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ONCE MORE, ON POLITICIZING CIVIL SERVICE IN ROMANIA AND EUROPE

Mădălina-Elena MIHĂILESCU [1]

Abstract

Obviously, the most recent tumultuous changes in the Romanian legislative area regarding the public administration or civil servants inevitably led to discussions as well as queries regarding the real / authentic reform of the administration, how deep the political interferences in the current administration have become, or to what extend the appointments in civil service are based on the value and professionalism of the nominated ones.

The article herein aims to debate upon the way the status of the prefect has evolved over time in Romania, but also in other European countries, but also to what extent the political environment has brought a positive or negative influence. Moreover, we consider that it is necessary to analyze all these aspects having regard to the amendment of the Administrative Code by the Emergency Ordinance no. 4/2021.

Keywords:

prefect, civil service, dignitary, political environment.

MOTTO: "Much more important than the size of government is its quality ..." (Fukuyama, 2014).

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1.The current Romanian state of affairs concerning the politicization of civil service positions

Gary Jones would note: "The key to an organization is the coordinated presence of people, not necessarily the presence of things." (Johns, 1998). Consequently, organizations involve people and ultimately depend on people's effort (Cotelnic & Scarlat, 2020, pp. 7-8).

It would therefore be an axiom to say that the value of any organization is determined by the value of its human resources. Understandably, the success of the organization is conditioned by a multitude of factors, but the human factor is the most important. For this reason, since ancient times, human society has been concerned with the appointment of leaders and the selection of the staff within organizations, from the simplest association to the state. Realistically speaking, both the appointment of managers and the selection of staff should be based on personal merit, meaning all intellectual and moral qualities, skills, including character traits, alongside with, as case may be, professional competence that needs to be understood as the overall amount of knowledge and skills necessary for the successful development of a specialized activity, of a technical nature, as well as professional experience (Coman-Kund, 2012, pp. 17-18).

"Performance is usually defined in relation to outcomes and outputs that follow from a public production process" (Hatry, 1999 as cited in Van Dooren et al., 2012, p. 492). This model seems to provide the dominant vocabulary used by public administration researchers and spractitioners when discussing performance (Dumitrache-Ionescu & Ciorăsteanu, 2019).

Obviously, the most recent tumultuous changes in the Romanian legislative area regarding the public administration or civil servants inevitably led to discussions as well as queries regarding the real/authentic reform of the administration, how deep the political interferences in the current administration have become, or to what percent the appointments in civil service are based on the value and professionalism of the nominated ones:

According to art. 371 para. (3) of GEO no 57/2019, the Romanian Administrative Code, "all throughout their entire professional activity, civil servants act in keeping with the principles objectivity, professionalism, legality and impartiality to enable both the public authorities and institutions to fulfill the duties thus provided by law ", as a result, the professionalism of the civil servant is a mandatory requirement, without which one cannot be appointed or exercise any public office.

Since 1993, professor J Ziller noted the fact that : "access to public offices complies in European states with two complementary principles

whose importance varies depending on each country, on the historical evolution and judiciary legal culture of each country - namely the principle of equality and the principle of merit" (Ziller, 1993 as cited in Apostol Tofan, 2020, pp. 330-331.)

In so far as competence (which mirrors professionalism) is regarded, it has been defined by doctrine as follows: "people aiming to enter a public office or to be promoted to a higher position must have and confirm that they own both the knowledge and skills that are necessary to exercise that particular public office. This principle must be applied carefully. People outside the public administration who want to access a public office or even those who are about to be promoted will rarely prove the full range of skills and knowledge that will allow them to carry out activities related to a new civil service position satisfactorily, right from their first day of office"(Ranta, 2008, p. 86).

It is obvious that in the matter of public office or dignities any appointment ought to be based on the principle of merit and competence that should be the cornerstone of another principle stipulated by the new Code - that of meeting the public interest: "Public administration authorities and institutions, as well as their staff, have the duty to meet the public interest before any other personal or group interest " (Romanian Government, 2019, Art. 10).

The fact that impends the actual possibility of being fully compliant with the principles stated above, are the appointments (also) of a political nature in the administration area, towards which the Romanian society has feelings of distrust, since there are obvious suspicions regarding the specialized training of some dignitaries or civil servants, their experience in certain complex (and vital) fields of activity, the existence of consistent portfolios to ensure the citizen of the fact that meeting of the public interest and providing quality civil services are priorities in the administration area.

Moreover, both the legislation as well as the specialized literature define the civil servant as someone who is appointed in a public office in keeping with the legal provisions(Romanian Government, 2019, art. 371)and depending on the category to which the civil servants belong, they take decisions and or carry out activities with a technical character, in order to guarantee that the general public interest of the public institutions and authorities is permanently pursued" (Cliza & Ulariu, 2020, p. 244).

"On the other hand, since our discussion will focus on analyzing a former senior official who became a dignitary (the prefect), we also need to appeal to the definition of the dignitary, as reflected by the Code: dignitaries - people who hold public office in on the basis of a mandate, according to

the Constitution, this code and other normative acts (Romanian Government, 2019, art. 5, point V).

The current legislative context (The Official Gazette of Romania, 2017), classifies human resources in administration into three main categories:

a) People appointed or elected to positions of public dignity and positions assimilated to these (including local elected officials), representing the political level, with a decision-making role in establishing governance objectives and actions;

b) People appointed to civil service (executive, management and senior civil servants) following specific recruitment and selection procedures, representing the administrative level responsible for exercising the prerogatives of public power in order to achieve the governing programme goals;

c) People who are employed or collaborate with public authorities and institutions and who constitute that particular category which carries out activities that, in principle, do not involve the exercise of public power prerogatives but contribute to the functioning of public administration. " (Cliza & Ulariu, 2020, p. 244).

Both the definitions provided by the Code, and from those resulting from the doctrine, note that the process of being appointed in a public position clearly implies that a competition has taken place and that the candidate possesses specialized knowledge that will be tested during the internship period (when it comes to "novice" officials) and, that will be subsequently perfected while performing the duties specific to the appointed position.

As provided by GEO 57 as well as the existing jurisprudence, the concept of public dignity encompasses a complex of attributions and responsibilities established by the Constitution, laws and other normative acts, which an individual assumes through his appointment as a result of the direct electoral process, by choice, or indirectly, by nomination, according to the law[2]. Hence, the public dignitaries will exercise their specific attributions based on the nature of their appointment (usually, political, ex: secretary of state) or following their being elected directly by citizens (former general mayor of the capital), which does not represents in many cases a certainty for the society that these people possess the specialized knowledge (administrative, legal or economic) or even a consistent portfolio or experience that guarantees the quality of their future activity.

[2] See details in the Section of Contentious Administrative and Fiscal Matters, Decision no. 4678 of 9 October 2013, Galati Court of Law.

We therefore return to one of the problems that have not yet been resolved in Romania today, namely the relationship between public administration and the political environment. Although the exact scale of the phenomenon is difficult to comprehend, it is obvious that each political change entails important changes[3] , especially at the level of management positions in public administration. (Radu, 2008, p. 68).

Regarding the politicization of public administration, different opinions have emerged in literature. Thus, it is stated that a certain level of political involvement in public administration is to be accepted, provided that the selection of civil servants on the basis of merit and competence is not compromised. The second opinion argues that politicization can be attained through the selection of civil servants on political criteria due to loyalty to a certain political party, but there is a possibility that this problem may vary and the selection to be made according to loyalty to a certain policy, vision or program.

A third opinion argues that the way in which political criteria are engaged can count for the performance of the administrative system (Baltaru, 2013; Peters & Pierre, 2004), thus, if the merit system is supported and old, narrow-minded, inflexible employees are removed from public administration to the detriment of politically affiliated people, this cannot be considered a detrimental issue to democracy or public administration. Politicization may also mean that civil servants take on certain tasks that could formally be considered political or that the use of the political criterion may be more important for guaranteeing or ensuring democratic values in government than the use of the conventional criterion of merit. (Baltaru, 2013; Peters & Pierre, 2004).

The politicization of public administration, characterized by a personalized approach of the decision-making process as well as the institutional management, leading to frequent institutional reorganizations (mostly related to the electoral cycle), the excessive use of provisional appointments to leadership positions and ad hoc legislation, with effects on the independence of the civil service, the predictability of the decision-

[3] According to the above-mentioned strategy "Improving the efficiency of public administration and carrying out activities in the service and interest of the citizen have been major priorities in recent years in all government programs. Similarly, all government programs have addressed, in a more or less developed way, issues such as accelerating the process of reforming the state and administration, increasing public sector performance, better citizen orientation and increasing trust in institutions. State". See, Government Decision 525/2016 on the approval The Strategy for the Development of the Civil Service 2016-2020 (The Official Gazette of Romania, 2017).

making process, recruitment and career development as a civil servant[4] as well as on the trust relationship existing between the political and administrative levels, discourages initiative and the sense of responsibility at administrative level. Resistance to change and excessive bureaucracy as a means of self-protection stand as additional consequences of the politicization of the administration[5].

Our debate occurs following the publishing in the Official Gazette, Part I no. 117 of February 3, 2021 of the Emergency Ordinance no.4/2021[6] for the amendment and supplementing of the Government Emergency Ordinance no. 57/2019 regarding the Administrative Code.

Thus, as a result of this change, the prefect and the sub-prefect are civil servants in positions of public dignity. The person who satisfies the following conditions cumulatively may be appointed as prefect or sub-prefect, namely:

a) is a Romanian citizen with permanent known residence in the country;

b) enjoys the exercise of electoral rights;

c) has full legal capacity;

d) did not suffer any criminal convictions, except for the situation in which the rehabilitation took place;

e) graduated university with a bachelor's degree or equivalent;

f) graduated specialized training programs in order to be appointed to a position of prefect or sub-prefect, organized by the National Institute of Administration, in accordance with the law.

If we were to regard the prefect by taking into account the status conferred by Law 340/2004 (repealed by the Administrative Code) and if we tried to establish a similarity between the administrative duties of the prefect nowadays and the administrative duties of the heads of the administrative-territorial units of the past [7](Postelnicu, 2010, pp. 9-10) we could note that, at least in our country, the prefect evolved in conjunction with with the administrative-territorial units. (Postelnicu, 2010, pp. 9-10).

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[4] Country Report Romania, 2016, apud. Ministry of regional development and public administration. National Agency of Civil Servants., The Strategy for the Development of the Civil Service 2016-2020 , pp 1-67, in Annex of Ministry of Regional Development and Public Administration. National Agency of Civil Servants., The Strategy for the Development of the Civil Service 2016-2020, 2016, pp 19.

[5] Idem, pp. 19

[6] Entered into force on 3rd February 2021.

[7] Some specialists in the field of administrative law claim that the origin of the prefect's institution is found in ancient Rome where the notion of prefect designated either official civil, military or economic positions or administrative units.

All these make sense from the perspective of art. 123 of the Romanian Constitution which states clearly and expressly that the prefect represents the Government in the territory, according to par. 1 "The government appoints a prefect in each county and in Bucharest." and acts as the head of the de-concentrated public services (paragraph 2 art. 123 of the Constitution states that the prefect heads the de-concentrated civil services of the ministries and of the other bodies of the central public administration in the administrative-territorial units').

Moreover, if we were to view facts from the perspective of those stipulated by the constitutional text (which does not lay down a specific statute for the prefect, as in the case of elected local public administration authorities) we should embark on a relevant analysis of the need to transform the status of the prefect from senior civil servant to dignitary, due to the fact that the conditions recently detailed by the Emergency Ordinance no. 4/2021 do not indicate any prerequisites related to the professionalism of the appointed person, except for that training course organized by the National Institute of Administration. Or, as we can infer from the interpretation of this text, it is not necessary in the case of prefects (and sub-prefects) to possess solid knowledge of management, law or economics (absolutely necessary in matters related to good management of a territory), since the text only points the requirement of "undergraduate studies graduated with a bachelor's degree or equivalent", which does not attest in any way the quality of future services in the field.

A prior normative act tackled the same matter - respectively art. II of the G.E.O. 179 of 14 December 2005 correctly conditioned the appointment to such a position by taking an examination: "prefects in office on the date the herein Emergency Ordinance has entered into force, as well as those who will fill vacancies after the date this Emergency Ordinance has entered into force and until December 31, 2005 may be appointed in civil service by the prefect following the promotion of an confirmation exam on the position ". What is more, the provisions of law 188/1999, meanwhile repealed by the Administrative Code, also required the appointment to this position by a competition[8] .

Regarding the requirements to access high public offices, in the past, the doctrine supported the opinion according to which:" The transition from the prefect as dignitary to the prefect as High Civil Servant, as we have demonstrated herein, does not only require legislation to clarify this transformation but is in fact a complex phenomenon, which must absolutely

[8] According to ex at. 15, pointe of Law 188/1999, republished (recently repealed by the Administrative Code).

take account of the former dignitaries being compatible with the rigors of public office and even with the civil servants from the specialized apparatus. What is more, a change in attitudes as well as internal and external perceptions will have to be imposed upon the institution. However, the reform of the Institution of the Prefect will not depend only to efforts to depoliticize it but also to the scope of duties that are or will be included in the competences of this public administration body" (Munteanu, 2006, p. 89).

2. The existence of political influence in the appointment of the prefect in other EU member states

The administrative system interrelates with the environment or the social system of which it is determined and which it acts upon. In terms of the environment, the social system consists of several distinct elements placed in a hierarchical but interacting structure. In this sense, the constituents of the social system are, according to J.W. Lapierre, the following: the political system, composed of political institutions and organizations, the biosocial system which includes all social processes that provide the necessary conditions for the progress of the population, the economic system, which refers to the organization of production activities and exchanges of goods and services, and the cultural system, defined by all material and spiritual values created human society throughout history.

Were we not to include the administrative system into the components of the social system, we would have to integrate it into the political system, which would also contradict the principle of separation of powers. Nevertheless, these systems are interdependent and some of them exert decisive influences on the evolution of others. In accordance with the above, the liberal thesis on the preeminence of politics would prove to be of interest. According to liberal point of view, the political system governs through its own regulations, thus functioning as a mechanism to manage the entire society. According to these interpretations, although they are conditioned by external elements, the political structures determine the economic and social structures. Practically, in this vision, political power is considered to be at the origin of the economic system, of the social classes and of the class consciousness[9].

"High levels of agency politicization have considerable repercussions for public organizations. Despite the need for bureaucratic responsiveness, a high level of political intervention in public administration is likely to impede organizational performance:" (Fuenzalida, et al., 2019; Gallo & Lewis, 2011).

[9] Romanian Government, MDRAP, A Comparative View of the International Systems of Administration in terms of the Territorial Level of Governing, 2013, pp. 9.

"In the European context, politicization has persisted in most bureaucratic systems, notably in Belgium, Austria, and Italy, where party membership is an important factor for recruitment and promotion, even in the lower levels of administration." (Kim et al., 2021; Page & Wright, 1999).

"Moreover, in Germany, with the institutionalization of 'political civil servants', political appointments have become acceptable for the top two ranks of the career civil service, despite a strong tradition of merit-based professional bureaucracy and stipulation in the constitution." (Schröter, 2004). "Altogether, a large body of the literature shows that political appointments can explicitly or implicitly manifest in various ways to intervene in public administration".

3. Spoil vs merit system in Romania and Europe[10]

"The spoils system (also called patronage), implies that a political party that is victorious in the elections gets the right to freely, and according to their own will, appoint people within the administration and public organizations, just as it has the right to appoint a minister for a particular portfolio. In contrast, in a merit system, a ruling political party (or coalition), appoints its people only to key political positions for a limited period of time, whilst within the administration professionals are recruited according to their qualities and based on public competition" (Stančetić, 2020, p. 418).

"The merit system nowadays refers primarily to the civil service system and implies that upon admission into civil service, the education (qualifications) and personal qualities of the candidates are valued. In addition, the merit system implies that employees are grouped, paid and promoted according to their abilities, commitment to work and results achieved" (Stančetić, 2020, p. 418).

Neshkova and Kostadinova focus on civil service laws as the most important component of public administration reform. They highlight the positive impact on the attributes and behavior of officials. For instance, they note that civil service laws provide for "a properly trained and paid public service to augment the state's capability to cope with corrupt practices, [...] to promote rules for fair, honest and impartial conduct of the civil servants in order to fight abuses of these rules." (Neshkova & Kostadinova, 2012, pp. 324-333; Meyer-Sahling & Mikkelsen, 2016).

[10]This section of the article was presented as part of the course on the European civil service at the master's degree called EU Governance Policies, at the "Dunărea de Jos", University, Galaţi, in the second semester, 2021 (20 mai a.c.). It is also part of the course support for that discipline that belongs to the author of this article.

The civil service "is often strictly regulated by a legal framework. Thus, entering the civil service, promotion, career, behavior etc is regulated by a number of laws, ordinances etc. that creates a boomerang effect when it comes to meritocracy. On one hand having appraisals as basis for promotion, there are reasons to state that, any civil servant will be motivated to constantly seek improvement of his performance, trying to perform in a meritocratic system. However, to what extent mat we consider that there is a direct link between promotion in a superior grade and the raise of the professional competencies of a civil servant? Too many times the objectives and the appraisal criteria are not connected to the civil servants performances, the indicators just as well, and this situation is sometimes beyond the will of the hierarchical superior. On the other hand strict regulations strictly limit the motivation and career "leaps" which has a negative impact on any aspect that would relate to meritocracy. The vast majority of civil servants is involved in achieving "routine administrative tasks" – applying the laws, procedures, various norms or internal orders. Traditionally, an executive civil servant dedicates most of his/her time for applying such regulations".(Matei & Campeanu, 2015).

In the spoils system, "public administrators and politicians are often in a mutually "exploitative" relationship. Politicians give them rewards, and in return, get various forms of support for their reelection. Hence, numerous negative consequences for citizens and the society as a whole emerge. These consequences can be generally marked as undemocratic and ineffective (violation of laws, hiding information of public importance, corruption, irrational use of resources and so on). By contrast, if the merit system would exist in reality, citizens would have better quality of services. Beside this, the public sector would be more transparent, which would produce more efficient use of the public money and other resources. In addition, the merit system would also contribute to improving political culture and fostering democratic values" (Stančetić, 2020).

In countries without a civil service law no clear division exists between what should be political positions and what should not. In an administration staffed and managed under a Labour Code, it is common to have the Minister or the Head of the institution select the staff at their own will. Although a public administration regulated by a Labour Code should formally not be defined as a spoils system, the experience from Central and Eastern Europe indicates that it becomes a spoils system in practise. In the long-term a spoils system means a lack of professional continuity and a lack of professionally independent input into the policy-making process and into administrative decision-making. "The spoils system maintains a lack of delegation of responsibility to positions in government at levels lower than

the political level. Policy-making, decision-making and co-ordination will in this kind of system continue to take place within the political realm of the administration only. The political class and societal elites in many countries need to be convinced, or rather, converted to the idea that a professional public administration is not possible without a professional civil service" (Cardona, 2009, p. 4).

"In position-based systems the emphasis is put on selecting the best-suited candidate for the position to be filled. It means that, in addition to the previous academic background and additional educational or training activities participated in by the candidates, the recruitment procedure is also aimed at finding out the personal experience, previous professional achievements, and even psychological characteristics of the candidates, in order to guarantee an acceptable performance standard in the job position from the very beginning. The recruitment procedure is a combination of examination, C.V.'s scrutiny and interviews. The final decision is made by a recruitment commission, or can be entrusted to the head of the convening department. There also exists the right to judicial review of the recruitment decision, either carried out by specialised administrative or common labour courts. In position-based systems there also exists an initial probationary period, mainly aimed at evaluating the adaptation of the newly recruited civil servant to the job position" (Cardona , 2006, p.5).

"In many of the post-2004 EU Member States and candidate countries there is an inadequate legal basis on which to build a modern, politically impartial and professional civil service. This results in high levels of politicization and management patronage with adverse consequences for professionalism, legal certainty and predictability in decision-making. In countries where the legal basis is more adequate, implementation is slow and in some countries is generally faltering. Political classes in the majority of countries have not yet fully accepted, in practice, the need for a professionally autonomous civil service.

Moves are underway to improve recruitment and promotion procedures, which currently are not, in the main, based on open, merit-based competition. Where there are competitive procedures in place, they are frequent exceptions and a lack of consistency in applying them. In other cases they are plainly circumvented.

Merit systems appear in general to apply more to initial recruitment and are less used for promotion, which is made more arbitrary by the inadequacies of most appraisal systems. In the majority of post-2004 EU Member States and candidate countries recruitment based on merit and through competitive mechanisms was not a legal obligation until recently. It is still not mandatory in Bulgaria, Hungary and Slovenia (except for certain

senior civil service positions in these two latter countries). With certain variations, it is obligatory in all other countries. The problem is that, even if legislation imposes competitive recruitment based on merit, there are few countries which to a greater or lesser degree comply with such obligation. One interesting phenomenon is that the more a country complies with the requirement of objective recruitment based on merit and competition, the more is it tangible the progress made in professionalising the civil service and the more the civil service becomes attractive for young professionals" (Cardona, 2006, p. 6).

4. Conclusions

Is quantity vs. quality all that comes to mind when we refer to such sensitive topics as the politicization of public offices? During the period after 1990 and after the fall of the communist bloc in Eastern Europe, we identified some efforts made by the states behind the former iron curtain to improve both the administrative system and to reform the functioning of public institutions, implicitly the civil services.

We debate more and more often on the digitalization of the administration, on transparency, and openness towards the citizen, and the principles of meritocracy and legality are more and more often invoked when discussing the revolution in the Romanian and even European administrative system. Having said all these, we cannot help but ask to what extent the obvious politicization of some civil service positions, the transformation of some senior officials into dignitaries actually relates to what we call the new management in administration or the reform of the system? All these in the context in which for about 30 years public law specialists, as well as practitioners, have fought and argued their position towards the de-politicization of public offices and have campaigned for serious competitions and inclusion among officials of personnel selected on the basis of real performances and serious knowledge in the field.

Indeed, we have noticed, that there are Western European states with old democracies in which the civil service system is closely linked to the political environment. However, we are convinced that in those cases the appointment in such civil service positions is based on the existence of a seniority and a real experience in the public system, which also attests to the fact that the nominees will have the ability to exercise their duties.

All in all, we would like to emphasize that there is (still) an enormous difference in the expression of the political class and even democratic principles in our country compared to other European states, taking into account the fact that Romania is yet a very young and inexperienced

democracy which cannot guarantee the citizens that the political factor has no implications in the area of public offices, a fact that would in fact certify an increase in the quality of civil service.

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