. Moreover, in the event that the local administrative act challenged by the prefect has decided to demolish a building or alienate some assets, the institution of suspending the act after the prefect's action has been brought in the court of law is intended to prevent certain damages that are difficult to repair.

Therefore, the prefect's action in annulling a local administrative act for excess of power entails the suspension of that act and, consequently, an entire local community is protected by preventing the production of potentially illegal legal effects that would cause irreparable damage, maintaining the existing situation until the final settlement of the dispute. This suspension of law cannot be equated with a personal benefit granted to the prefect by the Romanian legislator but, rather, with a legal guarantee established to protect the public interest. In this case, the suspension of law is an objective mechanism for protecting legality but also local communities.

If the administrative court rules in favor of admitting the action brought by the county prefect against a local administrative act adopted or issued with excess of power, then the court's solution strengthens the prefect's role as guarantor of legality, of protecting the public interest of a community that contributes to the consolidation of the rule of law and the supremacy of the law.

The local administrative act found illegal by the prefect and annulled by the court is eliminated from the legal order and thus the legal balance in the activity of the local public authority is restored.

In this sense, the Constitutional Court of Romania also ruled, namely "the reason for the express regulation of the institution of the suspension of the administrative act challenged by the prefect in the body of the Constitution lies in the protection of the priority interest of public order, consisting in avoiding the occurrence of serious or even insurmountable consequences on the legitimate rights and interests of persons, viewed both at a social, community or local level, and at an individual level, consequences generated by the execution of the respective administrative act. The constituent legislator configured the right of

administrative guardianship as a prerogative of the prefect, offering him, by virtue of his constitutional role of overseeing compliance with the law in the administrative activity of local public authorities, a margin of appreciation with regard to the formulation of an action for annulment against administrative acts of local public authorities, but if he considers them illegal, the immediate legal effect expressly provided for by the Constitution is that of suspension of the law" (Constitutional Court Decision no. 44/2025).

4. CONCLUSIONS

Local autonomy allows local public administration authorities to exercise judgment in adopting or issuing administrative acts; however, this judgment cannot be exercised subjectively or, worse, abusively, to the extent that it removes the obligation to respect the legal provisions in force that regulate a certain matter or avoids grounding the public interest through the absence of objective criteria.

Establishing criteria or patterns regarding appropriateness could mean limiting local autonomy. Appropriateness has no limits—or rather, should not have limits; it cannot be integrated into a pattern as long as the legality of the local administrative act is respected. Freedom, in any form or definition, remains without boundary until proven otherwise, namely by respecting legal provisions.

The prefect thus represents a mechanism for preventing abuse of law by challenging illegal local administrative acts at the administrative court, and the legal suspension of the challenged acts prevents the production of abusive effects until the dispute is resolved by the court.

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