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The Romanian Administrative System – French Inspiration and National Adaptation

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Dragoş Valentin DINCĂ

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Contents

Introduction – An excursion into the history of the Romanian public administration 7

Chapter 1. The Constitution – the fundamental law of Romania 21
1.1. General aspects regarding the Constitution 21
1.2. The Romanian Constitution after the December 1989 revolution 22
1.3. The separation of powers 24
1.4. The relations among the three powers 27
1.5. The system of public authorities 30

Chapter 2. The Romanian Legislative 33
2.1. The election of the Romanian Parliament 33
2.2. The organization of the Romanian Parliament 35
2.3. The functioning of the Romanian Parliament 36
2.4. The acts of the Romanian Parliament 37

Chapter 3. The judicial power 39
3.1. General considerations 39
3.2. The functioning principles of the courts of law 40
3.3. The material competence of the civil courts of justice 42
3.4. The territorial competence of the civil courts of justice 44

Chapter 4. The executive power 43
4.1. The president of Romania 43
4.1.1. The importance of the President 43
4.1.2. The election and validation of the President 44
4.1.3. Incompatibility and immunities of the presidential office 46
4.1.4. The President's prerogative's 47
4.1.5. President's acts 48
4.1.6. Vacancy and provisional appointment 48
4.2. The Government 49
4.2.1. The Government's prerogatives 49
4.2.2. The Government's activity 50
4.3. The public administration 53
4.3.1. The institutions of the Romanian public administration 53
4.3.1.1. The notion of public administration 53
4.3.1.2. The organization and functioning principles of the Romanian public administration 55
4.3.1.3. The tasks and roles of the public administration 64
4.3.1.4. The activities of the public administration 66
4.3.1.5. The system of the Romanian public administration 67
4.3.2. Administrative Acts 73
4.3.2.1. Characteristic features of Administrative acts 73

4.3.2.2. A comparison between the Administrative Acts and other legal acts ... 74
4.3.2.3. Categories of administrative acts ... 75
4.3.2.4. The issuance/adoption and effects of the administrative acts ... 76
4.3.2.5. The suspension, repeal and cancellation of the administrative acts ... 78
4.3.3. Categories of human resources within the public administration system ... 79
4.3.3.1. The public servants ... 80
4.3.3.2 High public officials ... 92
4.3.3.3. The public managers ... 92
4.3.3.4. The public servants with leadership prerogatives and the public servants with execution prerogatives ... 94
4.3.3.5. The contractual personnel ... 94
4.3.3.6. "The political officers" ... 95
4.3.3.7. Rights and obligations regarding the professional training of the public servants and the other categories of personnel ... 96
4.3.4. Administrative litigations ... 97
4.3.4.1. The legality review of the activity of the public administration ... 97
4.3.4.2. General characteristics of the Romanian administrative litigations ... 98
4.3.5. The institutions of the central administration and the devolved public services ... 100
4.3.5.1. The specialized central administration ... 100
4.3.5.2. The ministries ... 101
4.3.5.3. The prefect and the prefect's institution ... 104
4.3.6. Local councils and county councils ... 108
4.3.6.1. The local council ... 108
4.3.6.2. The county council ... 117
4.3.7. The mayor, the public administrator and the secretary of the territorial-administrative units ... 119
4.3.7.1. The mayor of the commune, town or municipality ... 119
4.3.7.2. The public administrator ... 122
4.3.7.3. The secretary of the territorial-administrative unit/subdivision ... 123
4.3.8. Public services ... 124
4.3.8.1. The theory of the public service ... 124
4.3.8.2. Legislative considerations regarding the local public services in Romania ... 126
4.3.9. The public property ... 135
4.3.10. The territorial-administrative units, the development regions and the national network of localities ... 138
4.3.10.1. The territorial-administrative units ... 138
4.3.10.2. The development regions ... 139
4.3.10.3. The national network of localities ... 145

Selective bibliography ... 155

Introduction – An excursion into the history of the Romanian public administration

The public administration, seen in the traditional line of the civil service, consists of a set of authorities, agencies and bodies which, driven by the political impetus, is meant to ensure the many interventions of the modern state in the life of individuals through the central government or local authorities.[1]

The public administration can also be understood as a plurality of public services aimed at answering certain general, regional and local interests, as the state is not the only provider of public services. Obviously, the counties and communes, in their quality of local communities, can organize their own services to answer their own interests[2], but there isn't a total separation between the local and the national interests – on the contrary, both always have a certain influence on the well-functioning of the state[3]. Therefore, we can speak of a local government, which includes bodies meant to cater to the needs of the members of the respective community, which is characterized by the fact that the power of the office holders who are to manage these interests is not granted by the central government, but by the local community through by-elections[4].

The formation of the Romanian public administration was a long process, spanning centuries of tumultuous history, as a result of Romania's geographical position at the intersection of three great powers: the Ottoman Empire, Russia, and the Austro-Hungarian Empire. At different stages of their existence, the administration and the state structures were marked by the models of the three great powers.

The "modern" forms of administration emerged at the end of the 19th century and the beginning of the 20th century; before that, there had been three Romanian principalities: Muntenia (Țara Românească - the Romanian Country), Moldavia, and Transylvania, each having its own institutions and administration.

1. The end of the 19th century and the beginning of the 20th century – the emergence of the "modern" forms of public administration

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[1] A. de Laubadere, *Manuel de Droit Administratif* – dixieme edition, 1976, L.G.A.J., p. 7.

[2] P. Negulescu, *Tratat de drept administrativ*, vol. I, ediția a patra, Institutul de arte grafice „E. Mârvan", Bucureşti 1934, p. 72.

[3] Anibal Teodorescu, *Tratat de drept administrativ*, vol. I, ediția a treia, Bucureşti, Institutul de Arte Grafice „Eminescu" 1929, p. 238.

[4] C. Manda, C. Manda, *Administrația publică locală din România*, Editura Lumina Lex, Bucureşti 1999, pp. 40-41.

After the suppression of the 1848 revolution, on the 19th of April (1st of May) 1849, Russia and Turkey signed the Balta Liman Convention, which contained references to the Romanian provinces. According to the Convention, the system of the ruler's eligibility was abolished, and the rulers of the Romanian Principalities were to be appointed by the sultan for a period of 7 years, according to a procedure settled by the two signatory powers.

During this period, a series of important legislative and administrative measures were adopted, which included: the legislation for the organisation of the military, the legislation regarding the construction of roads and bridges, different laws in the field of commerce; the regulation of the organisation of the towns was complemented and modified; the Criminal Code of Țara Românească (1850-1852), the Military Criminal Code and its procedure were drawn up and enforced. [5]

The central administration underwent certain changes, with the old high offices being renamed as departments or ministries. The Ministry of Home Affairs was the most important administrative body, concerned with public order, agriculture, health and public works [6]**.**

In the local administration there were also changes, with the county leaders being named governors or rulers.

The administrative reorganisation of the Principalities was achieved through the *Peace Treaty of Paris*[7], which provided for the establishment of a Commission made up of the representatives of the signatory powers and a Turkish commissioner, whose task was to get information regarding the situation in the Romanian Principalities and to come up with proposals regarding the grounds of their future organisation, to summon *Ad-hoc Divans*[8] in both Principalities, made up in such a way as to represent *the interests of all social classes*, and to organise the national army. Also, Art. 24 of the Treaty provided for the abolition of class privileges, the equality of all Romanians before the law, the fair and general arrangement of the taxes according to each taxpayer's wealth. Art. 46 established that "the municipal institutions, both in the towns and in the countryside, will

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[5] O. Matichescu, *Istoria administrației publice româneşti*, Editura Economică, Bucureşti, 2000, p. 104.

[6] T.W. Riker, *Cum s-a înfăptuit România, studiul unei probleme internaționale, 1856-1866*, Bucureşti, 1944.

[7] This treaty was concluded on the 30th of March 1856 between France, England, Turkey, Sardinia, Austria, Prussia and Russia and put an end to the Crimean War.

[8] At Mihail Kogălniceanu's proposal, the ad-hoc Divan of Moldavia approved, in the sessions of November 15th and December 13th 1857, the acknowledgement of the counties as entities with legal personality, and the establishment, in each county, of elected councils, responsible for adopting the budget, examining the accounts, distributing the direct contribution and preparing the measures of county interest. See J.H. Vermeulen, *op.cit*., p. 2.

benefit from all the development which can be acquired through the provisions of the present convention".

Transylvania was re-incorporated in the Austrian Empire after 1848 and included among the crown countries.

From an territorial-administrative point of view[9], Transylvania was subject to a number of organisational arrangements, first in 1850, when it was divided into six districts, 34 circuits and a number of sub-circuits, then in 1852 the number of districts was reduced to five, the circuits were reduced to 28 and the sub-circuits to 109. In 1854, Transylvania was divided into 10 *prefectures* and 78 *pretor's offices*.

An important moment in the evolution of the Romanian state was the unification of Muntenia and Moldavia under the rule of Alexandru Ioan Cuza in 1859, a reign which brought many changes in the Romanian society through a series of profound reforms.

We must mention the agrarian reform in May 1864 and the reformation of the constitutional life through *Cuza's Statute*[10], a constitution which modified the 1856 Convention of Paris, ensuring the possibility of governing without a parliament, with the assistance of the State Council[11].

The administrative unification was achieved first at the level of the central administration, then, at the level of the military common regulations were adopted. Common postal, telegraph, sanitation and transportation networks were also created.

Starting from the principles of the Statute, two acts were passed which reformed the local administration: the Communal Act, published on the 1st of April 1864, and the Act for the Establishment of County councils, published on the 2nd of April 1864.

The Communal Act provided for two types of communes: rural and urban, as well as for their right to "attend to their own interests and to manage themselves within the limits of the law" [12]. Art. 3 also provided for an obligation for each citizen to contribute to the communal tasks.

The Act also provides at art. 10-17 for the obligations of each commune, which is an entity with legal personality:

- to have a "house of the commune named Town Hall";
- to take care of the church or churches of the commune's religion;
- to take care of the foundlings and helpless;

[9] Through the administrative-territorial division, the empire sought an excessive centralisation, necessary, in the first place, for the suppression of the national liberation movement.
[10] "The first Constitution of Romania".
[11] This was a body dependent upon the executive power, with responsibilities in preparing the administrative bills and regulations (it also had responsibilities in the field of administrative disputes).
[12] Art. 1 and 2 of the Communal Act.

- to have one or more schools;
- to have a firemen brigade;
- for communes with more than 6000 inhabitants, to have a hospital;
- each rural commune was to have a "plantation garden for the dispersal of mulberry trees".

The leadership of the commune was assigned to a Council, made up of 5-17 members, according to the number of inhabitants, directly elected by the "assembly of the commune's voters", and to a mayor, also elected or appointed by the ruler, for the urban communes.

According to art. 67, the Communal Council is concerned with all the special interests of the commune, and according to art. 69 and 71, it has responsibilities in the following areas:

- "preserving and raising the commune's wealth";
- managing the pasture land;
- adopting the budget of the commune;
- approving the building and demolition projects etc.;
- "opening and closing streets and public markets";
- law and order etc.

The act also includes other provisions regarding the Secretary of the Communal Council, the tax collector, the communal expenditure and revenue and the communal accounting.

The Act for the Establishment of the County Councils provided for the existence of such a council in each county, to "represent the local collective and economic interests of the county". The Council had a President, elected from among the council members (art. 3).

Art. 49 provided for the right of the council to "take an attitude with respect to all the local interests of the county". Like the local councils, the county council has responsibilities in the area of adopting the county budget, but also other responsibilities, such as settlement the salaries of certain categories of public employees, founding and improving public establishments (Art. 57), approving the construction of county roads and bridges and other public works (Art. 60), classifying county roads etc.

The two Acts mentioned above legally sanction the notion of county public property[13] and communal public property, respectively.

The constitutional reform continued with the adoption of the 1866 Constitution. According to this document, the central public administration was represented by the ruler, who later became king, and by the ministers. The king

[13] Art. 53 of the Act for the Organization of the County Councils provides that the annexes of the county public property are all the county ways of communication and bridges, all the public building and establishment incumbent upon the county.

enjoyed the two monarchic privileges: *the irrevocability principle*[14] and *the inviolability principle*[15].

The ministers were *necessary collaborators of the king* and they made up a college named *The Council of Ministers* presided over by a president appointed by the monarch.

The Constitution established in Art. 4 that "the territory is divided into counties, the counties are divided into districts, and the districts into communes", and these divisions and sub-divisions could only be changed or amended by law.

Under Title III, "On the State Powers", Art. 37 provided that the exclusively county or communal interests are managed by the county or communal councils, according to the principles set out in the Constitution and special laws, and these provisions are complemented by those in Art. 107, which specify that these special laws will be based upon the decentralisation of the administration and the communal independence.

This principle of decentralisation regulated in Art. 107 is further developed in Title IV, "On the Finances", where Art. 108 specifies that taxes are "set" only to the benefit of the state, county or commune, and Art. 110 provides that no public burden and no county or communal tax can be "set" without the "assent" of the county council or communal council, respectively.

The 1866 Constitution also provides for the administrative organisation of the national army, under the title "*On the Military Power*". This was part of the public forces, meant to assist the police bodies in maintaining the order within and to defend the country against the enemies from without. Art. 118 established the mandatory military service: "Every Romanian is part of either the regular army or militias or the national guards".

Later, by the *Act passed on March 18th, the Citizen* or *National Guard was set up*, which contributed to the maintaining of social order, and this Act was complemented by the *1864 Communal Act* (granting the mayors the right to have a communal police led by the mayor, and the towns with more than 3000 inhabitants the right to have a police *prefect*), the *1874 Communal Act* (providing for remunerating the communal police agents through the financial contribution of the communes), the Act of June 12th, 1878 (setting up a *judiciary police* in Bucharest, granting all the urban communes the right to have a *municipal police*, and acknowledging the judicial police officer quality of the mayors and their assistants, of the municipal commissioners and inspectors of police, and even of the communal agents), the *1887 Communal Act* (granting the administrative police the right to carry out communal police measures), *Lascăr Catargiu's Act of*

[14] The king was irrevocable in the sense that he could not be revoked (dismissed).

[15] The king was also inviolable, in the sense that he was not bound to account even for his personal acts. Since the royal acts had no power unless they were counter-signed in advance by the line minister, the respective minister was held accountable for those acts.

July 23rd, 1894 (acknowledging the communal police agents' quality of judicial police officers), and the *Act Modifying the Urban Communal Police* of December 19th, 1902 (putting an end to the disagreements between the administrative and the communal police), the *Act of April 1st, 1903* (laying down as general principles the unity of direction and execution, the centralisation of the police functions within a unified aim and the active collaboration between the police functions, the education and training of the personnel through measures which can ensure a better fulfilment of the police service).

In January 1866, town guards were set up by decree, and their role was to ensure the "*commune guard*" service, to ensure the security of the people and of the properties and "*the maintaining of good order and public peace in general*". Later, the Act for the Establishment of the "*town guard*", published in the Official Gazette nr. 62 of 18/30 May 1866, this institution, through its established responsibilities, will become the ancestor of today's Local Police.

In June 1884 the institution of the town guard was abolished. By a decree approved by Carol I, LA 8/20, published in the Official Gazette of June 20th, 1903, the *"Town Sergeants' Corps"* is established within the prefect's institutions[16].

In this period the first local public services emerge, in the current sense of the concept. Thus, in Bucharest the Cişmigiu Garden is inaugurated, the public lighting with lamp oil is introduced, **the first in the entire world**, in 1860 the streets are being paved with paving stone, replacing the old pebble stone, the first tramcar line is commissioned[17], the Dâmboviţa river course is arranged. Later, in 1882, electric lighting is introduced[18] and the Fire Tower starts its activity as a fire station and a regularizing tank for the city water supply network, and in 1894 the first electric tram line is inaugurated on the route Cotroceni Blvd. – Obor, one of the first in Europe.

In Sibiu, in 1858 the town hospital is inaugurated, in 1871 the first kindergarten is opened, and in 1885 the first telephone connection in the town is established.

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[16] With respect to the city sergeant's responsibilities, the regulation provided as follows: "The City Sergeants' Corps will watch over the objects found in the street, over those which, through their exhibition or sale, generate a scandal, over the human and animal corpses, the dirt of any kind, altered food, raw fruit, counterfeited liquors, dishonest weights and measures, and everything of public use: streets, markets, harbours, channels, pipes, hydrants, electric wires and telephones, mailboxes, the events and deeds that endanger life and property: fires, floods, landslides, explosions, epidemics and spreading human and animal diseases.

[17] Travelling on the route Gara de Nord - Calea Griviței - Strada Luterană - Teatrul Național - Piața Sfântul Gheorghe, withdrawn in 1929.

[18] The first installation operates at the Royal Palace on Calea Victoriei, which also fuels Cotroceni Palace, followed by the National Theatre and the Cismigiu Garden.

Timisoara City is strongly influenced by the technological innovations of the century. Thus, in 1855 the telegraph is introduced, then the lamp oil public lighting and the tramcars. Between 1870 and 1880, wooden bridges are replaced by steel bridges. **In 1884 Timisoara becomes the first European city with public electric lighting**, and in 1899 the electric tram is introduced. Also in this period streets are being covered with asphalt.

In Brăila, the founding of the telegraph station (1855), the introduction of the lamp oil public lighting (1858), and the introduction of the electric tram and of the first electric bulbs date from this period.

2. The Period Between the Two World Wars – The Modernisation of the Public Administration

The formation of the unitary national state after World War I marks Romania's entry into a new stage of evolution. In this context, a particularly important role was played by the electoral reform of December 1918, as well as the measures taken for the development of education, the adoption of the Minorities' Statute, the 1920 monetary unification, and the unification of the administrative and legislative systems through a series of measures adopted from April 1920, when the regional administrative bodies are dissolved and replaced by central bodies.

In 1923 a new Constitution was adopted, which consisted of 8 titles: *On Romania's Territory; On Romanians' Rights; On the Powers of the State*[19]*; On Finances; On the Military Power; General Provisions; On the Revision of the Constitution; Supplementary Interim Provisions*, and 138 articles.

Title III contains the constitutional provisions whereby the separation of powers is established. The legislative activity was to be exercised by the king and the National Representatives' Assembly, the executive by the king and the Government, and the judiciary by the courts of law.

The Constitution contained a number of innovating aspects for that epoch. Thus, the principle of the judicial review of the administrative acts was regulated, according to which the courts of law could censor the acts issued by the state administration and make the state pay damages to private individuals.

The public administration reform, initiated in 1920, reached a climax in 1929, when a number of Acts were passed regarding the administrative organisation, both at central and at local level.

[19] Under this title, Art. 41 provided that "the counties and communes have a range of responsibilities at the local level, includingf the local interests, with respect to which their bodies have a right of regulating and organizing", which made Paul Negulescu assert that "local powers" were created. See P. Negulescu, *Constituția României*, Enciclopedia României, vol. I, Imprimeria Națională, Bucureşti, 1938, p. 185.

Thus, the *General Act for the Organisation of the Ministries* was adopted on August 2nd, 1929, with the aim of creating a general ministry organisation framework[20].

If until 1929 a special Act was passed for the organisation of each ministry, this time all ministries were organised into a unitary system[21].

Although the 1923 Constitution promoted the principle of decentralising the public administration, ministries managed a great number of local problems.

Within the Ministry of Home Affairs[22] there were departments such as the *Local Administration Department*, which guided and supervised the county and communal administrative authorities, and supervised local elections, or the *Public Pasture Land Department*, which was concerned with the distribution of the communal pastures.

The Ministry of Finance[23] was responsible, among others, for the financial guidance and review of all the public services and public utility institutions of the state, counties, and communes.

The Ministry of Public Works and Communications examined and coordinated the execution of the important works carried out by the state, counties and communes, the water course arrangements and exploitation, as well as the ways of communication of any kind. This ministry was also responsible for the supervision of the urban public works, according to the Administrative Act of June 27th, 1936.

The General Act for the Organisation of the Ministries, but also the 1929 Public Administration Organisation Act provided for the establishment of the *Local Ministerial Departments*. These were seven in number for each ministry and acted as local management and inspection centres. They were administrative bodies. The creation of these intermediate bodies of the state administration was motivated by the need to operatively solve the problems of the local administration without resorting to ministries[24].

With respect to the local public administration reform, a first important step was made through the adoption, based on Art. 108 of the 1923 Constitution, of the *Administrative Unification Act*[25], which established a unitary system of

---

[20] According to the 1929 Act, the ministries were organized according to a unitary structure into: *Departments*, *Services* of the Departments, *Sections* of the Services, and *Offices* of the Sections. There were also a number of divisions shared by all ministries: *the Minister's Cabinet, the General Secretariate, the Personnel Department, the Accounting Department, the Inspectors' Service, the Register Office, the Statistics, the Disputed Claims Office, the Technical Office, the Medical Service, and the Mobilization Office*.

[21] The General Act on the Organization of Ministries, „Codul Hamangiu", XVII, p. 877.

[22] Organized by the August 2nd, 1929 Act, partly modified in April 1935 and January 1936.

[23] Organized by the same 1929 Act and reorganized by the April 12th, 1933 Act.

[24] O. Matichescu, *op.cit*. p. 160.

[25] Published in the Official Gazzette, nr. 128 of June 14th, 1925.

territorial organisation of the national state, providing for the setting up of eligible local bodies[26].

A new Act regarding the local public administration was passed on August 3rd, 1929[27], aimed at achieving the administrative decentralisation. This Act was followed by a series of other measures, setting up the Legislative Council, the Administrative Superior Council, the Pension House, the Chambers of Agriculture, the Chambers of Employment.

According to Art. 232.1, the general interests were separated from the local interests, and Art. 62 lays down that the local public administration is entrusted to the citizens themselves or to their elected representatives, with the referendum also being introduced for certain situations. Also, a number of public services were exclusively assigned to the local authorities[28].

On March 27th, 1936, a new administrative organisation Act was passed[29], whereby the territory of the country was administratively divided into *counties* and *communes*, invested with legal personality, having their own property and leading bodies, based on the provisions of the 1923 Constitution.

The communes were run by a *communal council*[30], as a deliberative body, and by the *mayor*[31] and *deputy mayor*, as an executive body.

The communal councils took the initiative and decided on all local issues; they were called upon to take an attitude with respect to all issues committed to them according to the law and to enforce provisions of general interest issued by the central authorities, within the limit of their legal competence.

The administration of the county was entrusted to the *county council*[32], as a deliberative body of the county delegation, and to the prefect.

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[26] Most of the authors in the field consider this Act as a centralising one, because it strenghens the tutelage of the central power over the local administration. In this sense, see Anibal Teodorescu, *op.cit*., p. 287.

[27] The August 1929 Act underwent 11 modifications until 1936.
Legea din august 1929 a suferit până în 1936 11 modificări.

[28] In this sense, see Art. 25, 36, 104, 171, 224 of the Local Administration Organization Act.

[29] The Act was promulgated by High Royal Decree nr. 569 of 1936 and published in the Official Gazzette Part I, nr. 73 of March 27th, 1936.

[30] ***The Communal Council was made up of elected members and members in their own right. The number of the elected members varied according to the type of locality, from 10 to 36, and the members in their own right were recruited from among the cadres of the different public services or enterprises, connected to the public administration, and representing technical bodies, called upon to complement to competence of the elected members.***

[31] The mayor was elected by the communal council, from among the elected members. He was the leader of the communal administration, and, in this quality, he appointed and dismissed the public servants, according to the procedure provided by the law; he attended to the interests of the commune; he represented the commune in court; he was a registrar and the chief of the communal police.

[32] ***The county council was made up of elected members and members in their own right. The number of the elected members was settled according to the county population, between 24 and 36 – for a greater population; part of the members were entitled to speak and vote, part of them had an advisory vote.***

The county council was organised into elected commissions: the administrative, financial and review commission; the public works commission; the economic commission; the cults and education commissions; the health and assistance commission. Each commission appointed a *reporter* from among the elected members, and the reporters formed the *permanent delegation*[33].

The Act assigned a particularly important role to the *prefect*, in his quality of the representative of the government in the county and as the *head of the county administration*[34]. The prefect supervised and inspected all the public services and establishments in the county[35], at least once a year, reporting his findings to the respective ministry.

The prefect was the chief of police and gendarmerie, with the right to take all the necessary measures in order to ensure the public order, having the military force at his disposal.

In order for the prefect to be informed on the situation in the county and to be able to supervise the functioning of the services, the Act set up the *prefect's office council*, made up of all the heads of the local services. This way, these services came to cooperate with each other and to review each other's activity.

The prefect's office council aimed to ensure the well-functioning of all the services in the county, as well as the coordination and harmonisation of their activities.

The 1936 Local Public Administration Act was aimed at ensuring a harmonious development of the communes, by laying the obligation upon the urban communes to draw up the situation and systematization plans. Once approved by the county council, these plans could only be modified by royal decree, at the proposal of the Ministry of Home Affairs and at the express request of the respective local council.

The 1936 Act also contained regulations regarding the petitioning procedure, laying down that a special office for receiving petitions should operate

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[33] The permanent delegation was meant to replace the county council in the period between the sessions and to decide on the council's behalf, but within certain limits established by the law. The permanent delegation also had its own responsibilities, such as: checking the accounts of the towns and rural communes; taking the measures for defending the county in court; the inspection, control, and guidance of the administration of the county services; drawing up, together with the prefect, the draft budget and setting up the prefect's advisory council for any issue of local interest.

[34] Some authors consider that this Act strengthened centralism and the regime of governing through public servants, as representatives of the central power in the local administration. Thus, in his quality of head of the county administration, the prefect could punish disciplinarily the county public servants and the mayors, except for the mayor of the county town. He summoned local public servants to regular training conferences and carried out, together with the state local bodies, different inquiries at the place of action in order to take note of certain states of fact and to be able to take informed improvement measures.

[35] Except for those depending on the Ministry of Defence and the Ministry of Justice.

in every urban commune and county prefect's office, as well as at the headquarters of the Ministry of Home Affairs. The competent service was to receive the petition from this office, and then to commit it to the competent institution, which was to solve it. To avoid the very harsh penalties, the public servants had to answer the applicant within 30 days. Appeals were solved by the higher authority within 10 days.

In the rural communes, the service of receiving the petitions addressed to the commune, county, or Ministry of Home Affairs was carried out by the notary public, who was also responsible for drawing up villagers' petitions. The notary also had the obligation to receive the villagers' petitions even if addressed to other administrations and to commit the petitions to the respective administrations without delay.

The 1936 Act gave the communes and counties the right to form associations either among themselves or with the state in order to carry out certain works or economic, cultural or healthcare enterprises.

This system of organisation was broadly preserved both during the royal dictatorship instituted on February 10th, 1938 by King Carol II[36] and during the military dictatorship under Marshal Ion Antonescu[37].

After August 23rd, 1944 the local administration reverted to the functioning norms laid down by the 1923 Constitution[38] and the 1936 Act.

3. The public administration during the communist totalitarian regime

On April 13th, 1948 a new Constitution was adopted, which laid down that the new state, namely the People's Republic of Romania, was a "unitary, independent, and sovereign people's state" and that the "whole state power stems from the people and belongs to the people". [39]

According to the new Constitution, the supreme executive body was the Government, which was accountable to the Grand National Assembly, and when the latter was not sitting, to the Presidium of the Grand National Assembly.

Art. 75 laid down that "the territory of the People's Republic of Romania is administratively divided into communes, districts, counties and regions." Based on

[36] Based on the 1938 Constitution, on August 14th, 1938 a new Administrative Act was promulgated by the High Royal Decree nr. 2919/1938, published in the Official Gazzette Part I, nr. 87 of August 14th, 1938.

[37] The role of the prefects was strengthened – they were named by decree of Marshal Ion Antonescu – and the control of the local public administration was reinforced through the establishment of the 11 General Administrative Inspectorates.

[38] The 1923 Constitution re-entried into force by Decree nr. 1626 of August 31st,

[39] „Monitorul Oficial", nr. 87 bis, din 13 aprilie 1948./The Official Gazzette, nr. 87 bis, of April 13th, 1948.

these provisions, Law nr. 5 of September 6th, 1950 on the territorial-administrative organisation was enacted, whereby the territory of the country was divided into regions, districts, towns and communes. Even a so-called *Hungarian Autonomous Region* was created, modelled upon the numerous autonomous regions in the Soviet Union.

The institution of the local bodies of the state power, the local people's councils, was for the first time introduced, as were the executive committees, as management and execution bodies[40].

In Art. 77, the Constitution laid down the responsibilities of the people's councils: they "guide and manage the local economic, social and cultural activity, draw up and execute the economic plan and the local budget, taking the general national plan and the general state budget into account, ensure the good administration of the local assets and enterprises, the public order, the defence of the inhabitants' rights, the respect for and enforcement of the laws, as well as the necessary measures for the well-functioning of the local administration".

Also, in Art. 85 it was laid down that "divisions of the people's councils can be set up, according to different fields of activity, answerable to the people's councils and to the executive committees."

The changes which occurred in the economy, triggered by the nationalisation of the means of production and the cooperativization of agriculture, alongside the changes in the political sphere, led to the adoption, on September 24th, 1952, of a new Constitution.

This Constitution laid down in Chapter III, entitled "The State System", the territorial-administrative division of the People's Republic of Romania into 18 regions[41].

In Chapter IV, "The Local Bodies of the State Power", it was laid down that, at the level of the regions, districts, towns and communes, the local bodies of the state power are the People's Council of the working people from towns and villages. According to Art. 53, the People's Councils "guide the work of the administrative bodies subordinated to them, direct the local activity in the economic and cultural fields, ensure the public order, the observance of the law and the defence of citizens' rights, draw up the local budget", and according to Art. 56, "the executive and decision-making bodies of the People's Councils are the Executive Committees, made up of a President, Vice-Presidents, Secretary and members."

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[40] See Ioan Muraru, Gheorghe Iancu, *Constituţia României*. Texte, Note, Prezentare comparativă, Regia Autonoma „Monitorul Oficial", ediţia a treia, Bucureşti, 1995, p. 133 and the next.

[41] These regions were: Arad, Bacău, Craiova, Galaţi, Hunedoara, Iaşi, Oradea, Ploieşti, Suceava, Timişoara, The Hungarian Autonomous Region. Later two regions were abolished by Law nr. 5 of 1956.

In 1965, another Constitution was adopted, which was meant to sanction the "definitive victory of socialism in Romania".

Based on Art. 15 of the Constitution, which provided that "The territory of the Socialist Republic of Romania is organised into territorial-administrative units: the county, the town, and the commune", reviving an old tradition, in February 1968 the *Act regarding the Territorial-Administrative Organisation of Romania*[42] was passed, whereby the districts and regions were abolished and 39 counties were constituted, plus the Municipality of Bucharest, the capital of the country. In 1981, the number of counties was increased to 40, plus the Municipality of Bucharest with Ilfov Agricultural District[43].

Title V of the 1965 Constitution, "The Local Bodies of the State Power", sanctioned the leading role of the people's councils in the local life. Thus, according to Art. 86, "The people's councils are the local bodies of the state power in the territorial-administrative units in which they were elected." The main prerogatives[44] of the people's council are connected to the adoption of the economic plan and local budget, the approval of the budgetary-year closing account, the election and revocation of the executive committee or, accordingly, the setting up of economic organisations, enterprises and state institutions of local interest etc.

According to Art. 94, the people's councils had under their authority an executive committee or an executive office, which were local bodies of the state administration with general competence in the territorial-administrative unit where the People's Council was elected.

The regime of the local administration during the communist period is considered to be one of the most centralized throughout the history[45]. This doesn't result only from the organisation of the administration, but also from other facts which were meant to enhance the control over the administration. Thus, for instance, there was a Congress of the People's Counties, and, from 1976, a Legislative Chamber of the People's Counties.

With respect to the local public services, in 1981 the Communal Administration Act nr. 4 was passed [46]. The Act provided, in Art. 1, that "the communal administration is carried out […] with a view to the rational organisation, modernisation, embellishment and harmonious development of all

[42] „Buletinul Oficial", nr. 17-18 din 17 februarie 1968./The Official Bulletin, nr. 17-18 of February 17th, 1968.
[43] *Ibidem*, nr. 54-55 of July 27th, 1981.
[44] According to Art. 87 of the 1965 Constitution, republished in the "Official Bulletin of the Socialist Republic of Romania", Part I, nr. 65 of October, 29th, 1986.
[45] A. Iorgovan, *Drept administrativ*, Editura Actami, vol. IV, Bucureşti, 1994, p. 213.
[46] „Buletinul Oficial" nr. 48 din 9 iulie 1981./"The Official Bulletin" nr. 48 of July 9th, 1981.

localities, to the insurance of self-management, to the efficient use of the material and financial means, to the capitalization of the local resources […].

According to the Act (Art. 7), the communal administration activity has to seek to ensure the provision of running water, local transportation means, heating, but also the achievement of the socio-cultural purposes, the management and maintenance of the state-owned housing resources, the public lighting, as well as the maintenance of the streets, of the other ways of communication and of the green areas and leisure areas, the protection of the environment, the recycling of the reusable materials, the organisation and development of other activities which contribute to the provision of good services to the citizens on the territory of the respective locality.

Chapter 1
The Constitution – the fundamental law of Romania

1.1. General aspects regarding the Constitution

Every state establishes its type of organisation and exercise of power in the Constitution, considered to be the country's fundamental law, the supreme law, the fundamental pact.

The constitutional tradition is older than the written constitution. Every state had a constitution in the material sense, in other words, a set of constitutional customs which established, among others, the manner of exercising power.

All states have a constitution, i.e. certain organisation rules. The exteriorization of these rules in legal formulae amounts to constitutional norms, which can be **unwritten** or **written**.

Therefore, the substance of the constitutional regime is given by the rules of organisation and leadership of the state, whether they are in unwritten or written form.

Every modern state has a Constitution because, in the rule of the law, the government exercise their power only by virtue of certain prerogatives established by a political-legal act, of an act by which they are invested with certain responsibilities. Such investment is made through the Constitution. Thus the authorities which exercise the three powers – the legislative, the executive, and the judicial – have prerogatives based on the Constitution or a constitutional law and not on an ordinary or even organic law. Some responsibilities and tasks are established by law, but the place, role and function of these authorities within the government system need to be established by the Constitution. The Constitution also contains the general principles of law underlying the whole legal system, as well as the public rights and freedoms.

The Constitution is therefore the source of the political system, as well as of the latter's framework within the national legal system. The other legal norms change more rapidly than the Constitution, whose conservative role is obvious, as opposed to the dynamism of the organic or ordinary laws, which can be modified or repealed by means of ordinary legislative procedures.

Thus, the Constitution is placed on top of the hierarchy of the political and normative acts, to which it confers political and legal legitimacy, to the extent that they comply with the norms and principles established by the Constitution.

From an etymological point of view, the term "constitution" comes from the Latin noun "constitutio", which means "grounding" [1].

The written Constitution generally has the form of a political-legal document, with more or less articles, directly adopted by the people or its representatives, according to a special solemn procedure. This document has to meet certain conditions with respect to its content and form.

As a result, **the constitutional provisions have a normative character**. This character stems from the need to give consistence and a bounding character to the political norms, as well as to ensure the observance of these norms by coercive measures.

From a formal point of view, the **Constitution is a law** whereby the general principles of government and the general principles of the legislation are established.

The second formal element consists in **the supremacy of the Constitution**. The Constitution is a supreme law in relation to all the other laws. Everybody has the obligation to observe it, including the institutions of the power. The head of the state has the duty, laid down in the Constitution, to safeguard the observance of and compliance with the Constitution.

From the above we can conclude that: **The supreme law is a fundamental political-legal act, adopted by the nation or by its representatives on its behalf, in order to establish the form of the state, the organisation and functioning of the state powers and the relations between them, the general principles of the legal order of the society, as well as the citizens' rights and obligations, an act which is adopted and modified according to a special procedure.**

1.2. The Romanian Constitution after the December 1989 revolution

In December 1989, the National Salvation Front Council enacted the Decree-Law nr. 2/1989, which legally dissolved the socialist state power structures, which actually meant the implicit annulment of the articles in the 1965 Constitution referring to these structures, and established that the new authority (the National Salvation Front Council) was the supreme authority of the state power. Later, the National Union Interim Council enacted the Decree-Law nr. 92/1990 for the parliamentary and presidential elections, thus reviving a tradition which had been interrupted for about 50 years. This official document provided, among others, for the prerogatives of the head of the state, although it was not a Constitution in the formal sense of the word. The decree had a quasi-

[1] T. Drăganu, *Drept constituţional,* Editura Didactică şi Pedagogică, Bucureşti 1972, p. 45.

constitutional character though, because it was enacted by the authority which at the time played the role of legislative power and because it regulated institutions with constitutional value.

If structural political changes occur in the life of a state, namely when the political regime changes, or when a state fundamentally renews its political-legal and economic bases and its socio-political system, a new fundamental law needs to be enacted. The above mentioned changes led to the enactment of a new Constitution in Romania in 1991.

In 2003, as a result of the development of the society, a constitutional reform took place through the revision of the Constitution, in agreement with the socio-economic and cultural changes in Romania.

The present Constitution is structured into 156 articles, grouped under eight titles, with some titles also containing chapters and sections.

Title I, entitled **General Principles**, contains norms referring to the unitary structure and the republican form of government of the Romanian state. In Art. 1(3) of the Constitution, the Romanian state is characterised as a democratic and social rule of the law, where the citizens' rights and freedoms, the free development of the human personality, the fairness and the political pluralism are supreme values, guaranteed by the Constitution.

With respect to the national sovereignty, the Constitution states that this belongs to the Romanian people, who exercise it through their representative bodies and through referendum. With respect to the territory, this is administratively organised into communes, towns and counties. Under the first title there are also provisions which acknowledge and guarantee the right of the national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity.

There are also provisions which lay down the obligation for the state to support the strengthening of the relations with the Romanians abroad and to take action in order for them to preserve, develop and express their ethnic, cultural, linguistic and religious identity, with the observance of the legislation of their state of citizenship. There are provisions under this title regarding the political parties and the trade unions, the acquisition and loss of the Romanian citizenship, Romania's international relations, the national symbols (the flag, the national day, the national hymn, the emblem and the seal of the state), the official language of the state, which is the Romanian language, and the capital of the country, which is the Municipality of Bucharest.

Title II, entitled **The Fundamental Rights, Freedoms and Obligations**, establishes in Chapters I-III the guiding principles in the field of granting and guaranteeing the fundamental rights and freedoms.

Chapter IV regulates the Ombudsman, an institution with a special character, aimed at defending citizens' rights and freedoms.

Title III, **The Public Authorities**, contains six chapters, and is so structured as to reflect the Constituent Assembly's conception regarding the distribution of prerogatives among the main categories of institutions which exercise the state power and the relations between them. Thus, the first chapter contains the norms regarding the Parliament, its organisation, functioning and tasks. Chapter II contains norms regulating the institution of the Romanian President, establishing the President's role, election, prerogatives and relation with the other constitutional bodies. Chapter III contains norms regulating the structure, investiture, incompatibilities and acts of the Government. A special chapter, Chapter IV, is devoted to the relations between the Parliament and the Government and regulates the obligation of the Government and of the other public administration bodies to submit all the information and documents requested by the Chamber of Deputies, the Senate or the parliamentary committees through their presidents. Chapter IV also regulates the M.P.s' right to ask questions and address interpellations, to withdraw the confidence granted to the Government through the adoption of a censorship motion; it also provides for the legislative delegation for the issuance of ordinances in fields which are not subject to organic laws.

Chapter V, **The Public Administration**, regulates the specialised central public administration and the local public administration, and Chapter VI contains norms referring to the Judicial Authority, regulating the courts of law, the Public Ministry and the Superior Council of Magistracy.

Title IV – The Public Economy and Finances, contains norms referring to the market economy, the financial system, the national public budget, the tax system, the Court of Auditors.

Title V – The Constitutional Court, regulates the review of the constitutionality of laws.

Title VI – The Euro-Atlantic Integration is aimed at Romania's accession to the European Union and the North Atlantic Treaty Organisation.

Title VII – The Revision of the Constitution regulates the revision initiative, procedure and limits, aimed at firmly guaranteeing the observance of the people's will, expressed through a referendum endorsing the fundamental law, by which the Parliament itself must abide.

The last title, **Title VII – Final and Transitional Provisions** contains rules regarding the entry into force of the Constitution, the conflict between laws in time, the present and future institutions.

1.3. The separation of powers

Any socio-political government process carried out with a view to achieving objectives of general interest or which seeks the "common good" of the nation presupposes the specialisation of the state activities, i.e. the setting up of

bodies invested with authority, which will carry out the same type of activities without interruption, according to certain methods, practices or rules. This requirement has an objective character, it is necessary in the life of any state, in order for the government process at a general level to be efficient.

Even in the oldest states in ancient history the models of distributing the government authority to certain specialised bodies, invested with more or less prominent power prerogatives, were established gradually. This is because no matter how simple they might be, the power relations need to be arranged and regulated in a unitary manner by the society, and no matter how small a human community might be, the government process cannot be carried out directly by a single individual or by a unique body which holds the political power[2].

The principle of the separation of powers is reflected in the provisions of the Romanian Constitution. According to Art. 1 (4) of the Romanian Constitution, republished, the Romanian state is organised according to the principle of the separation and balance of powers – legislative, executive, and judicial – within the framework of the constitutional democracy.

Thus, **the legislative power** is entrusted to the Parliament, the supreme representative body of the Romanian people and the only legislative authority of the country. The Parliament consists of the Chamber of Deputies and the Senate. The Chamber of Deputies and the Senate are elected by direct, universal and equal suffrage in a free and secret ballot system, according to the electoral law.

The Chamber of Deputies and the Senate are elected for a term of 4 years, which can be extended, by organic law, in case of war or catastrophe.

The Parliament enacts **constitutional laws**, **organic laws** and **ordinary laws**.

According to Art. 73 (3) of the Constitution, **organic laws** regulate[3]:

a) the electoral system, the organisation and functioning of the Permanent Electoral Authority;

b) the organisation, functioning, and financing of the political parties;

c) the deputies' and senators' statute, their indemnification and other rights;

d) the organisation of the referendum and the referendum process;

e) the organisation of the Government and of the Supreme Council of National Defence;

f) the regime of the state of partial or total military mobilization and of the state of war;

g) the regime of state of emergency and siege;

h) crimes, penalties, and the regime of serving the penalties;

[2] Matei L., Popescu I., Dincă D., *Institutiile administratiei publice,* Editura Economică, Bucureşti, 2002, p. 77.

[3] For all the other areas of social life, the Parliament adopts ordinary laws.

i) granting of amnesty and collective pardoning;

j) the public servants' statute;

k) administrative litigations;

l) the organisation and functioning of the Superior Council of the Magistracy, of the courts of law, of the Public Ministry and of the Court of Auditors;

m) the general legal regime of property and inheritance;

n) the general organisation of education;

o) the organisation of the local public administration and of the territory, as well as the general regime of the local self-government;

p) the general regime of labour relations, the trade unions, the employers' bodies and social security;

q) the statute of the national minorities in Romania;

r) the general regime of the cults;

s) the other fields for which the Constitution provides for the enactment of organic laws.

The **executive** power is entrusted to the President and the Government, which amounts to a dual executive, **typical of the parliamentary regimes**.

According to the Constitution, the **President** of Romania represents the Romanian state and is the guarantor of the national independence, of the unity and territorial integrity of the country.

The President of Romania safeguards the observance of the Constitution and the well-functioning of the public authorities. For this purpose, he/she is the mediator between the state powers, as well as between the state and society. The President of Romania is elected by direct, universal, equal suffrage in a free and secret ballot system.

The **Government**, according to its governing programme accepted by the Parliament, ensures the achievement of the internal and external policy of the country and exercises the general leadership of the public administration. In accomplishing its prerogatives, the Government cooperates with the interested social bodies.

The Government is made up of the prime-minister, the ministers and other members established by organic law.

As far as the **judicial power** is concerned, this is exercised by the High Court of Justice and by the other courts of law established by the law.

Within the judiciary, the Public Ministry represents the general interests of the society and defends the law and order, as well as the citizens' rights and liberties. The prerogatives of the Public Ministry are exercised by prosecutors operating in prosecution services, in the conditions set out in the law.

1.4. The relations among the three powers

Among the three powers there are cooperation and mutual control mechanisms in place.

The interference of the legislative power with the executive and the judicial is a result of applying the principle of the separation of powers. Although in theory – as it was grounded by the 18th century thinkers – the three powers are separate, the constitutional reality only partially confirms this separation.

Practice has proved that an absolute separation of powers would amount to a constitutional and institutional freeze. In order to avoid this, different types of cooperation between the powers have emerged. What is essential for any constitutional system is that, while the interaction of powers is allowed, this should not affect the substance of the separation principle, which completely preserves its value.

The types of interference are established by the Constitution, thus having an absolute legal force.

The intervention of the legislative power in the activity of the executive power

The Constitution lays down that the President of Romania designates a candidate for the position of prime-minister, following consultations with the party which has the absolute majority in Parliament or, if there is no such majority, with the parties represented in Parliament.

The candidate for the position of prime-minister will request, within 10 days from his/her designation, the Parliament's vote of confidence for the programme and the whole Government list.

The Government programme and list are debated upon by the Chamber of Deputies and the Senate in joint session. The Parliament gives the vote of confidence to the Government, which requires the majority of the deputies and senators.

There can also be an intervention of the Parliament in the activity of the executive:

− the setting up of an investigation committee for the activity of certain government departments;

− questions and interpellations addressed to the members of the Government;

− the right to information, whereby the M.P.s can request data, information, documents from the Government and public administration bodies, within the framework of the right to parliamentary control, through the presidents of the Chambers or committee.

According to the provisions of Art. 109 of the Constitution, **the prosecution of the members of the Government can be requested by the two chambers of the Parliament**, as well as by the President of Romania, and according to the provisions of Art. 95, in case of serious wrongs which violate the provisions of the Constitution, the President of Romania can be suspended by the Chamber of Deputies and the Senate, in joint session, with the vote of the majority of the deputies and senators, following consultation of the Constitutional Court.

Also, according to the provisions of Art. 108(1) of the Romanian Constitution, republished, **the Government is politically accountable solely to the Parliament for its entire activity**. Each member of the Government is jointly accountable together with the other members for the activity and acts of the Government.

The intervention of the executive power in the activity of the legislative power

The direct involvement of the executive power in the legislative activity of the Parliament materializes in activities such as:

- **the legislative initiative;**
- **the participation in the parliamentary debates;**
- **messages addressed by the head of the state to the nation through the Parliament.**

The right of the Government to propose bills has a political justification. The Government is responsible for the general management of the public administration and for ensuring the achievement of the internal and external policies of the state – Art. 102 (1) of the Constitution. By virtue of these responsibilities, the Government has to have the prerogative of submitting bills to the Parliament, and also of making amendments to the legislative proposals put forward by the members of Parliament.

Moreover, the Government can have its own regulatory power or a regulatory power delegated by the Parliament, by virtue of which it has the right to issue, under certain circumstances, norms with power of law.

With respect to the participation of the members of the Government in the debates of the legislative authority, Art. 111 (2) of the Constitution provides that the ministers have access to the Parliament's works. Of course, the committees can decide that certain works take place without the presence of the Government members.

The motivation of the Government members' right to participate in the Parliament's sittings, including the sittings of the parliamentary committees, is the same as that of the right to legislative initiative. According to Art. 111 of the Constitution, the Government members' participation in the Parliament's sittings is mandatory, if their presence is requested.

Another form of direct intervention of the executive power in the activity of the legislative consists in the messages addressed regularly by the head of the state to the Parliament, regarding issues of general interest. The Constitution provides that the President address messages to the Parliament regarding the main political problems of the nation.

In the Romanian constitutional system, **the executive has prerogatives regarding the completion of the legislative process**. The head of the state has the power to enact the Act passed by the Parliament, thus subjecting it to a last content and constitutionality check.

Through enactment the law acquires legal force. After being enacted, the law is published in an official collection (the Official Gazette) which contains all the Acts passed by the Parliament, in a chronological order.

According to the constitutional provisions, the law is submitted to the President for enactment. The law has to be enacted within 20 days from receipt. Before enacting the law, the President can once request that the Parliament re-examine it. If the President requested the re-examination of the law or if a constitutional review was requested, the law is enacted within at most 10 days from its receipt after re-examination or from the receipt of the Constitutional Court decision confirming its constitutionality. The law enters into force on the date of its publication in the Official Gazette or on the date provided for in its text.

The Parliament can pass a special Act to qualify the Government to issue ordinances in fields which are not subject to organic laws, a procedure which is referred to as **legislative delegation (Art. 115 of the Constitution)**.

The qualifying law must establish the field and the time limit for issuing ordinances. If the qualifying law so orders, the ordinances are subject to the Parliament's approval, according to the legislative procedure, until the time limit expires. Failure to respect the time limit brings about the nullity of the ordinance.

Alongside the legislative delegation of a legal nature, the Constitution of Romania also regulates, in Art. 115 (4) the constitutional delegation, which applies in exceptional circumstances, when the Government can issue emergency ordinances.

These only enter into force after their submittal to the Parliament for approval. If the Parliament does not sit, its summoning is mandatory.

According to the provisions of Art. 89 of the Constitution, **the President can dissolve the Parliament following consultations with the presidents of the two chambers and the leaders of the parliamentary groups**, if the legislative authority did not give the vote of confidence to the Government within 60 days from the first request and only after at least two investiture requests have been rejected.

1.5. The system of public authorities

The term "authority" comes from the Latin "auctoritas", derived from "augere", which means "to increase", "to enhance", "to consolidate".

In the Roman law, a distinction was made between power and authority, in the sense that the power belonged to the people, while the authority was exercised by the Senate.

The Senate only had the possibility to confirm the laws passed by the People's Assembly, while the actual power belonged to the magistrates. The magistrates enjoyed the *imperium*, i.e. the right to mobilize an army and to summon the People's Assembly, and the *potestas*, i.e. the right to manage, the magistracy being conceived as an institution supposed to parallel royalty.

The Romanian Constitution, republished, contains, under Title III, provisions regarding the public authorities. Thus, under this title the following bodies are included, qualified by the Constituent Assembly as public authorities:

- the Parliament (Chapter I);
- the President of Romania (Chapter II);
- the Government (Chapter III);
- the specialised central public administration (Chapter V, Section I) – ministries, other specialised bodies under the authority of the Government, autonomous administrative authorities;
- the local authorities (Chapter V, Section II) – local councils, county councils and mayors;
- the judicial authority (Chapter VI) – the courts of law, the Public Ministry, the Superior Council of Magistracy.

As a result of the modifications of and addings to the Local Public Administration Act nr. 215/2001 made by Law nr. 286/2006, the presidents of the county councils are also included in the category of the local authorities.

One can notice that for each power in the state there are corresponding authorities which carry out its tasks.

Thus, the task of the **legislative power**, i.e. passing laws, is carried out by the two chambers of the Parliament (the Chamber of Deputies and the Senate), the tasks of the **judicial power**, i.e. to solve the legal disputes arising in the society, are carried out by the courts of law (local courts, county courts and the Court of Bucharest, appeal courts and the High Court of Justice), and the tasks of the **executive power** are carried out by the President and the Government, the latter having the general command of the public administration.

Throughout the time, the democratic practice demanded the creation of central authorities, with tasks relating to coordination and control (including the jurisdictional one), which should be independent from the Government, and sometimes even from the head of the state.

Such (administrative) authorities were created either by the Constitution or by special laws, some of them dependent on the Parliament, others not so.

The state authorities which, by their prerogatives, can be included neither in the category of the legislative authorities nor in that of the courts of law, have to be included, with all their specificity, in the category of the executive, administrative authorities, because essential for these authorities is that their entire activity is carried out on the basis of the law and with a view to observing the law. The fact that some of these authorities annually submit reports to the Parliament on the activity carried out or that their leaders are appointed by the Parliament is not a reason for changing their legal status: **autonomous administrative authorities**, as the Constitution calls them.

Among the public authorities established by the Romanian Constitution, the following classify as **autonomous administrative authorities**:

- The Supreme Council of National Defence;
- The Court of Auditors;
- The Ombudsman;
- The Legislative Council.

In the category of these authorities the following can also be included, as they have a legal status: *The Romanian Intelligence Service, The National Bank of Romania, The National Audio-Video Council etc*.

Then there are elected autonomous administrative authorities, such as the local councils and the mayors.

Chapter 2
The Romanian Legislative

2.1. The election of the Romanian Parliament

The Parliament is the supreme representative body of the Romanian people and the only legislative authority of the country. The Parliament consists of the Chamber of Deputies and the Senate. These are elected by direct, universal, equal suffrage in a free and secret ballot system[1]. The Chamber of Deputies and the Senate are elected for a term of 4 years, which is extended by right in case of mobilization, war, siege or emergency state, until the respective situation ceases. The elections for the Chamber of Deputies and Senate take place after a maximum of 3 months after the previous mandate has expired or the Parliament has been dissolved.

The choice of an identical election system for the two legislative chambers provides them with an identical legitimacy, since they both are the expression of the political will of the same electoral body. The elections for the Chamber of Deputies and the Senate take place on the same date, and until the legal sitting of the new Parliament, the mandate of the previous legislative authority is extended[2].

Deputies and senators are elected in uninominal constituencies, by uninominal ballot, according to the principle of proportional representation. The representation rate for the Chamber of Deputies is of one deputy to 70,000 inhabitants, and for the Senate is of one senator to 160,000 inhabitants. The number of inhabitants thus calculated resulted from the last population census, published by the National Institute of Statistics, distributed on localities, according to the actual territorial-administrative structure[3].

Elections[4] take place in only one day, which can only be a Sunday. The public information regarding the election date is done at least 90 days before the

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[1] See Art. 62 of the Romanian Constitution, republished.

[2] The actual interest of extending the mandate is to ensure the continuity of the parliamentary activity.

[3] See Art. 5 and 6 of **Law nr. 35/2008** for the election of the Chamber of Deputies and the Senate, amending Law nr. 67/2004 for the election of the local authorities, the Local Public Administration Act nr. 215/2001 and Law nr. 393/2004 regarding the Statute of the local elected bodies.

[4] See CHAPTER V of **Law nr. 35/2008** for the election of the Chamber of Deputies and the Senate, amending Law nr. 67/2004 for the election of the local authorities, the Local Public Administration Act nr. 215/2001, and Law nr. 393/2004 regarding the Statute of the elected local authorities.

voting day, by publishing the Government Decision regarding the election day in the Official Gazette, Part I.

In every uninominal constituency[5], each electoral competitor can only put forward one candidate. A candidate can only represent one electoral competitor in one constituency. Proposals for candidates are submitted to the electoral offices of the constituencies for which the candidates will stand, within a maximum of 40 days before the election date.

The persons who, on the date of the candidature submittal, do not meet the conditions for being elected provided by Art. 37 of the Constitution, republished, cannot candidate. The high public officials cannot candidate for the Chamber of Deputies and the Senate, except for the case where, on the date of the submittal of the candidature, their employment relations have ceased, according to the law. By derogation from the provisions of Art. 34 (3) of Law nr. 188/1999 regarding the Statute of the public servants, republished, the public servants with leadership prerogatives can run for the Chamber of Deputies and the Senate provided that they are suspended from the public office during the electoral campaign.

Independent candidates must be supported by at least 4% of the total number of persons in the electoral register in the uninominal constituency where they candidate, and no less than 2,000 voters for the Chamber of Deputies and 4,000 voters for the Senate. Independent candidates standing for the constituency of the Romanian citizens residing abroad have to be supported by at least 4% of the voters residing in one of the states belonging to the uninominal constituency for which they stand, but no less than 2,000 voters for the Chamber of Deputies and 4,000 voters for the Senate. The list of supporters must contain the date of the elections, the candidate's name and surname, the uninominal constituency for which he/she stands, the supporter's name and surname, personal code, date of birth, address, ID serial number, and signature. The list will also contain the name, surname and personal code of the person who drew it up. The person who made the list must submit a statement certifying the veracity of the supporters' signatures. The list of supporters is a public document, with all the consequences provided by the law. The supporters can only be citizens with a right to vote residing in the uninominal constituency for which the independent candidate stands. A supporter can support one candidate for each position subject to elections. Supporters give their adhesion on their own responsibility.

[5] *Uninominal constituency* – sub-division of an electoral constituency; *electoral constituency* – administrative territorial unit – county or the Municipality of Bucharest – or the electoral constituency for Romanians living abroad, where elections are organized and at the level of which mandates are distributed according to the results of the elections.

In every constituency, the electoral office of the constituency publicizes the preliminary results of the elections at least once every 24 hours[6], before obtaining the minutes and the results from all lower electoral offices under its authority. After getting the results of the elections from all the lower electoral offices under its authority, the electoral body responsible for publicizing the results of the elections at the level of the constituency informs the public on the final results of the elections, if the appeals submitted to it or to the court of law do not affect the results. The final results of the elections are determined after the courts of law solve the appeals by final decisions. The Central Electoral Office publishes the results of the elections in the press and in the Official Gazette, Part I, in the shortest possible time.

2.2. The organisation of the Romanian Parliament

The two newly elected Chambers sit together at the President's convocation within at most 20 days after the elections. The Chamber of Deputies and the Senate are summoned by presidential decree. For the validation of the mandates, each Chamber elects, at its first sitting, a committee made up of members of the respective Chamber. The committee has to reflect the political configuration of the Chamber, as it results from the formation of the parliamentary groups. The validation committee can propose the invalidation of a mandate only if they conclude that the respective MP got elected by electoral fraud or without observing a constitutional or legal condition regarding the elections.

Each Chamber establishes its organisation and functioning through its own regulations. The financial resources of the Chambers are provided for in the budgets approved by the two Chambers. Each Chamber elects a permanent office. The presidents of the Chamber of Deputies and Senate are elected for the entire mandate of the Chambers. The other members of the permanent offices are elected at the beginning of each session. The members of the permanent offices can be revoked before the expiry of the mandate. The deputies and senators can form parliamentary groups, according to the regulations of each Chamber. Each Chamber sets up standing committees[7] and can also set up enquiry committees or

[6] See Art. 49 of **Law nr. 35/2008** for the election of the Chamber of Deputies and the Senate, amending Law nr. 67/2004 for the election of the local authorities, the Local Public Administration Act nr. 215/2001, and Law nr. 393/2004 on the Statute of the local elected authorities.

[7] The role of the permanent committees is to examine the bills, legislative proposals and amendments in order to draw up reports or approvals, as well as to debate and decide on other issues submitted by the permanent office; also, they can carry out parliamentary enquiries, with the assent of the respective Chamber.

other special committees. Chambers can also set up joint committees. The permanent offices and the parliamentary committees are constituted according to the political configuration of each Chamber.

2.3. The functioning of the Romanian Parliament

According to Art. 63 of the Romanian Constitution, republished, the Chamber of Deputies and the Senate are elected for a term of 4 years[8], which is extended by right in case of mobilization, war, siege or emergency state, until the respective state ceases to exist. The mandate of the Chambers is extended until the legal sitting of the new Parliament. In this period the Constitution cannot be revised, and organic laws cannot be enacted, modified or repealed. Bills or legislative proposals on the agenda of the previous Parliament go on through the procedure in the new Parliament.

The sittings and sessions of the Chambers

The Chamber of Deputies and the Senate sit separately[9]. The Chambers also have joint sittings, according to a regulation adopted with the vote of the majority of deputies and senators, for:

a) receiving the President's message;
b) approving the state budget and the social security budget;
c) declaring the total or partial mobilization;
d) declaring the state of war;
e) suspending or ceasing hostilities;
f) approving the national defence strategy;
g) examining the reports of the National Council of Defence;
h) appointing, at the President's proposal, the chiefs of the intelligence services, and controlling the activity of these services;
i) appointing the Ombudsman;
j) establishing the deputies' and senators' statute, indemnification and other rights;
k) carrying out other prerogatives which, according to the Constitution or the regulations, require a joint sitting.

[8] The duration of the mandate is also known as legislature.

[9] During the sessions, as well as during the parliamentary mandatory sittings or sittings in their own right, the Chambers carry out their activity in plenary sessions or joint sittings. The sitting is the organisation form in which the Senate and the Chamber of Deputies debate on the bills and legislative proposals, as well as on other issues on the agenda. During the sittings, whether separate or joint, the proceedings take place according to the Regulations of the Chambers, and the the Regulations of the joint sittings of the two Chambers, respectively.

During a legislature, the Chamber of Deputies and the Senate carry out their activity in sessions[10]. Beyond the sessions, the Parliament cannot sit validly to decide, according to the prerogatives granted by the Constitution, republished. The Chamber of Deputies and the Senate sit in two ordinary sessions a year. The first session runs from February until the end of June at the latest. The second session lasts from September until the end of December at the latest.

The Chamber of Deputies and the Senate also sit in extraordinary sessions, at the President's request, at the request of the permanent office or of at least one third of the deputies or senators. The Chambers are summoned by their presidents.

In addition to these two types of session, Parliament is summoned by right or mandatorily, according to the express provisions of the Constitution[11] (Art. 92 and Art. 93).

There is no difference between the ordinary and the extraordinary sessions from the point of view of the material competence granted to the Chambers by the Constituent Assembly. The convocation of the Parliament in extraordinary session actually means the interruption of the parliamentary holidays between two ordinary sessions for very important, exceptional reasons.

2.4. The acts of the Romanian Parliament

The Romanian Parliament adopts two main categories of acts: legal and political. The former are expressly provided for by the Constitution, and the latter are inferred from the parliamentary practice, which is though sanctioned in the Regulations of the joint sittings, as well as in the Regulations of the two Chambers. The Constitutional Court made a pertinent classification of the legal acts passed by the Chambers into constitutional laws, organic laws, ordinary laws, the Regulations of the joint sittings, the motion of censorship. Each parliamentary chamber can adopt the following legal acts: its own Organisation and Functioning Regulations, decisions, and motions.

[10] These are the forms of organisation in which the two Chambers exercise their deliberation function over all issues submitted to them for approval.

[11] "In case of armed aggression against the country, the President takes the necessary measures for rejecting the aggression and notifies them to the Parliament with no delay, through a message. If the Parliament is not sitting, it is convoked by right within 24 hours from the outset of the aggression.

In case of mobilization or war, Parliament sits until the end of these states, and if it is not sitting, it is convoked by right within 24 hours from the outset of these states."

"The President institutes, according to the law, the state of siege or the state of emergency in the whole country or in some territorial-administrative units and requests the Parliament's approval of the respective measure, within at most 5 days.

If Parliament is not sitting, it is convoked by right within at most 48 hours from the institution of the state of siege or emergency, and will sit during the whole period of the respective state.

The Chamber of Deputies and the Senate pass Acts and adopt decisions[12] and motions[13], with the majority of their members. These are legal acts, thus characterized by the Fundamental Law. In addition to these, the Parliament or the Chambers sitting separately adopt statements, messages, appeals, which are considered to be exclusively political acts.

The Parliament adopts constitutional laws, organic laws and ordinary laws. Constitutional laws are those revising the Constitution.

[12] Decisions are legal acts which can have a normative or individual character – of course with a narrower scope than laws. Essentially, decisions regulate internal activities of the Chambers and have internal legal effects.

[13] The motion is a legal act of the Parliament (the motion of censorship) or of the Chambers (the simple motion) by which a position of the legislative authority is expressed towards an issue debated upon.

Chapter 3
The judicial power

Chapter VI under Title III of the Constitution regulates the courts of law, the Public Ministry and the Superior Council of Magistracy.

Although these three organisational structures are, for the purposes of the Constitution, judicial authorities, the judicial power is actually represented **only by the courts of law**.

3.1. General considerations

Courts of law carry justice into execution with a view to protecting fundamental rights and freedoms, as well as other rights and legitimate interests brought before them.

"Justice" is, for the purposes of the Constitution, the activity of solving disputes by decisions of the courts which make up a hierarchical system, with the High Court of Justice at its top. *Justice is administered by the courts of law, in the name of the law, which means that the act of justice has its source in the legal norms, and its executory force derives from the law*[1].

According to Art. 2 (2) of Law nr. 304/2004 regarding the organisation of the judiciary, republished, the Romanian courts of law make up a system which includes:

a) the High Court and Justice;
b) courts of appeal;
c) county courts;
d) specialised tribunals;
e) military courts;
f) local courts.

Administration of justice is completed by a manifestation of will embodied in the **jurisdictional act** (court decision), and this act has the authority of *stare decisis*[2].

The act of justice is, therefore, a law enforcement act, but with the purpose of solving a conflict of interests between two or more persons.

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[1] *Constituţia României – comentată şi adnotată,* de M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, F. Vasilescu, I. Vida, Regia Autonomă „Monitorul Oficial", Bucureşti, 1992, p. 278.

[2] The principle of stare decisis governs the judicial activity; accoriding to this principle, a dispute solved by a court decision cannot be taken back to court if it has the same object, the same cause and the same parties. See also *Dicţionar de drept civil,* vol. I- A-C, M.N. Costin şi M.C. Costin, Editura Lumina Lex, Bucureşti, 1997.

The other judicial authority, the **Public Ministry**, represents the general interests of the society and protects the law and order, as well as the citizens' rights and freedoms.

The "Public Ministry" consists of all the state agents, named prosecutors, organised hierarchically, authorized to discover the violations of the criminal law, to prosecute and to defend their cases in the courts of law with a view to punishing the guilty individuals.

Besides the main prerogatives listed above, prosecutors also have additional responsibilities, such as: to participate in the civil trials which deal with interests of minors or disabled or in other cases where their presence is deemed necessary; to ensure observance of the law in the process of executing judicial decisions and other executory titles, etc.

The third judicial authority mentioned in the Constitution, i.e. the **Superior Council of Magistracy**, is made up of 19 members, who have the status of high officials and who are elected, in the general judges' and prosecutors' assemblies, for a period of 6 years, without the possibility of being reinvested.

The main prerogative of this body is to propound judges and prosecutors – except for trainees – to be appointed or dismissed by the President.

Also, the Superior Council of Magistracy decides with respect to the promotion, transfer, suspension of judges and prosecutors, validates the judges' and prosecutors' final exams, gives approvals and expert opinions, at the request of the minister of justice, in justice administration matters.

The Superior Council of Magistracy also has the role, through its divisions, of a court of law in the field of the disciplinary liability of judges and prosecutors, for the wrongs provided for by Law nr. 303/2004 regarding the judges' and prosecutors' statute, republished[3].

3.2. The functioning principles of the courts of law

As we have shown, in Romania all courts of law, both the ordinary (local courts, county courts and courts of appeal), and the special (military courts) make up a system, which has the supreme judiciary authority – the High Court of Justice – at its top; the latter exercises the judicial review over the lower courts, by means of the ordinary or, respectively, extraordinary ways of appeal.

Romanian courts of law function on the basis of the following constitutional principles:

[3] Law nr. 303/2004 was republished in the Official Gazzette, Part I, nr. 826 of September 13th, 2005.

1. The principle of equality before the law:

According to Art. 16 of the Constitution, all citizens are equal before the law and before the public authorities, with no privileges or discrimination.

2. The principle of the public character of the debates:

According to the provisions of Art. 127 of the Constitution, "court sittings are public, except for the cases provided by the law".

The public character of the court sittings is understood as the right of the parties in a litigation, as well as of the public, to attend the sittings of the courts.

The public character of the court sittings is a procedural safeguard, guaranteeing the observance of the Constitutions and laws, since the citizens have the possibility to scrutinize the process of justice and to signal the possible illegalities committed during the court proceedings.

The exceptions to this principle are justified by the need to avoid causing prejudice to state interests or a person's dignity or private life.

3. The adversarial principle:

This principle refers to the fact that the parties in a trial have the right to be informed of all the acts and documents of the file, to speak in court and conclude the case.

4. The principle of giving the opportunity to appeal first instance decisions:

According to the provisions of Art. 129 of the Constitution, the interested parties and the Public Ministry can file appeals against court decisions, in the conditions provided for by the law.

Thus, the parties in a trial have the possibility, before the court decision on the case becomes final, to obtain the remedy of the possible errors on the merits or in law committed by the lower court.

From this point of view, the three levels of jurisdiction make it possible for the decision of the first instance court to be appealed first in a higher court, and then in an even higher appeal court.

There is also a system based on a double hierarchy of courts, employed in certain cases (when rapidity is required in solving litigations), such as administrative disputes, employment litigations, etc., where the decisions of the courts of first instance can only be appealed once.

5. The principle of the judges' independence:

According to the provisions of Art. 124 (3) in the Constitution, "judges are independent and they only obey the law".

This means that when they solve the cases before them, they base their decision only on the law, without being influenced in any way by orders from the higher authorities or from other types of authorities.

The judge is totally independent in assessing the evidence and in determining the facts, based on his/her own belief, and applies the legal solution according to the evidence.

6. The principle of appointing the judges:

Judges are appointed by the President at the proposal of the Superior Council of Magistracy for an indeterminate term.

The president, vice-president and division presidents of the High Court of Justice are appointed by the President, at the proposal of the Superior Council of Magistracy, from among the judges of the High Court of Justice, for a 3-year term, and they can only be re-appointed once.

The principle of electing the judges was considered unacceptable, since *a judge has to be beyond the political interests of the time, to carry the law into execution*[4] *without mixing considerations of "majorities" or "minorities" with justice.*

7. The principle of the judges' irremovability:

According to Art. 125 of the Constitution, judges are irremovable within the limits of the law.

Irremovability consists in the judge's right not to be removed from office except for the cases provided for by the law, and not to be promoted or transferred without his/her consent.

The irremovability principle ensures the judge's independence, protecting the judge from the political game, and thus giving magistracy the status of a real power within the state, just like the other two state powers – the legislative and the executive.

However, irremovability should only be granted to those judges who proved to possess the required moral and intellectual qualities.

[4] B. Puşcă, *Drept constituţional şi instituţii politice,* Editura Evrika, Brăila, 1999, p. 457.

Chapter 4
The executive power

4.1. The president of Romania

4.1.1. The importance of the President

The President is part of the executive power. In Romania the model of organisation of the executive power is that of the two-headed or dual executive[1].

The Romanian Constitution, republished, gives the President four important functions: the representational function, the function of guarantor of national independence, unity and territorial integrity of the country, the function of safeguarding the Constitution, and the function of mediator[2].

The President is the head of the state and the top authority of the executive power. In this quality, he/she represents the Romanian state and is the guarantor of the national independence, unity and territorial integrity of the country both in the internal and international relations of the country[3]. The President[4] exercises the state authority just like other public authorities such as the Parliament and the Government, but, unlike these, he/she personifies the state authority[5].

At national level, the president's roles include, among others, promulgating laws, an act whereby the laws are invested with executory power, and guaranteeing the independence of the country. At the level of the external affairs, the president accredits ambassadors, receives letters of accreditation, signs international agreements on behalf of the Romanian state etc.

The President is the guarantor of the national independence and of the unity and territorial integrity of the country. He/she has a series of important prerogatives which enable him/her to fulfil the role of guarantor of the above

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[1] According to this model, the executive power is balanced between the head of the state and the Government, each of them having a different legitimacy. The President has a popular legitimacy, as a result of his direct election by the people, while the Government is appointed by the head of the state based on the vote of confidence given by the Parliament.

[2] Art. 80 of the Constitution, republished, published in the Official Gazzette, Part I, nr. 767 of October 31st, 2003.

[3] Although the Constitution does not mention anything in connection with this, the representational function of the President refers both to Romania's internal and international relations. This conclusion is derived from the international constitutional custom.

[4] Parliament is not granted the prerogative of representing the Romanian state, whereas the president is expressely granted this prerogative by the Constitution.

[5] Al., Ioan, Mihaela Cărăuşan, S. Bucur, *Drept administrativ şi procedură administrativă*. Editura Lumina Lex, Bucureşti, 2005, p. 198.

mentioned values: he/she presides over the Supreme Council of National Defence, he/she is the supreme commander of the armed forces, he/she can declare, with the prior assent of the Parliament, the partial or general mobilization of the military forces, he/she declares the siege or emergency state, according to the law[6].

Art. 80 (2) of the Constitution also gives the President the prerogative of safeguarding the Constitution and the well-functioning of the public authorities. However, the Constitution does not mention the notion of presidential review, and therefore it does not give the President the competence of directly exercising a constitutionality review; instead, according to the Constitution, the President has the right to inform the competent public authorities. In this sense, the President is considered to act directly by informing the Constitutional Court with respect to the constitutionality of a law committed to him/her by the Parliament for promulgation[7].

Art. 80 (2) also states that, in order to safeguard the Constitution and the well-functioning of the public authorities, the President has the role of mediator between the powers of the state, as well as between the state and society. This mediation refers to arbitrating a conflict among the three constitutional powers. As mediator or arbiter, the President has to be impartial. Impartiality is also facilitated by the President's not being a member of any political party. [8]

4.1.2. The election and validation of the President

The President is elected by direct universal, equal suffrage in a free and secret ballot system.[9].

Candidates for the Romanian presidency can be proposed by political parties or alliances, set up according to the Political Parties' Act nr. 14/2003, but there can also be independent candidates. Political parties and alliances can only propose one candidate. The parties in an alliance which proposes a candidate cannot propose candidates separately.

Candidacies proposed by the political parties and alliances, as well as independent candidacies can only be submitted if they are supported by at least 200,000 voters. A voter can only support one candidate.

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[6] I. Alexandru, *Tratat de administraţie publică,* Editura Universul Juridic, Bucureşti, 2008, p. 295.
[7] In the field literature, there have been authors of opinion that the president can interfere directly in order to ensure compliance with the constitutional norms through messages addressed to the Parliament, through participation in the Government's sessions or by resorting to a referendum.
[8] C. Ionescu, *op. cit.,* p. 407.
[9] Art. 81 (1) in the Constitution, republished, and Art. (1) in Law nr. 370/2004 on the presidential elections.

Elections are held on Sundays. Elections take place in the month before the expiry of the previous president's mandate. At least 45 days before the elections the Government establishes the election date by governmental decision.

The persons who do not meet the requirements set out in Art. 37[10] of the Romanian Constitution, republished, as well persons who were twice presidents cannot run for presidency.

According to Art. 81 (3) of the Constitution, republished, the candidate who obtained the majority of the votes of all the people in the electoral register, at the first ballot, is declared elected president. If none of the candidates obtains this majority, the second ballot is organised for the first two candidates, who obtained the largest number of validly expressed votes in the whole country at the first ballot. The review of the whole electoral procedure and the confirmation of the results which triggers the organisation of the second ballot, the designation of the first two candidates and of the final winner are ensured by the Constitutional Court[11].

In order to be declared elected at the second ballot, a candidate has to be elected by a relative majority; one vote more than the other candidate is enough for winning the elections. [12]

After being validated, the President gives the oath[13] provided for by the Constitution before the two parliamentary chambers sit together, which marks the beginning of the presidential mandate.

The president is elected for a five-year term, which starts on the date when the president gives the oath and ends on the date when the new elected president gives the oath. The presidential office can only be held twice by the same person, whether the terms of office are successive or not.

[10] The persons who cannot candidate are: persons who do not have the right to vote, the persons who do not have the Romanian citizenship and residence in Romania, persons who are forbidden by the law to join political parties (judges of the Constitutional Court, the Ombudsman, judges and prosecutors, active members of the military, policemen and other categories of public servants established by organic law), persons aged under 35 on the date of the elections, persons who were twice presidents.

[11] The validation of the presidential mandate by the Constitutional Court has a special significance: the election of the Romanian President is confirmed by a jurisdictional, and not a political authority.

[12] The candidate who obtained the largest number of valid votes is declared elected.

[13] I swear to devote my entire power and skill for the spiritual and material development of the Romanian people, to obey the Constitution and the laws of the country, to defend democracy, the citizens's fundamental rights and freedoms, Romania's soverignty, independence, unity and territorial integrity. So help me God!

4.1.3. Incompatibility and immunities of the presidential office

The importance of the presidency requires that the President be completely devoted to this office, without holding any other private or public position or dignity. As an arbiter among the powers of the state, as well as between the state and society, the president must be impartial and independent. It is only in this way that the President can adopt a completely objective position towards all the parties involved in a dispute. During his/her term of office, the President of Romania cannot be a member of any political party, nor can he/she hold any public or private dignity or position[14]. In the light of the constitutional provisions, it follows that the elected President must publicly renounce his/her party membership before giving the oath. The validation of the presidential mandate does not consider party membership. The validated president can preserve his/her party membership until giving the oath, but not after that.

With respect to the incompatibility with any public service/dignity, the concept of public dignity is defined by the administrative law[15]: a position in the central or local state apparatus which involves the exercise of the state authority.

The President cannot hold any private position either, irrespective of its nature or field of activity. However, this incompatibility does not prevent the elected president from carrying out artistic, publishing or research activities, including the capitalization of profits they involve.

The Romanian Constitution, republished, contains parliamentary-type protection measures for the President. Thus, according to Art. 84 (2), the President enjoys immunity and lack of legal liability for the political opinions expressed during and in connection with the exercise of his/her mandate.

Immunity is therefore the rule, and it has a permanent character. The exception to this rule is the legal institution of suspending the President, as well as that of indicting the President.

Obviously, the Romanian President cannot be apprehended, detained, searched or prosecuted for acts carried out in connection with the presidential prerogatives. On the contrary, the violation of these prerogatives raises the question of the president's accountability, according to the nature and seriousness of the allegations.

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[14] See Art. 84 (1) of the Romanian Constituion, republished.

[15] The public service/dignity is the set of duties and responsibilities set by the public institution, according to the law, aimed at accomplishing its competences, and appointment in the public service/dignity is made following a contest or an exam.

4.1.4. The President's prerogatives

The President nominates a candidate for the position of prime-minister and appoints the members of the Government, on the basis of the vote of confidence given by the Parliament. In case of government reshufflement or vacancy, the President dismisses or appoints members of the Government, at the prime-minister's proposal. If the reshufflement proposal alters the political structure or make-up of the Government, the President can dismiss or appoint members of the Government only with parliamentary assent, given at the prime-minister's proposal.

The President can participate in Government's meetings where matters of national interest such as the external policy, defence, law and order are discussed, as well as in other matters, at the prime-minister's request. He/she presides over the Government's meetings he/she attends.

Following consultations with the presidents of the two Chambers and the leaders of the parliamentary groups, the President can dissolve Parliament, if it failed to give the vote of confidence required for forming the Government within 60 days from the first request, and only after the rejection of at least two investiture requests. Parliament can be dissolved only once in one year. It cannot be dissolved in the last 6 months of the President's term of office or during mobilization, war, siege or emergency state.

The President concludes, on behalf of Romania, international treaties negotiated by the Government and submits them to Parliament for ratification, within a reasonable term. The other international treaties and agreements are concluded, approved or ratified according to the procedure set out in the law. The President, at the Government's proposal, accredits and recalls Romania's diplomatic representatives and approves the establishment, abolition, and change of rank of the diplomatic missions. Other states' diplomatic representatives are accredited to the Romanian President.

The President is the commander of the military forces and president of the Supreme Council of National Defence. He/she can declare, with prior parliamentary assent, the partial and total mobilization of the military forces. It is only in exceptional circumstances that the presidential decision is later submitted to the Parliament for assent, within at most 5 days. In case of armed aggression against the country, the President takes measures to repel the aggression, notifying them to the Parliament through a message. If the Parliament is not sitting, it is summoned by right within 24 hours from the aggression. In case of mobilization or war, the Parliament is in session throughout the duration of these states, and if the Parliament is not sitting, it is summoned within 24 hours.

The President declares, according to the law, the state of siege or emergency in the whole country or in certain territorial-administrative units and requests the parliamentary assent for the measure within 5 days. If the Parliament

is not sitting, it is summoned by right in at most 48 hours from the measures and continues to sit throughout the duration of the respective state.

The Romanian President also has the following prerogatives[16]:

a) grants awards and honorary titles;

b) grants ranks of marshal, general, and admiral;

c) appoints public servants, according to the law;

d) grants individual pardon.

4.1.5. President's acts

In exercising his/her prerogatives, the head of the state issues acts referred to as decrees. These can have a general normative or an individual character. For instance, the presidential decree whereby the partial or general mobilization of the military forces is declared or the decree whereby the state of siege or emergency is declared has a normative character. The decrees granting awards or the rank of general have individual character.

Certain presidential decrees have to be counter-signed by the prime-minister, otherwise they are void. The prime-minister's contra-signature entails the Government's accountability for the content and effects of the counter-signed decree.

The Romanian Constitution, republished, provides in Art. 100 (1) that the President issues decrees which are published in the Romanian Official Gazette. Failure to publish the decree renders the decree non-existent. [17]

Besides the decrees, which are legal documents, the President can draw up political documents (statements, appeals, messages).

Messages are grounded in Art. 88 in the Constitution, according to which the President addresses messages to the Parliament with respect to the nation's main political problems.

4.1.6. Vacancy and provisional appointment

Vacancy of the presidential office occurs: in case of resignation, dismissal, permanent impossibility of exercising the presidential prerogatives, and death of the president.

Within three months from the occurrence of the vacancy, the Government will organise elections for a new president. If the presidential office is vacant or if the President is dismissed or it is permanently impossible for him/her to exercise

[16] Art. 85-94 of the Romanian Constitution, republished.

[17] Therefore it follows that there cannot be secret presidential decrees.

the presidential prerogatives, the officials temporary appointed are the president of the Senate or, if this is impossible, the president of the Chamber of Deputies[18].

The Constitutional Court takes note of the circumstances which account for the provisional appointment and notifies them to the Parliament and Government.

4.2. The Government

"The Government, according to its governing programme accepted by the Parliament, ensures the internal and external policies of the country and exercises the overall management of the public administration". (Art. 102 in the Romanian Constitution).

4.2.1. The Government's prerogatives

The administrative role of the Government is closely connected with the political one, with the internal and external policies of the country being carried out by means of drafting bills, adopting decisions for enforcing the laws, directing the activity of the public administration with a view to ensuring compliance with the Constitution, law, and governing programme.

In carrying out its competences as an executive institution, together with the President, and as a leader of the public administration, the Government has governmental (political) and administrative prerogatives.

In order to carry out its administrative competences, the Government establishes administrative law relations with different administrative persons; the legal relations can be classified as follows:

− **subordination** relations with respect to the ministries, other central bodies of the specialized public administration;

− **cooperation** relations with the autonomous administrative authorities and with the Romanian President;

− **administrative trusteeship** relations with respect to the local authorities.

According to Art. 73 (3.d) in the Romanian Constitution, ***the organisation of the Government is regulated by organic law***.

The main prerogatives of the Government, according to the legislation in force, are exercised in the following fields:

A. **in the political-administrative field:**

a) general prerogatives:

− ensures the execution by the public administration of the laws and other normative provisions;

[18] Art. 98 in the Romanian Constitution, republished.

− manages and controls the activity of the ministries and other central and territorial structures of the state administration;

b) **the legislative initiative,** by drafting bills and submitting them to the Parliament;

c) **enforcing the law and ensuring the law and order;**

d) **the country's defence**, by organising, equipping and training the military forces;

e) **the external policy. –** negotiating international treaties, agreements and conventions.

B. **in the field of the national economy:**

− approves development programmes in different fields of activity and in different regions;

− approves the balance of trade and external payments;

− enforces regulations for implementing the market economy mechanisms.

C. **in the social field:**

− develops environmental, employment and living standard improvement programmes etc.

4.2.2. The Government's activity

The prime-minister presides over the Government and coordinates the activities of the members of the government, with the observance of the ministers' prerogatives. Also, the prime-minister submits to the Chamber of Deputies or Senate reports and statements regarding the Government's policy (Art. 107 of the Constitution), which are debated upon with priority, and answers the questions and interpellations addressed by deputies or senators. The prime-minister can appoint a member of the Government to answer the questions and interpellations addressed to the Government by deputies and senators, according to the topic of the interpellation. The prime-minister also has other prerogatives, namely:

− **represents** the Government in its relations with the Parliament, the President, the High Court of Justice, the Constitutional Court, the Court of Auditors, the Legislative Council, the Public Ministry, the other public authorities and institutions, the political parties and alliances, the trade unions, with other non-governmental organisations, as well as in the international relations;

− is the vice-president of the Supreme Council of National Defence and exercises all the prerogatives stemming from this quality;

− **countersigns** the decrees issued by the President, where the Constitution provides for the compulsory countersignature;

− in order to solve operative problems, the prime-minister can set up, by decision, interministerial councils, commissions and committees;

− **summons** and **presides over** the sittings of the Government and of its executive board. During his/her absence, the prime-minister can appoint one of the state ministers to preside over the sittings of the Government and of its executive board;

− **signs** the documents adopted by the Government;

− **appoints and dismisses**:

a) the heads of the specialized bodies under the authority of the Government, except for the persons who have the quality of Government members;

b) the secretary-general and the deputy secretaries-general of the Government, if these positions are in place;

c) the secretaries of state and the state counsellors within the Government's working apparatus;

d) the secretaries of state;

e) other public servants, in the cases provided for by the law;

- any other prerogatives provided for by the Constitution or law or which derive from the role and functions of the Government.

For the purpose of carrying out his/her duties, the prime-minister ***issues decisions*** qualifying as administrative acts. The prime-minister's decisions are published in the Official Gazette, Part I. Failure to publish a decision renders it non-existent.

The Government, just like the President, can issue documents with a political character and legal documents.

The legal documents issued by the Government are, according to Art. 108 in the Constitution, the **decisions** and **ordinances**.

Decisions are adopted with a view to organising the execution of the laws, which means that they cannot include primary regulations of social relations, therefore having a *secundum legem* character.

The Government Decisions, just like the ordinances, are signed by the prime-minister and counter-signed by the line ministers, who are bound to carry them into execution.

Both decisions and ordinances must be published in the Official Gazette, with the exception of those with a military character, which are notified to the institutions concerned exclusively. Failure to publish a decision or ordinance renders it non-existent.

As a result, publication is a validity condition, in the sense that the decision or the ordinance, even if legally adopted, are valid and can be applied only when the publication procedure is completed.

Parliament can adopt a special law qualifying the Government to issue ordinances in areas which are not subject to organic laws, proceeding to what is referred to as legislative delegation (Art. 115 in the Constitution).

The qualifying law must establish the area and term within which ordinances can be issued. If the qualifying law requires, ordinances are subject to parliamentary approval, according to the legislative procedure, within the qualifying time limit. Lapse of time triggers nullity of the ordinance and cessation of the effects of the ordinance.

The Government decision and ordinance are administrative acts subject to the legality review by the administrative courts. In the case of the ordinance, this is possible only during the qualifying period, because at the end of that period the ordinance enters the realm of the acts regarding the relations between the Parliament and the Government, and *they are no longer under the jurisdiction of the administrative courts*.

Alongside the legal delegation, the Constitution also regulates, in Art. 115 (4) the constitutional delegation, which occurs in special circumstances, when the Government can adopt emergency ordinances.

These come into force only after their submission to the Parliament for assent. If Parliament is not sitting, it is summoned without fail.

The publicity condition, provided for in Art. 108 in the Constitution, also applies to emergency ordinances.

The Government in its entirety and each of its members separately must carry out their mandate with the observance of the Constitution and the laws, as well as of the governing programme accepted by the Parliament.

The Government is politically accountable only to the Parliament as a result of the vote of confidence granted on the occasion of its investiture.

Each member of the Government is politically accountable jointly with the other members for the Government's activity and acts.

The Government's political accountability can consist in the Government's dismissal following the withdrawal of the confidence granted by the Parliament, by adoption of a motion of censorship according to Art. 113 and 114 in the Constitution.

Besides the political accountability, the members of the Government can also be legally accountable – the civil, misdemeanour and criminal liability, according to the ordinary law in these areas or to the derogatory provisions in the Ministerial Accountability Act.

The Government members' criminal liability is triggered by crimes committed while in office.

According to Law nr. 115/199 on the ministerial accountability, republished, the following acts committed by the members of the Government while in office qualify as crimes:

a) preventing, by threat, violence or fraudulent means, the exercise in good faith of a citizen's rights or freedoms;

b) submitting in bad faith to the Parliament or President inaccurate data with respect to the activity of the Government or a ministry in order to conceal the committal of facts which can prejudice the state's interests;

c) the unjustified refusal to submit to the Chamber of Deputies, Senate or their standing committees, within the time limit provided for in Art. 3 (2) the information or documents requested by them within the framework of the activity of informing the Parliament by the Government's members, according to Art. 111 (1) in the Romanian Constitution, republished;

d) the issuance of discriminatory rulings or guidelines on grounds of race, nationality, ethnicity, language, religion, social category, beliefs, age, sex or sexual orientation, political affiliation, wealth or social origin, which can prejudice human rights.

If members of the Government commit crimes while in office, Law nr. 115/1999 provides that, besides the main penalty, there will also be a complementary penalty, i.e. the interdiction of holding a public dignity or service for a period of three to ten years.

The prosecution and trial procedure for members of the Government is regulated by the provisions of the Law nr. 115/1999 regarding the ministerial accountability, republished.

The member of the Government, sentenced by final court decision, will be dismissed by the President, at the prime-minister's proposal.

4.3. The public administration

4.3.1. The institutions of the Romanian public administration

4.3.1.1. The notion of public administration

The term 'administration' comes from the Latin 'minister', which means 'servant', and is connected with the term 'magister', designating the master whom he serves and is subordinated to[19].

The notion of administration is broader than that of public administration, since it also includes the notion of private administration. As any human activity, the public administration and the private administration seek to achieve an aim, using certain means.

There is a private administration and a public administration.

The difference between the two types of administration is that the public administration seeks to satisfy the public interest, the public utility, in a disinterested manner, by providing public services inclusively.

[19] Al. Negoiță, *Drept administrativ,* Editura Sylvi, Bucureşti, 1996, p. 3.

The aim of the public administration activity is both the regular and continuous meeting of essential requirements, common to the entire community, which through their scope exceed the private individuals' or companies', and the meeting of requirements which are by nature unprofitable, and therefore nobody would want to provide.

The decisions of the public administration are binding, with the agreement of the addressees not being required. Unlike the private administration, the public administration can use state coercion when necessary. The public administration belongs to the realm of the public activities, as a social activity of public interest and with the status of public power.

The public administration can be understood as a system of institutions, including administrative structures which organise and effect the execution of the laws of the state (in the broader sense, the whole range of regulations mentioned in the Constitution).

The public administration, *in the rule of the law*, is the main lever by which the values established at the level of the political realm are carried out. It has to be continuous, omnipresent, prompt and energetic, since it represents the state the whole time, both within and outside the country.

The public administration is a professional body meant to permanently provide services and ensure law and order, under the authority of the executive power, especially the Government. This body of public servants is specialized, permanent, and has to operate in order to ensure the continuity of the public services provided to the citizens. This approach to the public administration is the result of the present constitutional system.

Before the December 1989 Revolution, the public administration in Romania was entirely a state administration. After the entry into force of the 1991 Constitution, there is a new approach, according to which there is a state public administration, and a non-state public administration, of the local communities; the executive power is above the public administration, with the role to manage, control the public administration and to set its direction of action and priorities.

It should be mentioned that the fundamental law, approved by the national referendum of December 8, 1991, was revised by Law nr. 429/2003, and therefore references are made to the Romanian Constitution, republished.

The public administration is led by the Government (Art. 102 in the Romanian Constitution, republished), which sets its objectives, directions and actions, but at the same time it is subject to the law, which prevents arbitrariness. The discretionary power of the administration is the power to choose among several conducts, legal possibilities, and not an arbitrary power. Still, the public administration enjoys a discretionary power, in the sense that it can choose among a number of conducts and legal possibilities. This power of the administration is not an arbitrary one, since every action and conduct must observe a legal norm.

If the state's original right to carry out the public administration is acknowledged, the public administration can also be carried out by the local communities, through their own authorities, set up for this purpose, whose activity is referred to as **local public administration**.

The public administration can also be understood as a system of administrative institutions which organise and effect the execution of the law. In other words, the public administration is a body of public servants organised in a system of public institutions, endowed with material and financial means, legal personality and the competence to act with a view to executing the law.

4.3.1.2. The organisation and functioning principles of the Romanian public administration

The legality principle

Legality is a fundamental principle laying at the basis of the administrative phenomenon, with the actions of the public administration being subordinated to it.

The public administration, subject to the rigors of this principle, must be grounded upon the law, which represents the reference point in assessing the public administration. Legality is synonymous with the legal regularity and implies the fact that the action of the administration must consider two elements:

- ***the obligation to comply with the law;***
- ***the obligation to take initiative in order to ensure the application of the law.***

The fundamental aim of the public administration is to ensure the satisfaction of the general public interest, expressed by the sovereign will of the people transposed in the law.

The rule of the law demands that, in its activity, the public administration strictly observe the legality; in case of infringement of the legality principle, there should be mechanisms in place to ensure its restoration. "The legality principle", E.D. Tarangul[20] appreciates, *"consists in the rule stating that all the provisions made by the state should be general and impersonal and that all the state's individual acts have to be based upon and comply with the previous general and impersonal provisions. Consequently, administrative acts, which are individual acts, have to be based upon and comply with the previous general and impersonal provisions made by the legislator."*

The administrative act as a key instrument for carrying out the public administration is a unilateral act, in the sense that the executing authorities adopt

[20] E.D. Tarangul, *Tratat de drept administrativ român,* Tipografia Glasul Bucovinei, Cernăuți, 1944, pp. 4-5.

binding executory acts, without the consent or agreement of the addressees, whose conduct is regulated by the respective acts.

In carrying out their activity, the public administration authorities have the prerogatives of a public power, which allows them to impose their will in a unilateral way.

If the legality of the activity of the public administration is subject to judicial review, opportuneness, on the contrary, is excluded from such review. The scope of the opportuneness, of the discretionary power of the administration is very broad, and therefore it may be confused with abuse.

The discretionary power of the administration is understood as the power to choose among several decisions or conducts in compliance with the law.

In exercising its right to choose, the decision-maker complies with the law, so that he/she can only do what the law allows[21].

The basic principles laying at the basis of the rule of the law presuppose a certain normative framework, whereby the organisation and functioning of the administration is achieved and the main legal framework governing the whole public administration is established[22].

Considering that the public administration is essentially an action which seeks to achieve a certain aim, and the aims – and therefore also the functions of the public administration – are consciously established on the basis of the regularities of the social development and citizens' interests, we will notice that most of the times they (the aims, the functions) obtain a legal confirmation.

As a guarantee of the principle of the supremacy of the Constitution and the law, another two derived principles can be mentioned, namely the principle of the constitutional review of the law, exercised by the Constitutional Court (Art. 140 in the Constitution), and the principle of the judicial review of the action of the public administration[23].

The citizens' equality in rights before the laws and before the public authorities, without privileges or discrimination, is a principle stating that no one is above the law and therefore, in their entire activity, the authorities of the public administration, together with the other public authorities, are called to ensure the complete equality in rights in all the areas of the economic, political, legal, social and cultural life for all the citizens, without discrimination on grounds of race,

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[21] Also see I. Teodoroiu, „Legalitatea oportunității şi principiul constituțional al proporționalității", in *Dreptul,* nr. 3/1997, p. 39.

[22] N.Popa, *Teoria generală a dreptului,* Editura Actami, Bucureşti, 1996; I. Iovănaş, *Drept administrativ şi elemente ale ştiinței administrației,* Editura Didactică şi Pedagogică, Bucureşti, 1977.

[23] I. Deleanu, *Drept constituțional şi instituții politice,* Bucureşti, 1991; F.B. Vasilescu, Constituționalitate şi constituționalism, Editura Național, Colecția juridică, Bucureşti, 1998.

nationality, ethnicity, language, religion, sex, belief, political affiliation, wealth or social origin. This guarantees the possibility for all citizens to participate in the political, economic, social and cultural life.

The permanence and continuity principle

This principle expresses the permanent character of the activities of organising and effecting the execution of the law carried out by the public administration.

Maintaining the social balance and preserving the law and order require that certain general public interests be satisfied. The reason of existence of the society organised into a state cannot be understood without the satisfaction of certain common needs through cooperation among the members of the social body.

The government have to organise law enforcement activities and to endorse public services without which the society could not exist.

"In the human society, E.D. Tarangul[24] asserts, *there are certain needs of general interest, i.e. the need for peace and safety, the need for healthcare, the need for culture, etc. If these needs were not satisfied, the whole social life would suffer and lose balance. They have to be satisfied on a regular and continuous basis. The state must interfere and organise these activities in order to ensure peace and social balance."*

"*In principle*, professor E.D. Tarangul[25] remarks, *all types of activities, including the general interest activities, are left to the private initiative. For instance, the food, wood, clothing and medicine supply to the population are, undoubtedly, activities of an enormous importance for the general interest. Yet they are generally left to the private initiative*.

If, however, the state comes to the conclusion that the private initiative does not offer enough guarantees for an appropriate and regular satisfaction of the general interests and needs, then it takes over the respective activity and turns it into a public service."

Of course, in the present approach to the public administration, the regular and continuous character refers to all its actions of organising and effecting the execution of the law, so it is not restricted to the public service.

As opposed to a changing political environment, the public administration stands for continuity, permanence and stability, which enhance its influence on the society.

[24] *Op. cit.,* p. 14.
[25] *Op. cit.,* p. 16.

The equality and neutrality principle

Since it is aimed at satisfying general interests, the public administration must ensure equal access to the provided services for all citizens, which stems from the equality before the law.

The public administration must operate in order to satisfy the general interest, and not a private interest, in the sense that it provides services for all citizens, without discrimination on grounds of origin, age, race, political affiliation, religion, etc.

The principle of separation of the public and political positions

The efficiency of the public administration bodies in carrying out their tasks largely depends on the human quality and the professional capacity of those who make up these bodies. Therefore a distinction is necessary between the career civil servants and the political level of the administration. This principle is aimed at:

− creating a professional, impartial, honest, stable and efficient body of public servants;

− improving the public servants recruitment and selection system;

− improving the professional training systems;

− developing mechanisms resulting in the increase of the public servants' mobility within the civil service;

− distinguishing public servants from other state employees within the executive power. The civil service should be defined especially by considering the public servants' prerogatives rather than the institutions where they work;

− improving the coordination of the public servants and guaranteeing the uniform application of the administrative principles by the public servants;

− creating a performance-based wage and incentive system for the public servants' activity;

− creating a recruitment and promotion system based on merits, guaranteeing that the best public servants are promoted.

The transparency principle

The public administration with all its structures is not and cannot be seen as a system isolated from the general social framework, and therefore the relation between the public administration and the citizen is an unavoidable problem of present interest.

Romania has witnessed, after December 1989, a special dynamics of the socio-economic, political and cultural circumstances, and the legal framework has also been subjected to many transformations and adjustments, in the desire to achieve the best possible approach and solutions to the problems facing the Romanian society. There have been flaws and inconsistencies, execution difficulties and procrastinations inherent to a changing system.

Nevertheless, the legislation in force promotes modern regulations, which is an expression of the appropriate understanding; Law nr. 215/2001 states the following in its first article:

"The public administration in the territorial-administrative units is organised and operates on the basis of the local self-government, public service decentralization, public authorities' eligibility, and legality principles, as well as of the principle of consulting the citizens with respect to the local problems of special interest."

The last part draws our attention:

"consultation of the citizens with respect to the local problems of special interest", where reference is obviously made to the consultation through referendum, no longer applicable in the present because of the lack of a framework procedure. Still, a natural question arises: **why is it necessary for the citizens to be involved in the local authorities' decisions?**

- In an attempt to find a possible answer, we start from the assumption that the **citizen cannot be indifferent** to the social and economic background in which he/she lives or to the way in which the local administration works on the improvement of his/her living conditions.
- Also we consider that in the Romanian administrative system, **precedence must be given to creating the necessary conditions for taking responsibilities regarding the development of the localities**, as well as of all the local interest public services, especially by enhancing decentralization and the transfer of the responsibility management from the central to the local level, on the one hand, and from the public administration to the citizens, on the other hand.

In this sense, special emphasis is laid on:

- **the transparency of decisions;**
- **the accurate information from top to bottom and from bottom to top.**

Citizens' participation in the decision-making process in a traditional democracy presupposes certain steps.

The first step in that of **informing**, which *presupposes efforts made by both citizens and the local administration*. The public administration has to inform the citizens with respect to its activity and plans for the citizens to understand the priority directions of the administrative policy.

According to Art. 3 in Law. Nr. 544/2001 regarding the free access to the information of public interest, access to the information of public interest is ensured by the public authorities or institutions on their own motion or upon request, through the public relations department or through the person appointed for this purpose.

The second step refers to the **consultation with the citizens**, i.e. the authorities' attempt to identify the citizens' needs, to assess the priorities or to

gather ideas and suggestions with respect to a specific problem. Consultation does not question the decision-making system. The public authority has power of decision and the liberty to take the consulted citizens' suggestions into account or not.

According to Art. 6 of Law nr. 52 of January 21, 2003 regarding the decision-making transparency in the public administration, *published in the Official Gazette, Part I, nr. 70 of February 3, 2003*, within the framework of the bill drafting procedure, the authority of the public administration must post an announcement regarding the bill on its own site and at its headquarters or a place accessible to the public, and to submit it to the central or local media, accordingly. The public administration authority will send the bills to all persons who filed an application requesting such information.

Consultation involves a real dialogue between the citizens and the public administration representatives. It presupposes the abandonment of the dogmatic and directive-like attitude of the public authorities and the use of a clear and plain common language. Also, the increase of efficiency requires:

- ***an atmosphere of tolerance towards opinions;***
- ***encouraging everybody to express opinions, which is more important than offering information.***

In the present social climate, this initiative faces many difficulties resulting from the citizens' general distrust towards the state institutions, and therefore the public administration first of all has to rebuild its own image.

The third step refers to the **public involvement** itself. A first step towards it consists in admitting that a real public involvement is not easy to obtain.

Involvement presupposes the participation of each person, according to his/her knowledge and skills, in solving the problems of the community. This can be achieved by citizens' advisory groups, participation with ideas or involvement in the community's development projects.

The devolution principle

Administrative devolution is defined as *the redistribution of administrative and financial competences by ministries and other specialised bodies of the central public administration to their own territorial specialized structures.* The administrative devolution consists in transferring of an important part of the activity of the central administration to the territory. This is a diminished form of the centralising system.

In the case of a centralised regime, only agents of the central bodies operate in the territory. They are appointed and dismissed by and accountable to the central bodies. They are mere administrative agents, with no decision-making competence, having only obligations: to inform the centre with respect to the local situation and to execute the central decisions in the territory.

In the case of the administrative devolution on territorial bases, there are also administrative institutions in the territory, and not only mere agents. They are institutions of the state administration, whose members are appointed and dismissed by and accountable to the institutions of the central administration. They have their own decision-making competence. **The devolved administrative institutions are still state institutions, hierarchically subordinated, even if they acquired their own decision-making competence**.

The administrative decentralization based on the local self-government principle

Decentralization is that system within which the management of the local, communal, city or county interests is carried out by authorities freely elected by the citizens of the respective community. Having its own financial sources and autonomous decision-making power, according to the constitutional provisions, this system answers the idea of freedom.

If centralisation corresponds to the demands of unity, administrative decentralization corresponds to those of diversity. Administrative organisation was never achieved in a definite manner, on one dimension. Both excessive centralisation and absolute autonomy are objectionable, and efforts should be directed towards an appropriate weighting in order to obtain a balance between the two extremes.

Administrative decentralization combines with local self-government, in the sense that within the territorial-administrative units there are both autonomous local administrative authorities, elected by the local communities, which satisfy the local public interests, and devolved authorities of the state territorial administration at the level of the territorial constituencies which serve the local public interests and exercise, by delegation, some state competences, given that the state administration bodies in the territory also satisfy interests of the local communities.

Local self-government, regarded exclusively from an administrative point of view, emerges only as a final step in the development of the administrative decentralization; essentially, it represents the transfer of certain administrative competences from the central level to various administrative bodies or authorities, which function autonomously in the territorial-administrative units, and which are elected by the respective local communities.

Local self-government is the modern form of expression of the administrative decentralization principle. It is associated with the establishment of a distinct status for the local communities and their authorities in relation to the state administration and the authorities exercising it in the territorial-administrative units.

The essence of this principle is connected to the local communities, which, in the European Charter of Local Self-Government[26] – the autonomous exercise of the local power, are defined, taking the national regulations into account, as basic local communities (communes, districts, departments), but also as regional communities, inasmuch as the parties to this convention do not resort to the reservations that the Charter allows.

Art. 4 of the European Charter of Self-Government, "Scope of local self-government" sets out the **subsidiarity principle**, stating that *local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority, that public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen, and that powers given to local authorities shall normally be full and exclusive.*

So subsidiarity presupposes that the emphasis in the decision-making process for issues of public interest should move as close as possible towards the basic level, and stop being a monopoly or a rule for the state administration. Therefore, the competence in the public interest areas assigned to the autonomous local authorities at the basic level (commune and city), which are the closest to the citizens' needs and are elected by the citizens, should be the rule, while the intermediate and central authorities should be the exception.

The subsidiarity principle, applied in the public administration, does not stand, in a unitary state, for a sovereignty delegation or decrease, since local self-government is provided for by the Constitution and by the laws of the unitary state and is exercised according to them and within their limits.

Decentralization is a system of administrative organisation which enables territorial communities to self-manage, under the state's control, which grants them legal personality, allows them to set up their own authorities and gives them the necessary resources.

According to the definition given in Art. 2 l) in the Decentralization Framework Law nr. 195/2006, decentralization is "the transfer of administrative and financial competence from the level of the central government to the level of the local government or to the private sector".

Administrative-territorial decentralization presupposes the acknowledgement of the local authorities and of their right to self-government. Administrative decentralization refers not only to the solving of local problems by local authorities, but also by the private sector.

The elements of the administrative decentralization, based on the local self-government principle, are:

[26] The European Charter of Local Self-Government, adopted at Strasbourg on October 15, 1985, was ratified by Law nr. 199/1997 and published in the Romanian Official Gazzette, Part I, nr. 331/1997.

- ***The existence of a local community:***

The administrative decentralization based on the local self-government is done in connection with the existence of a local social community, organised in administrative constituencies which coincide with or differ from the state territorial-administrative units.

These local social communities, parts of the national community, have specific needs which join their members together.

The local needs and interests are linked with the specificity of the respective community and distinct from the general needs of the national communities. For instance, the needs solved through local services include: **the water supply, the heating system, sanitation, the public lighting, road construction and maintenance** etc.

On the other hand, the state cannot solve, through its means and in an operative and efficient way, all these problems and interests. As a result, the state is the one to determine which problems will be the responsibility of the state public services and which will enter the scope of competence of the local authorities. As a rule, the scope of the local problems is determined or delimited by Constitution or law.

- ***Acknowledging the responsibility of the local communities in managing the specific needs***

In order for the local self-government to exist, the problems specific to the local communities, recognised as such by the law, should be solved by these communities. The existence of the local needs and interests presupposes the existence of the material means to satisfy them, such as the community's property, a body of public servants to manage the public affairs, a certain degree of financial autonomy based on the existence of the community's budget.

- ***The local community should have its own administrative authorities, autonomous from the state.***

Local authorities, structures of administrative leadership of the local communities, are those authorities which solve specific problems.

In the case of the administrative decentralization, these local authorities must be the representatives of the local communities, and not the representatives of the state leading those communities. ***This means that the local authorities should result from free elections in the territorial communities' constituencies.***

For an operative solving of the local affairs, these authorities should have a competence which grants them autonomy from the bodies of the state administration.

This autonomy does not mean the independence of the local authorities from the central authorities of the executive power.

- ***Supervision of the actions of the local community by the authorities of the executive power.***

By virtue of the dependence of the local community upon the state where they are organised, the central authorities reserve themselves the right to supervise the actions of the local communities, exercising a certain type of control over them, which is called **administrative trusteeship**.

This type of control only regards the legality of the acts, not their opportuneness. The administrative trusteeship has an exceptional character and is different from the hierarchical control, in the sense that the cases in which it is exercised must be provided for by the law.

4.3.1.3. The tasks and roles of the public administration

The tasks of the public administration are those duties assigned to it with a view to achieving the political values transposed into law, within the framework of the social system.

These are duties towards the entire society which the public administration must serve, satisfying the overall needs of the individuals who make it up, from the point of view of the general interest.

The general interest is formulated within the political system by the bodies holding the power in the state and thus the tasks (missions) of the public administration have a prominent political origin, since the state politics is carried out through these tasks.

At the same time we must mention that the tasks of the public administration also stem from the functions and politics of the state, because the public administration is connected to the organisation of the society into a state.

Starting from the content of the public administration as an activity disposing or providing the organisation and effecting of the law, we can derive two categories of tasks:

a) leadership and organisation tasks;

b) ***service provision tasks.***

a) **Leadership and organisation tasks**

These tasks of the public administration derive from the traditional function of the state, i.e. that of regulating the activity of the members of the society.

The specificity of the leadership and organisation tasks consists in the *actions with regulatory character*, organising and effecting the execution of the law in the most diverse fields of activity in which the state and the territorial-administrative units operate.

Of course these tasks presuppose a whole range of activities, including preparation, information gathering, planning, decision-making and control.

b) **Service provision tasks**

These tasks, organised and carried out through the public administration system, derive from the function of the modern society of providing services of the most diverse types to the members of the social community.

Some service provision tasks are of national interest, such as those related to law and order, state security and diplomatic representation.

Other service provision tasks are of local interest and are meant to satisfy material or spiritual needs of the members of society, at the level of the local communities. Such are the goods manufacturing and service provision, education, social security and healthcare services.

Considering the above, the public administration can be defined as an activity of organising and effecting the execution of the law through activities of disposition and service provision, which are mainly carried out through the system of the public administration bodies, and, subsidiarily, through other systems of organisation of the state powers – the system of the legislative power and the system of the judicial power – as well as within private organisations carrying out activities of public interest.

The main roles of the public administration can be classified as follows[27]:

− **the role of an intermediate execution mechanism** meant to organise and ensure the execution – ultimately using its authority or even coercion;

− **the role of an instrument for preserving** the material and spiritual values of the society, ensuring the continuity and permanence of the society;

− **the role of organising and coordinating the necessary adjustment** resulting from the inherent transformations in the evolution of different areas of the society, especially in its economic structures.

The public administration is aimed at accomplishing the political values expressing the general interests of the society, formulated by the law. The institutions of the public administration system have missions pertaining to the content of the administrative and management activity, and not to the public power.

As a state activity, the public administration is closely linked to the executive power of the state, as a way of accomplishing it.

The state, as a form of social organisation, sets up a system of political institutions which allow it to lead and to govern. Under these there are administrative institutions, which execute the decisions of the political institutions. We may consider that these administrative institutions have important roles with a political character, connected to the existence, organisation and functioning of the state and of the local communities, without which a modern society cannot be conceived of.

[27] I. Alexandru, *Drept administrativ,* Editura Omnia, Braşov, p. 41 and the following.

4.3.1.4. The activities of the public administration

Executive activities with regulatory character

The name of the first category of activities, i.e. the executive activities with regulatory character, emphasizes the special character of the power granted by law to the public administration in order to organise the execution of the law.

On the basis of these activities the execution of the law is organised and the conduct to be adopted by the different legal and natural persons is established.

Through these activities, the administration prescribes to legal and natural persons a permissive or restrictive conduct, and in certain circumstances penalties can be applied for infringement of the law.

This framework of organisation of the execution of the law also includes the administrative police which deals with law enforcement measures and the security and sanitation, which must be in place in a civilised society[28].

Failure to observe the administrative police measures require different types of penalties, according to the type of offence – minor or serious.

The term "executive activities with regulatory character" expresses, at a functional level, **the power granted by the law to the public administration to organise the execution of the law**, and at an organisational level, it expresses **the notion of public authority**, author of administrative acts, the main form of manifestation of a legal will.

Within the decision-making process of organising and effecting the execution of the law, i.e. of the application of the law, a vast and complex activity of information gathering and consultation with other institutions is needed. These activities form the **advisory and information gathering administration**.

In their turn, the activities involving debates on issues to be decided upon form the **deliberative administration**.

Then, there are activities of direct execution of the law, which form the **active administration**.

The executive activities involving the provision of services

The political values expressed in the law are pursued by the public administration by means of providing different services of general interest, carried out on the basis of and in executing the law, *ex officio* or at the request of legal or natural persons or of different state bodies.

The act of providing services, ensuring the quality of life within the local communities, is carried out by the public administration in the area of sanitation and environmental protection, the supply of gas, electricity, telephone services, radio, television, postal services, public transport, construction and housing, healthcare, cultural and educational activities etc.

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[28] P.H. Carlidan, Cr. Houter, *Manuel pratique de droit administratif,* Editura Eyrolies, 1991, p. 84.

The public administration institutions have the task of meeting the interests of the citizens and the communities, and the services provided have the character of public services provided to the public by the public administration. These services are provided according to and in executing the law and represent specific forms of effecting the law, of carrying out the state policies through the public administration.

The public administration can be defined, with respect to the public services, both at a formal, organisational level, and at a material functional level, as a set of services meant to satisfy the many diverse interests and needs of each citizen and of the society as a whole.

The executive activities involving the provision of services derive from the new functions of the state in the contemporary era, in addition to the traditional functions involving the regulation of the activity of the members of the society and the execution and observance of the regulations[29].

The provision of services is linked with the power of the state, and it is provided for by the law and by the legal acts issued according to and in executing the law, as the responsibility of the public administration.

The provision of public services better shapes the specificity of the public administration as an activity and as a system of public institutions with specific connections among them, whose main task is to carry out the public administration as an activity of organising and effecting the execution of the law.

4.3.1.5 The system of the Romanian public administration

The public administration, from a material point of view, **is carried out through a multitude of organisational forms**, which make up the system of public administration, which is, in turn, a subsystem of the social organisation of the overall society.

Having the role of achieving the political values which express the general interests of the society, the public administration, regarded as an activity, is linked with the power in the state.

The public administration system is connected, both from an organisational and a functional point of view, with the legislative and the executive powers.

The executive power is the one that ensures the leadership and control of the whole public administration system in the exercise of the state power.

Social communities in relation to which the administration system is built are grouped according to **the territorial and the functional criteria**, which are criteria for organising the society. Social communities in relation to which the

[29] M. Waline, *Droit Administratif,* Paris, 1963, p. 6.

public administration system is built make up the population of the country, which is a defining element of the state.

The public administration system is in place for organising and effecting the execution of the law, an activity which addresses the whole population of the country and operates on the entire territory of the state and in its territorial-administrative units.

According to the Romanian Constitution, the general leadership of the public administration is assigned to the Government, as an authority of the executive power, together with the Romanian President.

Besides the governing role, the executive power also has the management role.

The components of the public administration system can be grouped, according to their relation to the state, into two sub-systems:

- **the state administration sub-system**
- **the local administration sub-system**

A. The state administration sub-system is organised, from a territorial point of view, at two levels:

a) the central level;
b) the territorial level.

a) at central level, the following components of the public administration system can be identified:

- **the presidential administration** (the President of Romania – as head of the executive, and the institution of the Presidency);
- **the governmental administration** (made up of the Government – as one of the two heads of the executive, and the public institution of the Government);
- **the specialized central administration**;
- ministries and other specialized bodies under the authority of the Government;
- specialized bodies under the authority of the ministries;
- **autonomous administrative authorities**:
- **with a constitutional status:** The Supreme Council of National Defence, The Court of Auditors, The Ombudsman, The Legislative Council;
- **with a legal status:** The Foreign Intelligence Service, The National Bank, The National Council for Academic Accreditation and Attestation, The Romanian National Securities Commission, The Competition Council, The National Audiovisual Council of Romania, The Economic and Social Council, The Romanian Academy etc.;

b) at the territorial level of the state administration (in the territorial-administrative units), the following components are in place, on the basis of the administrative devolution:

− **the prefect,** a high public official, is the representative of the Government at local level and manages the devolved public services of the ministries and of the other specialized bodies of the central administration in the territorial-administrative units, operating jointly with the prefect's institution, which is a public institution with legal personality, and with its own property and budget;

− **the external ministerial services,** devolved in the counties, under the authority of the ministries which established them, and coordinated by the prefect of the county.

B. The local administration sub-system is made up of deliberative and executive local authorities, as follows:

Type of territorial-administrative unit	deliberative authority	executive authority
Commune	Local council	Mayor
City*)		
County	County council	The president of the county council

)In the municipality of Bucharest, the deliberative authority is the General Council of the Municipality of Bucharest, and the executive is the general mayor of the Municipality of Bucharest; at the level of the districts of the municipality of Bucharest, the deliberative authorities are the Local Council of the respective district, and the executive are the mayors of the respective districts.

As mentioned at the beginning of the present work, the present Romanian public administration system and its specific institutions, self-government and decentralization, are not a novelty in the Romanian constitutional system; they actually have a long tradition in the administrative life of the Romanian society, which goes back to the second half of the 19th century.

Management of the local and county issues was, in our first constitutional systems, the responsibility of **the county and the rural or urban commune**, which were territorial constituencies with legal personality.

This organisational system of the local life was grounded upon the 1831 **Organic Regulations**, which, in the first place grants only to the cities the right to self-government "*through city councils elected by the inhabitants*".

Actually, the idea of self-government, of an autonomous local administration, later became a programmatic point in the demands of the **1848**

Revolution in the two principalities, with one of the demands being "the right for each county to elect its rulers".

The 1858 Paris Convention took over these desiderata, and Cuza's Statute recognizes them as organisational principles of the modern Romanian state. As a result, the Law for the urban and rural communes nr. 394/March 31, 1864 and the Law nr. 396/March 31, 1864 establishing the County Councils carry these desiderata into effect, recognizing the legal personality of the communes and counties, and providing the communes and counties with elected deliberative and executive bodies to represent the local interests of the respective communities.

The Constitution of July 1, 1866 proclaimed that the affairs of the local communities are to be managed through "the county and communal institutions", regulated by laws, based on "a more complete decentralization of the administration and on the communal independence" (Art. 106 and 107), and local self-government was declared in principle.

The 1923 Constitution provides for the county and communal institutions, in Art. 41 and 108, establishing that these are regulated by laws which "will be based upon administrative decentralization, and the members of the county councils and commune councils are elected by the Romanian citizens by universal, equal, direct suffrage in a secret and compulsory ballot system, with the minorities being represented"; according to the law, councils could also include "members by right and co-opted members" [30].

According to the provisions of the present **Constitution**, at the level of the territorial-administrative units there is a territorial administration made up of the devolved public services of the specialized central administration, including the prefect as a devolved service of the Government ("representative"), as an appointed state territorial administration, and, on the other hand, there are autonomous authorities of the communes and towns, representing the first level of the local self-government, and county authorities, representing the second level of the local self-government, with both the latter local authorities being elected.

The two components of the administration at the level of the territorial-administrative units are distinguished by the different regimes applied to each of them. The first component, representing the state services, has a devolved regime, whereas the second, represented by authorities elected by local communities, has a decentralized regime of self-government.

The two sub-systems of the public administration are not isolated; on the contrary, they interact in their activities, they are even in a relation of interdependence.

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[30] I. Muraru, Gh. Iancu, Mona-Lisa Pucheanu, C. Popescu, *Constituţiile României, Texte, Note. Prezentarea comparativă,* Bucureşti, 1993.

Art. 120 (1) in the Romanian Constitution, republished, shows that the public administration in the territorial-administrative units is based on the principles of decentralization, local self-government and devolution of public services. These constitutional principles are complemented, according to Art. 2 (1) in the Local Public Administration Act nr. 215/2001, republished, with the subsequent amendments and addings, by the following principles: the eligibility of the local authorities, the legality, and the consultation with the citizens in solving the local problems of special interest.

With respect to the relations between the local authorities, it is important to mention Art. 6 in the Local Public Administration Act nr. 215/2001, republished, with the subsequent amendments and addings, namely: "(1) The relations between the local authorities in the communes, cities and municipalities and the public administration authorities at county level are based on the principles of self-government, legality, responsibility, cooperation and solidarity in dealing with the problems of the whole country.

(2) There is no subordination in the relations between the local authorities and the county council, on the one hand, and between the local council and the mayor, on the other hand."

As a result, the local authorities effecting the self-government in communes, cities and municipalities are the local councils and the mayors. Municipalities have the same authorities in place, which can also be organised at the level of the territorial-administrative subdivisions of the municipalities.

The status of the local councils and mayors with respect to self-government is defined by the Constitution and by the Local Public Administration Act nr. 215/2001, republished, with the subsequent amendments and addings, with both authorities having the role of autonomous administrative authorities in dealing with the public affairs in communes and cities. From this point of view, a distinction must be made between the public affairs in communes and cities and the public affairs which exceed the local sphere, entering the sphere of the general interest, which can be dealt with by other services of the public administration or, by virtue of the law, such prerogatives can be assigned to the autonomous local authorities.

ARTICLE 120
Basic Principles

(1) The public administration in the territorial-administrative units is based on the principles of decentralization, self-government and devolution of public services.

(2) In the territorial-administrative units where citizens belonging to a national minority have a significant weight, the use of the minority language is

ensured in written and oral form in the relations with the local authorities and with the devolved public services, in the conditions provided by the organic law.

ARTICLE 121
Communal and City Authorities

(1) The public administration authorities who carry out the self-government in communes and cities are the elected local councils and the elected mayors, according to the law.

(2) The local councils and the mayors are autonomous administrative authorities and deal with the public affairs in the communes and cities, according to the law.

(3) The authorities provided for in (1) can also be set up in the territorial-administrative subdivisions of the municipalities.

ARTICLE 122
The County Council

(1) The county council is the public administration authority coordinating the activity of the communal and city councils, with a view to providing public services of county interest.

(2) The county council is elected and operates in the conditions set out in the law.

ARTICLE 123
The Prefect

(1) The Government appoints a prefect in each county and in the municipality of Bucharest.

(2) The Prefect is the representative of the Government at local level and runs the devolved public services of the ministries and of the other specialized bodies of the central administration in the territorial-administrative units.

(3) The prefect's prerogatives are established by organic law.

(4) There are no subordination relations between prefects, on the one hand, and local councils and mayors, as well as county councils and their presidents, on the other hand.

(5) The prefect can challenge, in an administrative court, an act of the county council, of the local council or of the mayor, if he/she considers the act illegal. The challenged act is suspended by right.

4.3.2. Administrative acts

4.3.2.1. Characteristic Features of administrative acts

The administrative act is part of the category of the concrete forms of effecting the public administration which produces legal effects. When we say that a concrete form of activity produces legal effects, we mean that it generates, modifies or cancels legal relations, or, more exactly, it generates rights and obligations for the subjects of legal relations.

The second category is represented by the forms of activity of the public administration which do not produce legal effects themselves, which include the **technical administrative operations** and the exclusively **political acts** of the public administration[31].

The administrative act is a unilateral legal act, issued by a public administration authority, by virtue of the state power, based on the law and aimed at executing the law.

- **The first characteristic feature is that the administrative acts are *legal acts*.**

This characteristic distinguishes the administrative act from the technical administrative operations.

The administrative act is a unilateral manifestation of legal will made in order to create, modify or cancel legal relations, whose execution is guaranteed by the state's coercive force.

From the above it follows that not any manifestation of will is a legal act, and the simple expression of an opinion by a public administration institution is not an administrative act.

An administrative act results in rights being created, new obligations being established or old obligations being cancelled. Also, through an administrative act, legal claims lodged by legal or natural persons before the administration authorities can be rejected. The unjustified refusal to solve a claim regarding a right recognized by the law or the silence of the administrative structures with respect to such legal claims amount to administrative acts.

- **The administrative act is a *unilateral manifestation of legal will*.**

The administrative act is unilateral not because it is issued by one person – more than one person can participate in the issuance/adopting[32] – but because it expresses one will, coming from an authority of the public administration.

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[31] See I. Iovănaş, *Drept administrativ,* Editura Servo-Sat, Arad 1997, p. 9 and the following.

[32] "Issue" is the term used where the issuing authority is a one-man authority – mayors and presidents of county councils, as executive authorities, while "adopt" is the term used where the

On the basis of this characteristic, administrative acts differ from other legal acts issued by the authorities of the public administration or to which the authorities of the public administration are parties.

- **The unilateral legal will is subject to a *specific legal regime*.**

The unilateral manifestation of will presupposed by an administrative act is subject to a specific legal regime, referred to as administrative regime. The administrative legal regime includes a number of rules of content and form which regulate the **issuance/adoption, validity conditions and legality review of the administrative acts**.

4.3.2.2. A comparison between the Administrative Acts and other legal acts

A. *The Administrative Act and the law*

Although they are unilateral legal acts, grounded on the public power, the legal force of the law differs from that of administrative acts, and so does its legal regime. The authority of the law is grounded on the state sovereignty, while the authority of the administrative act derives from the law.

The issuance/adoption and application of the administrative acts is based on the organisation of the execution of the law, and, consequently, the administrative act is always subordinated to the provisions of the law, which accounts for the different types of review to which administrative acts are subjected for their legality to be ensured.

B. *The administrative act and the court decision*

Although both acts are unilateral legal acts, grounded on the law, from a formal point of view the court decision is the legal act whereby the judicial power is exercised, while the administrative act ensures the intervention of the executive power in the organisation of the execution of the law.

The difference between the two categories of acts is not only a formal one, it is also one of nature and of applicable legal regime.

Thus, the administrative act is the act whereby the execution of the law is organised, while the court decision sanctions the infringement of the law, solving a litigation which occurred between the parties.

C. *The administrative act and the contract*

The main difference between the two categories of acts is that the administrative act represents a unilateral manifestation of will, while the contract represents an agreement aimed at producing legal effects, i.e. creating or terminating rights and obligations.

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issuing authority is collegial – the county councils/the General Council of the Municipality of Bucharest and the county councils, as deliberative authorities.

Another difference is in the realm of the legal regime. While the administrative act has a public law regime, with special reference to the administrative law regime, as a form of the public law regime, the contract has a private law regime.

At the same time, there are differences between the administrative act and the administrative contract, which is a special contract that the public administration bodies can conclude.

4.3.2.3. Categories of administrative acts

Administrative acts can be grouped into several categories, according to a number of peculiarities and criteria which will be presented below.

A. ***According to the scope of the effects they produce***

According to this criterion, we can distinguish the categories of **normative acts** and **individual acts**.

The normative acts contain general, impersonal rules, which apply to an indeterminate number of cases and subjects (persons).

The individual acts create rights and obligations benefitting or binding one or more determined persons.

According to their content, the following categories of individual acts can be distinguished:

a) **Acts establishing determinate rights or obligations for their addresses.** The classic example is the construction permit, which grants a well-determined right to a person.

b) **Acts granting a personal status to the beneficiaries.** This is the case of the graduation diploma, which grants a number of rights and obligations, but not a determined right or obligation.

c) **Sanctioning administrative acts.** These acts institute state coercion in the form of the sanction and presuppose the determination of the state of fact and of the offender's guilt, usually recorded in a document.

d) **Jurisdictional administrative acts.** They are individual, specific acts issued by public administration bodies with the specially assigned competence of solving certain litigations.

The procedure used in issuing these acts is different from that of the ordinary administrative acts, as it presupposes the parties' participation and the adversarial principle in the debate prior to the issuance of the jurisdictional administrative acts.

B. According to the issuing authority

Administrative acts can be classified by the author of the act, as follows:

− decrees issued by the President of Romania;

− decisions and ordinances adopted by the Government;

− directions and orders issued by the ministers and the heads of other specialized central administration bodies;

− decisions of the county, city and communal councils and of the local counties of municipalities;

− prefects' orders;

− orders of mayors and presidents of county councils.

C. According to the number of authorities participating in the issuance/adoption of the administrative act.

According to this criterion, administrative acts can be:

− administrative acts issued/adopted by one authority;

− administrative acts whose issuance/adoption involves more than one administrative authority.

Most administrative acts belong to the first category.

In the Romanian administrative law there are cases where administrative acts arise from the fusion of two or more manifestations of will coming from different bodies. This is the case of the direct coincidence of competences (for instance, the case of the administrative act issued by more ministers).

The fact that the complex acts contain more manifestations of will has two practical consequences:

− they can only be revoked or repealed by a symmetrical act, which contains the manifestations of will of all the bodies which drew up the previous act, or by an act issued by a higher authority than all the issuing authorities;

− any action in court must be brought against all the bodies which participated in the issuance of the act.

4.3.2.4. The issuance/adoption and effects of the administrative acts

The issuance/adoption of the administrative acts is the result of the exercise of the competence granted to the administrative authorities.

The administrative **competence** consists of the set of prerogatives assigned to an authority, a functional department or a person (public servant) and the limits of their exercise. As a component element of competence, the **prerogative** consists in the powers granted to an authority, functional department or public servant, on the grounds of a normative act.

In order for the legality of an administrative act to be determined, the following are analysed:

− **the material competence,** seen from the point of view of the content and scope of the prerogatives;

− **the territorial competence** designates the territorial framework within which public authorities exercise their prerogatives. For instance, the use of the

territorial competence as a classification criterion enables the distinction between the central authorities of the public administration (with a territorial competence extended to the entire national territory) and the local authorities (competent to exercise their prerogatives at the level of the territorial-administrative unit – commune, city, municipality, county);

− **the personal competence** consists in the set of prerogatives held by a person in a specific public office. In this sense, the mayor has one competence and the president of the county council has a different competence.

The administrative act must always comply with the law and other normative acts which it carries into effect. This requirement allows for the application of the principle of the supremacy of the law in the Romanian law. In other words, the administrative act, which operates within the executive activity and with a view to carrying out the executive activity, has to be in accordance with the law which it applies and with all the other normative acts issued on the basis and in the execution of the law.

The conformity of the administrative act with the content of the law and of the other normative acts is a **content requirement** of the respective act.

Formal and procedural requirements in the issuance of the administrative act

The requirement of the written form of the administrative act is the outcome of the presumption of its official character. Thus, in order to be considered legal, an administrative act must originate from an official institution, invested with certain prerogatives. *The written form is always required in the case of the normative acts, since they are subject to the publication requirement*.

The procedure of drawing up, adopting and carrying into effect of the administrative acts presupposes a number of successive operations involved in the issuance of a valid act. These operations are regarded as conditions prior to, accompanying or subsequent to the issuance of a valid act.

Among the **conditions prior to the issuance of the administrative act** we mention:

− the assent;
− obtaining the agreement of a public entity;
− carrying out studies;
− proposals;
− reports.

The procedural conditions accompanying the issuance of the act are the ***quorum*** and the ***required majority*** for the adoption of the act.

The quorum designates the number of members of a collegial body whose presence is required for the respective body to sit validly, while ***the***

required majority stands for the number of votes expressed in favour of adopting a particular act.

The conditions subsequent to the issuance of the act refer to:

- approvals of the higher bodies;
- publication (normative acts);
- notification (individual acts).

A distinct validity condition of the administrative acts is represented by their **opportuneness**. This is different from the legality condition, although some legal systems regard opportuneness as a legality condition.

The opportuneness of the administrative acts is the capacity of the administrative authorities to issue administrative acts allowing for the best ratio between resources and benefits, to assess the time and space conditions in carrying out their tasks, so that the issued acts fully correspond to concrete, realistic needs. Thus, the administration has to be flexible enough to adjust its methods of intervention to the social life and the specific circumstances.

Between opportuneness and legality there is an interdependence relation, in the sense that an illegal act cannot be opportune, while a legal act can be inopportune, as it no longer corresponds to the circumstances considered at the moment of its issuance.

4.3.2.5. The suspension, repeal and cancellation of the administrative acts

Suspension is an operation which leads to the temporary cessation of the effects of an administrative act, when there are doubts regarding its legality or opportuneness.

Suspension of the normative and individual acts can be ordered either by the issuing body, or by a higher body or the competent court which, according to the Administrative Disputes Act nr. 544/2004, is to decide on the legality of an administrative act.

Repeal is the operation whereby the issuing administrative entity or the higher authority withdraws an administrative act through a manifestation of will opposite to the one contained in the original act.

Cancellation is the operation of annulling an administrative act when it is illegal. Cancellation of the administrative act can be ordered both by the courts of law and by the higher body.

4.3.3. Categories of human resources within the public administration system

From a managerial perspective, the public administration is a system of organisations connected by a great number of relations of subordination, collaboration, participation, provision of services etc. in a real network which ensures both the necessary framework for applying the law, and the actual application of the law; this system ensures the continuity and permanence of government. Considering the scope and variety of this network of public administration organisations and the complexity of the activities they have to carry out, as well as the fact that the public administration is nothing but the activity carried out by people in relation with other people, the human resource management in the public administration acquires special values. One can easily see that performance in the public administration cannot be achieved without capable, competent, active, well-trained people, who understand the dimension of the public good.

We can therefore say that the effectiveness and efficiency of the public administration organisations in carrying out their tasks largely depend on the human quality and professional skills of those who work in these organisations. In other words, the value and potential of these organisations are significantly, and sometimes decisively, connected to the quality of the people who form them.

In order to have a body of professionals who can meet the requirements of a performant administration, a careful and appropriate recruitment and selection is a mandatory condition. The stake of this assessment process seems to be extremely important and to transcend the immediate reality – serving the public interest through a quality public service. Without going into details, we only venture to emphasize two possible explanatory assumptions: a) the central and quasi-permanent place of the interaction between the citizen and the public administration in the life of an individual; b) the truth according to which the quality of the public servants and administration expresses both the objective evidence of the validity of a political system at a specific moment in history and the extent of the future development potential of a human (local, national etc.) community. Thus, we can conclude that social order and even the general welfare depend on the public servants' human quality, professional training and will to carry out their tasks.

It should be emphasized that not only public servants, but also contractual personnel and "political officers" work in the public administration. Schematically, taxonomy of the public administration personnel looks as follows:

A. Public servants:

– High public officials;

– Public managers;

– Public servants in leading positions;
– Public servants in execution positions;
B. Contractual personnel;
C. "Political officers".

4.3.3.1. The public servants

The public servant is the person appointed in the civil service, which is seen as the set of duties and responsibilities set with a view to achieving the prerogatives of public power by the system of the public administration[33].

"The civil service is the set of duties and responsibilities established by the public authority or institution, on the basis of the law, with a view to effecting its competences." [34]

In Romania, there are about 120,000 public offices, which is quite a large number considering that the civil service is aimed at the prerogatives of public power, and not any type of activity within the public administration organisations. The public power is seen as the set of prerogatives assigned to the public administration in order to promote the general interest every time it is contradictory to the private interest (J. Rivero). The public power can also be defined as a complex concept defining a number of characteristics: a group's will to lead and the authority granted to this group by the law, or other conditions; the competence, i.e. the ability to make correct decisions for the entire community; the existence of cohesion and lack of constraint." (A. Hauriou) [35]

The political power is characterized as an overall power exercised within the community with the aim of organising, preserving and defending the respective community. The justification of such a power is that it ensures a climate of social peace and order in a human community, as it is necessary for each individual's interests and will to "melt" in a unique general will, expressed and imposed, if it is the case, through each individual's force, by legitimately appointed public authorities[36].

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[33] This category of human resources is regulated in Romania by:
- Law nr. 188/December 8, 1999 regarding the Public Servants' Statute, republished and updated;
- Law nr. 251/June 23, 2006 modifying and complementing Law nr. 188/1999 regarding the Public Servants' Statute;
- Law nr. 7/February 18, 2004 regarding the Public Servants' Code of Conduct;
- Law nr. 161/April 19, 2003 regarding the measures for ensuring the transparency in the exercise of the public dignities, of the civil service and in the business environment, the prevention and sanction of corruption.

[34] Law nr. 188/1999.

[35] Anton Parlagi, *op. cit.,* p.190, Armenia Androniceanu, *Management public,* Editura Economică, Bucureşti, 1999, p. 58.

[36] C. Ionescu, *Instituţii politice şi Drept constituţional,* Editura Economică, Bucureşti 2002, p. 207.

Within this framework, the civil service reform processes must aim to reduce the number of public offices in accordance with the public power attributes. In this moment, in the Romanian public administration, as a result of the waves of transformation of certain offices, there are many office holders whose activities are specific to the contractual personnel, without public power attributes.

There are a number of categories of public office holders, according to the complexity of the tasks to be carried out, education, experience.

The basic features characterizing the civil service are considered to be the following:

a) **it is created with the aim of effecting the public powers,** the prerogatives set by the law for the administrative public institutions;

b) **it has a permanent character,** in the sense of the on-going functioning with the aim of serving a general interest, continuously, without interruptions, for as long as the competence covered by the civil service continues to exist;

c) **it is created by law or acts issued on the basis of the law,** by an act of power, which is thus unilateral, and not contractual. At the same time, public offices can be modified or their content can be changed unilaterally, by law or a subsequent act, without the agreement of those who hold the respective offices;

d) **it is organised to serve the general public interest,** and not personal interests;

e) **it has a certain degree of specialization,** a competence established by law, aimed to serve a particular public interest.

The public servants' statute

The public servant is appointed by the public authority or institution, competent according to the law and legally invested with the prerogatives of the civil service, with an activity aimed at ensuring the permanent functioning of a public service.

For the principle of legality of the public administration to be observed, the legal character of the duties and responsibilities presupposed by the different public offices within the framework of the public administration structures does not suffice; **it is also necessary that these public offices be legally held and their holders be legally invested**.

Public servants are invested by means of a unilateral administrative act of appointment.

The public servant is granted the prerogatives which make up his/her competence not by the person who appointed him, but by the law, since it is the law that organises the civil service in order to serve a general interest. The law organises the civil service with the prerogatives established for it, and any person

who meets the requirements set out in the law can have access to and hold a public office.

The civil service is exercised by natural persons who turn this exercise into a career.

By appointment in the civil service, the public servant is invested with a legal statute which provides for his/her rights, obligations and responsibilities. The legal status of the public servant is therefore statutory.

Each public servant has a personal right to promotion, irremovability or stability, wage etc.

Since they are granted for the general interest, these rights can be increased, diminished or suppressed by the law, with the aim of increasing the effectiveness of the public service.

Public servants' general rights and obligations are provided for by Law nr. 188/1999 regarding the Public Servants' Statute, republished[37], modified and complemented.

Requirements for accessing public offices. Appointment and promotion

According to the provisions in Art. 54 in Law nr. 188/1999, republished, the person who meets the following requirements can be appointed in a public office:

a) has Romanian citizenship and domicile in Romania;

b) is proficient in the Romanian language, with writing and speaking skills;

c) is minimum 18 years of age;

d) has full legal capacity;

e) his/her state of health is consistent with the public office which he/she applies for, certified by specialized medical examination;

f) meets the requirements of education provided by the law for the public office;

g) meets the specific requirements for holding the respective public office;

h) was not sentenced for a crime against humanity, against the state or against the authority, for a crime during or connected to his/her work, for preventing the course of justice, for forgery or corruption, or for a crime with intent, which would render the person incompatible with the civil service, except for the situations where rehabilitation occurred;

i) was not removed from a public office or his/her contract was not terminated for disciplinary reasons in the last 7 years:

j) did not carry out activities of political police, as it is defined by the law.

[37] Law nr. 188/1999 was republished in the Romanian Official Gazzette, Part I, nr. 365/May 29, 2007, and then modified and complemented.

The law can also provide for other special requirements for holding a public office, such as those regarding the age, skills or a training session in the respective field.

According to the provisions in Art. 62 (6) in Law nr. 188/1999, when he/she joins the body of public servants, the public servant gives the oath within 3 days from the issuance of the act of appointment in the definitive public office. The oath is formulated as follows: "*I swear to respect the Constitution, the human fundamental rights and freedoms, to apply the laws of the country correctly and fairly, to thoroughly carry out the tasks set by the public office in which I was appointed, to keep the professional secret and to observe the norms of professional and civil conduct. So help me God.*" The religious ending formula will respect the freedom of religious beliefs.

The giving of the oath provided for in (6) is reported in written. The refusal to give the oath is reported in written and triggers the revocation of the administrative act of appointment in the public office. The obligation to organise the giving of the oath belongs to the person who has the legal competence to appoint public servants.

Also, the public servants have to submit, upon appointment in a public office or upon cessation of the employment relations, a statement of wealth to the head of the public authority or institution. The statement of wealth is updated every year according to the law (see Art. 47 (2) in Law nr. 188/1999). This statement is given on one's own account and contains references to the spouse's or under aged children's assets.

A public servant is appointed following admittance by competitive examination, within the limit of the vacancies provided for this purpose in the civil service employment plan.

The participation conditions and the procedure of organising the examination are established according to the law.

The examination is based on the principles of open competition, transparency, professional merits and competence, as well as equal access to the civil service for all citizens who meet the legal requirements.

The announcement regarding the examination is published in the Romanian Official Gazette, Part III, and in a widely circulated daily publication at least 30 days prior to the date of the examination. Exceptionally, the 30-day term can be reduced, according to the law, for the competition organised for public offices of execution which are temporarily vacant (Art. 57 (1-4) in Law nr. 188/1999).

The arrangements regarding the examination are made by Government decision, at the proposal of the Public Servants' National Agency.

Appointment in the public offices for which a competitive examination is organised is done by the administrative act issued by the heads of the public

authorities or institutions of the central or local administrations (Art. 62 (3) in Law nr. 188/1999) and represents the actual appointment in a position corresponding to a public office among those which public services are provided with.

At the beginning of their careers, graduates of educational institutions will be appointed in vacant public offices after they pass the competitive examination, initially for a probation period of 12 months for class I public servants (higher education graduates with an MA degree), 8 months for class II public servants (higher education graduates with a BA degree), and 6 months for class III public servants (high school graduates with a baccalaureate diploma) – see the provisions in Art. 9 and Art. 60 in Law nr. 188/1999 regarding the Public Servants' Statute, republished.

Upon appointment, a professional file of the public servant is opened, which will include all the documents regarding his/her professional and disciplinary situation, registered and chronologically numbered[38]. According to the provisions in Art. 25 (3) in Law nr. 188/1999 a professional file is opened for each public servant with the aim of ensuring the efficient management of the human resources, as well as of following the public servant's career within the public authorities and institutions.

The file will not include references to political, trade union, religious or any other opinions.

The public servant has the right to know his/her professional file and to receive, upon request, copies of the file. The institution has the obligation to allow the public servant access to his/her professional file.

According to the provisions in Art. 94 in Law nr. 161/2003 regarding the measures for ensuring the transparency in exercising the public dignities, public offices and in the business environment, the prevention and sanctioning of corruption, the quality of public servant is incompatible with any other public office than the one in which he/she was appointed, as well as with the public dignities.

Public servants cannot hold other offices or carry out other activities, remunerated or not, as follows:

a) within the public authorities or institutions;

b) within the dignitary's cabinet, except for the case where the public servant is suspended from the public office, according to the law, during his/her appointment for the position in the dignitary's cabinet;

[38] See the provisions of the Government Decision nr. 432/2004 regarding the public servant's personal file, published in the Romanian Official Gazzette, Part I, nr. 341/April 19, 2004.

c) within the publicly owned enterprises, private companies or other lucrative enterprises in the public or private sector, within a family association or as a self-employed person;

d) within an economic interest group, as a member;

As a result, public servants have the obligation to refrain from carrying out any lucrative activities which come in conflict with the dignity, prestige and norms of conduct deriving from their official position.

Public servants are assessed (marked) every year by their superiors with respect to their activity and conduct during work.

The professional assessment consists in rating the public servant as "very good", "good", "satisfactory" or "unsatisfactory".

It is compulsory for the assessment to be thoroughly motivated, and to be exact and objective.

An assessment made superficially, dishonestly or in bad faith amounts to misdemeanour in office and triggers the disciplinary liability of the guilty person.

If the number of positions is reduced within a public authority or institution, the head of the respective public authority or institution will consider the results of the yearly assessment of the public servants' activity.

Promotion to higher positions, classes, levels or categories is also based on the assessment of a public servant's activity.

The management of the civil service and public servants

According to the provisions in Art. 21 (1) of Law nr. 188/1999, the **Public Servants' National Agency** was set up, under the authority of the Government, with the aim of creating and developing a professional body of public servants, as a specialized body of the central administration, with legal personality.

The Public Servants' National Agency is headed by a president, with the rank of secretary of state, appointed by the prime minister. The agency is financed from the state budget and has the prerogatives provided for in Art. 22 of the law, among which we mention:

- it draws up the policies and strategies regarding the civil service and public servants management;
- it draws up and gives assent for bills regarding the civil service and the public servants;
- it monitors and controls the way of applying the legislation regarding the civil service and the public servants within the public authorities and institutions;
- it drafts the bill regarding the establishment of the unitary wage system for the public servants;
- it cooperates with international bodies and organisations in its field of activity.

The agency keeps the list of public offices and public servants up to date on the basis of the public servants' personal data submitted by the central and local administration authorities and institutions.

In the first month of the year, the public authorities and institutions will submit the modifications which occurred in the public servants' situation.

On the basis of the provisions in Art. 24 of Law nr. 188/1999, the human resource and public offices management is organised and carried out, within every public authority and institution, by a specialized department which directly cooperates with the Public Servants' National Agency.

Public servants' rights and obligations

Public servants' rights

The public servants within the public administration system have, according to the law, in their quality as personnel of the respective authority or institution, a number of economic and social rights regarding their pay, holidays, social security, and retirement pension etc., rights which are studied in detail by the employment law.

But public servants also have rights closely connected to their position, especially to the profession which their position is part of.

Among these rights we mention, in the first place, **the right of the legally invested public servant to have the exercise of his position ensured**.

There are two obligations corresponding to the above mentioned right; the first is the obligation of the public administration authorities and institutions to take all the necessary measures in order to ensure the public servant's exercise of his/her right to his/her position, and the second is the obligation of all the other persons from without the system of the public administration bodies to obey and to carry out the tasks set by the public servants.

With respect to the latter, we mention the taxpayers' obligation to pay the taxes.

With respect to the obligation of the public administration authorities and institutions to ensure the public servant's right to exercise his/her position, we mention the means of persuasion and coercion they have to use against those who do not obey the public servant in the exercise of his/her position.

For this purpose an additional right is granted, i.e. **the right to the protection of the law** in the exercise of or in connection to the civil service, with the public authority or institution having the obligation to ensure the public servants' protection against threats, violence, or insults they could be victims of (Art. 41 in Law nr. 188/1999).

Also, the public authorities and institutions must propose or adopt those norms which ensure the appropriate remuneration and other rights aimed to offer the public servant a decent living.

Another right is that which **ensures that the public offices are held only by persons with a certain professional qualification**.

The law provides for the requirement of legal or administrative qualification for the secretaries of the communes, towns, municipalities, and counties.

In this context we emphasize the existence of the faculties of public administration, training those who will hold execution or leading positions within the public administration.

Another right ensures **the continuity and stability in office** for the public servants within the public administration system (Art. 3 f) in Law nr. 188/1999).

The establishment of such a right guarantees that the public servants will not be removed from office on occasion of political changes and that they can exercise the right to have a career.

Stability is not absolute, however, since movement to a different position can be determined by promotion, by the necessity of rotation for the prevention of the administrative routine, or by delegation, transfer or other cases of modification of the positional relation due to certain necessities of the public service.

Another right regards **the possibility given to the public servants to complain to the competent authorities and institutions**, or to the administrative courts, respectively, when abusive measures are taken against them in connection to the disciplinary misdemeanour (Art. 80 in Law nr. 188/1999).

The public servant's **right to opinion** is guaranteed, and in this context it is mentioned that any discrimination among public servants based on political, trade union, religious, ethnical, sexual, financial status, social origin or of any other such nature is forbidden (Art. 27 in Law nr. 188/1999).

There is an interdiction, though, providing that public servants, while in service, have to show reserve in expressing political opinions which could influence their impartiality in exercising their prerogatives.

Another right is that of **holding more than one office**, in certain circumstances provided for by the law.

Among the common rights also shared by contractual employees, we mention **the right to join a trade union**, provided for in Art. 29 of Law nr. 188/1999 and in Law nr. 54/2003 regarding the trade unions. The **right to strike** is connected with the above mentioned right.

Another right refers to the **reimbursement of the travel and accommodation expenses**, as well as to the per diem allowance for work travels.

Another right regards the **child allowance**, or the right to a discount to the common transport tariffs, in the circumstances established by government decision.

We also mention the right to **free uniform** for the institutions where uniforms are required, the right to annual holidays, statutory sick pay and other leaves.

According to the provisions in Art. 39 of Law nr. 188/1999, public servants have the right to retirement pensions, as well as to the other state social security benefits, according to the law.

Public servants have the right to healthcare, prostheses and medicines, according to the law.

Public servants' obligations

Public servants have certain obligations which are shared by contractual employees, with respect to the fulfilment of the work duties, observance of the work discipline, improving the level of knowledge etc.

According to the provisions in Art. 43 of Law nr. 188/1999, public servants have the obligation to carry out their tasks with professionalism and impartiality and in accordance with the law, and to refrain from any act which could prejudice natural or legal persons or the prestige of the body of public servants.

At the same time, they have the duty to observe the norms of professional and civil conduct provided for by the law.

This obligation also presupposes the obligation **not to carry out activities outside the public office which come in conflict with the office they hold**.

The most important obligation is that of the lower public servants' **subordination** to the higher public servants.

In the exercise of the leading office prerogatives, the higher public servants have a right to direct, in the sense that they outline the lower public servants' tasks, and a right to control the lower public servants' activity.

The right to direct is often exercised through orders, memoranda and other categories of decisions, and the control is carried out in the form of the hierarchical and internal review.

According to the provisions of Art. 45 in Law nr. 188/1999, public servants are accountable for carrying out their tasks derived from the position they hold, as well as for the tasks delegated to them.

The public servant has the obligation to comply with the orders received from the higher public servants.

The public servant has the right to refuse, in written form and with stating the reasons, the orders received from the higher public servant, if he/she considers them illegal. If the order was issued in written form, the public servant has the obligation to execute it, except for the case when it is obviously illegal. The public servant has the duty to notify the superior of the higher public servant who issued the order.

If he/she executes an obviously illegal order, the public servant is held accountable, in any of the forms of the legal liability, together with the person who issued the act.

Another obligation is **to keep the state and professional secret and confidentiality** with respect to the facts, information and documents they have knowledge of as a result of the exercise of the civil service, according to the law, except for the public interest information (Art. 46 in Law nr. 188/1999), both within and without the institution where they work.

At the same time, public servants have the **duty to provide, in the exercise of the civil service, the information requested by the public**, while complying with the obligation to keep the state and professional (work) secret and the obligation of professional reserve (confidentiality).

Public servants are forbidden to directly or indirectly accept or request gifts or other advantages and force promises of gifts or other advantages for themselves or for other persons, in consideration of their official position (which amounts to the crime of bribery).

At the same time, public servants are **forbidden to accept requests which they are not competent to solve** and which are not assigned to them by their senior officers, or to interfere in their solving, as provided by Art. 48 (2) in Law nr. 188/1999 (these qualify as abuse and intercession).

Public servants have the obligation **to cooperate for carrying out the office tasks** and to deputize their colleagues within their specialization, while keeping the professional and work secret.

Categories of public offices and public servants

According to the provisions in Art. 7 of the Statute, public offices classify as follows:

a) general and specific public offices;
b) class I, class II, and class III public offices;
c) state, territorial and local public offices.

The general public offices represent the set of prerogatives and responsibilities with a general character, shared by all public authorities and institutions, with a view to carrying out their general tasks.

The specific public offices represent the set of prerogatives and responsibilities with a character which is specific to certain authorities and institutions, established with a view to carrying out their specific tasks, which require specific competences and responsibilities.

According to the provisions in Art. 8 of Law nr. 188/1999, the state public offices are the public offices set up and approved, according to the law, within the

ministries, the central administration specialized bodies, as well as within the autonomous administrative authorities.

The territorial public offices are the public offices set up and approved, according to the law, within the prefect's institution, the devolved public services of the ministries and other bodies of the central administration in the territorial-administrative units.

The local public offices are the public offices set up and approved, according to the law, within the apparatus of the local authorities and of the public institutions under their authority.

According to the provisions in Art. 9 of the Statute, public offices are divided into 3 classes, defined with respect to the educational qualification required for the respective public office, as follows:

a) class I includes the public offices which require an MA degree;

b) class II includes public offices which require a BA degree;

c) class III includes public offices which require a baccalaureate diploma.

In accordance with the provisions in Art. 10 of Law nr. 188/1999, according to the level of the public office holder's prerogatives, public offices are divided into three categories, as follows:

a) public offices corresponding to the category of high public officials;

b) public offices corresponding to the category of public servants with leading prerogatives;

c) public offices corresponding to the category of public servants with executing prerogatives.

Public servants appointed in class II and class III can only hold public offices with execution prerogatives.

According to the provisions of Art. 11 of the Statute, public servants can be beginners or definitive.

The persons who passed the competitive examination for occupying a beginner level public office can be appointed as beginner public servants.

The following persons can be appointed as definitive public servants:

a) beginner public servants who have completed the probation period provided for by the law and who have appropriate assessment results;

b) persons who join the body of public servants by competitive examination and who have worked in the field of the public office for at least 12 months, 8 months or 6 months, respectively, according to the level of education.

According to the appendix to Law nr. 188/1999, the following are referred to as public offices:

I. General public offices

A. Public offices corresponding to the category of high public officials

1. secretary-general in ministries and other specialized bodies of the central administration;

2. deputy secretary-general in ministries and other specialized bodies of the central administration;

3. prefect;

4. deputy prefect;

5. governmental inspector.

B. Public offices with leadership prerogatives

1. director general within the autonomous administrative authorities, ministries and other specialized bodies of the central administration;

2. deputy director general within the autonomous administrative authorities, ministries and other specialized bodies of the central administration;

3. secretary of the county and of the Municipality of Bucharest;

4. director within the autonomous administrative authorities, ministries and other specialized bodies of the central administration, as well as executive director within the prefect's institution or within the local authorities and the public institutions under their authority;

5. deputy director within the autonomous administrative authorities, ministries and other specialized bodies of the central administration, deputy executive director within the prefect's institution, within the local authorities and the public institutions under their authority;

6. secretary of the municipality, of the district of the Municipality of Bucharest, of the town and commune;

7. head of department;

8. head of office.

C. Public offices with executing prerogatives

1. counsellor, legal counsellor, auditor, expert, inspector;

2. specialty expert;

3. expert.

II. Specific public offices

A. Public offices with leadership prerogatives

1. architect in chief.

B. Public offices with executing prerogatives

1. competition inspector;

2. customs inspector;

3. labour inspector;

4. delegated controller;

5. IT and telecommunications expert;

6. commissioner.

C. Other specific public offices

1. public manager.

4.3.3.2 High public officials

The category of high public officials is regulated by Law nr. 188/1999 regarding the Public Servants' Statute, introduced in the republished version in the Official Gazette nr. 251/March 22, 2004, in Art. 9 (1), which classifies public offices according to the level of the office holder's prerogatives. Amendments and new regulations regarding this category were added in the updated version of Law nr. 188/1999 of July 20, 2006.

The high public officers carry out the higher level management in the central administration and in the autonomous administrative authorities, actually representing the public servants' elite. The justification for setting up this elite body with special requirements regarding the selection or the level of education is represented by the need to ensure stability, continuity, professionalism, transparency, efficiency and impartiality to the administrative institution they are part of, in order to achieve a quality public service.

At present, the following are considered to be high public officials: the secretary-general of the Government, the prefects, the deputy prefects, the deputy secretary-general in the ministries, as well as the governmental inspectors. Unlike the old regulations, the new one no longer includes the state counsellors, secretary-general of the prefect's institution – turned into deputy prefect of the county or of the Municipality of Bucharest. We consider, though, that the activity of the county secretary-general is particularly complex, comparable with that of a prefect or deputy prefect, and the removal of this public office from the category of high public officials is not justified.

4.3.3.3. The public managers

The public managers are a particular category of public servants, situated between the high public officials and the public servants with leadership prerogatives; through the exercise of their prerogatives and responsibilities, they contribute to ensuring the efficiency and continuity of the public administration reform, from the strategic to the operational levels. Also, public managers contribute to the integration in the European Union structures by implementing and following the application of the community acquis, within the public authority or institution where they work. Public managers are considered to be real agents of change in the public institutions.

The responsibilities of this category of public servants derive from programmes, projects and activities meant to speed the modernization and transformation of the administration and public services, with the aim of increasing the quality of the administrative act and improving the public services.

In this sense, public managers run, coordinate or assist the coordination of several activities. By their nature, these activities require a more comprehensive perspective on the problems and the relations among them, as well as a high level of expertise, distinct from the competences of the other categories of public servants.

Although frequently criticized, regarded as a forced implant in the public administration system, the category of public managers starts proving its utility through the outcomes obtained, through the flexibility manifested and through the integrated approach to the problems of the public sector adopted by its representatives. It is true that there still is an acute problem regarding the public managers' integration in the public organisations, generated mainly by the difficulties in accepting them and their distinct status. Old public servants still find it difficult to accept the young managers' rapid access to the management level, with a much more attractive remuneration.

Two normative acts, adopted during the first half of 2004, regulated the legal framework of the public managers' recruitment, training, appointment, assessment, remuneration and rapid promotion in the category of public servants with leadership prerogatives, as well as access to the category of high public officials (the Government Emergency Ordinance nr. 56/2004 regarding the creation of the special statute of the public servant referred to as public manager was repealed and is no longer in force). Thus, **Law nr. 157/2004 regarding the establishment of the "Romanian Government" special scholarship for training managers in the public sector**[39] set up, as provided in Art. 1, the "Romanian Government" special scholarship with the aim of training managers who commit themselves to carry out managerial activities within the public institutions, state-owned enterprises, companies with majority state capital or within the international structures or bodies, as representatives of the Romanian state. This scholarship was instituted in the university year 2005-2006.

The Government Emergency Ordinance nr. 56/2004 regarding the creation of the special statute of the public servant referred to as public manager[40] regulated the special statute of the public servants appointed in a specific public office, as public managers, but currently this ordinance is no longer in force. The Government Ordinance nr. 92/2008 regarding the statute of the public servant referred to as public manager is in force at present. [41]

This normative act marks a new stage in the development of a solid legal and financial framework, which ensures the sustainability of the project, as well as

[39] Published in the Official Gazzette, Part I, nr. 466/May 25, 2004.
[40] Published in the Official Gazzette, Part I, nr. 590/July 1, 2004; the Emergency Ordinance nr. 56/2004 was modified and complemented by the Government Emergency Ordinance nr. 6 of February 10, 2005 (published in the Official Gazzette nr. 149/18.02.2005). The modifications aim, among others, the establishment of a new Commission for the public managers, as well as a more detailed description of the remuneration mechanism for public managers.
[41] Published in the Official Gazzette, Part I, nr. 484/June 30, 2008.

the necessary environment for entering/re-entering YPS (Young Professionals Scheme) graduates in the public administration, after completing the training programme.

The public managers project and system were conceived of in order to attract young well-trained professionals, who can rapidly access key positions in the public administration with a view to improving the performance of the administration. Thus, the aim was to train a core of new generation leaders within the civil service, who were supposed to be politically neutral and professionally trained in the spirit of the modern values and principles of the public sector management in the European Union.

4.3.3.4. The public servants with leadership prerogatives and the public servants with execution prerogatives

The public servant is defined by the Public Servants' Statute, in Art. 2 (2), as "the person appointed, according to the law, in a public office", and in the field literature, as "the person legally invested by appointment in a public office within the structure of an administrative public service, with the aim of carrying out the tasks of the respective service."

Public servants, whether they have leadership or execution prerogatives, have the obligation to ensure a quality public service to the citizens' benefit, through participation in the decision-making process and in the practical application/materialization of the decision, with the aim of achieving the competences of the public authorities and institutions they are part of.

They have the obligation to have a professional conduct and to ensure, in accordance with the law, the administrative transparency, in order to win and preserve the public trust in the integrity, impartiality and effectiveness of the public administration.

The public servants' professional conduct is based on certain principles which must be observed and combined, with a view to satisfying the public interest, ensuring equal treatment, with impartiality and moral integrity, before the public authorities and institutions, showing honour and fairness.

The following persons are considered public servants with leadership prerogatives: directors general, heads of departments, and heads of offices. We should add that the directorates, departments and offices are components of the organisational structure.

4.3.3.5. The contractual personnel

Within any type of public organisation, there is a category of personnel whose activity does not presuppose the achievement of the prerogatives of public power, and this personnel does not enjoy a special status with additional

guarantees and forms of protection. This category of personnel falls under the provisions of the employment legislation, like any employee in the public or private system. We should mention, though, that even for this category there are specific conduct-related obligations, additional to those set for the private sector employees, and these obligations stem from the mission and functions of the public administration.

4.3.3.6. "The political officers"

On top of the hierarchy in most of the public organisation, there are appointed or elected persons, representatives of the political system, by virtue of the subordination of the public administration to the political power, the so-called "political officers". This category includes the ministers, secretaries of state, under-secretaries of state, presidents, directors general of certain structures of the public administration, mayors, local and county councillors.

Leadership of the ministries belongs to ministers, who make the connection between the Government and the administration, representing the ministry in its relation with the Government, and at the same time representing the Government in the administration that the ministries carry out.

The minister represents the ministry in its relations with the other public authorities, with the natural and legal persons in the country and abroad, as well as before the courts. In exercising his/her prerogatives, the minister issues orders and directions, according to the law, assisted by one or more secretaries of state.

The secretaries of state exercise the prerogatives delegated by the minister. Within the ministries, public institutions and other specialized bodies of the central administration, the position of under-secretary of state can also be used, according to the Government Decision regarding their organisation and functioning.

The self-government of the territorial-administrative units is carried out by the local councils, county councils or the General Council of the Municipality of Bucharest, which have a deliberative authority, and by the presidents of the county councils and mayors, who have an executive competence for the exercise of their competences.

In the exercise of their mandate, the local elected authorities are in the service of the community, being protected by the law, and the freedom of opinion and action in the exercise of the mandate of the elected local authority is guaranteed. Thus, the elected local authorities cannot be legally accountable for the political opinions expressed in the exercise of their mandate.

For this category there are no imperative requirements regarding the level of education or experience. This is why the specialists and the media constantly signal the need for "selection filters" in the organisation and functioning of each

political party. Unfortunately, the reality shows that when such filters exist, the subjectivity of the criteria and of the evaluators continues to be a problem difficult to solve, at least because one should start from the reconsideration in the present of the role and status of the political organisation (the political party) in relation with the democratic system.

4.3.3.7. Rights and obligations regarding the professional training of the public servants and the other categories of personnel

The Romanian Constitution, as well as the Universal Declaration of Human Rights, refers to the ongoing professional training as a fundamental right: *Art. 52 The right to education is ensured by the compulsory general education ... - as well as by other forms of instruction and ongoing* ***professional training***. Also, the Romanian Labour Code (Law nr. 53/2003) provides in Art. 190 (1) that *employers have the obligation to ensure participation in in professional training programmes for all employees. Thus, any person has the right to attend professional training courses*, a right which corresponds to the employer's obligation to create the conditions for the exercise of this right.

With respect to the public servants, Law nr. 188/1999, republished in 2007, regarding the Public Servants' Statute, regulates in Chapter V, Section 3 – *The public servants' professional training* - , providing in Art. 50 that *The public servants have* ***the right and the obligation*** *to continuously improve their professional skills and training*.

This right of the public servants corresponds to the obligation of the state and of the public institutions to create **the legal and institutional framework and to ensure the necessary resources** for its materialization.

In addition to a contractual employee, the public servant also has the **OBLIGATION** to improve his/her professional training, deriving from the fact that he/she exercises prerogatives of the public power and that his/her action is circumscribed to the general interest. In this context, the public servant has the obligation to attend professional training courses at the initiative or in the interest of the public institution.

The professional training obligation of the elected local authorities

With respect to the elected local authorities (they are not public servants – we are speaking about the presidents of the county councils, the county councillors, the mayors and the local councillors), there were different attempts at achieving professionalization and training formulae, some of them successful at informal level, achieved by the associative forms of the local authorities (training courses, internships, experience exchanges etc.), others ending in failure, such as the attempt to legislate for a minimum level of education.

Law nr. 249/June 22, 2006 modifying and complementing Law nr. 393/2004 regarding the Statute of the Elected Local Authorities marked an important step towards the training of the elected local authorities, in the sense of ensuring a minimum level of knowledge required for the proper exercise of their mandate. Thus, the above mentioned law states that the elected local authorities **have the obligation to participate in at least one training course in the field of local administration, during the first year of their mandate**. Without other details, though, the above mentioned regulation does not solve the problem of the professionalization of the elected local authorities. At the moment it is necessary for the law to provide for the minimum duration of these courses, the institutions qualified to organise them, the financing of these courses, the manner of completing the training programmes, the effects in case of failure to observe these provisions.

4.3.4. Administrative litigations

The administrative litigation is understood as the confrontation between the legal or natural person, in defence of their rights, and the public authorities.

In Romanian, the term used for "dispute" or "litigation" is "contention", which comes from the French word "contentieux", which, in turn, originates in the Latin verb "contendere", which means "to fight".

4.3.4.1. The legality review of the activity of the public administration

The "discretionary" power of the public administration authorities is not unlimited. In the first place, the prerogatives of an administrative body are provided for in a normative act (law, government decision etc.), which in turn has to comply with the Romanian Constitution or with the other documents with a superior legal force.

For failure to comply with the law, in the broad sense, within the executive activity there are more legal instruments of review, but in this chapter we shall restrict ourselves to analysing the judicial review with respect to the legality of the activity of the public administration. The importance of this type of review was also emphasized by the Romanian Constitution, which regulates as follows in Art. 52 (1): "*The person whose right or legitimate interest was affected by a public authority through an administrative act or through failure to solve a claim within the legal time limit is entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the act and the reparation of the damage*".

The details regarding the exercise of the right to action by a legal or natural person and the admissibility conditions of the action brought by the person

whose right or legitimate interest was affected by a public authority are set out in **Law nr. 554/2004 - The Administrative Litigations Act**.

Besides the natural and legal persons entitled to bring an action in court in order to protect their rights or legitimate interests, both the Romanian Constitution and Law nr. 340/2004 regarding the prefect and the prefect's institution grant the prefect the prerogative to **"attack an act of the county or local council or of the mayor in an administrative court, if he/she considers the act illegal" (Art. 123 (5) of the Constitution**.

4.3.4.2. General characteristics of the Romanian administrative litigations

A first characteristic is that the **administrative courts are competent to decide only with respect to the legality** of the acts whose annulment is requested. An action whose object is the opportuneness of an act issued by a public authority will be rejected as inadmissible.

Another characteristic is that in the administrative courts, **the object of the claim for annulment can only be the administrative acts of authority**, excluding the acts of management, whose legality is reviewed by ordinary courts.

The third characteristic consists in the **adversary character of the litigation**, the independence of the court in giving a solution, which, once documented in the decision, enjoys the principle of *res judicata*.

Another characteristic is that **the administrative courts are considered common courts** in solving administrative litigations. This means that whenever the law does not provide, the county courts are competent to solve administrative disputes.

For the purposes of Law nr. 554/2004, the phrase "administrative court" refers to the Administrative and Fiscal Division of the High Court of Justice, to the administrative and fiscal divisions of the courts of appeal, and to the administrative-fiscal county courts.

The fifth characteristic of the Romanian administrative litigation is that it is a full jurisdiction litigation. This means that **the administrative courts can proceed both to the annulment of the act or to compelling the public authority to issue an act, and to compelling the authorities to pay damages**.

The sixth characteristic of the Romanian administrative litigation is that the **law regulates both a subjective, and an objective litigation**.

The subjective litigation is regulated by Law nr. 554/2004, which seeks, by the action in an administrative court, the defence of the subjective right or legitimate interest of a natural or legal person. In this case, the court checks whether the claimant is the holder of a subjective right or legitimate interest and whether this right or interest was affected by an administrative act.

The objective litigation stems from Law nr. 340/2004 regarding the prefect and the prefect's institution and from the texts in the Constitution, and in this case the court can order the annulment of the act, based on the discovery of the inconsistency between the objective right and the content of the administrative act.

The admissibility conditions of the subjective litigation claims are as follows:

1. **The act whose annulment is requested must have the character of an administrative act**.

2. **The claimant must claim the infringement of a right or legitimate interest.** The affected right is any right provided for by the Constitution, by the law or by any other normative act, affected by an administrative act.

As for the legitimate interest, this can be a private or a public one.

3. **The act should not be by its nature exempted from judicial review;**

According to Art. 5 of Law nr. 544/2004, the following cannot be attacked in court:

− *administrative acts issued by public authorities regarding their relations with the Parliament;*

− *commandment acts with a military character.*

Administrative acts for whose modification or annulment the organic law provides for a different judicial procedure cannot be attacked in an administrative court.

The administrative acts issued for applying the regime of the state of war, siege or emergency, those which regard the national defence or security or those issued for restoring the public order, as well as those meant to remove the consequences of natural disasters, epidemics and epizootics can only be attacked on grounds of abuse of power.

4. The completion of the prior administrative procedure and the filing of the claim within the legal time limit (Art. 7 of Law nr. 554/2004)

Before addressing the competent administrative court, the person who considers that one of his/her rights or legitimate interests was affected by an individual administrative act must request the total or partial revocation of the act to the issuing public authority or to the higher authority, if this is the case, within 30 days from the notification of the act.

In case of a normative administrative act, the prior complaint can be filed at any time.

If the person who considers himself/herself prejudiced is not satisfied by the way his/her complaint was solved, he/she can bring an action in an administrative court.

An action in court can also be brought when the issuing public authority or the higher authority fails to solve the claim within the 30-day time limit.

In all cases, the action must be brought within one year at the latest from the date of notification of the administrative act whose annulment is requested, from the date of having knowledge of the act or from the date of submitting the application or request, accordingly.

5. The attacked act must be illegal.

4.3.5. The institutions of the central administration and the devolved public services

4.3.5.1. The specialized central administration

The Romanian Constitution regulates this matter in Chapter V, Section I – The Public Administration – under Title III – The Public Authorities (Art. 116-119).

As we previously mentioned, within the present constitutional system, the specialized central administration has two components, namely:

− **the public administration under the authority of the Government**, made up of administrative structures under the direct authority of the Government or under the authority of ministries

− **autonomous administrative authorities**, set up according to Art. 117 (3) of the Constitution.

The ministerial administration is made up of the administrative structures under the direct authority of the Government, referred to as ministries or having other names: **agencies, authorities, departments, offices, committees, councils** etc., no matter if their heads are members of the Government or not (according to Art. 102 (3), the Government is made up of a prime-minister, ministers and other members established by organic law).

In Chapter V under Title III in the Constitution other authorities are also mentioned, which carry out exclusively administrative activities. As we have shown, besides government acts specific to the executive, the Government also issues administrative acts, carrying out the state administration, as a dimension of the public administration.

The specialized central administration is carried out only as state administration, and its structure includes subordinated and autonomous governmental authorities. The governmental authorities, in turn, are divided into two categories, according to whether their subordination to the Government is direct or indirect (through a ministry).

No matter how much autonomy the central autonomous administrative institutions may enjoy, since they are state authorities, their acts are subject to actions in court, according to the provisions of Art. 52 in the Constitution.

4.3.5.2. The ministries

The specialized structure of the public administration, which imposes the solving of the tasks of the government in one field or another, is referred to as **ministry**.

Art. 116 (1) of the Constitution establishes the principle whereby the ministries are only organised under the authority of the Government. Thus, the autonomous organisation of the ministries is inconceivable.

Ministries are established and organised and they function according to the provisions of the Constitution and Law nr. 90/2001 regarding the organisation and functioning of the Romanian Government and ministries.

The ministries are considered specialized administrative bodies if they carry out the state administration in a certain field of activity.

As an element of the public administration structure, the ministry can be qualified as a public institution with personnel, material and financial means, and a competence recognized by the law, as well as legal capacity.

The personnel of the ministry includes the **minister**, invested with decision-making and representation prerogatives, and the **personnel in the ministry apparatus**, who prepare the decisions of the ministry, making up the advisory administration, structured on directorates, services and offices etc.

The ground of the continuity of the function of the central administration is provided by the stability and technical training, and not by the political affiliation of the ministerial public servants. The great number of decisions that the minister has to make does not allow him/her to study each file in detail, and therefore he/she is forced to appeal solely to the approval given by his/her collaborators.

According to the Constitution, the ministers ensure the application of the Government's policy in the area or field of activity of the ministry they run and are accountable before the Government for the activity of the ministry.

The leadership exercised by the minister presupposes the exercise of the hierarchical power over all public servants in the ministry, whom he/she appoints and dismisses. This involves:

− **the decision-making power** – of giving mandatory directions, of suspending or annulling the subordinates' acts;

− **the power of control over the public servants within the apparatus**, over their activity, including the disciplinary control.

The ministers can delegate some of the prerogatives to their subordinates, i.e. the secretaries or under-secretaries of state.

The organisation of the ministries

The role, functions, prerogatives, organisational structure and the number of posts of the ministries are established according to the importance, volume, complexity and specificity of the activity carried out and approved by Government decision.

According to the nature of their prerogatives, some ministries can, in their field of activity, have departments abroad, established by Government decision.

The ministries can set up specialized bodies under their authority, with the assent of the Court of Auditors. Ministries can have public services under their authority, functioning in the territorial-administrative units (devolved public services). The setting up or abolition of the devolved public services of the ministries or other central bodies in the territorial-administrative units, their object of activity, the number and employment of the personnel, the criteria for setting up departments and their leadership positions are approved by order of minister, or, respectively, by order of the head of the specialized body under whose authority these services or bodies carry out their activity.

The minister appoints and dismisses the heads of the specialized bodies under the authority of the ministry.

The leadership of the ministries

The leadership of the ministries is exercised by ministers. The minister represents the ministry in its relation with the other public authorities, with the legal and natural persons in the country and abroad, as well as in court. In the exercise of his/her prerogatives, the minister issues orders and directives, according to the law.

In exercising the leadership of the ministry, the minister is assisted by one or more secretaries of state, according to the Government decision regarding the organisation and functioning of the ministry. The secretaries of state exercise the prerogatives delegated by the minister.

The secretary-general of the ministry is a career public servant (high public official), appointed by means of a competitive examination, based on criteria of professionalism. He/she ensures the stability of the functioning of the ministry, the continuity of the leadership, and the achievement of the functional connections among the ministry structures.

The main prerogatives and responsibilities of the secretary-general are as follows:

a) coordinates the well-functioning of the departments and activities with a functional character within the ministry and ensures the operative relation between the minister and the heads of all the departments in the ministry and units under its authority;

b) cooperates with the specialized departments within the Secretariat-General of the Government, with the secretaries-general in the other ministries, as well as with the county secretaries and with the prefects, in problems of common interest;

c) receives and submits to ministries for approval bills initiated by the ministry and deals with the assent for other bills received from other initiators;

d) submits bills initiated by the ministry to the Government Secretariat-General, to be discussed in the Government meeting;

e) pursues and ensures the completion of the bills approved by the Government, which had been initiated by the ministry;

f) monitors and controls the drawing up of periodical reports, provided for by the regulations in force;

g) coordinates the whole personnel of the ministry, the drawing up of human resource policies and of the guiding principles for the human resource management within the departments.

The secretary-general of the ministry can also have other duties provided for by the organisation and functioning regulation of the ministry or assigned by the minister.

In exercising his/her prerogatives, the secretary-general can be assisted by one or two deputies. The deputy secretaries-general are career public servants (high public officials), also appointed following a competitive examination.

If, for different reasons, the minister cannot exercise his/her current prerogatives, he/she will appoint the secretary of state to exercise these prerogatives, notifying the prime minister about this.

Under the authority of the minister there is a ministerial college, which is an advisory body. The competence and functioning regulation of the ministerial college is approved by order of the minister.

The ministerial college sits, at the request of and presided over by the minister, in order to debate on problems regarding the activity of the ministry.

The general prerogatives of the ministers

Ministers have the following general prerogatives in their field of activity:

a) organise, coordinate and control the application of the laws, Government ordinances and decisions, the orders and directives issued according to the law, in compliance with the authority limits and the principle of self-government of the public institutions and companies;

b) initiate and approve bills, Government ordinances and decisions, in the conditions established by the methodology approved by the Government;

c) act for the application of the ministry's own strategy, integrated in the Government's socio-economic development strategy;

d) ground and draw up proposals for the annual budget, which they submit to the Government;

e) pursue the planning and achieving of the investments within the system of the ministry, based on the approved budget;

f) represent the interests of the state in different international bodies and organisms, in accordance with the agreements and conventions to which Romania is party and with other agreements established for the purpose, and develops cooperation relations with similar bodies and organisations in other states and with international organisations in their field of activity;

g) initiate and negotiate, by authorization of the Romanian President or of the Government, according to the law, the conclusion of conventions, agreements, and other international settlements, or propose the drawing up of the formalities for accessing the existing ones;

h) pursue and control the application of the international conventions and agreements to which Romania is party and take measures for meeting the conditions required for the integration in the European Union or other international bodies;

i) coordinate and pursue the drawing up and implementation of policies and strategies in the ministry's field of activity, according to the general strategy of the Government;

j) approve, according to the law, the setting up of non-governmental organisations and cooperate with them in order to achieve the aim for which they were created;

k) cooperate with the specialized institutions for training and improving the training of the personnel within their system;

l) approves the publishing of field publications and information publications.

Ministers have, in their field of activity, other specific prerogatives established by the legislation.

The government can order by decision modifications in the organisation and functioning of the ministries, as well as the transfer of certain activities from a ministry to another or to specialized bodies under the authority of the Government.

4.3.5.3. The prefect and the prefect's institution

According to Law nr. 340/2004 regarding the prefect and the prefect's institution, the prefect is the representative of the Government at local level, and a high public official.

The Government appoints a prefect in each county and in the municipality of Bucharest, at the proposal of the minister of administration and home affairs. The prefect is the guarantor of the respect for the law and order at local level.

The ministers and the heads of the other bodies of the central administration under the authority of the Government can delegate to the prefect some of their leadership and control prerogatives with respect to the devolved public services under their authority.

In order for the prefect to exercise his/her prerogatives based on the Constitution and other laws, the prefect's institution is in place, headed by the prefect.

The prefect's institution is a public institution with legal personality, property and budget. The prefect is a tertiary financial authority. The functional structure and the functioning of the prefect's institution are established by Government decision.

The headquarters of the prefect's institution, called prefecture, is located in the capital city of the county, in a building which is the public property of the state, county or municipality, accordingly.

The prefect runs the devolved public services of the ministries and of the other bodies of the central administration under the authority of the Government, organised at the level of the territorial-administrative units.

The prefect's activity is grounded on the principles of:

a) legality, impartiality and objectivity;
b) transparency and free access to the information of public interest;
c) efficiency;
d) responsibility;
e) professionalization;
f) orientation towards the citizen.

The activity of the prefect's institution is financed from the state budget, through the budget of the Ministry of Administration and Home Affairs, and from other legal sources.

The heads of the devolved public services of the ministries and of the other bodies of the central administration under the authority of the Government have the obligation to submit the draft budget to the prefect. The prefect's approval of the draft budget is submitted to the head of the institution superior to the devolved public service.

The prefect and deputy prefect belong to the category of high public officials.

There are no subordination relations between prefects, on the one hand, and local councils and mayors, or county councils and their presidents, on the other hand.

The prefects' and deputy-prefects' rights and duties

The prefects and deputy prefects who do not own a property in the capital city of the county where they were appointed receive an accommodation benefit equivalent to 3 basic gross salaries, as well as an appropriate work residence, according to the law, based on a lease, during the exercise of his/her term of office.

The prefects and deputy prefects have the obligation to inform the leadership of the Ministry of Administration and Home Affairs each time they travel outside the county.

As a representative of the Government, the prefect in office is granted military honours, according to the specific regulations, on occasion of the military ceremonies organised at the level of the county.

The prefect and the deputy prefect cannot be members of a political party or of an organisation with the same regime, according to the law; otherwise they are dismissed from the public office.

The prefect's prerogatives

As representative of the Government, the prefect has the following main prerogatives:

a) ensures, at the level of the county or the municipality of Bucharest, accordingly, the application of and compliance with the Constitution, laws, Government ordinances and decisions, other normative acts, as well as law and order in general;

b) acts for the achievement in the county, or the municipality of Bucharest, respectively, of the objectives included in the Government Programme and takes the necessary measures for the fulfilment of those objectives, in accordance with the competences and prerogatives set by the law;

c) acts for maintaining a climate of social peace and permanent communication with all the institutional and social levels, giving constant attention to the prevention of social tensions;

d) cooperates with the local authorities for determining the territorial development priorities;

e) checks the legality of the administrative acts of the county council, president of the council, local council and mayor;

f) ensures, together with the qualified authorities and bodies, the effecting, according to the law, of the measures of preparation and intervention for emergency situations;

g) orders, in his/her quality as a president of the County Committee for Emergency Situations, the necessary measures for the prevention and management of the emergency situations, and uses for this purpose the amounts specially provided for in the county budget;

h) uses, in his/her quality as the chief of the civic protection, the funds specially allotted from the state budget and the logistic basis for intervention in crisis situations, for the well-functioning of this activity;

i) takes the appropriate measures for the prevention of crime and for the protection of the citizens' rights and safety, through the legally qualified bodies;

j) ensures the execution of the plan of measures for the European integration;

k) takes measures meant to apply the national policies decided by the Government and the European integration policies;

l) decides, according to the law, the cooperation and/or association with similar institutions in the country and abroad, with a view to promoting the common interests;

m) ensures, according to the law, the use of the mother tongue in the relations between the citizens belonging to national minorities and the devolved public services in the territorial-administrative units where these citizens' weight is over 20%;

n) has other prerogatives established by the law and other normative acts, as well as the tasks set by the Government.

The examining board for the occupation of the position of head of a devolved public service mandatorily includes a representative of the prefect's institution in the county where the public service has its headquarters, appointed by order of the prefect, according to the law.

The prefect can propose to the ministers and to the heads of the other bodies of the central administration at the level of the territorial-administrative units to sanction the heads of the devolved public services under their authority.

In each county there is a prefectural college made up of the prefect, deputy prefects and the heads of the devolved public services of the ministries and of the other bodies of the central administration under the authority of the Government, which have their headquarters in the respective county.

The prefect can request to the mayor or to the president of the county council, accordingly, to summon an extraordinary sitting of the local council, county council or General Council of the Municipality of Bucharest, in circumstances which require the adoption of immediate measures for the prevention, limitation or removal of the consequences of disaster, catastrophes, fires, epidemics, epizootics, as well as for the protection of the public order and peace.

In case of force majeure and maximum emergency, in order to serve the interests of the inhabitants of the territorial-administrative units, the prefect can request the *ad-hoc* sitting of the local council, county council or General Council of the Municipality of Bucharest.

The prefect's acts

In exercising his/her prerogatives, the prefect issues orders with an individual or normative character, in the conditions set out in the law.

The orders establishing measures with a technical or specialized character are issued following consultation with the head of the devolved public services of the ministries and of the other bodies of the central administration under the authority of the Government, organised at the level of the territorial-administrative units.

The orders with a normative character issued by the prefect shall be published, according to the law.

The prefect's order which contains normative provisions becomes effective only after it has been publicised. The prefect's order with an individual character becomes effective from the date of its notification to the persons concerned.

The orders issued by the prefect in his/her quality as a president of the County Committee for Emergency Situations are effective on the date of their notification and are also executory.

4.3.6. Local councils and county councils

4.3.6.1. The local council

According to Art. 121 of the Romanian Constitution, republished, *"The authorities of the public administration, whereby the local self-government is carried out in communes and towns, are the elected local councils and the elector mayors, in the conditions set out in the law. The local councils and the mayors operate, according to the law, as autonomous administrative authorities and deal with the public affairs in the communes and towns."*, and according to Art. 122, *"The county council is the public administration authority for the coordination of the activity of the communal and town council, with a view to carrying out the public services of county interest."*

The local council is a collegial authority of the local administration, elected to solve the local problems of the commune, town or municipality, accordingly.

This authority **has an autonomous status**, in the sense that it deliberates on the specific interests of the local communities and decides with respect to the ways of satisfying them, without any interference from the authorities of the county administration.

The local councils, with their composition resulting from the elections, are exclusively accountable for the management of these interests.

Their political accountability is only an electoral one, because they have the specific competence of the local administration to decide on the way to solve the administrative problems of the local community. The autonomy of these collegial authorities consists in their self-government in all aspects. They receive the requests and information at the local level and adopt decisions with respect to the management of the local public affairs.

Some information regarding the local community, the organisation and functioning of the local council mostly come from the mayor, but **this situation does not transform the executive authority – the mayor – in the leader of the deliberative authority – the local council**, the sittings of the local council being presided over by the president elected from among the local councillors.

With respect to the election of the local councils and mayors, we should emphasize that the legislation in force adopted the solution of electing both authorities of the local administration. The most widely used formula, at European level, is the direct election of the local councillors, from among whom the mayor is elected.

The Public Administration Act sets out that **the deliberative authority is the local council**, and **the executive is the mayor**. The mayor's quality as an executive authority derives both from the fact that he/she ensures the application of the decisions of the local council, as well as from the fact that he/she has to carry into practice the orders regarding the effecting of the provisions of the law and of the other normative acts within the local communities.

Local councils are made up of local councillors elected by universal, direct and equal suffrage within a secret and free ballot system. The number of local councillors varies between 9 and 31, according to the population of the commune, town or municipality, except for the Municipality of Bucharest, where the number of local councillors is 55.

Local councils are elected on the basis of the proportional representation, within a panel voting system.

In order to be elected in the local council, the candidate has to meet certain requirements established by the Constitution and the Local Authorities Election Act (Law nr. 67/2004, republished, with the subsequent modifications and addings). The eligibility requirements are cumulative and regard:

a) the Romanian citizenship;

b) the right to vote;

c) the age of at least 23;

d) the residence in the territorial-administrative territorial unit for whose local council he/she candidates;

e) he/she shouldn't be an active member of the military, a judge or a prosecutor;

f) he/she shouldn't be sentenced by definitive court decision for abuses in political, legal or administrative positions, for violation of the fundamental human rights, and for other crimes with intent, if he/she wasn't rehabilitated.

For the independent candidates, the candidature is also conditioned by the submittal of a list of supporters. The number of supporters is determined by dividing the number which represents 1% of the total number of voters to the number of councillors to be elected in the respective local council. This number cannot be under 50.

The eligibility requirements have to be met on the date of submitting the candidature.

If a candidate meets the eligibility requirements and becomes a local councillor, he/she must also be subject to the rules regarding the incompatibilities, in order to exercise his/her mandate in the local council.

According to Art. 88 and 89 of Law nr. 161/2003 regarding the measures for ensuring the transparency in the exercise of the public dignities, public offices and in the business environment, and for the prevention and sanctioning corruption, with the subsequent amendments and additions, the position of local councillor or county councillor is incompatible with:

a) the position of mayor or deputy-mayor;

b) the position of prefect or deputy-prefect;

c) the quality of public servant or contractual employee within the specialized apparatus of the mayor, of the county council or of the prefect's institution in the respective county;

d) the position of president, vice-president, director general, director, manager, associate, administrator, member of the board of directors or auditor in the state-owned enterprises and companies of local interest set up or run by the mayor or by the county council concerned or in the state-owned enterprises or companies of national interest with the headquarters or a subsidiary establishment in the respective territorial-administrative unit;

e) the position of president or secretary of the shareholders' or associates' general assembly at a company of local interest or a company of national interest with its headquarters or a subsidiary establishment in the respective territorial-administrative unit;

f) the position of state representative at a company with its headquarters or a subsidiary establishment in the respective territorial-administrative unit;

g) the quality of deputy or senator;

h) the position of minister, secretary of state, under-secretary of state and the positions assimilated to them;

i) the quality of significant shareholder at a company set up by the local council or by the county council.

With respect to the situation provided for at i), it is worth mentioning that the incompatibility also operates when the elected councillor's spouse or 1st degree relatives have the quality of significant shareholder at one of the companies set up by the local council or the county council.

Also, a person cannot exercise a mandate of local councillor and one of county councillor simultaneously.

Other incompatibilities can be established by law.

The person who legally obtained the quality of local councillor and is in one of the incompatibility situations can choose between being a local councillor and preserving the quality which is incompatible with that of local councillor. If the local councillor does not give up the position or quality which makes him/her incompatible with the exercise of the mandate, he/she can lose the quality of local councillor following the decision made by the majority of the local councillors.

After the elections, the **prefect** summons the local council in the constitutive sitting, within 20 days from the elections. This term is only recommended, and the local councils can set up after it.

The sitting is legally constituted if at least two thirds of the number of elected local councillors are present. If this majority cannot be ensured, the sitting will be organised, in the same conditions, within 3 days, summoned by the prefect. If the sitting is not legally constituted, a new sitting will be summoned by the prefect, after another 3 days, in the same conditions.

If the local council cannot sit at this last summoning, because of the local councillors' unattendance, unaccounted for, the prefect will declare, by order, the vacancy of the seats of the elected local councillors who failed to attend the 3 previous sittings, without accounting for that, if they cannot be replaced by the alternate members registered on the candidates' list; in this case by-elections are organised again for occupying the vacancies, within 30 days, in the conditions set out in the Local Authorities Election Act.

The prefect's order declaring vacant the seats of the local councillors who failed to attend the 3 sittings without accounting for their absence can be attacked by those concerned in the administrative court, within 5 days from notification. The court decision is definitive.

The local councillors' failure to attend the constitutive sitting is considered accounted for if the respective councillors can prove that they failed to attend because of an illness which required hospitalization or made their attendance impossible, or because of a departure abroad.

The constitutive sitting is aimed at validating the local councillors' mandates, which is actually a self-validation, with the participation of the elected councillors in order to take note of the legality of the election of each local councillor and the lack of incompatibilities.

A committee set up for this purpose – the validating committee – proposes to the local council the validation or invalidation of the mandates, according to whether the eligibility requirements are met, and to the confirmation that the election was not fraudulent.

The local councillors' mandates are validated with the open vote of the majority of the local councillors attending the sitting and they are subject to judicial review, in the administrative litigation regime, conditioned by the justification of an interest by the person who challenges the legality of the decision.

Local councils are legally constituted after the validation of the mandates of at least two thirds of their members.

Local councillors are elected for a 4-year term, but their mandate can cease before this term.

Elections take place in one day, which can only be a Sunday.

Local councils can be dissolved by right, which presupposes the organisation of new elections, even within the 4-year term, if:

a) the local council does not sit for 2 consecutive months;

b) the local councillors did not adopt any decision in 3 consecutive sittings;

c) the number of local councillors drops below half plus one and cannot be complemented by alternate members.

The mayor, the deputy mayor, the secretary of the territorial-administrative unit or any interested party can inform the administrative court with respect to the cases in which the local councils are dissolved by right. The court analyses the state of fact and decides on the dissolving of the local council. The court decision is definitive and is notified to the prefect.

The local council can also be dissolved by local referendum, organised according to the law. The referendum is organised following the application submitted for this purpose to the prefect by at least 25% of the total number of the citizens with a right to vote on the electoral register of the territorial-administrative unit. The date of the by-elections for the new local council is settled by the Government, at the prefect's proposal. The by-elections are organised within at most 90 days from the definitive court decision finding the dissolving of the local council, or from the validation of the referendum results, accordingly.

Until the new local council is constituted, the mayor, or, in his/her absence, the secretary of the territorial-administrative unit, will solve the daily problems of the commune, town or municipality, according to their competence or prerogatives granted by the law.

Unlike the mandate of the local council, the mandate of the local councillor is exercised after the legal constitution of the deliberative

authority, on the date when the oath is given. The cessation of the local councillor's mandate may occur:

- ***on the date of the cessation of the 4-year mandate of the council;***
- ***before this date***:

– if the local council is dissolved;
– resignation;
– incompatibility;
– change of residence to another territorial-administrative unit, including the change of residence as a result of the reorganisation of the territorial-administrative unit;
– failure to attend 3 consecutive sittings of the local council, without accounting for the absence;
– the impossibility of exercising the mandate for more than 6 consecutive months, except for the cases provided for by the law;
– the local councillor is sentenced to imprisonment by court decision;
– the imposing of judicial interdiction;
– loss of the electoral rights;
– loss of membership of the political party or national minorities' organisation on whose list the local councillor was elected;
– death.

The Local Administration Act is consistent with respect to the principle that local councils *can decide on any matter of local interest,* except for those assigned by the law to other public authorities.

Beyond this general rule, set out in the Local Administration Act, the legislator is bound to mention a few prerogatives which refer exclusively to the self-government, not being transmissible to other authorities of the public administration.

Thus, the law provides, among the prerogatives of the local council, for its right to **choose the mayor/deputy mayors, to approve the statute of the commune or town and the Functioning Regulation of the local council**, based on guidelines issued by the Government. Faithful to the principle of local self-government, the law provides that the deliberative authority of the commune or town ensures the self-government through the budget, through the human resource management and through the management of the public or private property of the commune or town.

The local council, managing the local public affairs through the budget, **approves the local budget**, correlating the revenues and expenditure, according to its possibilities. Thus, each local council is entitled to determine the size and structure of the services, the personnel number and statute, according to the complexity of the administrative tasks and to the financial availabilities.

Both the solving of the public affairs and the level of the revenues still depend on how the local council acts in the area of managing the commune or town property. In this direction, ***the territorial-administrative units, the only ones having full legal capacity, through the local authorities, are holders of the right to manage the public and private property of the commune or town. They manage the local public services through state-owned enterprises, institutions and companies of local interest, set by their own decision, and exercise the control over their activities, according to the law***.

In order to accumulate new revenue sources for the local budgets, the local councils of the communes and towns are abilitated by the law to decide on the cooperation or association with Romanian or foreign legal persons with a view to financing and carrying out joint actions, works or projects of local public interest. Also, the local councils decide, according to the law, on:

a) the cooperation and association with other territorial-administrative units in the country or abroad, as well as on joining national and international associations of the territorial-administrative units, with a view to promoting common interests;

b) fraternization between the commune, town or municipality and territorial-administrative units in other countries.

These prerogatives of the local council are to be linked with the legal provisions regarding the prerogatives of the mayor, who exercises the rights and ensures the observing of the obligation incumbent on the commune or town as a legal person.

Together with these economic and financial functions exercised in managing the local public affairs, the local councils of the communes and towns are responsible for observing the market economy rules in the territorial-administrative units, ensuring the freedom of trade and the fair competition, while also being equally involved in defending law and order and in protecting the citizens' fundamental rights and freedoms.

The local councils, as the expression of the quality of the local communities of legal persons belonging to the area of the public law, exercise the public authority within the territorial limits of the territorial-administrative units.

The local councils sit monthly, summoned by the mayor, and are presided over by a president.

The mayor or at least one third of the local councillors can request the summoning of an extraordinary sitting. The ordinary sittings are summoned at least 5 days in advance, and the extraordinary ones at least 3 days in advance. The local councillors receive a written invitation to attend the sitting, which contains the agenda and the place and time of the sitting. At the same time, the agenda is publicised, ensuring the right of the interested persons to participate in these sittings.

The sittings of the local councils are public, except for the cases when the local councillors decide, with the majority of votes, that the sitting takes place behind closed doors. Thus, the interested persons can usually take part in the local council sittings.

According to the law, the prefect, the president of the county council, their representatives, MPs, ministers, as well as other guests can participate in the sittings, without having a vote.

The quorum required by the law for a legal sitting is secured if the majority of the councillors are present.

In exercising its prerogatives, **the council adopts, with the vote of the majority of its present members, besides the cases where the law or the council organisation and functioning regulation require a different majority, by-laws** at the proposal of:

a) the mayor;
b) deputy mayor/deputy mayors;
c) local councillors;
d) citizens.

By-laws are adopted by open or secret vote, according to the decision of the local council. As an exception to this rule, the by-laws regarding the property are adopted with the vote of two thirds of the total number of councillors.

Citizens can submit draft by-laws to be debated and adopted by the local councils or county councils in the constituencies where they live.

A draft by-law can be initiated by one or more citizens with the right to vote, if they are supported, under signature, by at least 5% of the population on the electoral register in the respective territorial-administrative unit.

The initiators submit the proposed form of the draft by-law to the secretary of the territorial-administrative unit. The draft will be publicised by the secretary of the territorial-administrative unit.

The initiators ensure the drawing up of the list of supporters, by using forms provided by the secretary of the territorial-administrative unit.

The list of supporters will include the supporters' names, surnames, domiciles, ID serial numbers and signatures.

After the documents are submitted to and examined by the secretary of the territorial-administrative unit, the draft by-law will follow the regular working procedures of the local or county council, accordingly.

By-laws are drafted by those who propose them, assisted by the territorial-administrative unit/subdivision and by the line departments within the mayor's specialized apparatus. By-laws with an individual character, addressed to individuals, will always be adopted by secret vote, except for the cases provided for by the law.

The by-laws adopted by the local council are signed by the chairman of the sitting and approved/counter-signed, for purposes of legality, by the secretary of the territorial-administrative unit.

With the secretary's assistance, the by-laws of the local council:

a) are notified to the mayor and prefect at once, but no later than ten working days from the date of adoption;

b) are publicised within at most five days from the official notification to the prefect;

c) for individual by-laws, they are notified to the interested persons within at most five days from the official notification to the prefect.

The by-laws of the local council become mandatory and have legal effects, as follows:

a) the normative by-laws, on the date of their publication;

b) the individual by-laws, on the date of their notification to the interested persons.

In the territorial-administrative units where citizens belonging to a national minority have a weight of over 20% of the number of inhabitants, the normative by-laws are also publicised in the mother tongue of the citizens belonging to the respective minority, and the individual ones are also notified in the mother tongue upon request.

In order to ensure the real representation of the interests of the local communities, the councillors who have a patrimonial interest in the issue debated upon, directly or indirectly, through their spouse or a relative up to the 4th degree inclusively, are excluded from the deliberation and adoption of the respective by-law.

In exercising their mandate, local councillors are at the service of the local community. They have the obligation to organise regular meetings with the citizens and to grant audiences. Also, they have the obligation to submit an annual activity report, which will be publicised with the secretary's assistance. Local councillors are jointly accountable for the activity of the local council, or, respectively, they are separately, personally accountable for the activity carried out in the exercise of their mandates, as well as for the by-laws they passed.

In order to ensure the unitary representation of the local interests, the Local Administration Act provides that the inhabitants of the villages which do not have elected local councillors in the deliberative authorities will be represented in the sittings of the local council by a village delegate, elected by a village assembly, made up of a representative of each family.

The local council can be dissolved when it adopted, during a period of at most six months, at least three by-laws which were then annulled by definitive court decision of the administrative court.

4.3.6.2. The county council

In the terms of the Constitution, **the county council is an authority of the public administration which coordinates the activity of the communal and town councils, with a view to providing the public services of county interest.**

The Local Administration Act defines the local council as an authority of the county administration, implicitly establishing the rule that the county is a local community, in between towns and communes, on the one hand, and the state, on the other hand. This local community has its own administration, elected in accordance with the law.

County councils are made up of county councillors, in a number determined by the law, according to the size of the population in the respective county.

The prerogatives of the county councils are connected to the exercise of the function of coordinating the activity of the local councils of the communes and towns, with a view to providing public services of county interest.

In order to achieve this, the county council has prerogatives regarding the organisation and management of the county public services, the adoption of social-economic development programmes and prognoses, the establishment of the general directions in the field of town-planning and territorial arrangements, the management of the public and private property of the county, the ensuring of the building, maintenance and modernization of the roads of county interest and of those connecting the county with the neighbouring counties, the reorganisation of the state-owned enterprises of county interest.

The county council is headed by a president elected by direct vote by the citizens in the electoral register, with the domicile in the respective county. The president is assisted by vice-presidents, elected by indirect vote from among the county councillors.

Also, the county council adopts the local budget of the county and imposes county taxes, as well as fixed-term special taxes, according to the law.

The economic prerogatives of the county council are complemented by the right of the county council to decide on establishing new institutions and companies of county interest, on the acquisition, licensing or rental of assets which belong to the private property of the county and of public services of county interest, as well as on the sharing in assets and capital with companies, with a view to providing works and services of county interest.

County councils appoint and dismiss the heads of the companies under their authority, assess their activity and set guidelines for the state-owned enterprises and for the companies they set up.

The prerogatives of the county councils also extend to the social, scientific, cultural-artistic, sports and youth fields, ensuring institutional or material

conditions in these fields. County councils also have other prerogatives established by the law, such as naming streets, squares and other objectives of local interest.

In principle, the mandate of the county council is for a 4-year term, with the county councillors exercising their prerogatives from the date when they give the oath until the constitutive sitting of the new county council following the general elections for the county councils.

The county council sits fortnightly in ordinary sessions, and every time it is necessary in extraordinary sessions. The county council is summoned through the secretary of the county, at least 5 days in advance, and for extraordinary sittings, 3 days in advance. Extraordinary sessions are summoned at the county council president's request, at the request of one third of the county councillors or at the prefect's request, addressed to the president of the county council, in exceptional circumstances.

The summoning, in written form, is sent to the address of the county councillors, documented in the minutes of the sitting, and it will contain the date, hour, agenda and place of the meeting.

In exercising its prerogatives, the county council adopts by-laws, which are administrative acts subject to judicial review by administrative courts, at the prefect's or interested parties' request.

The president of the county council is, according to the law, a distinct administrative authority, who, besides the prerogatives of presiding over the works of the county council, also has his/her own prerogatives.

Thus, according to the law, the president of the county council ensures the execution of the by-laws passed by the county council, exercises the prerogatives belonging to the county as a legal person, supports the activity of the institutions and state-owned enterprises of county interest, as well as other prerogatives established by the law or by the county council.

The prerogatives specific to the president of the county council are connected to the president's quality of a main financial authority: drawing up the draft budget and the budgetary year closing account, appointing and dismissing the personnel in the county administration, including the secretary of the county, as well as submitting reports to the county council with respect to the state and activity of the council administration or to the economic state of the county.

In exercising the prerogatives provided for by the law, the president of the county council issues normative or individual orders, which are subject to judicial review, based either on the Administrative Disputes Act, or on the norms of the ordinary legislation.

4.3.7. The mayor, the public administrator and the secretary of the territorial-administrative units

4.3.7.1. The mayor of the commune, town or municipality

The mayor is the executive authority of the local communities who also plays, at the same time, the role of representative of the state in the territorial-administrative unit where he/she is elected. In each commune, town and municipality, a mayor is elected by direct vote, and in the Municipality of Bucharest a general mayor is elected. Mayors are also elected in the urban districts of the municipality of Bucharest, and they are subordinated to the general mayor of the municipality. According to Law nr. 215/2001, in his/her activity, the mayor is assisted by one or two deputy mayors, who are elected by the local council for a 4-year term, the same as that of the local council.

The elections for the position of mayor take place in the electoral constituencies organised for the elections for the local councils, under the authority of the same electoral courts.

The mayor is elected uninominally, **in one ballot** (in the last 20 years, the mayor was elected in the second ballot. We consider that the present system with one ballot is not representative, as a candidate can become mayor with the votes of less than 10% of the total number of voters).

The eligibility requirements for the position of mayor include: ***Romanian citizenship (double citizenship is excluded), domicile on the territory of the electoral constituency, age of at least 23. The following categories of persons are denied the right to candidate: active members of the military, judges and prosecutors, persons sentenced by definitive court decision for abuses in political, legal or administrative positions, for violation of fundamental human rights, for other crimes committed with intent, inasmuch as they weren't rehabilitated, as well as the persons who concluded contracts with the local administration for execution of public works, provision of public services or supply.***

The position of mayor is incompatible with:

- ***the position of prefect and deputy prefect;***
- ***the quality of public servant in the specialized apparatus of the central and local authorities; the quality of public servant in the specialized apparatus of the county council, prefect, public services of local or county interest, devolved public services of the ministries and of the other authorities of the central administration; the quality of employee within the respective local authorities or within the prefect's apparatus in the respective county;***

− ***the position of manager or member of the board of directors of the state-owned enterprises or head of the companies founded by the local or county council;***

− ***the quality of senator, deputy, minister, secretary of state, under-secretary of state, and the ones assimilate with them;***

− ***any leadership position within the companies where the state or a territorial-administrative unit is the majority shareholder, or within the national companies or state-owned enterprises;***

− ***any other public activities or positions, except for teaching activities and positions within foundations or non-governmental organisations.***

The mayor's mandate can cease before the 4-year term in case of (Art. 69 and following of Law nr. 215/2001):

a) resignation;

b) incompatibility;

c) change of domicile to another territorial-administrative unit;

d) impossibility to exercise the mandate for a period of more than 6 consecutive months, except for when the mandate is suspended in the circumstances of preventive custody;

e) the finding, after the validation of the mandate, that the election was fraudulent or took place in any other violation of the Local Elections Act;

f) imprisonment sentence, by definitive court decision;

g) judicial interdiction;

h) loss of electoral rights;

i) death;

j) following the results of a local referendum, organised in accordance with the law;

k) failure to exercise the mandate for 45 consecutive days, without accounting for that.

The mayor can be **dismissed** by Government Decision, at the prefect's proposal, in accordance with the law. As in the cases of dissolving of the local council, the mayor's dismissal is subject to judicial review; the Government Decision can be challenged before the administrative court, and in this case the prior procedure required by the law is not necessary in this case. Until the election of a new mayor or while the present mayor is suspended from office, by virtue of the prefect's order following a judicial investigation, the mayor's prerogatives are taken over by the deputy mayor.

The mayor's **suspension** from office can be ordered by the prefect only at the motivated request of the court of law or prosecution service, in case of preventive custody.

The mayor's prerogatives are dependent on his/her quality of representative of the community where he/she was elected and representative of

the state in the territorial-administrative unit. The mayor **ensures the observance of the citizens' fundamental rights and freedoms, of the provisions of the Constitution, of the laws and other pieces of legislation issued by the state authorities. In this quality, the mayor functions as a civil status officer and is the head of the civil status and tutelary authority services**.

In his/her quality of representative of the state in the commune or town where he/she was elected, the mayor carries out tasks incumbent upon him/her from the normative acts regarding the census, the organisation and development of the elections, the publication of laws.

The mayor can request, through the prefect inclusively, according to the law, the assistance of the heads of the devolved public services of the ministries and of the other central bodies in the territorial-administrative units, if the tasks incumbent upon him/her cannot be carried out by his/her specialized apparatus.

When acting as an executive authority of the local administration, the mayor must **ensure the execution of the by-laws passed by the local council**. At the same time, the mayor is **capacitated by the law to submit proposals to the local council with respect to the organisation of the local referendum, to the local regulations on town-planning and territory arrangements, to the draft personnel statute, to the personnel number and remuneration**. In the same quality, the mayor is capacitated to **exercise specific prerogatives in matters of local budget, law and order, sanitation, public roads and road traffic, management of the local public services, management of the assets of the commune or town, prevention and limitation of the outcomes of exceptional situations**.

In exercising his/her prerogatives, the mayor issues **orders**, which are administrative acts subject to judicial review by administrative courts. However, some of the mayor's act do not have this character and they are subject either to the regulations in the field of employment law (acts regarding the employment on the basis of an employment contract), or to the regulations specific to other branches of the private law.

Also, the mayor, in his/her quality of representative of the legal person (commune or town), concludes legal acts subject to the civil or commercial law rules, which do not fall under the scope of administrative litigations.

The communes, towns and municipalities have a mayor and a deputy mayor. During the mayor's and deputy mayor's term of office, their employment contracts are suspended.

The deputy mayor is subordinated to the mayor and replaces the mayor by right. The deputy mayor is elected with the vote of the majority of local councillors in office, from among the members of the local council. The deputy mayor can be replaced by the local council, by decision adopted with the vote of the majority of councillors in office, at the mayor's proposal or at the proposal of two thirds of the local councillors in office.

4.3.7.2. The public administrator

The decentralization of the Romanian public administration triggered a diversification of the public services and an enhancement of the complexity of work, which led to the increase of the number of leadership positions and to their specialisation. The mayors and the presidents of the county councils, in exercising their prerogatives as executive authorities of the local administration, have to combine the elements of a technical, administrative, scientific nature, with managerial skills and qualities, which involves the professionalization of the top managers of the local administration. In this context, it was found necessary to increase the efficiency of the public management at local level, by separating the political realm from the executive one and by attracting and recruiting highly qualified specialists.

Law nr. 286/2006, modifying and complementing the Local Administration Act nr. 215/2001, regulates a number of elements of novelty meant to answer the important problems of the local administration, mainly those connected to the weak administrative capacity and to the lack of mechanisms for implementing the existing legal provisions.

Among the elements of novelty brought by Law nr. 286/2006 is the concept of *public administrator*, the law giving the possibility of delegating certain tasks by the mayor, and the president of the county council, respectively, to the public administrator. The legal framework is informative, allowing the local authorities to set up the position of public administrator and leaving to them the number and importance of the prerogatives granted to the person occupying that position. In the spirit of observing the principles of decentralization, decision-making authority and self-regulation, the position has an optional character. The public administrator can be employed, in accordance with the law, at the mayor's or county council president's proposal, with the approval of the local council, or respectively, of the county council, within the limit of the maximum number of positions in the organisation chart. The public administrator is both appointed and dismissed by the mayor or by the president of the county council. The appointment is based on a competitive examination. On the basis of a management contract concluded with the mayor/president of the county council, the public administrator can have prerogatives of coordinating the specialized apparatus or the public services of local/county interest. Thus, according to the number and importance of the delegated prerogatives, the public administrator can organise, coordinate and manage the activity of the town hall/county council, being a partner of the top management in the process of strategic decision-making.

The public administrator participates and is consulted in the process of allotting the material, financial, human and IT resources, as a prerequisite of

carrying out the tasks for which he/she was appointed in that position, and of achieving the programme and performance indicators provided for in the management contract.

The above-mentioned law also provides that the *inter-community development associations* can choose to employ public administrators with a view to ensuring an efficient management of the public services which are the object of the association.

4.3.7.3. The secretary of the territorial-administrative unit/subdivision

According to Art. 116 (1) of the Local Administration Act nr. 215/2001, republished, with the subsequent amendments and addings, each territorial-administrative unit and territorial-administrative subdivision of the municipalities has a secretary, remunerated from the local budget. The secretary of the commune, town, municipality, district of the Municipality of Bucharest, and of the county is a **public servant with leadership prerogatives**, with legally or administratively qualified. The secretary enjoys stability in office. The secretary cannot be a member of a political party or assembly, the sanction for violating this provision being his/her dismissal. The secretary cannot be the spouse or 1st degree relative of the mayor or deputy mayor, the sanction for violating this provision also being his/her dismissal.

The recruitment, appointment, modification and cessation of the employment relations and the disciplinary regime of the secretary of the territorial-administrative unit/subdivision are in accordance with the provisions of the legislation regarding the civil service and the public servants. As a result, the secretary is appointed by order of the mayor of the commune, town, municipality or district of the Municipality of Bucharest or by order of the president of the county council, accordingly.

The competition for the vacancy of secretary of the territorial-administrative unit/subdivision is organised, according to the law, as follows:

a) by the Public Servants' National Agency, for the public office of secretary of the town, municipality, district of the Municipality of Bucharest, and county;

b) by the mayor of the commune with a vacant position of secretary of the commune.

In order to check and validate the legal conditions of the organisation and development of the competitions for occupying the vacancies by the organising executive public authorities, the Public Servants' National Agency appoints a person to be responsible for the procedure, who is a public servant representing the Agency in the examining board.

In the case of the competitions for occupying the vacancy of secretary of the commune, the mayor of the commune has the obligation to communicate to the Public Servants' National Agency the data regarding the organisation of the competitions, at least 20 days before the commencement of the procedures provided for by the law.

The secretary of the territorial-administrative unit/subdivision carries out, in accordance with the law, the following main tasks:

a) counter-signs, for legality purposes, the orders of the mayor and of the president of the county council, the decisions of the local council and county council, respectively;

b) participates in the sittings of the local council or of the county council, respectively;

c) ensures the management of the administrative procedures regarding the relation between the local council and mayor, and the county council and its president, respectively, as well as between these and the prefect;

d) organises the archives and the statistic official records of the decisions of the local council and of the mayor's orders, or of the decisions of the county council and of the county council president's orders, respectively;

e) ensures the transparency and communication to the public authorities and institutions and interested parties of the acts provided for by a) in accordance with Law nr. 544/2001 regarding the free access to the information of public interest, with the subsequent amendments and addings;

f) ensures the procedures of summoning the local council or county council and the registration works, communicates the agenda, draws up the minutes of the sittings of the local council or county council, respectively, and draws up the decisions of the local council or county council;

g) prepares the works to be debated by the local council or county councils and by their specialized committees;

h) other prerogatives provided for by the law or tasks assigned by the local council or by the mayor.

What needs to be emphasized is that the secretary of the territorial-administrative unit/subdivision carries out:

a) **the prerogatives** granted by the law; and

b) **the tasks** assigned by the local council or by the mayor.

4.3.8. Public services

4.3.8.1. The theory of the public service

In defining the public service, there seem to have been three main periods: the end of the 20th century – the classical definition, mainly formulated by the French theoreticians, specialists in public law, whose conception was taken over

in most European countries, the period between the two wars, when there were many debates of the Romanian doctrinarians, and the present period, which, besides the legal approach, brings about new tendencies, comprising economic, social, and managerial points of view, as well as users' points of view in defining the public service. This latest stage is strongly influenced by the "crisis of the public service" and by the developments at the level of the European Union.

The Romanian field literature in the period between the two wars substantiated the notion of public service starting from the social needs that the state satisfied, with the public service being "the means by which the administration carried out its activity" [42], supporting the idea of public service as a ground for the public actions.

Thus, Anibal Teodorescu asserts that "the executive function of the state is exercised through public services, which are set up and organised by the state or its administrative subdivisions in order to achieve their executive prerogatives". [43]

In the Romanian field literature in the period between the two wars, the term "public service" was defined in many ways as an "activity of the public authorities for satisfying needs of general interest, which is so important that it must function regularly and continuously" [44], or as an "administrative body, created by the state, county or commune, with well determined competences and powers, with financial means acquired from the general property of the public administration which created it, at the public's disposal for regularly and continuously satisfying a need with a general character, which can be only incompletely and interruptedly dealt with by the private initiative" [45]. Therefore, these theories are in line with the French classical school, emphasizing the idea of the public service as activity and body, created by the public power in the name of the general interest.

In the opinion of the latter author, any public service, whether it is run by the state, the county or the commune, has the following features:

− the public needs of the state, county or commune are satisfied from the budgets of those institutions;

− the financial management of these public services is subject to the law of the state general accounting;

− the legal acts carried out by the agents of the service are administrative acts;

[42] Iorgovan A., Tratat de drept administrativ, vol. II, Editura Nemira, Bucureşti, 1996, p. 61.
[43] Teodorescu A., Tratat de drept administrativ, vol. I, ediția a treia, Institutul de Arte Grafice „Eminescu", Bucureşti, 1929, p. 256.
[44] Tarangul E.D., Tratat de Drept administrativ român, Cernăuți, Editura Glasul Bucovinei, 1944, p. 124.
[45] Negulescu P., Tratat de drept administrativ, vol. I, ediția a patra, Mârvan, Bucureşti, 1934, p. 123.

− the agents or officers of the service are subject to the administrative hierarchy, i.e. they have only one superior for the activity of the service;

− when a public service undertakes public works, for instance carries out a construction, builds a road, this work is subject to the general enterprise and public works conditions;

− the service, for the works it carries out, can resort to expropriation for public utility purposes;

− a public service must have a regular and continuous functioning throughout its existence;

− the specialty of the public service, each public service being created to satisfy a specific interest or a number of specific interests of a general nature;

− in general, a public service has more subdivisions, each corresponding to a field of activity: administrative, technical, commercial, financial operations etc.

Therefore, we can notice that the public services were set up and provided only by public agents, which did not entirely correspond to the social dynamics and with the increase of the demand for services, in the context of a lack of flexibility of the public structures to these demands, so that major changes occurred in the provision of services, through the acceptance of the service provision by private agents which have prerogatives of public power, under the control of the administration.

4.3.8.2. Legislative considerations regarding the local public services in Romania

If, in the life of a state, structural and political changes occur, i.e. when the political regime changes, or when a state fundamentally renews its economic, political and legal bases and the social-political system, new fundamental laws need to be enacted. The above mentioned changes led to the adoption in Romania of a new Constitution in 1991.

On the basis of the constitutional principles, the Local Administration Act nr. 69/1991[46] was enacted, a law which emphasizes the return to the Romanian tradition regarding the organisation and functioning of the local administration, taking over the principles of the legislation between the two wars in the matter.

The Act establishes that the public administration in the territorial-administrative units is grounded on the principles of local self-government, decentralization of public services, eligibility of the local authorities and consultation with the citizens on the local issues of special interest.

[46] Published in the Official Gazzette nr. 169 of August 16, 1991.

The authorities of the public administration through which local self-government is carried out in the communes and towns are the local councils, as deliberative authorities, and the mayors, as executive authorities. The local councils and the mayors are elected in the conditions set out in the law.

In each county a county council is elected, which coordinates the activity of the local councils with a view to carrying out the public services of county interest. The county council elects, from among its members, the president and the permanent delegation.

The relations between the county administration and the local administration are based on the principles of self-government, legality and cooperation in solving the common problems. There are no subordination relations between the local administration and the county administration.

The local council has the initiative and decides, with the observance of the law, on the issues of local interest, except for those which are assigned by the law to other public authorities.

The law also makes references to the assets of the territorial-administrative units: constitutes the property of the territorial-administrative unit: the movable and immovable assets belonging to the public and private property of the territorial-administrative unit, as well as the rights and obligations with patrimonial character.

According to Art. 76, the local and county councils decide with respect to the licensing, leasing, and renting the assets belonging to the public or private property. Also, the local and county councils can decide the founding, in accordance with the law, of companies, associations and agencies, and can organise other activities, with the aim of executing works of public interest, with a joint stock made up through the contribution of the councils and of other natural and legal persons (Art. 82).

The references in Law 69/1991 regarding the local administration to the local public services were complemented by the provisions of the Privatisation Act nr. 58/1991[47] and Management Contract Act nr. 66/1993[48].

The development of the local public services was stimulated by the enactment of the legislation in the field of the local public finances.

Thus, considering that the norms which ensure the autonomy of the local authorities in different fields of activity (culture, social institutions, healthcare, agriculture, etc.) cannot have the desired effect and become formal if they are not supported by other appropriate normative acts which ensure the conditions for the development of self-government in the financial field as well. Starting from this finding, the Local Public Finance Act nr. 189/1998[49] was enacted.

[47] Published in the Official Gazzette nr. 169 of August 16, 1991.
[48] Published in the Official Gazzette nr. 244 of October 13, 1993.
[49] Published in the Official Gazzette nr. 404 of October 22, 1998.

Law nr. 189/1998 was meant to ensure a large autonomy in the field of the local public finances, with the aim to contribute to the solving of the following shortcomings:

- Insufficient financial resources, related to the expenditure demands;
- Lack of a system which stimulates the authorities of the local administration to find new resources to increase their revenue, on the one hand, and the rationalization of expenses, on the other hand;
- Flaws in the management of the local budgets, caused especially by the delayed approval of new resources for the increase of the revenues, and implicitly of the transfers and of the amounts deducted from the income tax to the local budgets;
- Inappropriate criteria and means for carrying out a quality, efficient and operative management in the public service sector;
- Lack of specialized personnel (in the taxation field, technical field etc.) with whose assistance the public administration should carry out its tasks.

The law aimed to develop the role of the local authorities in accordance with the principles of local self-government and with the market economy mechanisms, and to establish the financial resources of the local administration in accordance with the management obligations.

In 2001, starting from the observation that Law nr. 69 of the local administration enacted in 1991 no longer corresponds to the developments of the Romanian public administration, a new law was enacted to regulate the organisation and functioning of the local administration, and of the public services at this level implicitly[50].

Section 2 of Chapter IV in the Local Administration Act nr. 215/2001 is entitled: "The public services of the commune, town, and the specialized apparatus of the local authorities" and the articles under this section use the phrase "the public services of the commune or town". The reference in the title of the section makes us consider that actually there are two categories of local public services:

- public services organised by the local authorities;
- public services subordinated to the local authorities.

As a result of the tendencies of decentralizing the public services, starting with 2000, local authorities were assigned new responsibilities in the following fields:

- collecting local taxes;
- supporting the system of human rights protection;
- supporting the system of disabled persons' protection;

[50] Local Administration Law nr. 215/2001 published in the Official Gazzette nr. 204 of April 23, 2001.

- social security;
- the state primary, secondary and high school education;
- the communal/town administration services;
- the community emergency systems;
- the registration services;
- the community police services.

In 2003, through the revision of the Constitution, some clarifications were made, especially with respect to devolving the public services, with the following mentions:

(1) The public administration in the territorial-administrative units is based on the principles of decentralization, self-government, and devolving of the public services

(2) In the territorial-administrative units where the citizens belonging to a national minority have a significant weight, the use of the mother tongue of the respective minority is ensured in written and oral form in the relations with the local authorities and with the devolved public services, in the conditions set out in the organic law.

In 2004, starting from the *Public Administration Reform Strategy* adopted in 2001 and from the revision of the Constitution, the *Public Administration Reform Acceleration Strategy* was drawn up, which formally is still in force. Unfortunately, one can find that the ambitious objectives of this strategy, including those aimed at the public services, have only been partly achieved[51].

Both the central and the local authorities have had in view the application of a strategy of modernization and development of the public services, which is based on the following fundamental objectives:

a) decentralising the public services and increasing the responsibility of the local authorities regarding the quality of the services provided to the population;

b) extending the systems for the basic services (water supply, sewerage, sanitation) and increasing the access of the population to these services;

c) restructuring the mechanisms of social security for the underprivileged segments of the population and reconsidering the price/quality relation;

d) promoting the principles of the market economy and reducing the monopolization degree;

e) attracting private capital in financing the investments in the local infrastructure;

[51] With respect to the degree of achievement of the objectives of this strategy – „Reforma administrației publice din perspectiva integrării europene", impact study carried out within the framework of the PAIS 3 Project, IER, by Marius Profiroiu, Ion Tudorel, Dragoş Dincă, Radu Carp, Bucureşti, 2005.

f) institutionalizing the local credit and extending its contribution to financing communal services;

g) promoting the sustainable development measures.

The year 2006 represents a turning point in matters of legislative reform of the public services, since it was in this year that a number of normative acts were adopted, whose provisions we shall analyse below.

A. Law nr. 286/2006 modifying and complementing the Local Administration Act nr. 215/2001, published in the Official Gazette, Part I, nr. 621 of July 18, 2006.

Section 2 of Chapter IV of the Local Administration Act nr. 215/2001, modified by Law nr. 286/2006, is entitled: "The public institutions and services of local interest and the mayor's specialized apparatus".

Local councils can set up and organise public institutions and services of local interest in the main fields of activity, according to the local specificity and needs, with the observance of the legal provisions and within the limits of the available financial means.

The personnel within the public institutions and services of local interest are appointed and dismissed by the heads of these institutions and services, in the conditions set out by the law.

According to the Local Administration Act nr. 215/2001, modified in 2006, local and county councils can contract works and services of public utility, according to the law.

Also, local authorities can decide on renting, licensing or leasing the assets belonging to the public property of the commune, town or municipality, accordingly, as well as the public services of local interest, according to the law, and on the sale, licensing or lease of the assets belonging to the private property of the commune, town or municipality, accordingly, in the conditions set out in the law.

Art. 38 establishes that, in exercising the prerogatives provided for in (2) d), the local council ensures, according to its competences and in the conditions set out in the law, the necessary framework for providing public services of local interest regarding:

1. Education;
2. Social services for the protection of children, disabled people, elderly people, family and other persons or groups in social need;
3. Health;
4. Culture;
5. Youth;
6. Sports;
7. Law and order;
8. Emergency situations;

9. Protection and regeneration of the environment;

10. Maintaining, restoring and capitalizing the historic and architectural monuments, the parks, public gardens and natural reservations;

11. Urban development;

12. Registration of the population;

13. Bridges and public roads;

14. Community services of public utility; water supply, natural gases, sewerage, sanitation, heating supply, public lighting, local public transportation, accordingly;

15. Lifesaving and first aid services;

16. Community and social administration services;

17. Social dwellings and other dwellings in the property or administration of the territorial-administrative units;

18. Capitalizing the natural resources in the area of the territorial-administrative unit, in the benefit of the local community.

B. Law nr. 51/2006 of the community public facility services establishes the unitary legal and institutional framework, the objectives, the competences, the prerogatives and specific instruments needed for setting up, organising, managing, financing, exploiting, monitoring and controlling the community services of public facilities.

According to Law nr. 51/2006, Art. 8 and 9, local authorities have the exclusive competence, in the conditions set out in the law, in all matters regarding the setting up, organisation, coordination, monitoring and control of the public facility services, as well as in matters of creating, developing, modernizing, managing and exploiting the assets belonging to the public or private property of the territorial-administrative units, assignable to the systems of public facilities.

In exercising their competences and prerogatives in the sphere of the public facility services, local authorities can decide on:

a) Drawing up and approving their own strategies regarding the development of the services of public facilities, extending and modernizing the existing systems of public facilities, as well as the programmes of setting up new systems, with the providers' consultation inclusively;

b) Coordinating the planning and execution of the technical and urban public works, with the aim of executing them in a unitary conception, correlated with the programmes of economic-social development of the localities, of territory arrangement, town-planning and environment;

c) Intercommunity association with a view to setting up, organising, managing and exploiting services for the common benefit, through financing and carrying out the investment objectives specific to the public facility systems inclusively;

d) Delegating the service management, as well as renting or licensing the assets belonging to the public and/or private property of the territorial-administrative units, making up the technical and urban public infrastructure assignable to the services;

e) Sharing of the territorial-administrative units in the joint stock of companies whose objective is the provision/supply of public facility services of local, intercommunity or county interest, accordingly;

f) Contracting or guaranteeing loans to finance the investment programmes with a view to developing, reconstructing and modernizing the existing systems;

g) Guaranteeing, in the conditions set out in the law, the loans contracted by the providers of public facility services with a view to setting up or developing the technical and urban public infrastructure assignable to these services;

h) Drawing up and approving the service regulations, based on the service framework regulations, drawn up and approved by the competent regulating authorities;

i) Determining, adjusting or modifying the prices, tariffs and special taxes, with the observance of the methodological norms drawn up and approved by the competent regulating authorities;

j) Approving the setting up, adjustment or modification of the prices and tariffs for the public facility services, accordingly, based on the approval issued by the competent regulating authorities;

k) Limiting the areas with monopoly conditions;

l) Protecting and preserving the natural and built environment.

The legal relations between the local authorities and the users are administrative relations, subject to the legal norms of public law.

Local authorities have the following obligations towards the users of public facility services:

a) to ensure the management and administration of the public facility services based on competitiveness and economic and managerial efficiency, with the objective of achieving and respecting the performance indicators of the service, determined in the management delegation contract, or in the licensing decision, in the case of direct management;

b) to draw up and approve their own strategies with a view to improving and developing the public facility services, employing the principle of multiannual strategic planning;

c) to promote the development and/or reconstruction of the technical and urban public infrastructure assignable to the public facility services and environmental protection programmes for the polluting activities and services;

d) to adopt measures with a view to ensuring the financing of the technical and urban public infrastructure assignable to the services;

e) to consult with the users' associations with a view to determining the local policies and strategies and the ways of organisation and functioning of the services;

f) to regularly inform the users on the state of the public facility services and on the service development policies;

g) to mediate and solve the conflicts between the users and the providers, at one party's request;

h) to monitor and control the observance of the obligations and responsibilities assumed by the providers in the management delegation contracts regarding: observance of the performance indicators and service levels, the regular adjustment of the tariffs according to the adjustment formulae negotiated at the conclusion of the contracts, observance of the Competition Act nr. 21/1996, republished, the efficient and safe exploitation of the systems of public facilities or of other assets belonging to the public and/or private property of the territorial-administrative units, assigned to the services, ensuring the protection of the environment and public property, ensuring the users' protection.

The legal relations between the local authorities and the providers are subject to the legal norms of public or private law, according to the form of management. Local authorities have, in their relation with the providers of public facility services, the following rights:

a) to determine the requirements and criteria for the participation and selection of the providers in the public procedures organised for granting management delegation contracts;

b) to request information on the level and quality of the provided/supplied service and on the maintenance, exploitation and management of the assets belonging to the public or private property of the territorial-administrative units, granted for the execution of the service;

c) to invite the provider to hearings, with a view to reconciling the disagreements which occurred in the relation with the users;

d) to approve the determination of the prices and tariffs, or the adjustment and modification of the prices and tariffs proposed by the providers, for the services which operate in monopoly conditions; prices and tariffs are approved based on the expert opinion issued by the competent regulating authority;

e) to monitor and control the supply/provision of public facility services and to take the necessary measures in case the operator does not ensure the performance indicators and the service continuity to which they bound themselves;

f) to sanction the providers if they don't perform at the level of the performance and efficiency indicators to which they bound themselves and do not ensure the service continuity;

g) to refuse, in justified conditions, to approve the determination, adjustment or modification of the prices and tariffs proposed by the provider, and, in the case of the services functioning in monopoly conditions, to request the expert opinion of the competent regulating authorities.

Local authorities have the right to unilaterally cancel the service management delegation contracts and to organise a new procedure for delegating the service management, if they find and prove the repeated failure to meet the contractual obligations by the providers, and if the providers do not adopt measure programmes in order to comply with the contractual obligations and to ensure the achievement, within a predetermined time limit, of the assumed quality parameters.

Local authorities have the following obligations towards the suppliers/providers of public facility services:

a) to ensure an equal treatment for all providers, irrespective of the form of property, country of origin, organisation and the type of management;

b) to ensure a competitive, transparent and loyal business environment;

c) to fulfil the assumed engagements towards the provider in the licensing decision, or in the contractual stipulations in the management delegation contract;

d) to ensure the resources required for financing the technical and urban public infrastructure assignable to the services, according to the contractual stipulations;

e) to keep, in the conditions set out in the law, the confidentiality of the economic financial data and information regarding the providers' activity, except for those of public interest.

C. Emergency Ordinance nr. 34 of April 19, 2006 on granting public acquisition contracts, public works hiring contracts and service hiring contracts, published in the Official Gazette nr. 418/May 15, 2006.

The ordinance regulates the procedures involved in granting the contracts of public acquisitions, public works hiring and service hiring, as well as the ways of solving the appeals against the acts issued in connection with these procedures.

D. Law nr. 273 of June 29, 2006 regarding the local public finances, published in the Official Gazette nr. 627/July 20, 2006.

The law establishes the principles, general framework and procedures for the creation, management, engagement and use of the local public funds, as well as the responsibilities of the local authorities and public institutions involved in the field of the local public finances.

E. Framework-Law nr. 195 of May 22, 2006 on decentralization, published in the Official Gazette nr. 453/May 25, 2006.

The law establishes the principles, rules and institutional framework regulating the process of administrative and financial decentralization.

4.3.9. The public property

The general provisions regarding the property and the legal regime of the assets are to be found in the Constitution.

According to Art. 136 in the Romanian Constitution, in Romania there are two forms of property:

– the public property and
– the private property.

The public property belongs to the state or to the territorial-administrative units.

The subsoil resources of any kind, the ways of communication, the air space, the waters with energetic potential which can be capitalized and those which can be used for the public benefit, the territorial sea, the natural resources of the economic zone and continental plateau, as well as other assets established by law, are the exclusive object of the public property.

The assets belonging to the public property are inalienable. In the conditions set out in the law, they can be granted to the state owned enterprises or public institutions to administer or they can be licensed or leased.

In addition to the constitutional text which makes reference to the law, we should also consider some provisions in the **Civil Code**.

The texts in the Civil Code make reference to "assets which do not belong to private individuals or companies", and this category includes assets belonging to the public property, together with assets belonging to the private property of the legal persons of public law.

The public assets can be of national interest, and in this case they belong to the state property, with a public law regime, or of local interest, and in this case they are the property of the communes, towns, municipalities and counties, also with a public law regime.

The management of the public property of national interest is carried out by the bodies provided for by the law, and the management of the public property of local interest is carried out by the local councils or, respectively, by the county councils.

Law nr. 213/1998 regarding the public property and its legal regime establishes that the right to public property belongs to the state or to the territorial-administrative units, over the assets which, according to the law or by their own nature, are of public use or interest, and the state or the territorial-administrative units exercise the possession, usage and disposal over the assets which make up the public property, within the limits and in the conditions set out in the law.

A clear-cut distinction is made between the public assets and the assets belonging to the private property of the state and of the territorial-administrative units, and the notion of property regime is introduced. Thus, the public property

regime covers the assets provided for in Art. 136 (4) of the Constitution, those established in the appendix to Law nr. 213/1998 and any other assets which, according to the law or by their own nature, are of public use or interest, and are acquired by the state or by the territorial-administrative units in the ways provided for by the law.

The public property of the state is made up of the assets provided for in Art. 136 (4) of the Constitution, those provided for at I in the appendix to Law nr. 213/1998, as well as other assets of national public use or interest, declared as such by the law.

The public property of the counties is made up of the assets provided for at II in the appendix and other assets of county public use or interest, declared as such by decision of the county council, unless they are declared by the law as assets of national public use or interest.

The public property of the communes, towns and municipalities is made up of the assets provided for at III in the appendix and other assets of local public use or interest, declared as such by decision of the local council, if they are not declared by the law as assets of national or county public use or interest.

The private property of the state or of the territorial-administrative units is made up of assets belonging to the property of the state or territorial-administrative units, which do not belong to the public property. The state or the territorial-administrative units have a right of private property over these assets.

The Local Public Administration Act nr. 215/2001 comes up with some clarifications in this sense. Thus, according to the Act, the lease or licensing of the assets belonging to the public or private property of local interest and the sale or purchase of assets belonging to the private property of local interest are only possible with the approval of the local or county council, accordingly.

Therefore, according to the legislation in force, the **public property** individualizes through:

1. Special ways of acquisition

The right to **public property** is acquired:

a) naturally;

b) by public acquisitions carried out in the conditions set out in the law;

c) by expropriation for public utility purposes (Law nr. 33/1994);

d) by acts of donation or wills accepted by the Government, the county council or the local council, accordingly, if the respective asset becomes public property;

e) by moving assets belonging to the private property of the state or territorial-administrative units to the public property of the same, for public utility purposes;

f) in other ways provided for by the law.

Assets are moved from the private property of the state or the territorial-administrative units to the public property of the same by Government decision, by decision of the county council, of the General Council of the Municipality of Bucharest or of the local council.

An asset is moved from the public property of the state to the public property of a territorial-administrative unit at the request of the county council, of the General Council of the Municipality of Bucharest or of the local council, accordingly, by Government Decision.

An asset is moved from the public property of a territorial-administrative unit to the public property of the state at the request of the Government, by decision of the county council, General Council of the Municipality of Bucharest or local council, respectively.

The right to public property ceases if the asset perished or was moved to the private property.

An asset is moved from the public property to the private property by decision of the Government, county council, General Council of the Municipality of Bucharest, or local council, respectively, unless the Constitution or the law does not provide otherwise.

2. Special legal regime

The assets belonging to the public property are **inalienable, not distrainable and imprescriptible**, as follows:

a) they cannot be alienated, they can only be granted for administration, licensed or leased, in the conditions set out in the law;

b) they cannot be subject to coercive execution and no warranty can be placed upon them;

c) they cannot be acquired by other persons by acquisitive prescription or as an effect of the good-will possession exercised over movable assets.

3. Special regime of usage by private persons or companies

The assets belonging to the public property can be granted to state-owned enterprises, prefect's institutions, central and local authorities, other public institutions of national, county or local interest, in order to administer them.

The right to administer is granted, accordingly, by decision of the Government, of the county council or General Council of the Municipality of Bucharest, or of the local council.

The holder of the right to administer can **possess, use and dispose of the asset**, *in the conditions set out in the document granting this right*. The right to administer can be revoked only if its holder does not exercise the rights or meet the obligations arising from the transfer document.

The lease of the assets belonging to the public property of the state or territorial-administrative units is approved by decision of the Government, of the county council, of the General Council of the Municipality of Bucharest, or of the

local council, accordingly, and the lease contract will include stipulations meant to ensure the exploitation of the respective asset, according to its specificity.

The lease contract can be concluded with any Romanian or foreign legal or natural person by the holder of the right of property or right to administer.

The licensing or lease of the assets belonging to the public property is done by public tender, in the conditions set out in the law.

The amounts collected from the lease or licensing of the assets belonging to the public property are turned into state or local revenue.

4. Special regime of arrangement

5. Special regime of solving litigations

Litigations regarding the scope of the public property of the state, counties, communes, towns or municipalities are solved by the administrative courts.

4.3.10. The territorial-administrative units, the development regions and the national network of localities

4.3.10.1. The territorial-administrative units

According to the Constitution, the Romanian territory is organised, from an administrative point of view, into *communes, towns* and *counties*. In the conditions set out in the law, some towns are declared municipalities.

The Romanian communes represent the most prominent category of territorial-administrative units (together with the towns and counties), both numerically and demographic-wise. Thus, in Romania there are 2,858 communes (which comprise 13,000 villages) out of a total of 3,178 territorial-administrative units. Although the most numerous, the communes and the rural space in general have not benefitted of enough attention within the framework of the reform programmes or at the level of the instruments meant to support their development.

The average commune in Romania has 3,500 – 4,000 inhabitants[52], with 23% above 60 years of age (as opposed to 16% in the urban environment), and 25% under 18. The population growth has a negative tendency, amounting to -3.7/1,000 inhabitants. The average number of members of a rural household is three. The commune has 3-4 component villages, with an average distance of 7km between the farthest of them. The average surface is of about 6,000 – 7,000 hectares, of which over 90% is agricultural land.

The town is the administrative unit run by an elected local council and an elected mayor. The more important towns can be declared municipalities. Romania has 263 towns, of which 82 are municipalities.

[52] Much less than the standard considered optimal at international level, i.e. 10,000 inhabitants.

The county is the administrative unit run by the county council and its president. Romania has 41 counties and the Municipality of Bucharest – the capital of the country, which has a similar status to that of a county. A county has an average surface of 5,800km^2 and a population of 500,000 inhabitants.

4.3.10.2 The development regions

The development regions are considered to be those "areas comprising the territories of the Romanian counties, set up as a result of the conventions concluded between the representatives of the county councils and, respectively, of the General Council of the Municipality of Bucharest, without legal personality and without the specific features of the territorial-administrative units." [53]

The regional development policy is a component of the reform promoted by the Romanian Government, which has as its main objective the decrease of the economic and social imbalances accumulated throughout the time and the prevention of new imbalances, as well as the support of the general sustainable development of all the regions of the country.

This is required in Romania because until 1989 disparities accumulated at the levels of economic and social development of the different areas of the country, caused by the fact that the industrial activity was concentrated in a few regions of the country, where there were mineral and energetic resources, while the economy of the other regions was dominated by the agricultural activities.

Although included in the 1976 Single National Plan, the territorial development, more precisely an imposition of an economic model from the centre, was subordinated to the single criterion aimed at the industrial development. The results were negative, since the forced industrialization of some counties was done without considering the efficiency criteria.

For this reason, integration in the European Union represented one of the most important strategic objectives of the country, as the European integration process undergone by Romania was the solution to many problems facing our society in the present. [54]

After 1990, Romania's regional development policy was restricted to a few national programmes, designed and promoted by the government in order to support underprivileged areas and regions, as a result of historical, geographical, economic and political circumstances.[55]

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[53] Art 5 and 6 of Law nr. 315/2004 regarding Romania's regional development, modified and complemented, published in the Official Gazzette, Part I, nr. 577 of June 29, 2004.

[54] V.R. Ionescu, Strategii de dezvoltare comunitară şi regională, Editura Fundației Academice "Danubius", Galați, 2006, p. 81.

[55] V. Iuhas, Dezvoltare econonică regională – implicații economice şi sociale, Editura Emia, 2004, p. 61.

Because of the insufficient financial resources, as well as of the lack of a legal and institutional framework and of a unitary vision in this field, the results were unsatisfactory. Thus, Romanian authorities' efforts to adjust to the requirements of the European Union presuppose the development of a vast process of increasing the efficiency of the Romanian economy which allows a movement forward towards the development level of the Western countries, as well as the necessary steps with a view to achieving a monetary, social and cultural balance.

A vast analysis of the territorial-administrative units from the point of view of the economic and social development was carried out in the study "Green Paper, the Regional Development Policy in Romania" [56].

Following this study[57], it was found that in Romania there are major disparities at the level of the development of the different regions of the country, and this situation is due to the existence of a different development potential, and here we refer to the natural and human resources, as well as to the demographic, economic, technological, social, political and cultural models which characterized them throughout the history.

The Green Paper proposed to the government a possible model of regional development, and on the basis of that model it drew up a regional development bill, which, after many revisions, discussions and debates at central and local levels with the interested authorities and institutions, was passed by the Parliament in July 1998[58].

Starting with the year 2000, the financial aid granted to Romania by the European Union for the pre-accession period was based on a planning document entitled the National Development Plan.

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[56] The Romanian Government, EC-Phare Programme, Green Paper – The Regional Development Policy in Romania, Bucharest, 1997.

[57] The study revealed the need to create a National Agency of Regional Development, which actually functioned between 1998 and 2000. This agency was responsible for drawing up and implementing the regional policy of the country, in its quality of governmental agency, run by a non-government consultative body, namely the National Council for Regional Development. The first Regional Development Agency in Romania was created in Craiova in 1997, the South-West Oltenia Regional Development Agency, followed by the South Muntenia Regional Development Agency, with the headquarters in Alexandria. Both the agency created in Craiova and the one created in Muntenia were based on models proposed by the Green Paper, and they functioned in the absence of a legislation in the field. The first regional development agency aimed to contribute to the promotion of the economic, social and cultural development of the counties of Dolj, Gorj, Mehedinţi, Olt and Vâlcea.

[58] Based on the Green Paper, Law nr. 151/1998 regarding the regional development in Romania was passed at July 15, 1998. Besides the institutional framework, this law also established the objectives of the regional development. This law was replaced in 2004 by Law nr. 315 of June 28, which establishes "the institutional framework, the objectives, the competences and the specific instruments of the regional development policy in Romania.

The first National Development Plan[59] was drawn up by the National Agency of Regional Development for the period 2000-2006, and had as its main objective the achievement of a sustainable economic growth and the creation of permanent workplaces. In this case it was important to settle the priorities, in order to draw up and implement programmes and projects based on them.

The National Development Plan established six national priorities regarding the regional development and three national priorities regarding the sectorial development. Among the priorities regarding the regional development and the corresponding measures for achieving them, we mention the development of the private sector and the promotion of investments by supporting private companies, attracting investments in the manufacturing sector, as well as in the adjacent public infrastructure. The support for the small and medium enterprises also represented one of the main objectives of the National Development Plan, aiming to improve the capital endowment of the SMEs, to improve the

[59] The first National Development Plan settled the priorities for the development of Romania for the period 2000-2002 and the corresponding measures. The financing of these measures was ensured from the state budget, the local budget, and the Phare, Ispa, Sapard pre-accession instruments. The Phare programme was supposed to co-finance measures which contribute to the achievement of the three types of objectives: the development of the activities in the manufacturing sector, the development of the human resources and the improvement of infrastructure connected to the business sector. The national development priorities and the corresponding measures were drawn up only for the period 2000-2002, based on the analyses carried out in the Regional Development Plans and on the strategies settled in the Development Plans, drawn up in the eight development regions. The second National Development Plan of Romania was drawn up by the Ministry of Development and Prognosis for the period 2000-2005. It stipulated from the very beginning the priority interest in the approach and inclusion of the sectoral strategies of the ministries in its structure. In addition to the approach contained in the NDP 2000-2002, 7 priority development axes were proposed, which aimed the improvement and development of the infrastructure, the strengthening of the potential of the human resources, the support for the agriculture and rural development, the protection of the environment, the stimulation of research and technological development, the improvement of the economic structure of the regions, the support for the sustainable and balanced regional development. The third National Development Plan was drawn up by the Ministry of European Integration for the period 2004-2006. The NDP 2004-2006 approaches the regional development strategy, divided into five strategic priorities, thus focusing on increasing the competitiveness of the manufacturing sector, improving and developing the transport and energy infrastructure, protecting the environment, developing the human resources, increasing employment and combatting social exclusion, as well as diversifying the rural economy and increasing the productivity in agriculture. NDP 2004-2006 also made a step forward by applying the partnership principle. Following a Government Decision (Government Decision nr. 1323/2002), the Inter-institutional Committee for drawing up the National Development Plan was set up, offering the legal basis for developing the inter-institutional and partnership structures at national and regional levels. Regarding the NDP 2004-2006 we can say that it is a starting point for the plan required for accessing the Structural Funds.

consultancy and to support the cooperation between the SMEs and the big enterprises. [60]

The improvement and development of the regional and local infrastructure, the development of the human resources, the development of tourism, as well as the support for scientific research and technological development were important elements mentioned in the National Development Plans drawn up later.

Currently, NDP 2007-2013 contains an in-depth analysis regarding the design of the Romanian cohesion policy, as well as a clear-cut distinction between the regional and sectorial programmes and the combination of national, regional and European priorities.

The National Plan of Regional Development 2007-2013 established six national development priorities, under there are many priority fields and sub-fields:

- Improving the economic competitiveness and developing the knowledge-based economy;
- Developing and modernizing the transport infrastructure;
- Protecting and improving the quality of the environment;
- Developing the human resources, promoting employment and social inclusion, and strengthening the administrative capacity;
- Developing the rural economy and increasing the productivity in the agricultural sector;
- Diminishing the development disparities between the regions of the country. [61]

The NDP 2007-2013 strategy is structured on the six national development priorities, and this limitation of the number of priorities is meant to ensure the concentration of the available resources in order to achieve those objectives and measures with a maximum impact on the diminishment of the differences from the EU and of the internal disparities. It should also be mentioned however that these large priorities include many specific fields/areas of intervention, such as education, healthcare, energy, IT and communications, the prevention of natural risks, and many others.

The NDP 2007-2013 attempts to closely reflect the urgent development priorities of Romania at national, regional and local levels, and proposes that these be supported by concentrated public investments, granted on the basis of programmes and projects. The implementation of the development strategy through the efficient use of the internal and external funds assigned will lead, towards the year 2013, to a competitive, dynamic and prosperous Romania,

[60] The National Development Plan; the priorities for the period 2000-2002.
[61] The National Development Plan 2007-2013.

successfully integrated in the European Union, in a trend of rapid and sustainable development.

Another important strategic document for programming structural funds is represented by the Reference National Strategic Framework (RNSF). This type of document is drawn up by each EU Member State, according to the new acquis regarding the Cohesion Policy. This document includes explanations on how the Structural Instruments will be implemented in Romania in the period 2007-2013. The main aim of the RNSF is to reinforce the strategic objective of Romania's economic, social and regional policies, as well as to establish appropriate and correct connections with the policies of the European Commission, especially with the Lisbon Strategy, which lays at the basis of the drawing up of policies of economic development and of creating new workplaces. The RNSF was drawn up on the basis of the **National Development Plan (NDP) 2007-2013**, and its implementation is carried out through the Operational Programmes. [62] Each of the operational programmes corresponds to at least one of the structural instruments of the European Union in the period 2007-2013 as follows: the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Cohesion Fund, with the additional possibility of accessing complementary instruments represented by European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF).

From the perspective of the decision-making and executive bodies, both at national and at regional level, we mention the existence of the National Council for Regional Development (NCRD), which represents the decision-making body responsible for the regional development policy in Romania, and whose main prerogatives are to approve the national policies and strategy for regional development, the National Development Plan, and the criteria and priorities regarding the use of the National Fund for Regional Development. At territorial level, each development region has a Council for Regional Development and a Regional Development Agency. The Councils for Regional Development are made up of the Presidents of the County Councils and a representative of each category of local councils (municipality, town, and commune) from each county

[62] The operational programs (OP) are management instruments to achieve the objectives of RNSF 2007-2013, by means of specific interventions. Romania has 7 operational programs drawn up with the convergence objective: the human resource development operational programme, the operational programme for increasing the economic competitiveness, the transport operational programme, the environment operational programme, the administrative capacity development operational programme, the regional operational programme, the technical assistance operational programme.

of the region. [63] The Councils for Regional Development coordinate the Regional Development Agencies in place in each development region. The councils are deliberative bodies, without legal personality, which coordinate the regional development activities and have a decision-making role in settlement, in accordance with the Regional Development National Strategy, the priority objectives for developing the region and the strategy for meeting these objectives.

The Regional Development Agencies[64] are executive bodies of the Councils for Regional Development. As a form of organisation, the Regional Development Agencies are non-governmental, non-profit, public utility organisations, with legal personality, which operate in the specific field of regional development.

With respect to the principles underlying the regional development policy in Romania, "**the subsidiarity principle, the decentralization principle** and **the partnership principle**" [65], they are harmonized with the principles underlying the regional development policies applied in the EU Member States, which aim the geographical **concentration** of the areas with social-economic problems; the **decentralization** of the decision-making process from the central to the regional (local) level; the **partnership** among all the actors involved in the field of regional development (co-financing of the projects); the **planning** of the resources through programmes and projects meant to meet the set objectives; the **adding (co-financing)**, by involving the actors contributing to the regional development with their own funds.

The territorial-administrative structures of the development regions are made up of: 1. **The Regional Development Council** – a deliberative body – without legal personality, based on partnership principles at the level of each development region, aimed at carrying out, drawing up and monitoring activities triggered by the regional development policies; 2. **The Regional Development Agency** – non-profit, public utility, non-governmental body, with legal personality; 3. **The National Council for Regional Development**, a partnership-type body, with a decision-making role in drawing up and implementing the regional development policy objectives. In our opinion, metropolitan structures will emerge within the development regions, and the administrative relations among them are to be extensively regulated by the legislator.

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[63] In the case of the Bucharest – Ilfov development region, the Regional Development is made up of the presidents of the Ilfov County Council, the general mayor of the Municipality of Bucharest, a representative of each district Local Council, and representatives of the Local Councils in Ilfov County, at a par with the representatives of the districts of Bucharest.

[64] In each county in the development region, except for the capital city of the county, there is an office of the regional development agency.

[65] Law nr. 315/2004 regarding the regional development, modified and complemented, published in the Official Gazzette, Part I, nr. 577 of June 29, 2004.

4.3.10.3 The national network of localities

The structure of the network of human settlements in Romania exhibits the following aspects:

a) **for towns**:

− the urban population represents 55%;

− the distribution of the towns among the counties is rational and balanced (4-10 towns/county);

− the average density of the urban population for each county is of about 33 inhabitants/km^2;

− the territorial growth of the towns through expansion was noticed for the last 20 years;

− municipalities are characterized by the synthesis of the urban development, as **vital centres** or **growth poles**;

b) **for villages**:

− the urbanization of villages has become a modern, irreversible tendency;

− the disappearance of some villages, which is another contemporary phenomenon.

The network of the urban settlements is shaped according to a neuronal structure, with multiple connections among settlements and between the settlements and the territory as a resource supplier and host of the settlements. Therefore, it is more appropriate to regard this network of interdependencies as a system, i.e. to speak about and operate with the idea of **system of settlements**, where we can more easily decipher the hierarchies and dynamic connections.

According to the size, the structure of the urban settlements includes: **small towns** – settlements below 10,000 inhabitants, **medium towns** – with 20,000 – 100,000 inhabitants, and **large towns/cities** – above 100,000 inhabitants. Relatively recent data exhibit the following urban structure in Romania: a very large city, Bucharest, with about 2.5 million inhabitants; 11 towns with 200,000 – 400,000 inhabitants; 13 towns with 100,000 – 200,000 inhabitants; 23 towns with 50,000 – 100,000 inhabitants; 29 towns with 20,000 – 50,000 inhabitants; one town with 10,000 – 20,000 inhabitants, and 184 towns with 5,000 – 10,000 inhabitants. The other settlements are the villages, over 13,000, grouped into communes. [66]

The functioning of the human settlements within networks is a relevant aspect of the contemporary world; the connections within the systems of urban

[66] G. Ionaşcu, *Dezvoltarea şi reabilitarea aşezărilor umane din România,* Editura Tempus, Bucureşti, 2003.

settlements, for instance, tend to increasingly replace the dependence of the town upon a surrounding region (Gottmann).

These connections required a much more in-depth study in Romania, inclusively within territorial arrangement regional plans, drawn up according to the systems of localities.

The dynamics of the population of the human settlements in Romania refers to the distribution, density, evolution and growth of the population.

The distribution is particularly balanced on the entire territory of the country. The vast majority of the population and of the human settlements are places in the plain area. The ethnical homogeneity of the population is considerable, as about 90% of the population is represented by Romanians. Actually, the population of Romania also has a remarkable linguistic and ethnographic unity. From the point of view of the religion, about 87% of the population is orthodox. Outside the Romanian borders there are about 12 million Romanians, most of them living in the vicinity of the borders, most of whom, about 3 million, living in the Republic of Moldova.

The density of the Romanian population increased from about 45 inhabitants/km^2 in 1990 to about 96 inhabitants/km^2. At the level of the counties, the maximum density is in Prahova, with about 170 inhabitants/km^2. The average density of the settlements in Romania is of about one locality/18km^2. From the point of view of the altitude, over 57% of the Romanian population live below 200m up, i.e. in the plain areas; 37,5% up to 600m, and about 5.5% in mountainous regions – plateaus and valleys.

The Romanian population increased constantly: from 8.6 million inhabitants in 1859, to 12.8 million inhabitants in 1912, 15.9 million inhabitants in 1948, to 23 million inhabitants in 1994. According to the type of locality, towns have an average of 48,000 inhabitants, communes have about 3,900 inhabitants, and villages 800 inhabitants. The functional monogram of the Romanian towns exhibits a prevailing orientation of the professional structure and economic activities towards the manufacturing industries in about 87% of the towns (Sandu). Recently, after the 1989 revolution, an ageing phenomenon has occurred, due to new tendencies. Still, the life expectancy remains close to 70, with the ageing phenomenon, typical of the advanced societies, being irreversible in Romania, where it will increase until 2050-2100, when the population aged 60 will stabilize at 30% of the total population. According to some studies (Grigorescu C., 1996), factors of demographic ageing are:

− the decrease of the weight of the traditional agricultural households, where many children were needed for production and for the security of the aged;

− women's emancipation, with women working in education and other non-agricultural fields;

− parents' preoccupation to ensure an appropriate raising and education to their children, which requires time and expenses, resulting in a smaller number of children;

− the increase of the social security for the aged, which reduced the children's role in supporting the aged parents;

− the increase of the spare time and of the holidays, the easy access to transportation, and others.

The national network of localities is made up of urban and rural localities, organised into a hierarchy according to their rank.

According to Law nr. 351/2001, the organisation of the localities into a hierarchy according to their rank is the following:

a) rank 0 – the Capital of Romania, a municipality of European importance;

b) rank I – municipalities of national importance, with potential influence at European level;

c) rank II – municipalities of inter-county or county importance, or with a balancing role within the network of localities;

d) rank III – towns;

e) rank IV – chief villages of the commune;

f) rank V – villages making up the communes and villages belonging to municipalities and towns.

Localities pass from one rank to the other by law, at the proposal of the local councils, with the consultation of the population through referendum and of the institutions involved, in the conditions set out in the law, while meeting the main minimal quantitative and qualitative indicators.

The main indicators, the equipment elements and levels provided for by the law for the organisation of the urban and rural localities into a hierarchy will lay at the basis of the criteria for setting the taxes.

In the areas with no towns on a radius of 25 – 30km, the Government, with the participation of the local authorities, will proceed with priority to:

a) modernize rural localities with a serving role in the influence area;

b) declare new towns, promoting special programmes of co-participation in the financial support of the institutional development, required in order to finance these new towns.

In order to achieve a balanced development of the territory around the Capital of Romania and the rank I municipalities, the main territorial-administrative units in these areas can associate into a voluntary partnership in order to found metropolitan areas attaching to the urban space. The association contributes to the strengthening of the complementarities between these units and the decision-makers interested in the development of the territory.

The metropolitan areas function as independent entities without legal personality. The metropolitan areas can function in a perimeter independent of the territorial-administrative units, agreed on by the local authorities.

The association of the metropolitan area, with the assent of the local councils and with the consultation with the population in the area where it was founded, adopts the development programme of the area.

In order to optimize the evolution of the great urban agglomeration, development areas can be founded within them by law. The law will provide for the perimeter, functioning term, institutional framework of management, as well as the granted facilities.

In order to protect the natural environment, to prevent the uncontrolled expansion of the urban localities and to ensure leisure spaces, the town plans drawn up and approved according to the law will provide for the creation of green belts or areas around the Capital of Romania and the rank I municipalities.

The national and regional development plans, including the trans-border ones, and the development plans for the integration in the European space, as well as the sectorial plans will be drawn up on the basis of the provisions of the sections of the National Territory Arrangement Plan – Ways of Communication, Water, Protected Areas, Network of Localities, Natural Risk Areas, as well as other sections of the National Territory Arrangement Plan approved by the law.

The main minimal quantitative and qualitative indicators for defining the urban localities:

No.	Minimal Indicators	Municipality	Town
1.1.	Number of inhabitants	25.000	5.000
1.2.	Employed in non-agricultural activities (% of the total employed population)	85	75
1.3.	Equipment with water supply installations (% of the total number of dwellings)	80	70
1.4.	Equipment of dwellings with bathtubs and water closets (% of the total number of dwellings)	75	55
1.5.	Number of beds in hospitals/1,000 inhabitants	10	7
1.6.	Number of medical doctors/1,000 inhabitants	2,3	1,8
1.7.	Educational institutions	higher education	high school or other form of secondary education

No.	Minimal Indicators	Municipality	Town
1.8.	Cultural and sports equipment	theatres, musical institutions, public libraries, stadium, gyms	theatres, public libraries, sports grounds
1.9.	Places in hotels	100	50
1.10.	Modernized streets (% of the total length of the streets)	60	50
1.11.	Streets with water supply networks (% of the total length of the streets)	70	60
1.12.	Streets with sewerage pipes (% of the total length of the streets)	60	50
1.13.	Return water purification	purification plant with mechanical and biological stages	mechanical purification plant
1.14.	Streets with exterior hydrants for extinguishing fires (% of the total length of the streets)	70	60
1.15.	Green spaces (parks, public gardens, squares) – sqm/inhabitant	15	10
1.16.	Controlled waste yard, with ensured access	public park	public garden

Equipment elements and level of the rank 0 and rank I urban localities

Favourable geographical situation:

Geographical situation of international or European interest, constituting development and attractiveness centres, placed along the major axes of the ways of communication of international/European importance.

Population:

a) an important number of inhabitants: at least 200,000 inhabitants;

b) highly specialized professional training: workforce with high qualifications and on-going training, characterized by flexibility/dynamism;

c) identity: the identification of the specific character of the town, together with the awareness of its belonging to the group of towns with the same rank.

Accessibility:

− At international, pan-European level: direct access to the major network of pan-European ways of communication (road, rail, naval, and air)

− At national level: access to the network of national ways of communication (highways, express roads, high-speed railways, maritime or fluvial navigable ways, ports, airports).

Economic functions: high-tech and flexible economic base (secondary sector, productive socio-cultural and IT services).

Equipment level:

Localities ensure a hosting/receiving potential for certain functions and equipment whose importance, quality, and capacity meet the European standards/requirements. The international or European character of these localities consists in the international or European dimension of their functions and equipment.

The main categories and types of equipment for ranks 0 and I:

− political, legal and economic decision-making institutions of international, national or regional importance:

− Parliament, Government, ministries and other central institutions, supreme courts (The High Court of Justice, The Constitutional Court, The Legislative Council), embassies, etc.;

− centres of the local administration, centres of the decentralized services of the ministries and other central bodies in the territory, local courts, county courts, prosecutors' offices, centres of the political organisations, centres of trade unions, foundations, centres of non-governmental organisations, etc.;

− national and regional institutions of international/European reputation or active in the field of international/European relations:

− centres of branches of international bodies, great national institutions with a scientific character with international/European opening (academy, national research centres and institutes, etc.);

− congress and conference centres, centres for exhibitions and fairs, luxury and high capacity hotels, international schools, offices for internationally recognized professions, offices for international arbitration, etc.

− foreign and international institutions with permanent residence:

− foreign companies and banks, different other socio-economic, cultural and scientific institutions, international non-governmental institutions, foreign scientific institutions (schools, universities), consulates and other diplomatic, commercial, touristic representatives, etc.

− different organisations with branches and agencies abroad:

− financial, banking, insurance centres, centres of cultural and scientific organisations;

− other equipment:

− education and research: universities, diversified higher education institutions, national research institutes or their branches;

− healthcare: university clinics and hospitals;

− *culture: museums, drama, comedy, revue, puppet theatres, opera houses, operetta, philharmonic, concert halls, multipurpose halls, great libraries, publishing houses, printing houses etc.;*

− *trade, commercial services provided to the population and companies: trade and business centres, stock markets, diversified and high quality commercial services;*

− *mass-media: system with international/European or regional casting range, national and regional radio stations and TV channels;*

− *sports, entertainment: sports centres, stadiums, international/ European, national or regional level sports competition halls, swimming pools, artificial skating rings, diversified touristic and entertainment base, parks, botanical gardens, zoos, casinos, sports and entertainment clubs, etc.;*

− *environmental protection: environmental protection agencies and ecological services with special equipment for preserving a quality environment (organising the environmental auditing, urban hygiene etc.);*

− *sewerage and water supply: water supply networks, sewerage system, purification plant;*

− *cults: ecumenical centres, metropolitan churches, episcopates, archdioceses, dioceses, centres of the authorized cults;*

− *transportation/communications: international airports, railway stations connected to the European network, postal services with international coverage;*

− *law and order, defence, and national security: specific institutions, connected to international organisations.*

Equipment elements and level of rank II urban localities
County capital municipalities
Population

− *from about 50,000 to about 200,000 inhabitants;*

− *influence area: about 200,000 – 500,000 inhabitants.*

Scope of service: about 60 – 80km

Access to the ways of communication: *direct access to at least two major systems of ways of communication (main railway lines, national roads which transit that place or leave from that place, possibly airport, ports and/or fluvial railway stations)*

Economic functions: *diversified production capacities in the secondary sector and in the manufacturing, socio-cultural and information sector with a mainly county scope.*

Equipment level:

− *political, administrative and legal decision-making institutions of county importance:*

− *centres of the local administration, centres of decentralized services of the ministries and other central non-governmental bodies in the territory;*

– *local courts, county courts, prosecutor's office and other legal institutions, headquarters of political parties, trade unions and non-governmental organisations;*

– *education and research:*

– *higher education institutions or branches, colleges, branches of national research institutes;*

– *healthcare, social security:*

– *university clinical hospital or general hospital, specialized hospitals, county ambulance, specialized assistance (chronic diseases, disabled people, functional recoveries, psychiatric centres), old people's homes, recovery centres, children's homes, etc.;*

– *culture:*

– *cultural centres with theatres, concert halls, exhibition, conference, multipurpose halls, clubs, museums, libraries, publishing houses, printing houses, etc.;*

– *trade, commercial services provided to the population and companies:*

– *trade centres, chambers of commerce, business centres, stock markets, specialized wholesale and retail trade, showrooms, high quality diversified services, possibilities of organising important fairs;*

– *tourism:*

– *3-star hotels with at least 200 places;*

– *mass-media:*

– *county mass-media (radio stations and TV channels), daily or periodical publications;*

– *finance, banking, insurance:*

– *branches of financial, banking and insurance companies;*

– *sports, entertainment:*

– *relaxation and leisure centres, zoos, national/regional/county sports competition halls, stadiums and other diversified sports and leisure equipment (multipurpose halls, sports grounds, swimming pools, possibly artificial skating rings etc.);*

– *environmental protection:*

– *environmental protection agencies and services with special equipment for preserving a quality environment and urban hygiene;*

– *sewerage and water supply:*

– *water supply networks, sewerage system, purification plants;*

– *cults:*

– *churches, episcopates, eparchial centres, vicarships, sub-centres of authorized cults;*

– *transportation/communications:*

− *railway stations, coach stations, means of transportation, automatic telephone exchange, fax, post office, etc.;*

− *law and order, security:*

− *institutions specific to the requirements at county level.*

Other municipalities

Population

− *usually, between 25,000 and about 70,000 inhabitants;*

− *from the influence area: between about 30,000 and about 100,000 inhabitants*

Scope: about 20km

Access to the ways of communication: *direct access to the railway, county road, and easy access of the localities in the influence area.*

Economic functions: *diversified production capacities in the secondary and tertiary sector, possibly in agriculture*

Equipment level:

− *public administration, judicial authorities, political parties, trade union:*

− *centres of the local administration, local courts, prosecutor's office, centres of political parties, trade unions and other associations:*

− *education and research:*

− *high schools, specialized high schools, colleges, vocational schools;*

− *centres of research institutes;*

− *healthcare, social security:*

− *general hospital, ambulance, health centre, nursery, kindergarten, old people's home;*

− *culture:*

− *culture centres, cinema, public libraries, museums, exhibition halls, club, etc.;*

− *trade, commercial services:*

− *diversified trade companies: general and specialized stores, supermarkets, food market;*

− *diversified and/or flexible service providing companies;*

− *tourism:*

− *3-star hotel with at least 30 places;*

− *finance, banking, insurance:*

− *branches of financial, banking and insurance companies;*

− *sports, entertainment:*

− *stadiums, sports grounds and halls (county or local level competitions), other spaces dedicated to sports, public gardens and other green spaces arranged for spending leisure time;*

− *environmental protection:*

− *services with specific equipment for environmental protection, polluting emissions monitoring, and urban hygiene;*

– *sewerage and water supply:*
– *water supply networks, sewerage system, purification plant;*
– *cults:*
– *archpriest residences, parishes;*
– *transportation/communications:*
– *railway station, coach station, post office, telephone;*
– *law and order, security:*
– *police, specific objectives.*

Equipment elements and level of rank III urban localities

Population:

– *as a rule, from about 5,000 to about 30,000 inhabitants;*
– *in the influence area: between about 5,000 and 40,000 inhabitants.*

Scope of service: about 10–20 km

Access to the ways of communication: *direct access to national or county road, to the higher rank centre and connections with the localities in the influence area.*

Economic functions: *production capacities in the secondary (manufacturing industry and constructions), tertiary (social and commercial services), and primary (extractive industry, agriculture, fishing, forestry)*

Equipment level:

- *public administration, judicial authorities and associations:*

– *town hall, local court, prosecutor's office, notary public, centres of different associations;*
– *education: pre-school, primary, secondary, high school education;*

- *healthcare, social security:*

– *general hospital or branch, maternity hospital, healthcare centre, ambulance, nursery, chemist's shop, old people's home;*
– *culture: - cultural centre, cinema, public library, museums, exhibition hall, club, etc.;*
– *trade, services: general stores and specialized shops, food market;*
– *tourism: two-star hotels with at least 50 places;*
– *finance, banking, insurance: branch offices of banks, loan institutions, insurance companies;*
– *sports, entertainment: sports grounds, possibly small stadium, sports centres, possibly for local competitions, public gardens and other arranged green spaces;*
– *environmental protection: environmental protection service;*
– *sewerage and water supply: water supply networks, sewerage system, purification plant;*
– *cults: church;*
– *transportation-communications: coach station, possibly railway station, post office, telephone exchange;*
– *law and order, security: police and constabulary stations.*

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