

Ioan Alexandru

# Comparative administrative law issues regarding central and local government



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regarding central and local government**

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# **Chapter I**

## **The administrative regimes**

### **Section 1**

#### **Administrative regimes**

All services in a country are arranged according to a system of centralization or decentralization, autonomy or subordination.

#### **§1. Administrative centralization**

In centralism, the authority comes from above and the decision-making power is in the hands of the central government and its representatives. There are no or very few organs chosen. The powers of the lower authorities are restricted.

Professor Dissescu, pointing out the concerns of the supporters of centralization (increasing national sentiment, greater capacity of central bodies, ensuring homogeneity and safer national independence, etc.), showed that this proves its usefulness only in wartime. How, however, war is an abnormal state, outside of itself, so most of the time, society must be characterized by decentralization. This eliminates the delays that may arise in the centralization system, so that the central authority is aware of local interests and advises on what measures it deems necessary. Also, any errors, inherent in human nature, are less serious and easier to repair in this system.

Professor Dissescu quoting the statement of a French journalist, considers it true: "centralization is a center apoplexy and a paralysis at the extremities".

It can be appreciated that centralism is still the normal regime under which most of the administrative services lived and lived in both the Central and Eastern European countries, and partly the West, under the immediate authority of the leaders and



collectivities depend, not having a distinct personality from that of these communities; they are run by appointed officials and decision-making power is concentrated at the top.

Subjectively, centralization is the means of avoiding political education for citizens, from an objective point of view, local collective life develops forcefully, according to an official plan for the whole country, and not naturally depending on the interests and temperament of the area's inhabitants.

Power is assimilated in modern societies with the state, subject to a logic of centralization. Hans Kelsen<sup>1</sup> considered that his territory and authorities were subjected to a relatively centralized coercive order, an order that is even the state, the principle of which is answered by Jacques Chevallier<sup>2</sup> postulate of "state centralization".

Centralization is the form that concentrates all the administrative tasks in the national territory in the person of the state, the tasks of which are ensured through a hierarchical and unified administration, an administration considered bureaucratic. We can see the link created between the principle of centralization and the negative interpretation given to the Weberian model, bureaucracy.

Simply centralized regimes in which all the legal norms of a state apply throughout the territory of a single center do not exist, but in reality we encounter states that have a centralized or partially decentralized regime. Thus, the regulation of the satisfaction of the general interests is done by laws applicable throughout the state through centralization, and the regulation of the satisfaction of the local interests is done by local legal norms, applicable only in certain administrative-territorial units, by decentralization.

If, however, a state is organized in such a way that the satisfaction of local or national interests is through public

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<sup>1</sup> Hans Kelsen, *Theorie pure du droit*, Dalloz, 1962, p. 380.

<sup>2</sup> Jacques Chevallier, *Science administrative*, PUF – Thémis, Coll Science politique, Paris, 1986, p. 95.

services, which are directly dependent on the central public authority and the management of which is appointed by it, that centralized state.

The State in the centralized regime is the only public person for the whole of the national territory, which ensures by itself and through its budget and agents the satisfaction (in fact pseudo-satisfaction) of all needs of general interest.

A centralized regime accepts a division of territory into constituencies (to allow a rational implantation of services in the territory), but communities that correspond to human assemblies pre-existing to centralized organization are not recognized. It is the central administration that satisfies all interests and needs by legal provisions and by regulations valid throughout the territory, which are carried out by the services organized at constituency level.

The state administration is thus rigorously hierarchized. Local government authorities are appointed by the central government and are directly dependent on it. Decision power is concentrated at the top of the hierarchy. At local level, the decisions of the central authorities are implemented. Local initiative is not allowed.

The material resources needed to implement the decision are entirely in the hands of the central administration.

Appointments are largely uncontested, depending on the preference of the higher organs, and there is no civil servant's right to stability.

The centralized system is also characterized by a powerful hierarchical control. The central authority exercises control without legal text, deriving only from the hierarchical power. The control is general, extending over all administrative acts, leading to their annulment or modification, as well as to the officials, the latter having no means of defending their act against the exercise of the hierarchical power.

The effects of centralized administration of the administration are represented by its uniformity. Regardless of

the area of origin, citizens are treated the same way, the same answers for the same issues, which fosters corporatism, lowering the liability of administrative agents, poor information retrieval, and a brake on skills. Through this system that provides the same guarantees for all citizens, officials are sheltered from any pressure and discretionary power, gradually reaching their immobility.

## **§2. Administrative-territorial deconcentration**

Deconcentration in terms of services consists in the deterioration to a certain extent of the administrative group of which they are part, by removing the direct authority of the governing bodies of the communities on which they depend, and which retains only a certain control over them, operating almost fully under the authority of their own bodies, giving them financial individuality and legal personality.

Care must be taken to study this move to deconcentrate services and its consequences. This form of controlled decentralization has taken on a large scale in most countries. But administrative services always have a self-dwelling tendency, by their very existence. This results from their organization, from the very mission they have to accomplish. For example, within a ministry the different services seek to be distinct from others. The individuality of a service is determined not only by the specificity of its object and the need it fulfills, but also by its traditions, the spirit that animates it, the way of recruiting its staff, the methods it practices, and the technicalness that is needed.

This individuality, which derives from the nature of things, can be strengthened and asserted by applying a special legal regime that separates these services from others by some, giving them a certain independent, but only, surface. Separation involves certain degrees, this may be a financial separation when grouping the expenses and revenues of the service into a separate budget, or by granting the legal personality, becoming a holder

of rights and obligations, possessing a certain patrimony<sup>3</sup>. Separation can go as far as giving authority through its own organs.

It was considered that by deconcentration the service activity will be improved, their management being adapted to the specifics of the respective tasks. Finally, a depoliticisation of these services was sought, removing the influence of elected parliamentarians or locals.

In the first years after 1989, the center-province gap grew in Romania from an economic and social point of view, but once with the first local elections, the province's political weight increased at national level. Bucharest remained, however, the main pole of attraction for foreign investments and the city with the lowest percentage of unemployed in terms of the number of inhabitants.

It is appreciated that the revision of the Constitution regarding the principle of the deconcentration of public services was necessary given that the local administration, as it is carried out at county level and at the level of localities, in turn implies a territorial settlement of specialized bodies, thus a deconcentration towards the localities of the services, which, at present, only function in the county seat of the county, respectively in the villages to the neighborhoods or, if necessary, even to the villages<sup>4</sup>.

Due to the increase in the administrative burden and the increasing complexity of this task, an increase in individualisation, a diversification of its status, a personalization process of services has been carried out in all countries. Everywhere there has been an increase in the number of

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<sup>3</sup> Annick Percheron, *L 'opinion et la décentralisation ou la décentralisation apprivoisée*, „Pouvoirs” n°60 - La décentralisation - janvier 1992, p.25-44.

<sup>4</sup> Ioan Muraru, Antonie Iorgovan, Mihai Constantinescu, Elena-Simina Tănăsescu, *Constituția României revizuită. Comentarii și explicații*, All Beck Publishing House, Bucharest, 2007, p. 253.

deconcentrated services ranging from controlled decentralization to local democratic, to personified services.

In this sense, needs and preoccupations of different natures have been achieved. It is therefore necessary to ensure the improvement of the technical competence of the managers in charge of these services, appreciating that due to the increase of financial individuality and legal personality, better results will be obtained in the management of services.

But the bodies that are at their head are composed of elements designated by various ways, which more or less preserve the authority of the state or the community on which the service depends. At the same time, there has been some obstruction with administrative rules, services being often caught in a set of definitions and procedures that they have to respect and which would put them in a position of inferiority to private enterprises.

### **§3. Administrative-territorial decentralization based on local autonomy**

Decentralization is seen as an indispensable corollary of democracy, for the organization of public administration it has the same weight as the representative democracy for constitutional organization<sup>5</sup>. Not often decentralization, which is generally accompanied by measures and mechanisms to enable citizens to participate in the leadership and administration of local communities, has also been called "democratic decentralization" or "democratic local decentralization"<sup>6</sup>.

In fact, the issue of the relationship between democracy and decentralization has been quite free to the attention of specialists. Territorial citizens' collectivities are intermediary

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<sup>5</sup> See in this respect Charles Debbasch, *Science administrative*, Paris, Dalloz, 1989, p. 123.

<sup>6</sup> Mihaela Cărăușan in Ioan Alexandru (coord.), *Drept administrativ*, 2<sup>nd</sup> edition, Lumina-Lex Publishing House, Bucharest, 2007, p. 177 et seq.

bodies interposed between the individual and the central power, determining rules adapted to each geographic framework and personalizing state authority according to local issues.

Modern society, characterized by contradictions and pluralism, involves a wide variety of social behaviors and therefore decision-making at the central level is not enough, but it needs to be adapted to local specificities. At present, there is a growing talk of the "*subsidiary state*", which would enshrine the "*welfare state*", who, by promoting the solution, favors democratic passivity, turning citizens into subjects<sup>7</sup>, although it is obvious that without the civil society, the state would be quickly paralyzed and powerless.

One of the major factors common to the evolution of contemporary administrative institutions is the re-launch of local autonomy. This is also spurred by the principle of subsidiarity, of German tradition, but taken over by European primary legislation first by the Single European Act of 1986 and then by the Treaty of Maastricht. It has thus been established that "in areas which do not fall within its exclusive competence, the Community does not intervene, in accordance with the principle of subsidiarity, only in so far as the objectives of the action envisaged can not be sufficiently achieved by the Member States and can therefore in the light of the scale and effects of the action envisaged, be better achieved at Community level. The Community does not go beyond what is necessary to achieve the objectives of the Maastricht Treaty"(Article 3B). This principle is transposed even before the emergence of the Communities, traditionally and at national level in the relations between the central and the local administration<sup>8</sup>.

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<sup>7</sup> See in this respect Jean - Pierre Joseph, *Decentralisation et démocratie*, *Après-demain*, no. 341/1992, p. 57.

<sup>8</sup> See Cătălin-Silviu Săraru, *European Administrative Space - recent challenges and evolution prospects*, ADJURIS – International Academic Publisher, Bucharest, 2017, p. 22.

The decentralization characteristic of the *subsidiary state* allows better realization of social justice, develops solidarity, ensures the proximity of the decision to the place where it produces its effects, and the citizen who will be informed in advance will be directly involved in the decision making and thus in the actual participation to solve problems of public interest.

This idea was also expressed in the Romanian legal literature, claiming that the administrative decentralization reveals the democracy, because it allows the different localities to participate in the public administration. That is why, in relation to democracy, which can be considered a never-before-won and never-ending struggle, decentralization appears complementary and inseparable.

In his paper, "*De la democratie en Amerique*", Tocqueville, as early as 1835, explained the most direct need for decentralization: a central power, however lighted and scholarly, could not encompass all the details of a people's life. The constant trend of the democratic countries is "to focus government power in the hands of the only power that represents the people", so that "provincial liberties" are the only guarantees that democracies have in order to put themselves "in the shadow of the excess of despotism" of the state government .

Decentralization is, according to Michel Crozier, a remedy for the bad news of the public administration. Today, this administration is a blocked system, the change of which can only be operated through brutal crises that shake the organizational ensemble. There is, however, another possible way of switching, which would avoid blockage and crises. It would consist in a profound transformation of the system in the sense of greater decentralization<sup>9</sup>.

Centralization is the fundamental factor of this blockage, but not centralization in the usual sense of

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<sup>9</sup> Michel Crozier, *La société bloquée*, Editions du Seuil, Paris, 1971, p. 21.

concentration of power for the benefit of an administrative agent at the top of the pyramid, although this aspect can be retained. There is another more significant meaning, namely that administrative agents sometimes have formal decision-making powers because they are broken by administrative reality, so decisions are not in line with this reality.

There is a rupture between those who decide and those who are called upon to make the administrative decision. Those who decide do not have the necessary knowledge and information, and those who have such knowledge and information do not have decision-making power, so that due to the distribution of competencies, those who decide are foreign to the administration's problems and thus arbitration takes place.

That is why, in order to have decentralization as an administrative reality, it is necessary to change the conceptual design of the administrative system as a whole in order to ensure the rational distribution of competences to decision levels as close to where they are executed.

The change of administrative systems is existentially linked to a "game" - in terms of edge, space, allowing for easier movement of articulated pieces of each other. This game would, according to Michel Crozier, ensure some freedom of organization. "These are assemblies that are the least integrated and have more resources that can easily be transformed"<sup>10</sup>. The change would not only result from the introduction of decentralization into a system. But it would be considerably easier. It would not occur without successive crises but, along with them and thanks to the supplements that allow decentralization, it would progressively impose a new type of administrative system, cleansed by rigidities that paralyze the system as it works today. Decentralization thus conceived is not only an administrative technique but also a political hope.

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<sup>10</sup> M. Crozier & E. Friedberg, *L'acteur et le système*, Editions du Seuil, Paris, 1977, p. 46.



Decentralization is a system of administrative organization that allows human communities or public services to administer themselves under the control of the state, which gives them legal personality, allows them to set up their own authorities and provides them with the necessary resources<sup>11</sup>.

Decentralization has two forms: administrative-territorial decentralization of local communities and technical decentralization of state public administration services.

Thus, the administrative-territorial decentralization means the local construction of a public administration different from the state administration, and by the technical decentralization there is a movement in the territory of some organs of the state public administration.

Public administration, as an activity, is carried out through executive activities with a mood character and executive activities with a performance character. Public administration can be considered, both formally-organizationally and functionally, as a totality of public services designed to meet the interests and varied needs of citizens and society<sup>12</sup>.

In the Romanian specialty doctrine, respectively in one of the first courses of Romanian administrative law, elaborated a century ago by Professor C.G. Disseseu discusses the system of administrative centralization and decentralization, starting from the classification of the sphere of interests specific to the associations of people who, in its opinion, form the nation, in the *general interests* of the large association, forming the *major center*, and the *particular interests* of the communes, forming the *minor center*<sup>13</sup>. The general interest is that of the entire population, and to be satisfied requires sacrifices on behalf of all.

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<sup>11</sup> Massimo Balducci, *État fonctionnel et décentralisation*, Editions E. Story-Scientia, Bruxelles, 1987, p. 73.

<sup>12</sup> Alexandru Negoită, *Drept administrativ*, Sylvi Publishing House, Bucharest, 1996, p. 62 et seq.

<sup>13</sup> Constantin G. Dissescu, *Curs de drept public roman*, vol. III - *Drept administrativ*, Stabilimentul Grafic I. V. Socecu Publishing House, Bucharest, 1891, p. 72.

The private interest is what a local administrative unit and for its satisfaction only efforts are needed from the local people. If the application of centralization is justified by the general interest, the realization of particular interests will be greatly facilitated by the application of decentralization. The two categories of interest are qualitatively different, they can not be confused and can not be absorbed into each other; therefore, the major center can not absorb the minor center.

Therefore, if centralization is a report, a whole susceptible to more or less, its opposite, - professor Dissescu maintained - in the rigorous sense of the notion of antithesis, is the lack of relation between the central and the local power, which is not perhaps, because in reality there is always a relationship, a connection between the general interest and the special interest. To look, therefore, decentralization as the opposite of centralization is wrong, because it does not mean denying centralization, but diminishing it, diminishing the concentration of powers.

From this perspective, it appears that as decentralization grows, centralization will decrease, both being relative phenomena in the life of any society. So, the problem that a nation has to worry about, how the state is organized and functioning, is not the answer to the question of which of the two systems is to be applied, but it involves determining the degree of decentralization required. Local autonomy, a stand-alone legal institution, involves administrative decentralization, autonomy being a right, and decentralization a system that assumes it<sup>14</sup>. Thus, if decentralization is characterized by the existence of a secure autonomy vis-à-vis the central administration, this autonomy must not be understood in the sense of total absolute liberty, eliminating any intervention by the state when it proves necessary. The autonomy that characterizes decentralization is

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<sup>14</sup> See in this respect Anibal Teodorescu, *Tratat de drept administrativ*, vol. II, Mârvan Publishing House, 1935, p. 46.

not a uniform one, but a global concept, covering a diverse reality.

Thus, in support of decentralization, the Romanian administrative doctrine has revealed that local interests can never be better known, closer and therefore better satisfied than by the local authorities.

The Romanian Constitution stipulates in art. 120 that "The public administration in the territorial-administrative units is based on the principles of decentralization, local autonomy and the deconcentration of public services".

But, although these principles were constitutionally and detailed in Law no. 215/2001 on local public administration, it can not be said that decentralization is manifested in particular. This happens in the conditions in which there is a strong centralist tendency in Romania, with an old tradition, which has led to the modern era of neglecting the province in favor of the capital and of the strong centralization of decisions.

It seems that awareness of the direct relationship between the decentralization process and the consolidation of democracy has not been realized. Even though democratic processes have achieved remarkable success, the weakest component of these developments remains the decentralization and autonomy of local government.

So, decentralization can only be said to be a guarantee of the stability of a functioning democracy. If most Western societies have had the chance of democratic consolidation from the local level to reach the center, for Romania, democracy has to take a reverse road: from the center to the periphery<sup>15</sup>.

The European Charter *The autonomous exercise of local government*, adopted by the Council of Europe<sup>16</sup>, has created a common framework that brings together European standards on

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<sup>15</sup> See in this respect V. Popa, I. Munteanu, V. Mocanu, *De la centralism spre descentralizare*, Cartier Publishing House, Chişinău, 1998.

<sup>16</sup> It was adopted on 15 January 1985 in Strasbourg, we refer to it as the Charter of Local Self-Government.

the attribution and preservation of public affairs management competencies to local authorities closest to citizens, so that they have the opportunity to participate effectively in decision-making related to their everyday environment.

Through its content, the Charter obliges the signatory parties to apply regulations that can guarantee the political, administrative and financial autonomy of local authorities.

The Charter contains provisions to create a general framework for transposing the principle of local autonomy into practice. Thus, first of all, it is specified the necessity of the existence within the national legislation of the constitutional and legal regulations for substantiating the local autonomy.

According to art. 3 of the Charter, local autonomy means the right and effective capacity of the local public administration authorities to solve and manage, within the law, on their own behalf and in the interest of the local population, an important part of the public affairs.

This capacity referred to by the text implies the need for central authorities to adopt clear and precise regulations that include, inter alia:

- a status of civil servants capable of recruiting highly qualified staff, on the basis of competence and merit (Article 6.2);

- a status of elected representatives to ensure "free exercise of the mandate" (Article 7.1);

- the right to have "within the framework of the national economic policy, its own financial resources" (Article 9.1), "which corresponds to responsibilities" (Article 9.2), "to be sufficiently diversified and flexible (evolutionary) to correspond to as much as possible with the real evolution of costs" (Article 9.4) and consist, at least in part, of "local taxes, the proportion of which can be determined by themselves within the limits of the law" (Article 9.3).

In spite of some, sometimes overly cautious formulations, the Charter defines a kind of ideal to be achieved,

which is built on a global conception, strongly inspired by the principle of subsidiarity, on the place of local communities within the state, deal with a unitary or federal state. From the content of the Charter, the components of administrative decentralization are separated, based on the principle of local autonomy<sup>17</sup>:

1) *The existence of a local territorial community.*

Administrative decentralization on the basis of local autonomy is related to the existence of local social collectivities, established within the administrative-territorial units of the state.

Needs and local interests are related to the specificity of the respective community and are distinguished from the general needs of the national community. For example, needs are solved through local services: water supply, heat, sanitation, public lighting, construction and maintenance of roads, etc.

The state can not solve all these needs and interests by its means and in terms of efficiency and effectiveness. Therefore, it is the state through legal regulations that determines which of the issues will be the responsibility of the state public services and which will fall within the competence of the local authorities.

2) *Recognize the responsibility of local communities in managing their specific needs, as well as the existence of their own resources.*

For the existence of local autonomy it is necessary that the specific problems of the local communities, recognized as such by the law, are solved by these collectives. The existence of local needs and interests also presupposes the existence of material means for their realization, such as own patrimony, a body of civil servants to manage public affairs, a certain financial autonomy based on the existence of its own budget.

3) *The local collectivity should have its own*

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<sup>17</sup> See in this respect André de Laubadère, *Traité de Droit Administratif*, L.G.D.J., Paris, 1980, p. 90; Jacques Cadart, *Institutions politiques et Droit constitutionnel*, L.G.D.J., Paris, 1957, p. 57 et seq.; Ioan Alexandru (coord.), *Drept administrativ*, Economica Publishing House, Bucharest, 2002, p. 96 et seq.

*administrative authorities, autonomous to the state.*

Local authorities, administrative structures of local communities, are the ones that solve specific problems.

In order to find us in the situation of administrative decentralization, it is necessary for these local authorities to be representatives of local communities and not representatives of the state placed at the head of the community. This implies that the local authorities are the result of free elections held in the administrative-territorial units.

For the operative solving of local affairs, it is necessary for these authorities to have a competence that gives them autonomy towards the public administration authorities of the state.

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

*4) Surveillance of the activity of the local community by the authorities of the executive power.*

By virtue of the dependence of the local community on the state in which they are organized, the central public authorities reserve the right to supervise the activity of local communities, exercising over them a certain type of control called administrative supervision.

#### **§4. The subsidiarity principle**

Europe is one of decentralized local collectivities, the emphasis is on decentralization, to allow for the development of contacts that the hyper-centralized state would not have promoted and which, however, could not have tolerated them. It can be said that decentralization is one of the paths that lead to a kind of European "normality" and that it participates in achieving

this goal<sup>18</sup>.

In support of it, the idea of subsidiarity has been established, which is quite often circulated at the European level, although it has appeared in a rather distant past, attributed to Aristotle itself. It is significant to note that although this idea is in line with the political and legal traditions of several European countries, particularly those of German culture, this notion has returned to the attention of analysts during the debates preceding the signing of the Treaty on European Union, also accepted by the parties that wanted Europe to become a federation, and those who demanded full respect for the autonomy of the constituent states<sup>19</sup>.

The current success of this concept comes at a time when traditional state models are being called into question in Europe, the principle of subsidiarity being considered as a possible response to the many problems raised by the organization and structure of the united Europe.

Thus, the current context is more favorable to diminishing the role of the state, which should focus on its major functions: diplomacy, defense, monetary policy, maintaining macro-economic equilibrium, etc., that is, those that derive directly from national sovereignty, which only the state holds it, whether it is a unitary or federal state.

That is why the reappearance of the term "subsidiarity" corresponds to the need to give a name to these changes which, through its influence in various areas of social life, marks a global and profound evolution of society by rediscovering the individual, but also of its potential<sup>20</sup>.

The construction of the European Union has brought

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<sup>18</sup> Mihaela Cărăușan in Ioan Alexandru (coord.), *Drept administrativ*, 2<sup>nd</sup> edition, Lumina Lex Publishing House, Bucharest, 2007, p. 182 et seq.

<sup>19</sup> See in this respect Corneliu Liviu Popescu, *Autonomia locală și integrarea europeană*, All Beck Publishing House, Bucharest, 1999, p. 140 et seq.

<sup>20</sup> *Idem*.

important changes to the traditional functioning of national sovereignty. Of these, it is relevant to remember the "sharing of sovereignty" or the "joint exercise of sovereignty", evoked even by the phrase "ceding of sovereignty" in order to realize what mutations still occurred in the configuration of these Member States of the European Union. We can join the fundamental freedoms recognized at European Union level, namely the free movement of goods, services and capital. All this unquestionably influences not only the institutions of law in general and administrative law in particular, but also the administrative law itself, implicitly and explicitly<sup>21</sup>.

The notion of "subsidiarity" puts the person, the individual at the center of the state organization, which is why it is found in the majority of the western culture's thoughts: starting with Aristotle's definition of politics as "the art of governing free people", continuing with the role which Thomas d'Aquino attributes to the government, namely to "secure, increase or maintain the perfection of the beings he has in his care" or "to take care of his subjects in keeping with their nature", and later with the liberalism of John Locke and his successors.

The basic idea of the principle of subsidiarity is that political power should intervene only to the extent that society and its various constituent parts (from individuals, families, local communities and other large social groups) are not able to satisfy their own necessities. It follows that subsidiarity means more than just a principle of institutional organization; it applies primarily to the relationships between the individual and the society, the relationships between society and institutions, and is the source of inspiration for the distribution of competences within the institutional scheme between the foundation and the higher levels.

A complete wording of the principle was given in the

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<sup>21</sup> Verginia Vedinaş, *Quo vadis administrative law?*, „Juridical Tribune – Tribuna Juridica”, Volume 8, Issue 2, June 2018, p. 391.



pontifical encyclicals, more precisely that of Pope Pius XI, issued in 1931, on the occasion of the fortieth anniversary of the *Rerum Novarum* (*Quadragesimo Anno*), a decisive role in the drafting of which was attributed<sup>22</sup> to jurist Althusius: "This so important principle of social philosophy must not be changed or overthrown: it would be an injustice that could lead to serious social order disorder, both taking over from citizens the skills they are able to perform on their own initiative and by their own means, and the withdrawal of the functions initially attributed to lower-ranking social groups to be attributed to higher or higher-ranking collectives, inasmuch as the former are fully capable of meeting them. The natural purpose of any intervention in the social sphere is to help the members of the social body, not to annihilate or absorb them".

Thus, subsidiarity, upgraded and liberated by historical, ideological or religious significance, appears as an invitation to reassess social relations in the context of greater autonomy, and to constantly strike a balance between the freedom of citizens and the various existing institutions (local and regional authorities within the national state, the states within the international society and in particular the regional groups) and the necessary state authority, which is naturally responsible for ensuring security, social cohesion and the global organization of the economy.

One of the paradoxes of the subsidiarity principle is that it does not appear to be explicitly named in any document, but many of the European legislative systems refer implicitly to it.

A *definition* of the principle can be found in the European Charter of Local Self-Government, art. 4 (Domain of Local Self-Government), which states that "local authorities have, within the law, full power to take the initiative for any matter that is not excluded from their competence or which is not

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<sup>22</sup> According to the report of the Council of Europe's Steering Committee on Local and Regional Democracy on "Defining and Limiting the Principle of Subsidiarity".

attributed to another authority, that the exercise of power politics must, in a general way, return to those authorities which are closest to the citizens and that the powers and powers entrusted to local communities must normally be full and complete".

Thus, the text of the Charter anticipated the provisions of the Maastricht Treaty, whose preamble states "an ever closer union among the peoples of Europe, in which decisions are taken *as close as possible to the citizen*".

## **Section 2**

### **Administrative regionalization**

The growing importance of the regions in Europe, whatever the definition we use for the region, an institutional or a political definition, is a marked phenomenon of the last three decades. Denis de Rougemont not only predicted it, but also inserted it as a fundamental element of the European construction process of the 21<sup>st</sup> century. For him federalism and regionalism were inseparable<sup>23</sup>.

The realization of an analysis of the phenomenon of regional affirmation that manifests itself in Europe leads us at the institutional level to a double dialogue, vertically and horizontally. The first corresponds to the relations that the regions develop or are trying to develop with the European institutions, the European Union or the Council of Europe, the second is the importance the regions attach to the direct relations they have established. The year 1975 marks the moment of institutionalization, from this perspective, of relations with the European institutions as well as especially of the direct relations between the border regions.

For three or four decades, we have witnessed, in all Western European countries, a real mutation of mentality

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<sup>23</sup> Denis de Rougemont, *L'avenir est notre affaire*, Editions du Seuil, Paris, 1978, p. 85.

regarding the role of regions in state and continental systems. Since the end of the 1980s, the European system (and by this we understand the whole complex of issues that manifested at all levels on the individual - supra-state level) has changed under the impact of two contradictory processes in part that have been mutually supportive . These processes, which have raised the stance of states as unique internationally relevant actors, are the processes of integration and fragmentation. Through the changes they have generated, these processes have increased the importance of the regions with the importance that civil society bodies have gained at the expense of states at the international level. A "Europe of Regions" was spoken in the 1990s, and it was increasingly perceived that the region is not only an intermediate level between central and local authorities, but it becomes a third point (together with states and localities ) which defines the triangle in which the process of European integration could develop. Each country, in its own way and according to its historical tradition, tries to answer the regional problem, the regionalist currents that cross it, orienting them, diminishing them, ignoring them or rejecting them. But whatever the political response to the regional problem is, it is important for all those who want to describe it, analyze it, explain it and even guide it, master concepts that will allow for a better assessment of this phenomenon.

### **§1. The region**

The word region leads us to the image of space - to a certain space with more or less slim limits - then to a Uranus group of humanity with specific characteristics and especially to a certain unity or identity. So, space and the human group, the first basic elements of the regional definition place the region as an intermediary between the *local community* (with a clearly delimited territory and community), and a *state* (territorially delimited in which a nation lives). But these two concepts of space and group can be immediately "reused" in two different

directions that lead, one towards regionalization, another to regionalism, the first one insisting on space: its organization and its second frame on the group, the community : his identity and his action<sup>24</sup>.

In trying to define the notion of a region (a space in which a community with specific characteristics lives), it may be asked in some cases whether or not the object is created by the desire to discover it. Because we must always have in mind the fluidity of the term and we must not simplify it beyond measure by giving it a mythical stance.

The idea of a region is quite ambiguous. The Council of Europe considered the region to be "an average size range that is likely to be geographically determined and considered to be homogeneous".

If it is accepted that the notion of "average size" is totally subjective, a typical scale can not be assigned to the region. Instead, the link between the territory and the human element that inhabits it, an element that appears as an awareness of the homogeneous character of the region, is always present when it comes to defining it.

As far as the European Union is concerned, it has given a rather administrative definition for the region: "*the scale immediately below that of the state*", which, depending on the competences granted to it (in the case of centralized systems) which he has granted (in the case of federalist systems) manages administratively and politically a territorial community whose size varies greatly. In this respect, the Community Book of Regionalization<sup>25</sup> states at Art. 1 :

*"1. Within this Charter, a region means a territory that,*

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<sup>24</sup> Ioan Alexandru, Cristian Bădescu, *Introducere în studiul procesului de cooperare interregională*, Sylvi Publishing House, Bucharest, 1997, p. 23 et seq.

<sup>25</sup> Document drawn up by the European Parliament on 18 November 1988 and adopted as an official document of the European Communities on 19 December 1988.

*from a geographic point of view, forms a net unit or a similar set of territories in which there is continuity, where the population possesses certain common elements and wishes to retain its specificity thus resulting and to develop it in order to stimulate cultural, social and economic progress.*

*2. Common elements of a specific population means a common specificity in terms of language, culture, historical tradition and interests related to economy and transport. It is not necessarily necessary to bring together all these elements in all cases.*

*3. The different names and the legal-political nature that these entities may receive in the different states - autonomous communities, Länder, nationalities, etc. - do not exclude them from the considerations set out in this Charter".*

Also, Art. 2 of the Charter expressly states that "*the Member States of the European Community are invited, having regard to the popular will, the historical tradition and the need for an efficient and adequate administration of their functions - especially in terms of planning for economic development, institutionalization in their territories (or to maintain where they exist) regions within the meaning of Art. 1 of this book*".

The European Union considers the regional level to be an administrative level that has its place in the administrative hierarchy of the Member States at a position immediately below the central level. According to the "Nomenclature of Territorial Statistical Units", each NUTS has three types of territorial units that are ranked on hierarchical levels in terms of the size of the territory: the level of the locality, the departmental (county) level and the regional level.

The Assembly of Regions (AER) has also defined regions as those "*political entities immediately below the state, which have certain powers exercised by a government, which in its turn is accountable to a democratically elected assembly*".

Concretely, in the process of creating a new European Union, we can signal three decisive directions that define the rise

of regional reality<sup>26</sup>:

- Firstly, the regions contribute to economic development and the achievement of the objective of economic and social cohesion;

- Secondly, the regions contribute to bringing citizens closer to the reality of the European Union, making it possible for greater institutional democratization;

- Third, the regions are the exponents of a pluralistic Europe in which very diverse cultural, linguistic and social realities coexist. The European Parliament itself, in its Resolution on Community Culture Policy of 1 December 1993, stated that "*the road to the European Union goes through the manifestation and promotion of European cultural identity, which is the result of an interaction of civilizations and a plurality of national cultures, regional and local*".

The Council of Europe also reiterated its concern for the regionalization issue going ahead with the adoption of a regulation on regional autonomy<sup>27</sup>.

Taking into account the elements explained above and the documents presented at the level of the Council of Europe by the CLReA (Congress of Local and Regional Authorities) experts, a limited number of regionalization models considered to be representative were identified at European level.

The six types of regions identified are:

*Model 1:* Regions with the power to adopt primary legislation, the existence of which is guaranteed by the Constitution or by a federal law, and can not be challenged against their will;

*Model 2:* Regions with the power to adopt primary

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<sup>26</sup> Roca I. Junyert, Miguel, *Europa regională*, „Situation”, Banco Bilbao Vizcaya, no. 1/1995.

<sup>27</sup> The Congress of Local and Regional Powers of the Council of Europe approved in 1997 the European Charter of Regional Self-Government as a Recommendation (Rec. 34/1997).

legislation, whose existence is not guaranteed by the Constitution or by a federal law;

*Model 3:* Regions with the power to adopt laws, in accordance with the general provisions and principles established by national law, the existence of which is guaranteed by the Constitution;

*Model 4:* Regions with the power to adopt laws or other regional normative acts in accordance with the principles and general provisions laid down by national law, the existence of which is not guaranteed by the Constitution;

*Model 5:* Decision-making regions (without legislative power) and Councils directly chosen by the local community;

*Model 6:* Decision-making regions (without legislative power) and Councils chosen by the component local councils.

However, the regional trend has its fierce critics, whose arguments are not to be neglected. Ralf Dahrendorf is one of them, considering that this trend is not a process that we can characterize as a progressively progressive process, but an old and very problematic process that re-emerged with the discussion of the current status in terms of integration and delegation of powers at the supra-state level. Ralf Dahrendorf thus sees only fragmentary, anarchy, chaos and increasing insecurity in the regional current by destroying current equilibria.

The issue of regional current is a problem of the European space remodeled by that internal balance of states that are increasingly demanding the monopoly of politics. Indeed, the question is whether administrations "*have adapted to the European area*" because "*the general tendency seems to be decentralization and integration into the European structures at national level*". But if trends are not very difficult to spot, the question marks on the region model remain topical.

## **§2. Regionalization and regionalism**

In an attempt to clarify the terms of regionalization and regionalism, we will resort to a simple method, using the

phenomena that have marked these terms and the dynamics they engender. In search of a regional reality we will list four such phenomena<sup>28</sup>:

- **regional imbalances** are one of the problems whose existence does not require long demonstrations; almost all European countries show differences of development in the territory;

- **ethno-cultural alienations** have been made aware at regional level by collectivities that consider linguistic and cultural dependencies in relation to other regions to be unjustified. At the same time, the municipalities do not agree with affirming their inability to manage their own problems;

- **centralism**, closely related to the previous phenomenon, is characterized by the process by which any decision, regardless of its domain, is taken at the central level of the state;

- **"socialization" of European politics**<sup>29</sup> has a direct impact on the regional phenomenon, representing the increasing importance of the state in all sectors of social and even individual life.

Undoubtedly, these four regional phenomena, in varying degrees and in variable combinations, are the main causes of regional dynamics that are felt today in Europe. These regional dynamics have three major phases in their development, phases that can overlap, interpenetrate and even oppose over time within this "regional process":

- the emergence of regional consciousness;
- regional or regionalist movements;
- development of regional or regional authorities.

**Regionalism** is a movement that comes from the bottom up with respect to the three phases of the regional process.

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<sup>28</sup> Mihaela Cărauşan, *op. cit.*, p. 188 et. seq.

<sup>29</sup> Alain Tourraine, *Sociologie de l'action*, Editions du Seuil, Paris, 1965, p. 79.



It represents the awareness of common interests (the region being perceived as a homogeneous territory by the people living it) and, at the same time, their aspiration to participate in the management of these interests. Regional consciousness is very close, on a wider scale, to the awareness of "local business" that exists at the local level. Hence, there is a community notion that naturally aspires to manage their business because it expects to be the best able to know them, understand them, guide them and defend the local interest. In particular, this regional community considers itself more capable of solving these things than the state, considered too far and too far, accused of wanting to impose a unitary model on particularisms, and in any case not having a size appropriate to resolve their problems in an effective manner.

Regionalism therefore corresponds to a deep desire for the communities to be responsible for solving the problems that concern them directly. Where the irreversible (more or less autonomous, even independent) movements are born in all European regions, which, based on claims of local economic, social or cultural values, seek to achieve a certain regional power through the establishment of regional institutions worthy of this name and based on the need to satisfy their need for affirmation of identity. Finally, more than a desire to be herself. Regionalism does not only arise from the awareness of regional imbalances, from regional economic underdevelopment, but also from the awareness of the socio-cultural underdevelopment, from the centralism of the national state and from socialization.

Regionalization, unlike regionalism, has a downward trajectory and has other purposes, proposing other means of implementation than those of regionalism. This is the fundamental difference, which only reappears in every phase of the "regional process".

In response to the regionalist movement, the state can thus recognize a regional identity (the region being perceived this time as a territory considered homogeneous by the state) and can take the necessary measures for the regions to take part in

managing their own businesses.

In fact, the starting point of regionalization is regional disparities or rather their awareness. This awareness is followed by a strategy of a state or supra-state apparatus (the European Union) which, starting from well-known scholarly techniques, tries to plan, decentralize, regional deconcentrating economic activities that are too reunited in some strengths of the national or European space, and even the "regional tranches of the plan" can be said in this context.

The last stage of the "regional process", that of the regional institution, is marked by the decision-making power - the decisional analysis and the institutional analysis always go together - which only confirms, and, in the case of regionalization, any such top-down movement.

There is an inevitable interaction between the two movements: regionalism - bottom-up and regionalization - coming from above. Through a dynamic process, the needs of the regions are addressed through a state policy that has repercussions on regional sentiment and engenders the region's responses.

In conclusion, we can say that regionalization has, as a rule, an important concern to reach for a country or for Europe a better balance in the distribution of wealth by trying to raise the level of less developed areas. In turn, regionalism has as a golden rule the region's decision-making power in all its components, the assertion of its identity under its identity-memory and identity-action aspects.

These brief reflections on what a region can be, on the (re)discovery of authentic regional space or collectivities, identity, dialogue, and participation, allow for a better understanding of the double relationship, increasingly more institutionalized, established directly between regions, as well as between European regions and institutions. This dual relationship is part of the dialectic regionalization-regionalism, more or less intense, depending on the state.

### §3. The development regions

European integration and the impetus to regionalization are not contradictory phenomena but are part of the general reconsideration of the role of the state in today's European conditions. The state, conceived as the main level of government - often unique - crosses a period of crisis, and it is not the "Leviathan" of Hobbes's classical conception and is obliged to reconsider its function. It is no longer the only framework for solving the various problems that affect society. Appeared after World War II to ensure economic startup and especially for the distribution of "generalized" prosperity, the welfare state is now under discussion due to the economic crisis, the expansion of unemployment and the continuous increase in taxes on individuals and businesses. In addition, they were added to the anonymity and complexity that characterized the decision-making process within such a structure. What has remained large and remote, in the current society, is no longer synonymous with efficiency.

That is why Europe can no longer just be Europe's merns, but it must develop a forward-looking strategy on the road to building a Europe of regional cultures, which will make the deepening of democratic values much more viable.

In this respect, *the regional development policy*, which represents a set of measures planned and promoted by the local and central public administration authorities, in partnership with various actors (private, public, volunteer) in order to ensure economic, dynamic and sustainable growth, by making efficient use of regional and central potential and obviously for raising the standard of living of the population.

With the support of the European Union and on the basis of the first law on the organization of the development regions in Romania, Law no. 151/1998, at the end of 1998, eight development regions, which are functioning as instruments for promoting economic and social development, and which

automatically became eight statistical regions affiliated to the Commission European Statistical Service (EUROSTAT).

The regional development policy, as defined by the current regulation, is the set of policies developed by Government, through central public administration bodies, local public administration authorities and specialized regional bodies, in consultation with the socio-economic partners involved, in order to ensure economic growth and balanced and sustainable social development of geographic areas established in development regions, improving Romania's international competitiveness and reducing the existing economic and social disparities between Romania and the Member States of the European Union.

The development regions are areas that comprise the territories of the respective counties, respectively of the Bucharest Municipality, constituted on the basis of conventions concluded between the representatives of the county councils and, as the case may be, of the General Council of the Municipality of Bucharest, and operate on the basis of the provisions of the present law. Development regions are not administrative-territorial units and do not have legal personality.

The development regions are the framework for the development, implementation and evaluation of regional development policies as well as the collection of specific statistical data in accordance with the European regulations issued by EUROSTAT for the second level of territorial classification NUTS 2 existing in the European Union. Regions, counties and/or localities in counties that are part of different regions may be associated with the purpose of achieving objectives of common, interregional and/or inter-county interest.

In order to coordinate the activities for promoting the objectives deriving from the regional development policies were

established by Law no. 315/2004<sup>30</sup> the following institutions:

**The National Council for Regional Development**, national partner-type structure, with a decision-making role regarding the elaboration and implementation of the objectives of the regional development policy.

The National Council for Regional Development shall be composed of the Presidents and Vice-Presidents of the Regional Development Councils and, in parity with their number, representatives of the Government, appointed by decision of the Government, including the President. The President of the National Council for Regional Development is the head of the national institution with responsibilities in the field of regional development and may delegate this function.

**The Ministry of Regional Development and Public Administration**, a specialized body of the central public administration, subordinated to the Government, is the institution that exercises at national level the attributions and responsibility for developing, promoting, coordinating, managing, implementing and monitoring regional development policies and strategies Romania, as well as economic and social cohesion programs. This ministry provides the secretariat of the National Council for Regional Development.

**The Regional Development Council** is a deliberative regional body without legal personality that is set up and operates on partner-level principles at each developmental level in order to coordinate the development and monitoring activities arising from regional development policies.

The council is made up of the presidents of county councils and one representative of each category of local municipal, town and communal councils in each county of the

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<sup>30</sup> Law no. 315/2004 on regional development in Romania, modified and completed by Government Emergency Ordinance no. 111 of 2004 approved by Law no. 58 of 2005. For an analysis of the provisions of this law, see Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 827-830.

region; for example, in the case of the Bucharest-Ilfov development region, the Regional Development Council is made up of the president of the Ilfov County Council, the mayor of Bucharest, one representative of each local council and representatives of local councils in Ilfov County, at parity with the representatives of the sectors of Bucharest.

This council elects a president and a vice-president who can not be representatives of the same county; these functions are fulfilled, by rotation, for a one-year term by the presidents of the county councils.

Depending on the issue to be debated, the county prefects, representatives of the local, municipal, town and communal councils, of the institutions and organizations with attributions in the field of regional development, representatives of the civil society can participate in the works of the Regional Development Council and relevant socio-economic partners.

In each development region there is a **Regional Development Agency**, a non-profit, non-profit, public utility body with a legal personality that functions in the field of regional development. In each county component of the development region, with the exception of the county of the agency, a *regional development agency office* operates.

The Director of the Agency for Regional Development is appointed by competition and is releasing from office by the Regional Development Board. In developing the organizational structure of the Agency for Regional Development, its Director applies the principles of clear definition of functions and competences as well as the separation of duties.

The future of Europe will be affected by the process of "reallocating authority" that belongs to the state, to smaller, sub-state units, through an infra-national fragmentation. That is why we believe that in line with the economic and social cohesion objectives of Romania and the European Union in the field of regional policies, our country must consider other organizational variants.

In accordance with the economic and social cohesion objectives of Romania and of the European Union in the field of regional development policies, eight development regions are established in Romania:

- **South** including counties: Arges, Calarasi, Dambovita, Giurgiu, Ialomita, Prahova, Teleorman

- **South-East** including counties: Brăila, Buzău, Constanța, Galati, Tulcea, Vrancea

- **South-West** including counties: Dolj, Gorj, Mehedinti, Olt, Valcea

- **North-East** including counties: Bacau, Botosani, Iasi, Neamt, Suceava, Vaslui

- **North-West** including Bihor, Bistrita-Nasaud, Cluj, Maramures, Satu-Mare, Salaj

- **West** including counties: Arad, Caras-Severin, Hunedoara, Timis

- **Center** including counties: Alba, Brașov, Covasna, Harghita, Mureș, Sibiu

- **Bucharest-Ilfov**, including Bucharest and Ilfov County.

The administrative-territorial reform through the importance attached to the state requires the elaboration of as many solutions as necessary to be studied and subject to public debates in order to find the most viable, the most accepted of society.

From the multitude of solutions<sup>31</sup> found at the doctrinal level, we stop in the things that we want on some of what we consider to be feasible with a minimal normative, financial and institutional effort:

1. *reconfiguring* the current development *regions* on the basis of different criteria, using economic, demographic and

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<sup>31</sup> Excluding what we mention, we also draw attention to the other ways identified: 1. maintaining the current territorial division in 42 counties and development regions; and 2. creating regions based on cultural identity criteria. Knowing their criticism at the doctrinal level and especially by public opinion, we believe that they should be abandoned.

infrastructure indicators, emphasizing the potential of the counties to develop common and unitary policies by imposing the principle of complementarity and functionality.

2. *reconfiguring* the boundaries of the current *counties*, taking into account their common features that can unite and foster collaboration, such as in industrial areas or similar economic profiles.

As can be seen, the two models to be followed would fall within the category of French administrative regions that would not duplicate the political decision, but only increase the efficiency of the administration through a division of competencies that would have the strongest effect on those administered. In conclusion, as far as the authority of the region is concerned, it should be emphasized that the state delegates not its powers but rather a part of its authority in order to exercise these attributes. Thus we have to deal with a national-democratic de-centralization (by delegation of authority) in opposition to the autonomist-ethnic decentralization which means the delegation of attributes: the single language, the unitary legislative authority; and with it the erosion of state authority<sup>32</sup>.

In order to establish the regions administrative-territorial units, some changes of the legal framework in the field are necessary, of which the most important is the fundamental law by introducing in art. 3 paragraph (3) of a new administrative level or by adding the following phrase "... other forms of territorial-administrative organization that can be established under the law". Starting from the constitutional amendments and the other normative acts, consequently, they will correlate with the regulations of the fundamental law.

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<sup>32</sup> Mihaela Cărăușan, *op. cit.*, p. 194.



## **Chapter II**

### **Government and central governments. Comparative analysis**

#### **Section 1**

#### **The central government, its governing structures, information and advice**

##### **§1. Government administrative apparatus**

In all countries, the central government is the one who runs the political affairs and management of general interests for the entire national community.

The central government has a duty to govern and the administration.

As I have emphasized, a distinction needs to be made between governmental and administrative affairs. The first ones are of primary importance and, through the solutions they use, influence the general course of the political, economic and social life of the country, being able to affect the nation's essential interests, to question its unity, commit her destiny.

Administrative affairs (administrative acts and facts) are the ones that lead to the execution of measures taken at governmental level and seek to determine the fulfillment of non-exceptional tasks; they deal, under government orders, with relatively minor difficulties, often with current difficulties, regulating what the English called the "business routine".

The boundary between the two types of government activities is quite imprecise. The head of state (especially in the presidential regime) has important attributions and relations with the government and the administration. He appoints officials, exercises control over public services, has regulatory powers - his acts (in some cases administrative acts), they have different names: decrees (France), royal judgments (Belgium), executive

orders (US), etc.

The role of the head of state is more restricted in the parliamentary regime, very important in the presidential regime, absolute or constitutional monarchy. The president or monarch acts directly on the administration - the ministers are only his messengers.

The head of state has - to assist him in his administrative work - certain administrative bodies that are less important in the parliamentary regime and more developed in non-parliamentary regimes. It has civilian and military counselors, a secretariat, and several quite important organs, such as the US president.

In certain situations, the parliament also complies with some administrative acts. Thus, he sometimes decides with the head of state for appointments in important positions or in the direction of foreign relations. In the US, the Senate has to give its approval for the appointment of senior officials, to ratify international treaties. Everywhere, the parliament has the essential function of voting the budget, regulating development and fixing the financial means of the administration. Parliament authorizes some administrative operations, such as the execution of public works. Parliament supervises the administration.

In the parliamentary regime, ministers must enjoy the confidence of parliament and comply with its will. Ministers come to parliamentary deputies or committees to explain how they run administrative services (US).

Where appropriate, parliaments are more or less interested in the administration. In the current period, Parliament has little to do with the administration, more devoted to political talks and laws, giving up direct control over the administration; Parliament delegates this role to ministers.

Ministers make the junction between the government and the administration. The head of state is, above all, an organ of representation and government, the parliament one of law-making and control; he also deals with governmental issues and administrative affairs.

The double character of ministers - both governors and administrators - is evident in the parliamentary regime. Under the non-parliamentary regime, they can be cantoned almost exclusively into the administration, as the head of state reserves for government business regulation.

In the US, for example, the council of ministers merely sums up the approval of decisions already made by the president, the ministers are only the heads of the administrative services.

If their governmental role goes aside, ministers carry out very important administrative tasks. They have the direct appointment of many officials and propose to the Head of State the appointment of senior officials; they ensure discipline in the service and watch their good work. They have regulatory power, giving instructions to their subordinates, and setting the conduct to follow in their department, executing hierarchical power over all department officials, giving them orders and sanctions; deciding on the complaints caused by their activity, making numerous decisions, authorizing credits, preparing the draft budget, draft laws, etc.

Ministers act either individually or college. They reunited in the cabinet, in the council of ministers or in a small committee.

Among ministers, the prime minister or chairman of the council of ministers has a special position and a preponderant role. Prime Minister's importance is growing in English.

In the presidential regime, he has a deleted role, or he does not exist, or there is a prime minister (in the US Secretary of State).

Prime Minister has a key government role, but he often acts in administrative matters. It exercises general control over public administration, striving to ensure coordination between services. In order to carry out its tasks, it has several management and control bodies, general secretariats, cabinet secretariats, information services, documentation, statistics, inspection bodies, boards with general or special competencies. Sometimes Prime Minister has his own regulatory power (eg. France).

In some constitutional systems, the prime minister is confused with that of the head of state (eg. the German Länder, where the prime minister is also the head of state).

On the contrary, in Switzerland, the seven members of the Federal Council are in turn, for one year, presidents of the Helvetic Confederation. The Council, in this case being a head of state collegiate, each minister is a member of the Council of Ministers and part of the head of state.

The ministry includes first and foremost the ministers who are headed by the department, ie a group of central government services.

Sometimes the Prime Minister also heads a department. There are sometimes offices with a rank of minister, but without heads of departments, ministers without portfolios or state ministers. For example: In the UK, the Minister of Foreign Affairs has long been assisted by a state minister.

Other characters than state ministers also have the rank of minister without having a ministerial department under their authority (for example, the Lord President of the Council in England).

There are heads of ministerial departments that do not have the name of the minister. For example: In France, Belgium, England, the Department of Commerce is headed by the President of the Trade Council, the Marine Ministry as the first Lord of Admiralty.

In the US, ministers do not officially bear this name, but the executive secretary.

Subordinates of ministers exist in many countries (eg. England); the sub-secretaries of state, who exercise administrative functions in various ministerial departments.

In the US, executive secretaries have secretary assistants and lower secretaries, sub-secretaries.

The number of ministers varies, depending on countries and times. We must distinguish this number after that of the ministerial departments. Sometimes the number of ministers is

left to the discretion of the prime minister or the head of state. Other times, the constitution decides on this number, but often the original legal provisions are changed. The minimum is in Switzerland, by seven ministers.

The trend in the world is to increase the number of ministries and ministers. When the number of ministries is high, small groups need to be formed in order to be governed.

In England the cabinet only comprises the most important members of the ministries. Inside ministries permanent or ad hoc committees are set up. Ministers are generally elected by the head of state. In parliamentary terms, they are elected by the head of the government or one of the heads of the parliamentary majority. In the presidential or monarchical regime the freedom of choice is great. Sometimes ministers are elected by parliamentary vote (Germany). Ministers can be politicians or technicians.

In general, they are political people, but even in the parliamentary regime, special services outside the political staff are being used. Amongst the political staff, some people are especially qualified for certain jobs through their studies or their professions.

In England, the Chancellor, the Chief Legal Officers of the Cabinet and the General Advocate are elected from among the eminent members of the Bar, which belong to the majority in power<sup>33</sup>.

In the presidential regime, ministers are the agents of the president and it is in the US tradition that ministers should not be elected from the world of political personnel, but from business leaders or from people who have declared a special talent in a branch or another national activity<sup>34</sup>.

The personal qualities of the minister, his competence,

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<sup>33</sup> M. R. Curtis, *Central Government*, Pitman Paperbooks, London, 1965, p. 120.

<sup>34</sup> H. B. Jacobini, Albert P. Melone, Carle Kalvelage, *Research essentials of administrative law*, Palisades Publishers, Pacific Palisades, California, 1983, p. 72.

the length of time he remains in office, influence the value, intensity and depth of the action that this minister exercises over his department on the branch of administration with which he is vested. It is obvious that a powerless, incompetent energy minister exposed to an imminent fall is unable to act effectively on his services. On the contrary, a minister who has personality and professional competence, develops the force of the department and puts his mark on the whole activity.

Leaving aside the chairman of the council, there are some inequalities between ministers. These inequalities come from history, from the age of functions, from their nature and from their importance. In most countries, the Minister of Justice or his equivalent has a prominent place, the Minister of Finance enjoys an overwhelming, but acknowledged superiority; the other ministers must negotiate with him in order to get the credits they need; the Minister of Foreign Affairs is in every country surrounded by a special consideration. New ministers generally have less prestige than the old ones. In England, the Chancellor (Minister of Justice), Chancellor of the Exchequer (Finance Minister) and state secretary for foreign affairs are at the forefront. In the US, the Secretary of State (Minister of Foreign Affairs) is the prime minister and is set up with relative superiority to the other executive secretaries.

For a long time, in many countries, and especially in England, the great services were directed not by individuals, but by councils, by a collegial or chambermaid system of which certain features existed (for example, the president of the "board of trade" genuine minister of commerce, or the first Lord of Admiralty - the Navy Secretary)<sup>35</sup>.

As a matter of principle, colleges are being set up to lead the ministerial departments, with responsible heads.

As we will see, the federal states have ministers for the

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<sup>35</sup> Paul Meyer, *Systemic Aspects of Public Administration*, G.E.C., Gad Publishers, Copenhagen, 1973, p. 346.

federal administration and for the administration of the federation states.

In addition to the major advisory bodies, such as the State Councils, which have a leading and coordinating role and which we will later examine, the main governing bodies are: the Head of State Secretariat, the Head of Government and certain services legislative studies.

**The head of state**, in order to be assisted in his work, always has a service closely tied to him and bearing different names and often subdivided into several branches. This service provides the personal secretary of the Head of State, assisting him in fulfilling his representative function, especially for the organization of ceremonies and trips, the distribution of audiences and the exercise of the governmental and administrative functions of the Head of State, communicating information, watching the problems. The importance of this service to the head of state is relatively lower in the parliamentary regime.

In France, the president of the republic has civilian and military counselors. In England, the queen has a private secretary.

In the US, the secretariat of the president is extremely large and includes a large number of staff and some immediate collaborators of the president, often outside this secretariat, but without governmental functions and exercising some predominantly political influence. The Secretariat itself is called the "Executive Office of the President" and has 200-300 employees and headed by secretaries assisted by administrative assistants. The president also has personal counselors.

**The head of the government** has a special cabinet or secretariat to assist him in his general management and coordination, a body distinct from his cabinet or the ministerial secretariat, often holding a portfolio. This special secretariat is made up of a few officials and a few trusted people. In other countries, under the direct authority of the Head of Government, a government secretariat, permanent body, was set up to carry

out a general training and coordination task.

The institution appeared in England. This secretariat has the function of concluding minutes and recording decisions. The opinions are not always recorded, but only the decisions taken. The Secretary takes notes and draws up the minutes following these notes.

When prime ministers and ministers find compliance with their memoirs, minutes of meetings are destroyed and minutes can only be consulted by the Prime Minister and Ministers.

The second function is to communicate the decisions taken by the government to the departments concerned and to prepare reports to the Prime Minister on the measures taken to implement these decisions. Through these minutes, the Prime Minister exercises control and coordination on ministries.

It also ensures the convocation of the cabinet and its various committees. Preparing for the "agenda", as the English say, ensures the distribution of documents for these meetings.

Finally, he ensures coordination between the cabinet (government) and the various committees that are set up in this cabinet to study special issues. This institution has made incredible the powers of the prime minister and contributes to coordination and cohesion.

In this cabinet secretariat, an economic section and a central statistical section were set up to smoke the Prime Minister's work and information to enable the cabinet to make informed deliberations on special, economic and financial issues. The model was also imitated in France, establishing the General Secretariat of the Government.

In Italy, there is also a secretariat - the Cabinet of the President of the Council of Ministers. Various offices and committees (legislative studies office, reconstruction committee, etc.) operate within or besides the cabinet, as well as in Belgium.

Sometimes, within the framework, and sometimes outside the cabinets or secretariats of the head of the government



or council of ministers, legislative studies are organized. As the government has the right of legislative initiative, all the projects are prepared in the different ministries, discussed in the Council of Ministers, often subject to a state council with general competence or special committees.

Frequently, there has been a need for joint study services to the government (eg. Italy). In England, the legal officers in the cabinet, the Chancellor, the Attorney General, the Advocate General, the Advocate General for Scotland, are examining the texts that the cabinet wishes to submit to the parliament. Apart from the cabinet, the "future legislation committee" and the "legislative committees" are also set up; are made up of several ministers and are drafting the program of government legislation. Then there is an office of parliamentary advisers to the finance minister, made up of old lawyers, who are technically studying the projects developed in the offices of the various departments.

To inform the government, and especially its chief, on the state of mind of the population and from outside the country, on the economic context, the movement of the population, there are information services, which are included in the cabinets or secretariats of the Prime Minister or directly attached to the Prime Minister (Italy and Belgium).

In the US there are "office of government reports" - the budget office, information services directly attached to the president. Also, for inspections and checks ordered by the chairman, it has its own inspection bodies.

**Certain bodies** with little or no character as bodies for the coordination of legislative, information and control studies and **managing regular administrative services** are sometimes attached directly to the head of state, non-parliamentary, or to the head of the government, on a parliamentary basis. Top tethering is generally the reason that the services in question are of common interest to several ministries, providing special means of action and information, in some cases not being so important to constitute ministries; it should be added that some, after a while, become ministries.

In the US, the administrative services directly attached to the head of state have greatly developed. The law of administrative organization of 1949 gave the president the power to attach certain services by decree or executive order. Most important for the life of the administration is the budget office.

In the US, the executive has no legislative initiative. Congress votes for credits for periods of uneven duration and without these credits being coordinated in a genuine budget. Since 1921, it has been decided that the president should present such a budget. For its elaboration, a "budget bureau" was set up at the Ministry of Finance, headed by a director directly dependent on the president. The bureau employs about 700 employees.

Also next to the president is the "staff management office", which liaises with the civil service commission, as well as the intelligence service.

Besides the central government, there are large consultative bodies that are associated with administrative activities and even government activities. Some of them have jurisdictional powers. As a rule, however, they issue opinions and have no decision-making power except for exceptional cases, but may decide when acting as jurisdictions.

These large consultative bodies are divided into two main categories. Some are of general competence or very proficiency. In this category we mention the French State Council.

Others have a special competence which is limited to business of a certain nature, or which is exercised, above all, by the preoccupations of certain services or certain branches of national activity, frequently applying technical knowledge.

A state council of the French type is very different from a public instruction board or a mining council. The major consultative bodies are either attached to the head of state, or to the Prime Minister or to the Government as a whole, as is the case with the General Councils or the Minister, as is the case with

a special competence council.

The consultative bodies of general competence comprise people with diverse knowledge, especially administrative and legal. These councils are not technical bodies, although they are composed of technicians. They are involved in regulatory work, especially in the preparation of laws, give advice in different areas. The term state council does not have to confuse us because in some countries the term designates organs with a different competence. For example, in England, the state council is a body that replaces the queen when she leaves the country.

In the former Socialist countries, the State Council had a different meaning: either as a body of authority or as an executive body of the Assembly of Deputies.

In Sweden, besides port ministers, there is also a state counselor.

In Portugal, the State Council is a governing council, a political body that rarely meets for issues of exceptional importance. The French Council of State, of an advisory nature, has very old origins. In addition to the Romanian magistrates, there were some trustworthy people who gave advice. Then, besides, prince, in feudalism, "*Curia regis*".

In England there is the king's council or the private council.

In Italy, the State Council is the continuation of the old state council of the Kingdom of Sardinia, consisting of 60 Chancellors and 14 Reformers.

In Belgium, the system is also of French inspiration.

Specialized advisory bodies are either permanent or temporary. Some are designed to prepare a draft law, others respond to tasks continuously, giving opinions consistently. They are headquartered next to the head of state, head of government or minister.

Different economic councils - national defense councils. Some councils even have service roles and their opinions are in line, and the administration can not do anything else. It is the case of boards.

In Romania, according to the Romanian Constitution in 1991, the general government of the public administration is entrusted to the Government, which, together with the President of Romania, represents the authorities of the executive power, but which, through their duties, also carry out administrative tasks.

As mentioned, the state administration can be central or territorial, according to the way of implantation of the state public administration authorities.

The central state public administration is composed of the authorities of the executive power, the Government and the President of Romania (insofar as these authorities exercise administrative powers) and the central specialized public administration.

The Government should not be considered only as a body through which the executive power of the state acts, but also as an organ of public administration, in the sense of a public institution, having the specific components of these institutions; he is the central body of the executive power that organizes the achievement of public administration throughout the country and in all areas of activity subject to the rule of law.

In present, the decentralization of the competences and the increase in the number of the actors involved in formulating the public policies is the key element of the paradigm of governance. The typical entities that appear as partners of the government in the process of governance are the nongovernmental organizations, the associations, and the foundations, as well as the associations among them called federations<sup>36</sup>.

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<sup>36</sup> Valentina Cornea, *The role of the associative structures of the local authorities in the governance process*, „Perspectives of Law and Public Administration” Volume 7, Issue 1, May 2018, p.24.

## **§2. Governmental and administrative structures in federal states**

In a unitary state, the central government has administrative services that can operate throughout the territory and in all areas, under which they are but local organs.

In a federal state, due to the nature of this state and because local services are similar to those of a unitary state, there is an overlapping of organs and a division of attributions resulting from the constitutional pact.

**The federal government and the federal administration** act on federal matters throughout the federation. The governments of the Member States and the administration of these States shall, within the territorial context of each of these States, deal with matters which are recognized as being a matter for the Member States.

In general, the federal states have extended their powers and the federal administration has developed its interventions to the detriment of the powers that seem to be reserved for the Member States. This trend is observed in the USA, Germany, Switzerland.

As a rule, federal bodies do not only draft directives, but also ensure federal enforcement. Thus, in Switzerland and the US, the federal administration, distinct from that of states or cantons, ensures the enforcement of federal power decisions in all its powers. The federal administration collaborates for certain matters with the state administration and sometimes exercises control over them in areas that are mixed. She takes care of them when serious events occur or when they have insufficient reserves. The federal intervention is foreseen in the event of disturbances. It is worth mentioning the practice of subsidies, especially in the US, with a control over the services subsidized by the federal authority.

**Every state has its own government and administration.** In the US, there is a governor, a deputy and

officials in each state. At the head of the administration are usually - political figures.

In the Länder of the Federal Republic of Germany, there is a prime minister, at the same time head of state and chairman of the council of ministers and ministers at the head of land services.

In Switzerland, the executive power is entrusted to a state council or a governing council, acting as collegial head of state and as a council of ministers; each of them is at the head of a department of the central administration.

**The central administration** comprises coordinating bodies, administrative management bodies, which depend directly on the head of state or the chairman of the council and, finally, ministerial departments.

In French terminology, as in Romanian, the expression "central administrations" designates a central core of ministries, the services grouped by ministries under their direct authority, in opposition to outsourced services, more or less deconcentrated, which are distributed over the whole territory, including the capital, and acting in the execution of administrative tasks, under the authority of the central administration, specially entrusted with the supervision of the ministry's general conduct. These are external services, which Americans call "field services".

### **§3. Specialized central administration. A brief comparative look**

The central administration is subordinated to the services of the head of state or of the chairman of the council of ministers.

The overall structure is almost the same everywhere. At the top, the minister with his cabinet. The minister has a triple role: he is at the head of the services grouped in his department, he leads them and he is responsible for their conduct, for their acts. He is also the controller of his administration, according to the image used by the English: "he is a knowledgeable in food,

who must appreciate the cuisine", he gives an account if the kitchen is well made and meets the needs of the administrated<sup>37</sup>. He is finally the defender of his services and their spokesman before the parliament, before his colleagues, before the head of state.

Alongside the minister, we have the cabinet, made up of a few reliable people, immediate collaborators, whose destiny is linked to that of the minister, whose job lasts as that of the minister. The cabinet is the junction between administration and politics.

In England, the ministers do not have genuine cabinets, but only a private secretary and always penniless officials.

Subordinate to the minister and his cabinet, there is sometimes a secretary-general of the minister.

Every British ministry is a permanent secretary - general secretary; he is the highest official in the ministry and remains in office whatever political changes.

There is a hierarchy among these permanent secretaries: the highest is the treasury. In other states, secretaries-general are not permanent officials.

Permanent secretaries' institution has advantages and disadvantages, the English are very pleased and do not intend to change it. In other countries, it is shown that the institution is interposed between ministers and directors, which may jeopardize the minister's personal policy. In Germany, there are secretaries of state career officials.

The Minister and, under his authority, the Secretary-General, direct the various departments of the Ministry. These services are divided into two broad categories: there are common services on the whole of the ministry (staff, archives, organization, contentious, budget, social assistance). These services are more or less developed in all ministries. But sometimes they are not individualized and remain fragmented

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<sup>37</sup> Henry Puget, *Les institutions administratives étrangères*, Paris, Dalloz, 1969, p. 7.

between the major administrative assemblies of the ministry. Among the common services, general inspections, which are mostly of the ministries and are almost always attached directly to the minister, must be retained. The specialized services are very different, according to ministries: education, higher education, personnel, technical, etc.

Services are grouped by forming **directorates** or **directions**. Sometimes a Directorate-General brings together several directions. Almost everywhere there is a tendency to multiply the directorates and directions.

In other words, the names used must not be misleading. Before the directions, even in France, **the divisions** were wound up. The term is used in England and the US, but must be translated in the direction.

Offices bring together offices, ie administrative cells where a number of officials work under the direction of a boss.

In the Anglo-Saxon countries the word **office** means direction or, more specifically, French service. In the French sense, the service includes several offices. Ministries are conglomerates of offices, spread over directions and services. What is proper to directors is to have direct communications and personal meetings with the minister.

In England, each ministry has a permanent secretary, which has a considerable role. He has assistants, as heads of the main subdivisions of ministries, deputy secretaries and permanent sub-secretaries.

Within the Treasury Department a O.M. (organization and methods), which is concerned with the improvement of the state administration as a whole: improvement of the structures, simplification of the formalities, better arrangement of the transmission of documents, improvement of the working methods, putting every clerk in his place and ensuring a maximum yield its activity. This office has extensions in each ministry, linked to each other, for unit of conception. They are entrusted to the controllers and have good results.



The same department of finance has a sub-division called the "Stationary Office", responsible for printing and targeting all official documents, and providing office supplies to the entire central administration; the system is great for standardizing the material.

We have more important ministries: the ministry of public works, the interior ministry (has a much smaller role than in France, deals with general and special police, especially with foreigners), foreign affairs, defense, energy, Ministry of Agriculture, Fisheries and Food, Transport, Labor, Education, Health, Pensions, Sciences.

In the US, the Secretary of State is the highest in rank. The Secretary of State is the first of the Executive Secretaries, has Undersecretaries and Associate Assistant Secretaries.

The Minister of Finance does not deal with the budget; the budget office is attached to the President. The Ministry of Finance has only the task of collecting taxes and fees. It is the general control that checks the accounting of the federal government.

In Romania, the ministries form the second echelon of the public administration system, being central specialized bodies that lead and coordinate public administration in various fields and branches of activity. Their number is determined by the mass of the tasks of the public administration in one or another field of activity, but also by the political conceptions and interests that manifest themselves at the factors that make up the political system. Ministries carry out their leadership and organization tasks, on the basis and under the law.

The organization of ministries should be seen from two points of view: that of the nature of the field of activity that may involve the existence of several branches in the structure of the ministry (requires the organization of departments or equivalent compartments) and that of the structure of the ministries regarding the tasks they have through the organization of the management ministries and the ministerial administration itself.

Ministerial leadership is in the hands of ministers, who

make the junction between government and administration, representing the ministry in relation to the government, but at the same time representing the government in the administration of the ministries. The double character of ministers - both governors and administrators - is evident in the parliamentary regime.

The political composition of the ministries, which is part of the political system, is: ministers, state secretaries and sub-secretaries of state from the organizational point of view, the staff of the ministries is organized in offices, services, directorates and general departments.

The activity of ministries is generally carried out under the legal regime of administrative law, but also civil law; from the organizational point of view, the ministries, as specialized bodies of the state public administration, may establish and use under their authority, according to the law, specialized bodies.

The State Territorial Administration designates the deconcentrated authorities of the state public administration in the administrative-territorial units. Among them are all territorial extensions of the central bodies, including the prefect.

## **Chapter III**

### **Four examples of government structures and central public administration**

In addition to the overall picture of how the structures are organized at the level of government and central governments, we detail more or less this analysis by four examples: two united states, Britain and France, and two federal states: the US and Canada.

#### **Section 1**

#### **Great Britain**

##### **§1. Constitutional foundations of public administration**

The United Kingdom does not have a written constitution in the form of a single document. The Constitution is based on several documents, mainly acts of the Parliament and a series of settled practices over time, called conventions. Legislative, executive and judicial powers are separate, as in many countries with a written constitution, such as the US, but they balance and complement each other<sup>38</sup>.

The most important feature of the British Constitution is what is called "the supremacy of the Parliament". This means that Parliament can approve or reject any law it wants and its rulings prevail over the judiciary. On the other hand, it makes the British Prime Minister and his cabinet very strong because, as long as they control the majority of the House of Commons, they can do whatever laws they want. However, there are some practical limitations.

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<sup>38</sup> Kathleen Allsop, *Local and Central Government*, Hutchinson & Co., London, 1978, p. 19.

As far as constitutional conventions are concerned, they refer to the relationship between the Crown, as the chief executive of the executive, and the prime minister and the cabinet, as chief executives.

Some conventions are very old, such as the one that the Crown chooses (appoints) the ruling party from the party that holds the majority in the Commonwealth House. Others are more recent, such as the one concerning the appointment of a member of Parliament, from the opposition party, as chairman of the Public Accounts Committee. Conventions ensure the effectiveness and flexibility of the Constitution. They put it into practice. Because of them, the gendarmerie mechanism can, it works.

An important notion, previously mentioned, is what is called "the supremacy of Parliament" or "the sovereignty of Parliament", which means the same thing.

By Parliament's supremacy it is understood that only Parliament has the right to make laws, and this right is supreme and unlimited. It can approve any laws it wants and can also cancel any law that it has itself adopted. This parliamentary supremacy makes the British government the strongest in the world, because as long as the majority has a majority in the House of Commons, the government can make or cancel any laws it wants. Of course, there are limitations in the power of the Parliament, most of them having international implications. For example, Parliament can not make changes that could affect the status of the Monarch or the succession line without the approval of those Commonwealth countries that still accept the Queen as head of state. Also, Parliament can not approve laws that are contrary to international law. If there is any misunderstanding between the UK and the European Community, in fact its legislation, the British courts are understood to give priority to Community law.

**Monarchy.** The Great Britain is a hereditary constitutional monarchy in which the head of state rules, but does

not govern. In other words, the monarchy acts within the limits set by the Constitution. The elected government acts on behalf of the Crown, and the personal powers that the Monarch used to have are now used to guide, advise the prime minister and the government. The explanation of the Queen's presence in the Constitution is given by the fact that it ensures stability and continuity that are so rare in politics.

The royal prerogative or royal right are terms used to describe the powers still held by Monarch. The importance of the prerogative powers lies in the fact that they can be legally used without the consent of Parliament. In this way, the executive's decisions can be taken in a shorter time, and the government has a greater freedom of action, because in reality all the powers of the Crown are exercised by the government on behalf of the Crown. The foreign affairs are dealt with by the Prime Minister, the Foreign Minister and the Cabinet. Judges are appointed on the recommendation of the Prime Minister who, in his turn, is advised by the Chancellor. Ministers are also appointed on the recommendation of the Prime Minister. The occasions when the Monarch wanted to make a change regarding these recommendations were very rare. Lords and bishops are also appointed on the recommendation of the Prime Minister. The Prime Minister has the responsibility to recommend people for honors; as regards the list of those to be rewarded for political services, it is first examined by three private counselors who are not members of the government. There are also some titles of honor that are personally granted by the Queen.

The Private Crown Council appeared at the beginning of the 17<sup>th</sup> century and consisted of a small group of personal advisors to the Monarch. Today, every member of the Council has a title of honor. For such a title of honor, the person must enjoy a high reputation. But a title of this kind is rarely granted. All members of the Cabinet are appointed private counselors, wishing to keep oath and loyalty to the Crown. The total number of Council members now stands at around 300. The royal agreement on legislation and the formal approval of executive

acts, using the powers of authority, are given on behalf of the Crown by a small group of private counselors. The Bureau of the Private Council is an administrative body. His political head, who is a member of the Cabinet, is Lord President of the Council.

The Queen's closest advisor is her private secretary, and the media secretary deals with the press secretary. The Prime Minister also has a private office and secretary for press relations. Another important counselor is the Secretary of the Cabinet. Thanks to these officials, the communications car, the information, works impeccably.

## §2. Prime Minister and Cabinet<sup>39</sup>

The Prime Minister's institution has emerged and evolved as a consequence of the monarch's renouncing the right to personally chair Cabinet meetings. At first, the Prime Minister was just one of the ministers appointed by the King to lead Cabinet sessions in his place.

The Prime Minister's modern institution is a product of the *Reform Act* of 1832, which enshrined the obligation to appoint the Prime Minister as the leader of the majority party in the House of Commons. The first occupant of this dignity in this modern sense was Robert Peel.

As the *de facto* chief of the executive, the Prime Minister practically exercises much of the office of a head of state.

The prime functions of the Prime Minister are as follows:

- Is the leader of his party, throughout the country and in Parliament;
- He is responsible for designating ministers, who are appointed by the Queen with his opinion;

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<sup>39</sup> Ioan Alexandru, Ivan-Vasile Ivanoff, Claudia Gillia, *Sisteme politico-administrative europene*, Bibliotecha Publishing House, Targoviste, 2007, p. 396 et seq.

- Demands ministers if circumstances so require;
- Selects those ministers to be the Cabinet and directly coordinates the whole policy, developing and specifying the guidelines of principle that its own party sets;
- She is the leader of the House of Commons, controlling her work and acting as her spokesman;
- Communicate to the sovereign the decisions of the Government;
- Meets with Commonwealth Prime Ministers at regular conferences and heads of other governments at high-level meetings.

The Prime Minister is a particularly important figure, perhaps the most important of British political life. In asserting his prestige, he largely contributes to his personal qualities, character, working with close collaborators, and Cabinet members.

The history of British public life has demonstrated how some Prime Ministers, due to their style, have imposed themselves on the most powerful personalities of political life in Great Britain, such as Lord Salisbury, Lloyd George, Winston Churchill, Margaret Thatcher, John Major or Tony Blair.

The cabinet, under the Prime Minister's leadership, is the dominant piece of the British constitutional system. Three elements explain the primacy of the Cabinet:

- through it all the powers of the Crown are exercised;
- leadership of the majority;
- its political legitimacy is claimed by democratic choice.

The Cabinet is the emanation of the Private Council, and it also has its origins in the Medieval *Curia minor*.

The Private Council has transformed over time into the Crown Council. It is composed of a multitude of members, among which we mention: the former and current ministers, the speaker, the archbishops of the Church and other personalities called by the Queen. The leadership of the Arcade Council is made by an important member of the Cabinet - the Lord President of the Council who is not a member of the House of Lords, but

on the contrary is generally the *leader* of the party in power in the House of Commons. The powers of the Private Council are essentially formal. It shall not meet in plenary session until the marriage or death of the King, to proclaim the successor to the Throne.

We need to make a clear distinction between the Cabinet, the restricted decision-making body, and Guvem, in the broad sense of the term, which contains a certain number of members, each head of department being assisted by several ministers of lower rank and ministers without portfolio, playing the role of *whips*, that is, those charged with ensuring the cohesion of the majority and the ballot participation of the *banckbenchers*.

The government does not reunite entirely and is not a decision-making body, not even a formal one; it forms only the core of the parliamentary majority that ensures the defense of Parliament's policy decided by the Cabinet.

The government is the executive body resulting from the general election. Its composition from the Prime Minister to the ministers expresses the electoral victory of one of the two main political parties. This makes it politically possible for British governments to be very stable and, from the point of view of their legitimacy, to be challenged only by political opponents and not by the great popularity of the population. Of course, this does not mean that unpopular governmental goals are agreed by the population.

The party that won the general election will occupy most of the seats in the House of Commons and will thus hold the parliamentary majority. With this majority, the Government will have the approval of its royal program and the draft laws it will propose to Parliament.

The government itself is made up of a large number of members, some of which are departmental members, and others (about 40-50) have the role of *quasi-substitutes* ("junior ministers").

Ministers have various names: Lord of the Treasury,



Lord President of the Council, Lord Chancellor, and General Prosecutor, Finance Minister. State Secretaries occupy important ministries with an old tradition such as: Foreign Office, Home Office, Defense, etc.

The term *ministry* is used to designate department owners who have been recently created. Minor rank ministers also have various names: the junior lord of the treasury, parliamentary secretaries, etc.

In addition to departmental staff, "junior ministers" occupy positions that can be assimilated to those of state secretaries in the higher-ranking civil servants' nomenclature in the ministries of other countries. In general, the Ministers are in their turn recruited.

The Prime Minister has a dominant position both within the Government and in general in the political life of the country. In reality, all power is concentrated in his hands.

The Prime Minister is the one who elects Cabinet members, but, according to the custom, a certain number of members of the Government are members *ex officio*: Lord Chancellor, Finance Minister, Secretary of State for Foreign Affairs, Internal Defense, Scottish, and so on. The Prime Minister's freedom of choice as to the composition of both the Government and the Cabinet is limited to objective political needs.

An original institution is the so-called "*Shadow Cabinet*". This government is made up of a number of deputies of the opposition it has appointed and led by its leader. The purpose of the organization is to "become" a potential government for a possible alternative to power.

The cabinet is the most effective part of the executive mechanism. Unlike Guvem, he includes a small number of ministers elected by the Prime Minister. The Cabinet includes, as a rule, the Minister of Finance, the Chancellor of Justice, the Minister of Foreign Affairs, the Minister of Defense, Constitutional Affairs, Interior, Commerce and Industry, the Minister of Business of Scotland, Wales, Northern Ireland, and

some leaders (*Chief Whips*) of the House of Commons and the House of Lords, who have a ministerial rank. The number of cabinet members usually amounts to 20 people. However, in exceptional times, the number of members was narrower. In 1914-1918, the cabinet headed by Lloyd George consisted of 5 members. In 1940 and 1945, under the authority of Churchill, the figure varied, depending on circumstances, between 5 and 8 members. During the 1991 Gulf War, the crisis cabinet consisted of John Major (Prime Minister) and foreign affairs and defense officials.

The Government has the following tasks:

a) executive tasks. The government decides on the country's general development line by acting in two directions: "persuading" Parliament to adopt/approve a measure, a government initiative; after the adoption of the proposed measure, act with its full authority to implement the measure.

b) attributions in the legislative process. Approximately 90% of the number of laws voted by Parliament are initiated by the Government. Due to the disciplined parliamentary majority and closely linked to the ruling party, the Government manages to transpose its government program into laws.

c) financial attributions. Although the budget is voted by the Parliament, he does nothing but vote on the draft that is being handed to him by Guvem.

Nowadays, the Cabinet comprises about 20 ministers who, for the most part, are members of Parliament, some of whom are part of the House of Lords. The exact number of Cabinet members is set by the Prime Minister. Most cabinet ministers lead major government departments, but some do not have specific responsibilities or have cumulative responsibilities, such as the Lord President of the Council or Lord Seal Keeping the Cabinet's responsibilities, combining the two branches of government, being members at the same time the executive and the legislature.

The leader of the ruling party becoming Prime Minister,

he elects Cabinet members from among the party's top members. As long as the Prime Minister and the Cabinet can count on the support of the majority in the House of Commons, they can stay in office, but they can be dismissed by a vote of mistrust.

Most Prime Minister's prerogatives are based on conventions, rather than on the right, but they are real enough to have this role. The first and most obvious is the election of the Cabinet.

Its members are appointed by the Queen, at the Prime Minister's proposal, and can be dismissed as easily. Of the 22 members of the Cabinet made up by Margaret Thatcher, when she first became prime minister in 1979, only eight remain on the 1986 list. The prime minister's prerogatives for ministerial appointments extend outside the 20 Cabinet members, prime ministers, and include about 80 other government members.

There are then more than 20 top departments in the Civil Service, where the appointments depend directly on the Prime Minister. Moreover, a minister can not dismiss his permanent secretary (who heads the department) without the Chief Cabinet's approval.

The Prime Minister makes recommendations for appointments in the Anglican Church for the appointment of judges at the High Court of Justice for the appointment of private counselors.

The cabinet usually meets once a week, and whenever necessary, if events evolve.

The work of the Cabinet is carried out with the help of a large number of committees and subcommittees. This system was established in 1945.

Currently, there are about 25 standing committees and subcommittees, and a number of 100 such committees are temporary.

The most important permanent committees are those for foreign and defense policy, economic strategy, social affairs, and legislation.

Although the Prime Minister may invite some members

of the government (who are not Cabinet members) to attend Cabinet meetings, this is not a common practice. Until the beginning of our century, the Cabinet had no specialized staff, no secretariat.

In 1916 a permanent secretary was appointed, and now the office of the Cabinet is headed by a secretary who, at the same time, is also the head of the Civil Service. The Cabinet Office serves the Cabinet and all its committees and subcommittees.

The Secretary of the Cabinet is a very strong person, being very close to the Prime Minister in the work he carries out, his office being in direct connection with the one in Downing Street 10.

As a whole, the office of the Cabinet is more than just a secretary, because it also includes the following:

- the central statistical office;
- the Personnel and Management Office, which shares with the Civil Service personnel recruitment and training;
- a historical section that keeps the gospel documents.

### **§3. Central public administration**

Most Cabinet ministers lead major departments. They are supported in their departments by the political hierarchy of state ministers and parliamentary secretaries and permanent civil servants, led by a senior official appointed permanent secretary.

There are usually 15 state departments considered major, led by Cabinet ministers and 16 smaller departments or sub-departments, which are headed by one or two exceptions by ministers who are not among Cabinet members.

Among the major departments we recall<sup>40</sup>: the Ministry of Food, Agriculture and Fisheries, the Ministry of Defense, the Department of Education and Science, the Department of Labor,

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<sup>40</sup> Denis Derbyshire, *The Business of Government*, Chambers, Edinburgh, 1987, p. 154.

the Department of Energy, the Department of the Environment, the Department of Foreign and Commonwealth Affairs, the Ministry of Health and Social Security, internal, ministry of Northern Ireland, ministry of Scotland, department for trade and industry, transport department, treasury ministry, ministry of Wales.

In each major central department there is a political structure comprising ministers with different ranks, and besides, there is a non-political structure, consisting of civil servants (belonging to the Civil Service).

The head of the department (state secretary or minister) is assisted by one or more state ministers, depending on the size of the department (the state minister is in hierarchy after the minister who is a member of the Cabinet).

## **Section 2**

### **France**

Unlike the United Kingdom, France has a written Constitution which clearly reveals the major differences between the French (continental) administrative system and the English (insular) system: mainly the difference between centralist and self-government.

Title II of the Constitution of France is given to the President of the Republic. The regulation of the presidential institution was carried out before the other state authorities, a matter denoting its prerogative to these authorities (Government, Parliament, Constitutional Council). Title II is one of the largest titles (it contains 15 articles). The head of state has a central role in the institutions of the 5<sup>th</sup> Republic.

#### **§1. Statute of the President of the Republic**

##### **Election of the President of the Republic**

The term of office of the 5-year President may be renewed. The Constitution makes no mention of the number of

mandates that can be met by the Head of State.

The mandate of the President may terminate before the deadline for natural causes (death, resignation, final impossibility of exercising the duties, appreciated by the Constitutional Council - Article 7 of the Constitution) or for other reasons (in the case of political or criminal liability - Article 68 of the Constitution). The Prime Minister's appointment is made by the Prime Minister. Pursuant to the constitutional provisions (Article 21 paragraph 3 and paragraph 4), the Prime Minister shall, if necessary, supplement the President of the Republic in the chairing of the national defense councils and committees. Exceptionally, the Prime Minister may chair the meetings of the Council of Ministers on the basis of an express delegation, valid for one Council meeting and a fixed agenda. In no other case, the other powers of the President of the Republic may not be delegated.

Protection of the presidential mandate is ensured by a series of constitutional and legal means. The exercise of the office of President of the Republic is incompatible with the exercise of any public office or any private activity.

The President shall enjoy the necessary functional and personal resources necessary for the fulfillment of his mandate. We should mention that the President benefits from various residences that are made available to him during his term of office.

The President of the Republic plays an important role in the political life of France. This issue is also marked by the wide range of functions and attributions the President has. Without looking at them in detail, we propose to review them, precisely to mark the position and role of the President of the Republic within the French public powers.

Article 5 of the Constitution presents, in a general and slightly vague manner, the role of the President: "The President of the Republic is observing the Constitution. It ensures through its arbitration the normal functioning of the public authorities, as

well as the continuity of the state. He is the guarantor of national independence, territorial integrity and respect for treaties".

In the literature, presidential prerogatives were classified into the following categories:

- a. personal or autonomous attributions of the President;
- b. shared attributions;
- c. attributions performed in exceptional circumstances.

## §2. Government

The second element of the executive power, the government was defined as "*the college led by the Prime Minister and made up of ministers, excluding the head of state*".

Its decision-making role varied in intensity, depending on the constitutional environment,

has not ceased to play an essential role in the operational field.

The government occupies an important place in the continuity of national life, being *the confluence place of all the problems*. In fact, it is the responsibility of the public authorities: whether it is the presidential authority, the administrative and military authority with which it lives in osmosis (Article 20 of the Constitution) or the parliamentary authority: in a word, the institutional machinery converges and transits through Matignon.

The notion of *Government* comprises a complex ensemble, consisting of three elements:

1. *a collegial body - the Council of Ministers*. However, this body is not presided over in France by the person generally designated by the Prime Minister, but by the Head of State - the President of the Republic. On the other hand, this body is divided into other bodies: the Cabinet Council, which is becoming less and less under the Prime Minister's presidency; inter-ministerial councils, chaired by the President of the Republic, and inter-ministerial committees chaired by the Prime Minister, with members of the Government including senior officials;

2. *a leading actor - the Prime Minister*;

3. a variable number of *ministers*, whose titles and functions differ according to the place and role they occupy.

The government of the 5<sup>th</sup> Republic has failed neither in *populism* nor in *imperialism*. It oscillates between *influential*, minimal and *decisive* power to the fullest.

The government unites diversity with unity. It presents itself as an ensemble, at the same time, *differentiated and coordinated*.

In the Third and Fourth Republics, the President of the Council was appointed by the President of the Republic, but the designation was preceded by a genuine "ritual" of consultations (with the Chairs of the Chambers or the main political parties).

In the 5<sup>th</sup> Republic, the President of the Republic appoints the Prime Minister and, on his proposal, appoints the other members of the Government (Article 8 of the Constitution).

As for the appointment of the Prime Minister by the President of the Republic, two situations have been met in practice:

a) when the President had a favor in favor of the National Assembly, the election he made appeared like that made by a leader who chose his "right hand". The Prime Minister had to enjoy the President's full confidence, but also to have qualities that would allow him to lead the governmentary and parliamentary majority. The president could thus name either a person with a political prestige (as was the case with Michel Debré, Jacques Chaban-Delmas, Jacques Chirac, Pierre Mauroy), or he was a close person who was not politically representative the case of Georges Pompidou, Maurice Couve de Murville, Raymond Barre, Pierre Bérégovoy, Jean-Pierre Raffarin, Dominique de Villepin);

b) the second situation met in 1986, 1993 and 1997, when the President, following unpopular legislative elections, had to approve the election made by the electors. Thus, in 1986, Mitterrand appointed Prime Minister Jacques Chirac, who was the leader of the new majority, and in 1997 he was appointed by



the same rules Lionel Jospin.

In the 5<sup>th</sup> Republic, the usages of the parliamentary regime were ended, namely: the ministers are no longer elected by the parliamentary majority. Political evolution has highlighted a diverse composition of the Government: politicians, technocrats, or even representatives of civil society.

We can state that the powers of the ministers, *stricto sensu* (excluding delegated ministers and state secretaries) are set by decree after the approval of the State Council. No provision fixes the list of ministerial portfolios left to the discretion of the Head of State and the Prime Minister (Article 8 of the Constitution). Beyond the harsh core of public and management power, the distribution takes into account political considerations (personality or proportion), conjunctural or structural. Only the Minister of Justice, in his capacity as Vice-President of the Superior Council of Magistracy, has a constitutional status (Article 65 of the Constitution). The number of ministerial portfolios varies depending on policy factors. The number of government members varied between a minimum of 25 members (at the Pompidou Government in 1962) and a maximum of 48 members (eg. the Rocard Government in 1988).

Despite the principle of legal equality between the members of the Government, the latter is based on a hierarchical basis. However, the hierarchical organization of the Government is more sustained and more nuanced.

The Prime Minister is *officially* entrusted with the task of leading the Government's action (Article 11 of the Constitution), but the presidential regime's evolution has countered its preeminence.

Under the generic expression of *members of the Government*, the hierarchy between them is not set by the Constitution. In fact, the term of *minister* is rarely used in the Constitution (except Articles 19 and 65). It simply follows from the *appointment decree*, published in the *Official Journal*. The usual position between them is generally determined according to the following:

- Minister of State;
- Minister;
- Delegated Minister;
- Secretary of State.

### §3. Council of Ministers - *Conseil des ministres*

The Council of Ministers is an institution specific to the French system.

In the absence of any regulation, his composition is left to the discretion of the Head of State, who convenes and presides over him, in principle, every Wednesday morning at the Élysée Palace. Exceptionally, the substitution is entrusted to the Prime Minister *by virtue of an explicit delegation and a determined agenda* (Article 21 paragraph 4 of the Constitution).

Its agenda, proposed by the Prime Minister, decided by the head of state, addressed to the participants the day before, consists of three parts:

- *Part A* concerns draft laws, ordinances and decrees, for which there is no place for deliberation and even less for voting, but for *consensus* adoption;

- *Part B* refers to individual measures (appointments of senior officials, general officers, and managers of public enterprises) and the dissolution of municipal councils, in principle it does not give rise to deliberations;

- *Part C* is reserved for communication with ministers, and traditionally with the Minister of Foreign Affairs. The engagement of governmental responsibility (Article 49 of the Constitution) and proclamation of siege (Article 36 of the Constitution) are deliberate here. Tradition requires that the last word belongs to the Head of State.

Outside the Council of Ministers there are a number of less solemn parties, such as:

1. Cabinet councils bring together the members of the Government under the Prime Minister's presidency, without

benefiting from the presence of the President.

2. Interministerial Committees - shall meet under the chairmanship of the Prime Minister, Ministers and senior officials, with a permanent character.

3. Restricted Committees - composed of the same principle, whose mission is limited to the study of a particular file and which are not permanent

4. Interministerial meetings. All draft laws or decrees that are of interest to several departments are prepared at the inter-ministerial meetings that meet at Matignon, under the leadership of a member of the Cabinet of the Prime Minister or the Secretary General of the Government, senior officials.

#### **§4. Central public administration**

The direct **central government** (the public function of the State) has a hierarchical structure. It is headed by the president of the republic and the prime minister. The President of the Republic is the head of state, he appoints the prime minister and the ministers - members of the government - are also appointed by the president but at the Prime Minister's proposal. Ministers lead the line ministries. The government determines and drives national policy. He is represented in the territory of prefects.

In 2003, France underwent an imperial reform process. The new constitutional reform of 2003 confirmed that administrative-territorial units have an important role in national and community policy. *Delegation à l'Amenagement du Territoire et à l'Action Regionale* (DATAR), with the 2005 government's amendments, after a period of 40 years of spatial planning activity, adapted to the new economic changes. In this regard, the DATAR yesterday became today *Delegation interministérielle à l'aménagement et à la compétitivité des territoires* (DIACT), particularly concerned with territorial cohesion, the balanced planning of rural and urban space, the implementation of European policies and the contractual policy

of the state and territorial communities.

DATAR in its first phase of organization was a service attached to the Prime Minister then subordinated to the Minister of Public Service, State Reform and Territorial Development, and currently DIACT is under the coordination of the Minister of Land and Territorial Planning.

Thus, France, with the assistance of the Interministerial Committee for State Reform, through the revision of the Constitution in 2003, but especially through the Local Freedoms and Responsibilities Act of 13 August 2004, succeeded in clarifying and identifying the purpose of public services by simplifying and transparent procedures, by decentralizing state responsibilities and modernizing public management.

The State was represented in the Departments by a Commissioner (empowered) of the Republic. The latter was replaced by the prefect who, until the reforms of 1982/1983, exercised the dual function: the State's representative and the Chief Executive Officer. Prefects are appointed by the President's decree, based on the decision made by the Council of Ministers at the proposal of the Prime Minister and the Minister of the Interior. The prefect represents the state and is the head of the deconcentrated services of the state in the territory where he is empowered to act as the prefect of the department where he is seized and the capital/center of the region also acts as prefect of the region. Department Prefect is assisted by sub-prefects in the arrondissements. The prefect of the department is not hierarchically subordinated to the prefect of the region in the exercise of his duties, but after 1992, the prefect of the region is the one who sets the department prefect the directions necessary for the development of the economic and social policies as well as for the spatial planning.

The Prefect is the only holder of the state authority in the territory that manages and represents the Prime Minister and each relevant minister. He is responsible for public order, organizing various choices and organizing in case of calamities. It also plays

an important role in establishing contractual relations, agreements and conventions established on behalf of the state by local authorities. Finally, in the field of spatial planning, it has the role of negotiator of urbanism contracts between the state and the regions.

Nowadays the prefect is the administrative army of a unitary, democratic, deconcentrated and decentralized state<sup>41</sup>.

The indirect administration (the territorial public function) consists of the territorial public authorities - regions, departments, arondissements, communes. Article 72 of the Constitution guarantees the autonomy of those authorities subject to State oversight. New functions have been given to municipalities, particularly in the area of town, department, social administration and public health and regional planning: regional planning and economic assistance, etc. State leadership has been relieved and is currently limited to legal scrutiny.

### **Section 3 Canada**

#### **§1. The political regime**

Canada is a constitutional monarchy within the Commonwealth. The head of state is, *de iure*, the sovereign of Great Britain, represented by a general governor. *De facto*, the state is run by a federal bicameral parliament, composed of the Senate and the Chamber of Deputies, and a federal government<sup>42</sup>.

All acts of the government are executed on behalf of the queen, but the proper authority of each is the consensus of the Canadian people. When the authors of the Canadian Constitution elaborated it in 1867, they agreed freely, deliberately and

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<sup>41</sup> Gilles Darcy, *Le système administrative français*, Édité par Centre de formation des personnels communaux, 1982, p. 12.

<sup>42</sup> Eugene A. Forsey, *Les Canadiens et leur Système de Gouvernement*, Ministère des Approvisionnement et Services, Canada, 1984, p. 37.

unanimously, to give the Queen a formal executive power, power that would be administered by the sovereign in person or by its authorized representative, according to British democratic principles.

Nowadays, unless the Queen is in Canada, all its powers are exercised by its representative, the general governor, a Canadian named by the Queen, with the advice of the Canadian Prime Minister. Apart from extraordinary circumstances, he exercises all his prerogatives, but must receive the opinion of the cabinet, which is supported by the majority of the House of Commons.

Canada is a federal state, consisting of ten provinces, which enjoy wide autonomy, and two territories controlled by the central government.

### **Queen**

In the constitutional law of 1867, the following provision is provided: "The government and executive power of Canada belongs to the queen". The Sovereign delegates, however, its authority to its representative, the general governor, whom he appoints upon the recommendation of the Canadian Prime Minister. The term of office of the governor general is five years, but may be extended for another year. At the provincial level, the queen is represented by the lieutenant-governor.

The texts of federal laws always start with the phrase: "His Majesty, with the approval and consent of the Senate and the House of Commons of Canada, decides:". Provincial law texts have a similar start.

The head of state, or its representative, is the one calling the Parliament or provincial legislatures. No law can enter into force without royal promulgation. The Sovereign has even promulgated certain federal laws, but usually this is done by the general governor or alternate general governor. They may have prior consultations with the cabinet to reach a consensus but, in isolated cases, they may act without the cabinet's opinion or even against it.

## §2. Prime Minister and Cabinet

In Canada, current parties have not been established by law, but they are still recognized. They are constituted as voluntary associations of people, who have the same views on issues of public interest.

The general rule is that the Prime Minister should be a deputy in the House of Commons. Even if the appointed person is not a deputy, the custom is that, in this case, one of the members of the majority party resigns, thus creating a vacancy, which may be occupied by the appointed one, after a partial ballot.

The one who appoints the Prime Minister is the general governor. It is also the one that asks the leader of the minority parliamentary group to form a new government if the old government was censured in the Chamber.

Prime Minister's powers in front of the cabinet are quite large. He not only selects ministers personally, but can ask any member of the cabinet to submit his resignation. In case of a refusal to resign, the Premier may recommend to the general governor the dismissal of the person concerned and he usually satisfies the request.

If the cabinet has to make a decision, it is not necessary to apply the majority principle. In fact, an influential Prime Minister, after listening to the opinions of his cabinet colleagues and finding that they are at odds with him, may disregard them and his point of view becomes the official policy of the government. In this case, his colleagues must obey or resign.

Cabinet members who are appointed by the Prime Minister must be part of the Queen's Private Council for Canada. The appointment to this council is made by the general governor, upon the recommendation of the Prime Minister, the so-called councilors remaining members of his life, unless they can be dismissed from the council at the request of the Prime Minister. But this has never happened.

The Private Council includes all former and current ministers, former and current Presidents of the Supreme Court of Canada and former Senate Presidents, and House of Commons' orators. Also, some eminent citizens may also be appointed to the Private Council. The Private Council meeting is quite rare, and only at very important political events, such as the arrival of a new sovereign on the throne. The active body of the Private Council is the Private Council Committee.

By tradition, all cabinet members must be members of the House of Commons or, after appointment, be given a seat in this room. However, there have also been cases when outside the Parliament were called in the Cabinet and, having failed to occupy a Chamber or Senate seat, they had to resign<sup>43</sup>.

Although senators may be equally appointed as ministers, since 1911 there is only one senate member in the cabinet, usually a minister for government relations with the Senate.

There is a custom in every province to be a cabinet representative. But if the ruling party has not obtained any mandate in that province, this representation is very difficult to assure. In this case, the Prime Minister may appoint a senator from the province in the cabinet, or convince a deputy from another province to resign and try to occupy the vacancy with another Provincial representative. It is important, however, to point out that the smallest Canadian province, Prince Edward Island, has been deprived of many years by a cabinet representative.

There is also the tradition that at least one place in the cabinet is occupied by an English-speaking Catholic representative from the Irish community or by representatives of other ethnic minorities.

At federal level, there is a Canadian Intergovernmental

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<sup>43</sup> Mary Ferguson, Michael J. Ryan, *Canadian Federal Government Handbook*, Glob and Mail Publisher, 1993, p. 142.



Conference Secretariat (C.I.C.S.), which has the role of providing the administrative support necessary for the preparation of cabinet meetings and also federal-provincial or inter-provincial intergovernmental meetings. Its leadership is assured by a federal secretary, assisted by an assistant secretary and under the subordination of three services, each headed by a manager.

## **Section 4**

### **United States of America**

#### **§1. Administrative organization and political regime**

The United States of America forms a huge country as a continent: 9.936.691 km<sup>2</sup> and has a population that in April 2006 was 298.6 million inhabitants<sup>44</sup>. This state has huge production forces, which puts it first in the world economy.

The United States is forming a presidential republic. It is a federal state, according to the Constitution of 1787, completed between 1791 and 1971 with 26 amendments.

The United States of America consists of 50 states and a federal district, the Columbia District, on whose territory the capital is located: Washington.

States are governed by governors, who are elected for four years. Every two years, one-third of the guvemists are chosen.

The population of the United States of America is totally unevenly distributed territorially. The largest human agglomerations meet in the northeast, to the Atlantic coast, the Great Lakes and the Mississippi River, the Pacific Ocean and the Gulf of Mexico, an area that has an intense industrial life and the presence of cities with a large population: New York (over 16.7 million inhabitants with suburbs); Chicago - 7.7 million inhabitants; Philadelphia - 5.6; Detroit – 4.7; Boston - 3.6 and on

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<sup>44</sup> <http://ro.wikipedia.org/wiki/SUA>, consulted on 1.10.2018.

the Pacific coast, Los Angeles - 10.4 and San Francisco - 4.6.

The federal capital is in Washington (along with Columbia County and the suburbs has over 3 million inhabitants), having this quality since December 1, 1801. During the proclamation of independence, the residence was settled in Philadelphia. But with the expansion to the West, the city becomes a peripheral capital, which, at the initiative of former President Th. Jefferson, moving her more inward. The main function of the federal capital is the administrative one, where the president (the White House) resides.

According to the Constitution, the President is the head of state, being the head of the government. He concentrates the whole state government in his hands.

The US Constitution does not contain provisions on the government. However, the practice has established the existence of the cabinet or government and the Bureau of the President as the main organs of the executive. Thus, the government is made up of state secretary ministers, appointed by the President of the United States, with the consent of the Senate. State Secretaries each lead a state department and are responsible for departmental activity only to the President of the United States, by virtue of the principle of "incompatibility of the Secretary of State with that of a member of the Congress".

The Cabinet implements the provisions of the President and is consulted on various issues, without taking any decision. Cabinet meetings held at the initiative of the President have the character of coordinating the work of all departments, with the US President being the only person entitled to pass these decisions.

**The Office of the President** was created in 1939 by Fr. D. Roosevelt and developed under Truman's presidency. The Office of the President includes several services:

a) **The White House Office**, which is a cabinet and a personal secretary of the President, comprising approximately 350 close associates. Through the Chancellery, the President

liaises with the Congress, the heads of some central administrative bodies, the press, etc.

b) **The Budget Bureau**, consulted by the President in the preparation of the budget and the tax program.

c) **The Council of Economic Advisers**, consisting of three counselors, who prepared the half-yearly economic report on the state of the Union.

d) **The National Security Council**, created in 1947, responsible for the elaboration of the military program and policy, coordinating the work of all civil and military departments working in the field of national defense and security.

e) **The Office of Policy Development**, which is in fact an internal policy service introduced by the Reagan administration, but how at that time the internal policy agenda involved budget and staff cuts and regularization administration, this office was not very active in the development of new legislative proposals.

Other offices existing within this structure are: f) Office of Science and Technology Policy; g) Council of Environmental Quality; h) the Office of Administration and i) the Office of the United States Trade Representative.

### **The principle of federalism**

Federalism is a common feature of contemporary nation-states. It is a division of political authority between the central government and state or provincial governments. In this regard, some examples of federal states are Canada, Australia, Nigeria, Germany, United States. In each of these nations there are states, provinces or provinces that have a considerable degree of sovereignty (supreme political authority) legal or constitutional. However, in each of these cases the governing bodies are subordinated to a central government.

Federalism is opposed to "unitary" political systems in which there are no quasi-sovereign governmental units interwoven between citizens and the national government. Such examples of unitary states are England, France, Romania. To such nations, as we have already shown, sovereignty is exercised

only by the national government, which, in the democratic regime, is seen as an agent of the people, who is the sovereign. Unitary governments may delegate political and administrative authority to municipalities or other government bodies, but they have no sovereignty and authority other than those given to them by the national government. Delegations of this kind constitute political and administrative "decentralization", but not federalism<sup>45</sup>.

The Government of the United States of America is a federal government. In the federal system, the "central", "general" or "national" government has extended jurisdiction to the country's borders. Each "regional" or "state" government covers a smaller geographic section of the country than the whole: the sum of the geographic areas of state governments (plus Columbia District) in the US equals the total area of the national government. There is a division of power between the two levels of government, which are supposed to be legally equal; not only that states are equal, but each state government is considered to be equal to the national government.

Because the two levels (national government and state government) cover the same geographical area, they can be regarded as co-ordinated units of the government within this area. Theoretically, while they operate in the same geographic area and with the same people, they do not lead the same people with the same duties<sup>46</sup>.

## §2. Federal governance system

The structure of the federal administration is fragmented,

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<sup>45</sup> David R. Rosenbloom, *Public Administration, Understanding Management, Politics and Law in the Public Sector*, Random House, New York, 1989, p. 86.

<sup>46</sup> Stephen I. Wesby, *Government and Politics - The Process and Structures of Policy - Making in American Government*, New York, Charles Serbners Sons, 1973, pp. 34-38.

consisting of departments, agencies, committees, corporations and other types of functional units.

Departments are generally considered to be the most insignificant and most comprehensive administrative units. They also enjoy the highest formal status. Today, there are 13 departments, although their number has varied over the years. Differences in size and budget for each department are noted. For example: The Department of Defense exceeds the size of all other departments, with approximately 1,085,000 employees. Most of the budget is for defense (\$ 280 billion) and Social Security and Medical Assistance (\$ 270 billion). On the other hand, the Department of Education has only about 5,000 employees and the Department of Commerce has a relatively small budget (\$ 2 billion). The structure of these departments also differs considerably. Some have pyramidal, hierarchical structures associated with bureaucracy. Others are conglomerates of separate units, somewhat autonomous, and are mostly organized as holding companies.

The federal government is made up of secretaries (ministers) who are appointed by the President, regardless of their political affiliation and Congress composition and confirmed by the Senate. Cabinet members can not be members of Congress at the same time.

The Cabinet consists of the Secretary-General, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health, the Secretary for Housing and Urban Development, Secretary for Transport, Secretary of Energy, Secretary for Education.

The US President has the right to appoint other heads of specialized agencies and departments as members of the cabinet with the Senate's confirmation. In 1947, the National Security Council was set up to coordinate the main foreign policy actions directly linked to US national security.

The members of the Board are: the President, the Vice-President, the Secretary of State, the Secretary of Defense, the

Councilor of the President for National Security Issues, the Director of the Central Intelligence Agency and other persons appointed by the President.

Approved ministers come to senators or senatorial commissions to explain how they run the administration.

Ministers are the heads of the administrative services (military, finance, telecommunications, etc.) and, within the Council of Ministers, they approve decisions already made by the US President. There is no Prime Minister or President of the Council of Ministers in this country. But there is a chief minister - the state secretary. Also, US ministers do not officially bear this name, but executive secretary. They have secretary assistants and lower secretaries - sub-secretaries.

There are ten executive secretaries in the US plus the heads of three major federal agencies. The tradition is that they are not elected from the world of political staff, but from business leaders or from people who have declared a special talent in a branch, or another national activity.

The personal qualities of the minister, his competence, the length of time he remains in office, influence the value, intensity and depth of the action that this minister exercises over his department, over the administrative branch with which he is vested.

The Secretary of State is the highest in rank, being the prime minister and established with relative superiority to the other senior secretaries. He has under-secretaries and assistant secretariats.

In the US, the Minister of Finance does not deal with the budget, which is a separate service directly attached to the President. The Ministry of Finance has only the task of collecting taxes and fees.

The Secretary of State, "the first among the peers" in the US Cabinet, through the State Department, gathers information and evaluates all political, historical and diplomatic factors on which decisions need to be made.

In the US system, the Secretary of State does not just endorse the leadership of the State Department's own apparatus, but coordinates and concentrates all information and administration issues that concern US international affairs.

Although in theory he is a coordinating administrator rather than a foreign policy maker, in practice he contributes substantially to formulating and elaborating this policy through his own coordinating function, which allows him to accept or reject various initiatives, proposals and recommendations of their own diplomatic apparatus or departments that are subordinate to them as to the aspect of their external activity. The extent to which this role grows or decreases depends to a large extent on the personality of the Secretary of State and the President, as well as on the relations that are established between them.

The federal administration, distinct from that of the states, assures the execution of federal power decisions. The federal administration collaborates in some areas with the state administration and sometimes exercises control over them.

In the US, the federal government runs political affairs and management of general interests for the entire national community. The Government therefore has the power to govern and administer:

- the first duty to govern is of paramount importance, as the solutions it uses influence the general course of the political, economic and social life of the country, being capable of affecting the essential interests of the nation, they, to hire her destiny;

- the second, to administer, are the actual facts and administrative acts that lead to the implementation of measures taken by the government.

The head of state, the US president, is also the head of the executive and has direct relations with the government and the administration, exercising control over public services. Its acts are called executive order. In his work, the US President has some administrative bodies, as well as civilian and military counselors and a secretariat.

### §3. Governance system at state level

Often, the structure of state governments tends to be parallel to that of the federal government. In all states, the executive is led by an elected governor.

Despite these similar structures, many countries differ markedly from the political and administrative model found at national level. They also differ from one another.

One of the most important differences is the nature of state constitutions. Only those in Massachusetts (adopted in 1780) and New Hampshire (adopted in 1784) have the longevity of the US Constitution, which was finally adopted 1789. Most states have more than a constitution: Louisiana has eleven constitutions. Only those of Connecticut and Vermont are just as concise as the federal constitution. Many of them are more detailed and some of them have been amended several times over the federal one. For example, the constitutions of the states of California and South Carolina have been changed more than four hundred times<sup>47</sup>.

States differ quite a bit from each other and from administrative structures. Each governor is considered to be the head of state administrative operations, but the governor's power to appoint and supervise civil servants to set taxes varies considerably from one state to another. In several states, six or more senior civil servants are elected by citizens<sup>48</sup>. Among these, the most commonly elected are the Prosecutor General, the Governor's Lieutenant, the Treasurer, the Secretary of State, the Financial Auditor and the Education Officer. And other senior civil servants may be elected. Generally speaking, it may be said

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<sup>47</sup> Robert Lorch, *State and Local Politics*, Englewood Cliffs, N.J. Prentice Hall, 1986, p. 15.

<sup>48</sup> Daniel R. Grant & H. C. Nixon, *State and Local Government in America*, Ally and Bacon, Boston, 1975.



that the higher the number of elected senior civil servants, the lower the governor's control over the public administration of that state. Officials elected may be opposed to the governor's policy and programs. The governor has no official role in the selection of these senior officials nor can he dismiss them. Their responsibility is given to those who voted for them.

Since 1920, state budgets have been drawn up by the governor rather than by the legislature of that state. Today, implementing an executive budget, prepared by the governor or executive agency budget agencies, is an important area of state administrative activity.

States also differ in the degree to which their administrative operations are professionalized. In 1978, 56% of the administrative staff had higher education. Between 1958 and 1980, the population of state-run civil servants increased from 51% to 75%<sup>49</sup>.

All these differences, taken as a whole, can make the administrative life in a state quite different from that in another state. They can also lead to serious complications in trying to enforce legislation in federal programs, which require state administration at a certain standard.

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<sup>49</sup> David C. Mice, *Federalism: The Politics of Intergovernmental Relations*, St. Martin's Press, New York, 1987, 4-9.

## Chapter IV

### Local governments

#### Section 1

##### Local collectivities and main political regimes

No state is the sole contractor of public services. Local communities have taken care of a number of public services by organizing local public services. But they can be conceived in two different ways:

Local communities can see them as natural societies, in their equal or pre-existing state, enjoying rights which the state has recognized more than it has assigned; these local communities will be invested in the law with true autonomy, limited only by control, often discreet, of the state. They are usually a great diversity of organization. Local communities so designed have the vocation to be free, being allowed to govern themselves, respecting legal provisions<sup>50</sup>.

As we have seen, another view considers local communities as state dismantling, creation of the law for purposes of administrative convenience, as simple territorial constituencies raised to the dignity of moral persons, invested with certain rights through the goodwill of the central power. They keep them under close supervision by setting up a guardian on them and putting in their hands officials called by it and not elected by the inhabitants, or, if the election is permitted, narrowly limiting the powers of the elect.

Local communities so designed are strictly subordinate to central power. In general, the first type may be exemplified by the British local administration and the second by the French

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<sup>50</sup> H. Puget, *Les institutions administratives étrangères*, Dalloz, Paris, 1969, p. 390; Jean-Luc Bodiguel, *La fonction publique locale en Europe: Spécificité et autonomie?*, „Revue française d'Administration Publique”, no. 19/1989.

organization.

Between the two systems there are attenuations, interferences, communications. None of the two are presented in a pure state.

For economic, political, social, state, even in countries with the widest local autonomy, it has developed its powers, developing various control methods; imitating the example given by the countries with extended local liberties and under the action of liberal ideas, gradual decentralization has taken place in the countries with centralization regime, the leadership of local businesses has been increasingly built on the choosen bodies, closing in the legal proceedings the exercise of this trusteeship. There is, however, a difference between the two different systems and the countries with local governments belonging to one or the other.

For countries where, under the law, autonomy is the fundamental principle, it is spoken of by the local government. If, at the national scale, the government imposes a solution to the major issues of interest to the whole of the national community, the local echelon is admitting that local authorities themselves can deal with the issues that are essential to them. In this sense, the English use the term "*self-government*".

In principle, in countries where state authority is felt with force on local communities, it is not spoken by a local or local government. Thus, in France and Germany, it is said that there is a decentralized administrative regime, that they have an autonomous "*self verwaltung*" administration, but the word government is not used, being only a national echelon.

The term local regime in France and the European continent has, however, acquired a general sense. By extension, it now designates the organization and functioning of local communities, whatever the degree of autonomy or subordination that we find for these communities.

In the UK and other countries, the central government has left almost parallel to it a broad autonomy of the inferior collectivities on which he has long been content to lay down his

sovereign authority. But local life has gone through a period of decadence; this has led in both the United Kingdom and other analogue countries to amplify central control, increase the power and role of the central government.

In another series of countries, like France and Spain, the state subordinated under its authority, in the 17<sup>th</sup> and 18<sup>th</sup> centuries, the localities. For almost 100 years, the state has only given them a little and very certain freedoms. Decentralization, where there is decentralization, emerged as a general movement during the 19<sup>th</sup> and 20<sup>th</sup> centuries. There have been many oscillations and withdrawals - some centralization efforts have been the result of financial difficulties, poor management of local authorities, which have transposed the authoritarian methods of the new authoritarian regimes, those that have triumphed for a while in Germany and Italy, during fascism. After the fall of fascism, there was a return to decentralization.

However, as a general observation, in the present world, local liberties in fact mark a certain regression; although declaratively it affirms the increase of autonomy. The state, almost everywhere, increases its control by various procedures; who owns large financial resources, to settlements that are usually poor, he grants subsidies, but claims that the services operate under the conditions he imposes, and which he observes. He prescribes rules by law, whose enforcement he supervises, and he protects those who are abusive.

Local communities are ranked and divided into several categories. At its base is grouped primordial and essentially uniting directly the inhabitants - the common.

The etymology of the common word highlights the fact that this human cluster was born out of a community of life and interests, it has the character of a natural society that results from the neighborhood. But at its origins, it did not have a real reality and an active life as in the city. Thus, especially in our days, in the considerable agglomeration existing in the commune, the importance of its services is multiplied and amplified. The rural

commune is often deprived of personnel and reserves, but it remains useful and an object of attachment to the population. There are always two kinds of communes: urban and rural, but in different countries they are subject either to a uniform regime or to different legal provisions. Urban communes must be distinguished by major cities, metropolises and capitals, for which there are special conditions and often rules other than those that apply to ordinary communes.

Between the commune and the state are the intermediate collectivities, some of which have roots in history, and others are artificial creations of the law. These collectives are county, department, province, region, county.

Among these categories, in most of the countries, there are territorial groups, districts, circles, cantons that once had a real administrative existence, but which are often without too much life and, in different countries, they are not genuine communities local, being simple constituencies for state services. Local organization, like any administrative body, reflects the political regime, it translates spirit and institutions locally. A liberal political regime has as a complementary consequence the recognition or attribution of freedoms to local communities; thus, it is found in France, England, USA. Sometimes an authoritarian political regime can tolerate to a certain extent local liberties, but these local freedoms are always rigorously limited and almost invariably authoritarian regimes establish a strict subordination in local matters.

Independent of the character of the political regime, the arrangement of central government institutions also influences the shape and functioning of local institutions.

The local English system of deliberating councils reflects the reality of the existence of power in their hands and shows an obvious analogy with the parliament. The American municipal regime is inspired in many respects by the constitutional concepts of the federal state; the mayor's system is designed after the president of the US. The French departmental and departmental system is modeled in its essential features after

the constitutional monarchy, that is, the separation between the executive body and the deliberative body; the executive body can not be overthrown by the general council or by the municipal council, but for important acts it can not pass over this council.

In the Anglo-Saxon countries, a regime different from that of continental Europe has developed and has influenced the US one, with some differences, but not fundamentally. It is generally appreciated that the Anglo-Saxon world enjoys a wide local autonomy, designated as local self-government. But during the conservative government, there was a narrowing of local liberties in Britain by expanding central power control.

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As Rinaldo Locatelli, executive director of the Permanent Conference of Local and Regional Communities in Europe, said, "local communities are one of the fundamental structures of a democratic regime and, as a consequence, one of the pillars of the construction of democratic Europe, designed in accordance with the principle of subsidiarity".

This requirement is even stronger as the countries of Central and Eastern Europe are increasingly willing to put into practice these principles of local autonomy. However, local autonomy is a permanent conquest, even in countries where it has long been. In new democracies, it can not conquer and develop without the inspirational sources and permanent exchanges with countries with more experience.

The European Charter of Local Self-Government, drawn up by the Council of Europe, initially proposed as a guarantee of safeguarding and strengthening democracy in Western Europe, will in the future inspire reforms of the local structures of the new democracies.

The analysis of local autonomy in several European countries by the Operation of the Romanian Villages - a pioneering organization in defending local democracy in Eastern

Europe - is a valuable contribution to the strengthening of local autonomy within the "Great Europe" (see **L'Europe à l'épreuve de ses démocraties locales** - Etude comparative, Timisoara, 1994).

Regarding such a competent assessment, we understand to some extent the data provided by the monographs drawn up by this organization on the occasion of some debates on this issue in our country, as well as the remarks of Prof. Alain Delcamp from the paper **La régionalisation et la décentralisation dans les Etats à structure unitaire du Conseil de l'Europe**, presented at Geneva on June 3-5, 1993, at the Conference on Regionalization in Europe.

## Section 2

### The structures of local government in the unitary states

#### §1. France

France has an area of 674843 km<sup>2</sup> and has over 62998773 inhabitants (semi-presidential republic, bicameral parliament, decentralized unitary state) and comprises 26 regions, 100 departments and 36763 communes.

Relations between the Republic and the constituent communities are governed by Title XII and Title XIII of the Constitution, but also by special laws.

If we consider the degree of autonomy of the constituent collectives of the Republic, we can distinguish between:

1. Collectives located in the Metropolis, including Hexagon and Corsica. These collectives are regulated by art. 72, art. 72-1 and art. 72-2 of Title XII of the Constitution.

2. The ultramarine collectives regulated by Art. 72-3, art. 72-4, art. 74 and art. 74-1 of Title XII of the Constitution.

3. New Caledonia that finds its regulation in Title XIII of the Constitution.

According to art. 72 of the Constitution, the territorial units of the Republic are the communes, departments, regions,

special status societies and overseas collectives provided by art. 74. Any other territorial community may be created by law, if applicable in place of one or more of the above-mentioned collectivities.

If the *departments* were created in 1790, the General Council and the Prefect were established by the Consulate in 1800, the Law of 10 August 1871 is the one that will give the department the status of territorial collectivity. Since then, the General Council has been recognized as competent to regulate issues of departmental interest, but he did not have the power of decision in all areas. The executive power was entrusted to the prefect. The Law of 2 March 1982 entrusts the General Counselors with new powers while the executive is transferred to the President of the General Council who prepares and implements the department's budget. Territorial colleges have the right to make decisions for the range of competencies that can be better put to work at their level.

These communities are freely administered by elected councils and have a regulatory power to exercise their powers.

No territorial community can exercise guardianship over another. However, where the exercise of competence requires the concurrence of several territorial communities, the law may authorize one or a group of them to organize modalities for joint action.

In the territorial communities of the Republic, the State Representative (the prefect), the representative of each member of the Government, has the task of defending national interests, of carrying out administrative checks and of observing the laws.

The Constitutional Council, by a decision of 25 February 1982, accepted the deletion of the administrative guardianship and its replacement with a *legality control*. When a collectivity decides, it must pass it on to the prefect, who, if it judges it to be illegal, is attacking it by an action brought before the administrative court. This legality check ensures compliance. Territorial colleges have long complained that they lack



sufficient resources to carry out their missions. Article 72-2 of the Constitution gives them some guarantees in this respect.

Territorial collectives benefit from resources freely available under the conditions established by law.

They can receive all or part of the charges of any kind. The law may authorize them to set taxes and duties within the limits it decides.

Tax receipts and other own resources of territorial collectivities represent, for each category of community, a determinant part of their total resources. The organic law sets out the conditions under which this rule is implemented. Any transfer of powers between the State and the territorial communities is accompanied by the allocation of resources equivalent to those devoted to their exercise. Any creation or extension of competencies resulting in increased expenditures of territorial communities is accompanied by resources determined by law.

The law provides for equitable distribution of taxes designed to promote equality between territorial communities.

However, territorial collectivities do not have full financial autonomy, as the legislator retains the legislative competence in the field of taxation, only to create new taxes.

**The region** was created by Law 72-619 of July 1972, subsequently amended 14 times, in the idea of increasing autonomy.

There are 22 metropolitan regions in France (including Corsica, which has benefited from a special status since 1982. The new Statute of 13 May 1991 established a special regime for Corsica. This region had a deliberate gathering - *Assemblée de Corse* - a Executive Board and Economic, Social and Cultural Council. By law of 22 January 2002, the status was completed, strengthening the competences of this region), plus four other overseas territories: Guadeloupe, Guyana, Martinique and Réunion, recognized as regions in 1982 (Law of 2 March 1982), when a real administrative reform takes place in France with the adoption of the law on the rights and freedoms of communes, departments and regions, also known as the "*decentralization*

law".

The regions correspond to purely administrative territorial units, which are distinct from the old historical provinces. Since 1972 (Law of July 5, 1972), the region has been recognized as a legal person not as a local community but as a public institution whose purpose was to contribute to the economic and social development of the region.

The region benefits from a *Regional Council* and an *Economic and Social Committee*. The Regional Council has budgetary decision-making power, while the Economic and Social Council has an advisory role.

*The Regional Council* has deliberative power. It is composed of elected direct directors, by department, for a 6-year term. The Council carries out its work in public meetings.

Regional councilors elect from among them, with the absolute majority of votes the President of the Council for a six-year term. The President of the Regional Council is the executive authority. It has its own powers, established by legal provisions, but also by powers delegated by the Regional Council.

It is the President of the Council who prepares the deliberations of the regional assembly and is responsible for their implementation. He also manages heritage, informs the Regional Economic and Social Council, heads the region's services, and represents the region at all events in public life. The President may delegate certain powers and powers to the Vice-Presidents of the Regional Council.

The regional government also includes a *Bureau*, composed of the President of the Regional Council and several vice-presidents, with specific competences in a specific field.

Besides the Regional Council there are also a number of *committees*:

- *a standing committee*,
- *internal committees* for different areas of activity;
- *joint committees* - the state and the region are committed to implementing a regional development policy. In

order to accomplish this, there have been established "*Joint State-Region Committees*", which group representatives and services of the state, on the one hand, elected and services of the Region, on the other.

The region has administrative services charged with implementing policies decided by elected officials. The President of the Regional Council is the head of the administrative services, but he delegates their leadership to a General Services Director.

*The department* has a much larger historical background, being created since 1790; changes in structure and skills occurred until July 1987.

Prior to the Revolution, France was administratively organized in *the provinces*. The Constituent Assembly of 26 February 1790 decided to divide France into departments (initially there were 83 departments). Today in France there are 96 metropolitan departments and 4 departments overseas (Martinique, Guadeloupe, Guyana and Réunion).

Metropolitan Departments are numbered in alphabetical order (01 Ain, 02 Aisne, etc.). Corsica has 2 departments (20A - South Corse and 20B - Haute-Corse), so the numbering stops at 95 and not 96 departments.

The French departments are administrative divisions under the authority of a *prefect* and administered by a *General Council*.

*The General Council* is a chosen departmental assembly. In each canton, a general councilor is elected by uninominal majority voting with two rounds.

General Counselors are elected for a six-year term, half of them being renewed every three years. Each member of the Council may be re-elected. *The Chairman of the General Council* is elected from among the General Counselors at each renewal.

The Standing Committee is elected by the Assembly after each renewal. This committee is made up of the President of the General Council, Vice-Presidents and several elected members. The role of this committee is to deal with the current affairs of the department.

**The commune** is the third level of local government. France has more than the whole of its partners in the European Union (36,560 in metropolitan France, that is, without the overseas territories - figure, registered on 1 January 1991). It also accounts for 23% of the total area of the Union. To this fragmentation is added the low demographic density of most communes: 88% of the communes have less than 2,000 inhabitants and only 2,3% of the communes have more than 10,000 inhabitants.

So, the grassroots colleges of the local government in France are the communes. In France, we distinguish the following categories of communes: a) *rural communes*, which are divided into communes with a population of less than 3,500 inhabitants and communes with a population of over 3,500 inhabitants, and b) *urban communes*.

There are two representative authorities at the level of the commune: *the Municipal Council* and *the mayor*.

*The Municipal Council* is the deliberative authority, with general competence, working in public meetings. Municipal councilors are elected by direct universal suffrage for a six-year term.

The General Code of Local Authorities establishes in Art. L2121-2 number of councilors for each commune by population:

The Council shall meet at least once a quarter.

The municipal government is represented by the mayor, elected by the Municipal Council. Article L2122-7 of the General Code of Territorial Communities provides that "The Mayor and his deputies shall be elected by secret ballot and by an absolute majority of votes. If, after two rounds of voting, no candidate has obtained the absolute majority, a third ballot is held, the candidate who has obtained the relative majority being elected. In case of equal votes, the oldest candidate is elected".

The term of the mayor's term coincides with that of the Municipal Council. The resignation of the mayor is forwarded to

him by the representative of the State in that department.

Although not directly elected by citizens, the mayor is a major actor in the life of the local community. He carries out his judgments. The mayor is assisted by a number of deputy mayors nominated by the municipal council from among its members, to which they may delegate the right of signature for certain acts or delegate certain tasks.

Primary exercises two categories of attributions: **a)** attributions exercised on behalf of the commune and **b)** attributions exercised on behalf of the state.

**Intercommunal syndicate and district.**

Intercommunal cooperation is a means of remedying the fragmentation of the French communes, with the merger having a controversial success. It is widespread since France counts more than 17,000 public intercommunal cooperation institutions on 1 October 1992. The law on territorial administration of 3 February 1992, to stimulate intercommunality, created in addition to the three classical formulas, which are: the union, the district and the urban community, two new formulas: the community of communes and the community of towns.

**Intercommunal syndicate:** it allows neighboring communities to rationalize the cost of services such as water and transport. It can have a unique vocation (SIVU) or multiple vocation (SIVOM), ie expanded to more competencies or linked to a global project. There is also a mixed union, which associates a commune with another moral person of public law (region, consular room ...); for SIVU, as for SIVOM, funding mostly takes place through community participations. It can be fiscalized, SIVU or SIVOM perceiving contributions from taxpayers directly. On 1 October 1992 there were 14,449 SIVUs and 2,478 SIVOMs.

**District:** it provides various services in place of communes and addresses the problems of equipping the suburban agglomeration. He is equipped with his own tax. There are 242 districts.

**Urban community:** It is formed for the regrouping of

communes in agglomerations of more than 50,000 inhabitants and exercises with full rights, in place of communes, powers in terms of fitting out, equipping or economic development. There are nine urban communities. These are self-taxed groups.

**Existing clusters** are most often associated with the inter-community associative approach, limited to managing local services and making certain equipment to exploit economies of scale.

The community of cities for more than 20,000 inhabitants and the commune community without reference to a demographic threshold must necessarily exercise competencies in economic development and spatial planning. In addition, their skills must cover at least one of four areas: the environment, housing, roads, cultural, sports and school equipment. They are equipped with their own tax.

The degree of autonomy is generally related to the importance of our own resources, including local taxation and tariffs induced by service management, as well as revenue from the field:

- Local taxation: Land tax on built and unbuilt land, professional tax, housing tax. Local tax is almost half of the funding;

- Transfers: Global equipment and global equipment endowment;

- Loans: Approaching 10% of resources.

### **Arrondissement**

The District Council is chaired by the mayor of the district. The mayor is elected from among the members of the City Council Council.

The election of the mayor of the district following the general renewal of the Municipal Council takes place 8 days after the election of the mayor of the commune. The district council is convened on this occasion, exceptionally, by the commune's mayor. The district council designates one or more deputies from municipal councilors or district counselors.

The mayor of the district and the deputy ministers are assigned, within the district, with attributions in the field of civil status, school business, etc. Also, the mayor of the district has the same features as those that are recognized to the mayor of the commune. The mayor of the commune may delegate some of his duties to the mayor of the district, except for the annual review of electoral lists (Article L2122-26 paragraph 5 of the General Code of Territorial Communities). As mayor of a commune, the mayor of a district may delegate the right of signature to the general manager of the departments of the mayoralty.

## §2. Spain

Spain has an area of 504,800 km<sup>2</sup> and has 43,2 million inhabitants (parliamentary monarchy, bicameral parliament, decentralized unitary state, comprising 17 regions, 50 provinces, 8,077 communes). The Spanish Constitution of 29 December 1978 guarantees the autonomy of communes to manage their interests. Commune (*municipio*) is the third level of administration. Communes, as well as provinces, have administrative burdens: their autonomy is within the legal framework determined by the two higher levels of government, the State and the Autonomous Community. According to the Constitution, municipalities must have sufficient means to carry out their functions. The Law of 2 April 1985 gives municipalities local and supra-local competences and coordination and control systems if they prove to be necessary.

From the point of view of its structure, Spain is a **unitary state**, and the regions from which the state is constituted enjoy a wide, autonomy. The Constitution of Spain uses a number of terms which, at first glance, could lead us to the characterization of the state as a multinational, for example: in the Preamble it speaks of the "peoples of Spain", while in Art. 3 par. 2 speaks of "the other Spanish languages". However, at the same time, the constitutional text refers globally to the "Spanish people", to "Spanish citizens". There are historically established cultural

nationalities that have linguistic identities and specific traditions, but all these elements are encountered within the Spanish regional unitary state.

The notion of federalism itself remained associated in Spain with the ephemeral and unfortunate experience of the 1873 Republican Constitution, which degenerated into anarchy. Federalism was understood to imply a true fragmentation of sovereignty, likely to lead to the dissolution of the State. In this spirit, the constituent of 1931, essentially concerned with the question of Catalan autonomy, conceived an original system that excludes the generalization of inherent self-government in the federal system but opens the way for an optional autonomy that can be recognized in the constitutional framework of the central state as local authorities claim it in accordance with a procedure provided for by the Constitution.

This is the formula of the *integral State concept* in front of the Constitution of 1931 by the socialist deputy Jiménez de Asua, who wanted a synthesis of the unitary state and the federal state, respecting all forms of local autonomy. This doctrine of the *integral State* was borrowed from Hugo Preuss. The system will only be put into practice in Catalonia by the 1932 Statute elaborated following the referendum of August 2, 1931. For the Basque Country and Galicia, the Statutes only intervene after the Civil War was launched and as a means within it. Along with the franchise regime, the suppression of autonomies implemented within the Republic is radical, and any autonomist expression is suppressed as separatist. The restoration of democracy, following the 1977 elections, led to the implementation of the so-called pre-autonomy statutes, ie pre-constitutional autonomy. It began in September 1977 with the restoration of the General of Catalonia, continued in the beginning of 1978 with the assignment of regimes of super-autonomy to the Basque Country and Galicia, and eventually expanded almost to the entire Spanish territory before the entry into force of the Constitution.

The constituent took over the technique invented in



1931, consisting of not defining at once a system of single and generalized political regionalization throughout the territory, but recognizing the different nationalities and regions as a specific right to accede to autonomy (Article 146 of Constitution). At the same time, the Constitution covers only the framework of competence of the autonomous institutions, referring to the determination of the concrete content of autonomies to a considerably autonomous norm in its elaboration - even if it has to be approved in the form and procedure of an organic state law - **the status of autonomy**, which is the property of each of the autonomous communities.

The state is organized from a territorial point of view in **municipalities, provinces and Autonomous Communities**. All these entities enjoy autonomy in managing their interests.

### **Bodies of the Autonomous Communities**

The Spanish Constitution recognizes and guarantees the right to autonomy of the nationalities and regions that make up it. The right of autonomy is recognized by nationalities and regions on geographical, ethnic and cultural criteria.

### **Municipalities (Los Municipios)**

*The Provisional Agreement of the Mayoralty of the Kingdom* of 23 July 1835 drew the map of the Spanish municipalities, which is largely preserved today. As in most European countries and in Spain there are a large number of municipalities. On January 1, 2006 there were 8,108 municipalities in Spain.

The management and management bodies in the municipalities are:

- *City Hall (Ayuntamiento)*;
- *Mayor (el Alcalde)*;
- *Counselors (Consejales)*.

According to art. 140 of the Constitution, municipalities have full legal personality.

*Councilors* are elected by universal suffrage, equal, free, direct and secret. Each municipality is a single constituency with a variable number of councilors, depending on the population of

that municipality.

Councilors are elected for a four-year term, without being able to be dissolved by the mayor. Elections take place on the fourth Sunday of May.

The mayor is elected by an absolute majority of councilors in the same session establishing new municipalities.

The mandate of the mayor extends, in principle, throughout the legislature (4 years).

### **Provinces (Las Provincias)**

The provincial division dates back to Spain in 1833, with a slight change in 1927, which aimed to divide the Canary Islands into two provinces. At present, there are 50 provinces in Spain, which the Constitution pretends to be local entities with their own legal personality.

According to art. 141 of the Constitution, the province is a local entity with its own legal personality, consisting of a group of communes and territorial divisions, for the purpose of carrying out state activities. The Basic Law establishes a special role for the province, the electoral constituency for the appointment of both deputies and senators (Article 68 paragraph 2 and article 69).

Any change to the boundaries of provinces must be adopted by the Cortes through an organic law.

Since the Constitution of 1812, provinces as local entities are governed and administered by the Deputy (*Diputaciones*).

As administrative entities providing services to citizens, the deputies have temporarily lost their powers, which have been transferred to the Autonomous Administration (*Administración Autónoma*).

The autonomous governance and administration of the provinces is entrusted to councils and other collectives of a representative character.

*The Deputy Chairperson* is elected by the provincial deputies at its first constitutive session.

The province's core function is to assist and cooperate with municipalities. There is a tendency for most Autonomous Communities to deprive Deputies of a range of skills that traditionally belonged to them in areas such as economy, agriculture, public works, transport, health and social services.

### §3. Italy

The Italian Republic is divided into: **communes, provinces, metropolitan cities and regions.**

Communes, provinces, metropolitan cities and regions are autonomous entities with their own statutes, powers and functions set by the Constitution.

*Metropolitan cities (città metropolitane)* have a particular status, which was established by Law no. 142/1990. These metropolitan cities are Turin, Milan, Venice, Genova, Bologna, Florence, Rome, Bari and Naples.

In Italy there are 8103 communes, 106 provinces, 9 metropolitan cities and 20 regions.

The Constitution distinguishes two categories of regions:

- regions with a common law status;
- regions with special status.

#### a) **Regions with a common law status**

As regards the first category, the statutes determine, in accordance with constitutional provisions, the form of government and the basic principles of the organization and functioning of the regions. According to art. 123 par. 1 of the Revised Constitution of Italy, each region has a status which, in accordance with the provisions of the Constitution and the laws of the Republic, lays down rules for the internal organization of the region. The statute of the region also establishes rules on the exercise of the right of initiative, but also those relating to the referendum.

According to art. 123 par. 2 of the Constitution of Italy, the status of the region must be adopted by the Regional Council with an absolute majority of its members. The Statute is subject

to a popular referendum within three months of its publication at the request of 1/5 of the region's electorate or 1/5 of the members of the Regional Council. The text submitted to the referendum must be approved by a majority of valid voters' votes.

**b) Special status regions.**

Article 116 of the Constitution provides: "*The regions of Sicily, Sardinia, Trentino-Alto Adige/Südtirol, Friuli-Venezia Giulia and Valle d'Aosta/Vallée d'Aoste are accorded special forms of autonomy under special statutes adopted by constitutional laws*".

The necessity of a constitutional law is justified to the extent that special statutes may derogate from the provisions of Title V of the Constitution.

**Valle d'Aosta** was constituted in a region of special status by a Decree of 1945, and the autonomous region of Sicily was constituted by a decree-law of 15 May 1946 (these Decrees were, however, repealed by the adoption of Article 116 of the Constitution from 1947).

Constitutional Law no. 3/2001 allowed for the first time to take into account the bilingualism of the two regions, translating their names into German (Trentino-Alto Adige/Südtirol) and French (Valle d'Aosta/Vallée d'Aoste). The same law gave the Trentino-Alto Adige/ Südtirol an additional specificity, by reference to other regions with special status, because Art. 116 par. 2 states: "The Trentino-Alto Adige/Südtirol region is made up of two autonomous provinces of Trente and Bolzano".

The **Friuli-Venezia Giulia** region gains a special status through the constitutional law of 1963. This delay from the other regions was determined by the need to regulate territorial issues with Yugoslavia that arose with the war.

Following consultation with the Regional Councils, constitutional law may require the merging of existing regions or the creation of new regions with at least one million inhabitants, at the request of a number of municipal councils representing at

least one third of the inhabitants concerned, provided that the proposal was approved by referendum by the majority of the respective population.

Article 132, paragraph 2 states that the provinces or communes that make the proposal can be detached from the region and embedded in another. The transfer is authorized by an ordinary law after deliberation in the Regional Councils and the organization of a referendum to be adopted with the vote of the majority of the population concerned.

Putting autonomy into operation for Regular Regions has been delayed for a long time. The Constitution did not provide for a constitutional law to achieve this autonomy, but an ordinary law.

### **Regional organization**

The organs of the Region are, in terms of art. 121 of the Constitution, the following:

- Regional Council - *Consiglio regionale*;
- The Regional Assembly - *Giunta*;
- President of the Assembly - *Presidente della Giunta*.

The electoral system and the ineligibility and incompatibility regime for the President, Giunta members and regional councilors will be governed by a regional law respecting the fundamental principles established by the regional legislator.

#### **a) Regional Council - *Consiglio regional***

*The regional council* is the regional parliament. It exercises the legislative power, as well as other attributions conferred on the region by the Constitution and by law. We mention the election of regional delegates for the election of the President of the Republic (Article 83 of the Constitution), the request for organizing a regional popular referendum (Articles 75 and 132 of the Constitution). This Council has the right to make legislative proposals to the Chambers of the Italian Parliament (Article 121 paragraph 2 of the Constitution).

The Council shall elect from among its members a President and a Bureau.

For example, the Regional Council of Venice Region

(*Consiglio regionale del Veneto*) consists of:

1. *Il presidente;*
2. *ufficio di presidenza;*
3. *commissioni consiliari;*
4. *gruppi consiliari;*
5. *attri organi istituzionali.*

Regional councilors can not be held accountable for their opinions and votes cast in the exercise of their office.

**b) Giunta and the President of the Assembly -  
*Presidente della Giunta***

Constitutional Law no. 1/1999 and Constitutional Law no. 3/2001 allowed for a strong reinforcement of the executive body of the region.

*Giunta* is the executive body of the region.

*Giunta's president* represents the region, runs *Giunta's* policy and is responsible for it. He promulgates laws and elaborates regional regulations. The President has delegated state administrative functions in the region, following the instructions given by the Italian Government.

The President is elected by direct universal suffrage, unless the status of the region otherwise requires.

The President is a true Chief of the Government because he is the one who appoints and revokes the members of the *Giunta*.

The President is in charge of the Regional Council. The generalization of the responsibility of the President of the region to this body was enshrined in Constitutional Law no. 1/1999, which has profoundly modified Art. 126 of the Constitution.

The Regional Council may file a motion of censure against the President of the region, following a procedure similar to that provided for in Art. 94 of the Constitution.

The motion must be signed by one-fifth of the members of the Council and must be approved by roll call by an absolute majority of the votes of these members. The motion will be debated three days after filing.

The adoption of the censure motion against the President

elected by universal suffrage directly leads the resignation of the entire executive (*Giunta*) and the dissolution of the regional council.

The dismissal of the President of the region, as well as the dissolution of the Regional Council, may be made by reasoned decree of the President of the Republic. This is an exceptional way of control by the state, which is likely to intervene when the President of the region or the Regional Council has committed acts contrary to the Constitution or seriously violated the laws or for reasons related to national security. The Decree is adopted after consulting a Joint Committee on Regional Issues, composed of Deputies and Senators (Article 126 paragraph 1 of the Constitution).

### **Provinces and communes**

Law no. 142/1990 stipulated the right of provinces and communes to have their own status.

Communes have to set up binding bodies: a council and a mayor, as well as the provinces, which set up an executive body and a provincial president.

The provinces have a *Provincial Council* elected for 5 years, who elects a collegial executive body - *Giunta provinciale* - and an elected president.

Municipalities are headed by a *Communal Council* and a *mayor (Sindaco)*. The municipal council is appointed by the mayor for a 5-year term. The mayor, elected by the citizens, is the head of the communal executive. By Law no. 81/1993, in the communes with more than 15,000 inhabitants the direct election of the mayor was introduced by the citizens.

The utility of the provinces is special, in their capacity as administrative constituencies of the state, but also as authorities charged with establishing the link between the regions and the communes. The provinces play a role of technical and administrative assistance to the communes.

The territory of the communes is determined by regional laws, according to a procedure established by the regional legislation. By Decree-Law no. 276/2000 foresaw the possibility

of the communes to associate in order to carry out specific activities, which will be carried out under conventions.

#### **§4. Romania**

A special role in the public administration system is played by the local public administration bodies, constituted in the administrative-territorial units of the state - the commune, the city, the county and the task of solving the problems specific to each social collectivity.

As we have seen in Part Three, Chapter II, Section 4 of this paper, according to the regulations contained in the law of local public administration and according to art. 120 of the Constitution of Romania, the organization of the local public administration is based on the principle of decentralization, local autonomy and deconcentration of public services. The local public administration includes communal and town authorities (local councils and mayoralties), county councils and public services organized under the authority or under the authority of these public authorities.

In Romania, according to the Constitution, the local government is built on two levels, namely the communes and the cities - as basic territorial units and the counties, respectively Bucharest - as intermediary units between the local and the central local authorities.

**Local councils** are collegial authorities of the local public administration with an autonomous status, chosen to solve problems of local interest of the commune, the city and the municipality, consisting of elected councilors for a period of four years by universal, direct, secret and free vote, under the conditions established by the local elections law, by the inhabitants and among them. The number of these councilors varies according to the number of inhabitants of those localities.

Local councils exercise their power in ordinary and extraordinary ordinary meetings whenever necessary at the



request of the mayor or at least one-third of the members of the council; have attributions regarding the appointment of deputy mayors, the establishment of institutions of local interest and the appointment of the members of the administrative boards of the autonomous administrations and of the members of the state empowers from the commercial companies with state capital of local interest.

The local public administration law specifies that the deliberative body is the local constellation and the executive is the mayor, and in the exercise of their duties, the local councils adopt individual or normative decisions.

**The mayor** is the executive authority of local communities and at the same time fulfills the role of state representative in the administrative-territorial unit in which he is elected. The mandate is four years and expires when the new mayor takes the oath. The function of mayor is incompatible with the position of local councilor, prefect or sub-prefect, with other public functions.

The attributions of the mayor correspond to its quality as a representative of the state, ensuring respect for the fundamental rights and freedoms of citizens, the provisions of the Constitution, the laws and other normative acts issued by the state authorities; he also performs the status of civil status officer and manages civil status and guardianship. When acting as the executive authority of the local government, the mayor has to ensure the execution of the decisions of the local council, having specific attributions in terms of local budget, public order and peace, sanitation, public roads, etc.

In exercising his/her duties, the mayor issues provisions that are administrative acts subject to administrative litigation.

**The secretary of the local council** fulfills important tasks in the law enforcement activity, being subject to the status of civil servants. The function of secretary deals with the competition, requiring legal or administrative studies. The secretary of the local council ensures the convening of the local council, approves the draft decisions, prepares the works

included on the agenda, etc.

**The county councils** are all organs of the local public administration, but at an intermediate level between the basic communities located in the localities and the national collectivity in relation to which the state is organized. They are elected by universal, equal, direct, secret and freely expressed vote and consist of a number of councilors according to the number of the population in the county.

County Councils represent local communities and will act to achieve their interests at county level by organizing structures and services on the basis and in the execution of the law; do not have a hierarchical situation superior to the public administration bodies in communes, cities, municipalities.

The County Council carries out its activity in ordinary meetings once every two months and in extraordinary sessions whenever it is needed.

### Section 3

#### Local government structures in federal states

##### §1. Germany

The former Federal Republic of Germany has long been the only genuine federal state of the European Community. The division of the former Federal Republic of Germany into eleven Länder dates back to 23 May 1949, when the Fundamental Law (*Grundgesetz*) was promulgated.

In the former German Democratic Republic, the five Länder were abolished in 1952. After the unification of 3 October 1990, they were restored and integrated into the FRG and the European Community. At present, Germany's population is over 82 million.

The three levels of constitutional authority are: **the federal government, the Lander (the regional states), the communes (*Gemeinden*), and *the Kreise* as local authorities.**

On January 1, 1980, Germania numbered 8,501 communes. On January 1, 1980, Germany numbered 8,501 communes.

The Fundamental Law of the Federal Republic of Germany guarantees the autonomy of the communes. The organization of local communities is subject to the Länder legislation, which explains the great diversity of local structures. However, the Länder must take into account Article 28.2 of the Basic Law, which "guarantees the communes the right to settle, under their own responsibility and within the laws, all the problems of the local community". *Kreise* and *Gemeinden* (Communes) have many powers, which belong only to them, and which are enshrined in the constitutional texts of the Land, under the control of the Federal Constitutional Court. Municipalities can intervene when drafting texts that are likely to change their status, especially in financial matters.

The Fundamental Law guarantees an important place for the federal system and circumvents its principle from any constitutional review.

In addition, the Land is more and more involved with the execution of some administrative functions that have been delegated by the federal state. This includes: defense administration, federal motorways, corporate taxation, and the central government exercises an opportunity check on how to perform those actions; in addition, he may intervene in the process of appointing civil servants on different posts.

In art. 28 paragraph (1) of the Fundamental Law states in a clear manner: "In each *Land, county and municipality* the people shall be represented by a body chosen in general, direct, free, equal and secret elections. In municipalities a local assembly may take the place of an elected body".

Only in exceptional circumstances does the central federal administration have its own executive bodies throughout the territory (diplomatic and consular, financial, postal, transport, etc.). Normally, these institutions are created only in areas where the Federation has legislative powers.

Federal and Land authorities may exercise their

administrative functions either directly through their own bodies or indirectly through legal entities, autonomous legal entities.

Where these functions are directly exercised by the legal personality of the federal or land authorities, there is a general power to issue directives from the ministry to the smallest administrative units. Where such functions are exercised indirectly, legally autonomous administrative bodies (eg foundations, corporations, etc.) are subject only to the legality control by the State.

However, a number of administrative tasks are also transferred to particular parties (eg transport companies), with some exceptions, such as: public protection, which remains under public law.

### **Arrondissements**

The main administrative division of the Land is the constituency, an entity that does not have legal personality. The area and population of a constituency are variable: from 178 km<sup>2</sup> to 16,338 km<sup>2</sup>, from 300,000 to 5,600,000 inhabitants. For example, the Land of Rhine-Westphalia comprises 6 regions, each with an average of 6,200 km<sup>2</sup> and 2,650,200 inhabitants, and in Germany there are 32 regions.

The Land Government has one representative in each region, which has the competences to coordinate the entire activity. He is controlled by the Land's Minister of the Land and by each minister responsible for technical matters.

The administration of the region is important and is structured in several services.

The regions exercise a guardianship over independent cities and communal groups.

Local departmental collectivity of departmental level is the **arrondissement - Kreise**.

The Basic Law and the Constitutions of the Land recognize the administrative autonomy as well as the representativeness of its own authorities.

The status of the arrondissement is determined by a

special code - *Landkreisordnung*, adopted as a law of the Land, which differs from one Land to another.

The arrondissement has important prerogatives of public authority. Among these are: the power of organization, the power to recruit and manage staff, the financial and budgetary power and the power to issue certain general legal rules for the territory of the district. He also has the right to seal, coat of arms and flag.

In general, *the compulsory attributions* of the arrondissement are: the construction and maintenance of intercommunal roads; landscaping; maintenance of natural parks; social assistance; construction and maintenance of hospitals; the establishment and maintenance of high schools and vocational schools; collection, processing and storage of household waste.

The arrondissement may transfer, under the law, some of its attributions to the commune, which are large enough to be able to carry them out, or may take over some of the functions of the communes.

It can also assume some *optional attributions*. Assuming them depends on financial capacity and political will. Some of the more frequent facultative duties include: support for certain cultural activities; construction and maintenance of public libraries; promoting the economy and, in particular, tourism; building sports facilities.

In order to carry out its duties, the district has elected bodies and an administrative apparatus.

The representative body, directly elected by the population, is **the Assembly of the Arrondissement - *Kreistag***. The members of this Assembly are elected by direct vote for a term of **five years**. The Assembly decides on all issues pertaining to the competence of the district, but it may delegate some tasks to the President of the Assembly or to committees made up of its members. These committees sometimes have important powers.

At the level of the arrondissement, a particularly important role belongs to the **President of the arrondissement - *Landrat***. He is directly elected by the population (eg Bavaria,

Hesse, North Rhine Westphalia, Sarr, Saxony, Thuringia, etc.) or by the Assembly of the Arrondissement (*Kreistag*) in Brandenburg, Schleswig-Holstein for periods between 8, 6 and 12 years, depending on the Land.

The president of the arrondissement is an elected public official who has both the position of President of the Assembly of the district and the head of the administrative apparatus in the district.

In the Land of the West of the Federal Republic of Germany, we find 200 arrondissements and 80 cities assimilated to the arrondissements. For a city to be assimilated to a district, it must have at least 50,000 inhabitants (Bavaria) or more than 100,000 inhabitants (Hesse and Renania - Westphalia). As a general rule, large metropolises with more than 100,000 inhabitants are assimilated to arondisments. Western ranks have, on average, a population of 169,000 and a territory of 1,000 km<sup>2</sup>.

In the 5 new Landes of the former German Democratic Republic, we find 190 quarries (*Kreise*) with a population of between 50,000 and 150,000 people.

### **Communes - *Gemeinden***

In Germany there are 117 **cities** and 16,068 **communes** whose autonomy is very high. The concept of decentralization in Germany translates, in a particular way, through the constitutional recognition of the communes' own field of action. In this respect, Art. 28 par. 2 of the Fundamental Law states that "*they (the communes) must be guaranteed the right to regulate, on their own responsibility, on the basis of the laws, all the problems of the local communities*".

The German tradition of local self-government, expressed here, finds a diverse application in each Land, with the task of legislating the organization of local communities.

Local grassroots collectives are *communes* that have different statutes.

Communes are basic units of German local communities. There are several types of communes in Germany.

The status, and even more so, the structure of the communes often presents notable differences from one Land to another.

The term " commune" applies to both large cities and small rural areas.

Schematically we can distinguish between the following types of communes:

- The major metropolises - *Stadtkreis/kreidfreie Stadt* - which generally have more than 100,000 inhabitants;

- Medium cities - *große Kreisstädte* - with over 20,000 inhabitants of a *Landkreise*;

- Small towns or villages in the countryside.

The administrative and financial capacity of the communes deepened with the reform carried out between 1965 and 1975 in the Land of the former Federal Republic of Germany. During this period, the number of communes in a country that numbered almost 60 million inhabitants at that time was reduced from 25,000 to 8500. After the reunification, the communes of the old Democratic Republic of Germany have been preserved. They were much smaller than those in the Federal Republic of Germany, being more numerous in relation to the territory and the population of the country.

The current number of communes in the Federal Republic of Germany is 16,000.

In the Western Land, around 85% of the population lives in communes with more than 5,000 inhabitants. Only 37% of the communes have less than 1,000 inhabitants and about 1% of the communes have more than 100,000 inhabitants.

The status of the commune is governed by the principle of free administration, which means that it solves, in its own name and on its own responsibility, all the local problems. To this end, the commune has a number of prerogatives, including: financial autonomy, ability to plan development, the power to adopt certain normative acts, and the ability to recruit and manage staff.

Municipalities have their own attributions, tasks delegated by the Land and, possibly, some attributions

transferred by the district. Own assignments may be mandatory or optional.

Apart from the above mentioned attributions, the communes can also act as economic agents, within the limits established by the law. Thus, they can set up economic enterprises if they meet a public need. Normally, these businesses need to be profitable, and their profits go to the commune's budget.

Most of the Land Constitutions regulate the freedom of action of communes. Thus, the communes are, within their territorial limits, the only responsible and promotional, exclusively, of the local public administration as a whole. They perform all public tasks insofar as they have not been attributed to other authorities through legal provisions.

Each Land has its own municipal legislation, although local government bodies are characteristic of all states (both federal and unitary), and these are: City Hall and Council (Municipal/Communal).

Regarding the organization of communal public administration, there are three main forms, namely:

**1) the local regime**, where **the authority of the Communal Council** prevails. Within this system, the Council is elected by the citizens and exercises both legislative and executive tasks. The role of the mayor is limited, and can only be acted upon by the Council. This regime is very common in southern Germany, but in various ways. For example, in the Baden-Württemberg Land, the chairman of the municipal council is also the head of the local public administration. Elected for 8 years by the Council, he is a relatively independent civil servant, who also chairs the Citizens Committee, a body set up only in communes with over 3000 inhabitants; a variant of this system is the local regime of British influence, in which the powers normally attributable to the Council are largely exercised by the administrative commission, headed by the president of the communal council. But the chairman is not entitled to exercise



administrative functions. They are entrusted to an official elected by the Council for a period of 6-12 years leading the communal administration and executing the decisions of the Administrative Commission. In addition, he does not obey local authorities but receives directives from the central authorities of the Land;

**2) the communal regime**, in which **the mayor's authority** prevails. He is the head of the local government and a representative of the central government, being elected for a period of 8-12 years in some Landes, and in others only for a four-year mandate;

**3) the communal regime** in which **the authority of the Magistrates' Committee** prevails. This is a collegial body, in which the mayor has an honorary position. The Committee is elected by the Communal Council, which remains the legislative body and the tutelage body on the local administration.

Communes fulfill both compulsory and optional skills. The compulsory ones are: school construction and maintenance, pollution control, water and energy supply, gas production and distribution, provision of assistance to minors, etc. Optional attributions are: granting of economic aid (land concessions, credits for industrial, commercial, etc.), building of slaughterhouses, wholesale markets, maritime or internal public ports, transshipment centers.

Certain competencies are exercised on behalf of the federal administration: housing, police, fire brigade.

In Germany, local laws on administration are delimited according to an essential feature, namely: if the local government and the local council are headed by one and the same person - **monism** - or if there are two persons - **dualism** - that is an honorary ruler of the local council (the mayor) and a head of the local government.

The organization of the administration of the German communes has three models:

- **the "Council" model** encountered in North Germany;
- **the "Magistrate" model**, spoken in Hesse and Schleswig-Holstein;

- **the "Mayor" model** in South Germany.

### **The model of the "magistrate"**

The "Magistrate" model is applied in Hesse, but also in the cities of the Schleswig-Holstein Land and has its roots in Prussia's municipal status. This system is composed of two main organs.

It presupposes, on the one hand, the existence of a Municipal Council - **Stadtrat**, a deliberative body, elected by direct vote for a four-year term, and, on the other hand, an executive body, the Magistrate.

The magistrate is a collegial body composed of the mayor and his deputies elected by the Council for a 6-year term (Hesse) or 6 to 12 years (Schleswig-Holstein).

The magistrate being a collegial body does not prevent each member from having his own duties. He represents the common in relations with third parties and manages the services of the communal administration. It also prepares the meetings of the Municipal Council and executes its decisions.

### **Driving through the Mayor**

**The "Mayor" model - *Bürgermeister*** - is a system inspired by the tradition of South Germany, where the mayor enjoys a special consideration. This system is about to be adopted, with some modifications, by all the Landes.

The system involves a mayor with important powers. The deliberative body remains the Communal Council, elected by direct vote, for a five-year mandate, but the mayor has a great influence, being also elected by direct vote for an 8-year term. He presides over the communal council and is the head of the commune administration.

The election of the mayor by direct universal suffrage in two rounds is the source of a great autonomy vis-à-vis of the political parties, including the one who proposed it. He thus enjoys greater legitimacy over the Municipal Council. Its attributions are specified by the Municipal Code. Among these attributions we can highlight:

- preparing the sessions and chairing the municipal council;
- execution of decisions;
- the management of the municipal administration;
- managing the commune's daily problems;
- other attributions established by law or delegated by the Municipal Council, etc.

**The Northern Germany model - the leadership through the Council**, which is characterized by the following:

- the citizens elect the Local Council of the City, which in turn appoints a president (the mayor general);
- the local council chooses a municipal director (city director) who will be also the deputy mayor of the locality and will perform the duties of the local administration leader.

**South Germany Model - Leading through the Council**

**The "Council" model** is British inspiration. In this case, the predominant authority is the **Municipal Council - Gemeinderat**, elected by direct vote for a four-year mandate, which has all the important tasks.

The mayor, elected by the council, chairs the sittings and represents the commune, for an honorary basis.

The services of the communal administration are headed by a Director, elected by the Municipal Council for a fixed period (6, 8 or 12 years, depending on the Land). It actually deals with the commune's affairs.

Depending on the size of the commune, the Director may be assisted by a number of deputies, also elected by the Council, for a fixed term.

There is also a board of directors in Saxony, consisting of a director, his deputies and a number of municipal councilors. The Committee prepares the meetings of the Board but also has the right to decide in certain areas. The Director is responsible for the execution of the decisions of the board of directors and the decisions of the municipal council.

**The communal management model in the new**

**German Land** has as its main features:

- citizens choose directly the community representatives;
- the local council has a president, a presidency or a governing body;
- mayor and deputy mayors are elected by the Local Council for a period of 4 years;

German local communities enjoy, by virtue of the federal state organization principles expressed in the Basic Law, a degree of autonomy difficult to reach by other European states.

## §2. Switzerland

The surface area is 41,000 km<sup>2</sup> and the number of inhabitants is 7.5 million. This small country, marked by a great diversity of its main components (languages, cultures, different religions), has a relatively complex politico-industrial system in a federalist structure with three levels: the Central State (called the Confederation), 23 cantons and about 3,021 communes.

The idea of federal canton organization has historical roots and originated from the practice of alliances linking populations and territories to common interests.

The federal organization of the state is made taking into account the existence of three entities: **the federation, cantons and communes.**

The Constitution states that all cantons are sovereign insofar as their sovereignty is not limited by the Constitution. Cantons exercise all rights that are not delegated to the Confederation.

The fact that the Constitution provides, on the one hand, the sovereignty of cantons, and on the other hand, the sovereignty of the Confederation does not mean that there is a conflict of sovereignty. In fact, cantons benefit from wide autonomy and not from sovereignty, in the classic sense of the concept.

Regarding communes, the Constitution stipulates, in art. 50 that their autonomy is guaranteed within the limits set by the

cantonal legislation. According to the federal principle of participation, cantons are represented in the Council of States by two members, and semi-cantons of one member, regardless of the size of the population.

Article 42 of the Constitution makes a distinction between the tasks of the Confederation and those of the cantons. The tasks of the Confederation are those attributed to it by the Constitution. Cantons are the ones that define the tasks they have to fulfill within their competencies.

Each canton has its own governing bodies. Thus, in each canton there is a *Cantonal Parliament*. The Confederation does not prescribe any rules of cantons regarding their modalities of parliamentary organization. The only explanation he makes is that the representatives must be democratically elected.

**The Cantonal Government** (*Conseil d'État*) is the highest executive and executive authority in a canton. He is the one who leads the government's cantonal activity and cantonal administration. The Cantonal Government is entrusted with the preliminary legislative procedure, with the elaboration of the financial plan and budget, as well as with the representation of the canton both internally and externally.

Each cantonal government consists of 5 or 7 members (*state councilors*), each tasked with the management of a department or cantonal administration department. As with the Federal Council, the work of the Cantonal Government is governed by the principle of collegiality. The presidency of the Government changes annually according to seniority and does not imply the acquisition of a special status, but only the leadership of the State Council meetings.

The government of each canton is directly elected by the electoral body. In most cantons, elections take place every four years. In 24 of the 26 cantons, the election is based on the majority vote, with the exception of the Tessin canton and the Zoug canton, where proportional representation is used.

The main sectors of activity in all cantonal administrations are: finance, justice, economy, social protection,

police and security, housing and public affairs. Organization in departments varies from one canton to another.

### **Communes**

Communes form the basic echelon of Switzerland's political organization. Apart from the tasks entrusted to them by their own canton or by the Confederation, municipalities establish their own competencies in different fields.

Communes are political entities endowed with their own legal personality and with different competences, such as budget management, decision-making procedures, their internal organization, etc. Most of the competences are autonomously established in common areas such as: territorial organization of the commune, supply, waste management, communal tax administration, education or social.

The municipal organization in Switzerland is characterized by a highly fragmented structure: more than 40% of the communes have less than 500 inhabitants, while the average population of a commune is 2300 inhabitants. The number of communes is gradually diminishing due to multiple mergers. In 2005, there were 2867 communes in Switzerland, much higher than in other European countries of comparable size to Switzerland.

The size of the municipal executive varies greatly. The municipal executive authority can be limited to 3 people, but this number is often much larger.

The president of the commune has a relatively important status, since it is elected in the majority of cases directly by voters and has specific competences. Approximately 4/5 of the communes practice direct democracy in the form of a *communal assembly*.

Switzerland is a clear example of liberal corporatism. It illustrates exemplarily the three major elements of the system: tripartite concentration, relatively small and comprehensive interest groups, the preeminence of representative associations.

Swiss federalism, by its principles, by its inherent

balances and respect for local liberties, presents that heterogeneity which is based on the particularities of cantons and communes.

**The control of cantons** on communal legislation is very strong in the field of communal finance. Local tax is mainly income tax. Differentiate direct income tax on individuals, direct tax on individuals' wealth, income tax, corporation tax, real estate tax or complementary land tax and the right to move on real estate transfers

Organization of the commune is democratic. Municipalities all know at least one deliberative body. Most often, the latter is composed of a citizens' assembly or an elected parliament. In the Swiss conception, the people, the ensemble of active citizens, is the sovereign to whom the final decision belongs, thanks to the two institutional instruments: initiatives and the referendum. In the State considered as a car, the initiative would be the accelerator pedal, and the referendum brake; the initiative invites the authority to deal with one problem or another, and the referendum stops the legislative process.

The popular initiative exists in most cantons for parliamentary communes and looks at the whole of local public affairs, of which the regulatory power.

**Semi-direct democracy in the communal plan:** the communal domain is one of the rarest, perhaps even the only, which remains in the exclusive competence of the cantons, hence the wide variety of solutions, especially in the field of citizens' rights (extent and modalities) at local level.

The extent and modalities of the application of popular rights also varies according to the system of deliberate authority: the communal assembly open to all citizens or the elected parliament. In all cantons citizens elect directly the communal parliament, where it exists, as well as the executive body.

**The mandatory referendum** is registered in most cantons, except for three, where the communal parliament is the rule. It generally refers to the main acts of the local authority, such as: the budget, the important expenses, the real estates and

communal regulations.

The optional referendum is associated with the institution of the parliament. For municipalities with popular assembly, several cantonal legislation also empowers a certain number of citizens to demand that assembly decisions be subject to the approval of the assembly of the electoral body.

Certain legislation knows an extraordinary type of voluntary referendum: a referendum at the request of one-third of parliamentarians or most of them.

Decisions that may be the subject of a voluntary referendum are in principle determined by cantons as well as by the communes themselves: the cantonal laws contain a list of objects (with the possibility for common ones to complete it) or a general clause limited by a negative enumeration. Rare are the cantons which, in this area, leave no freedom to communes.

Considered globally, the practice of a semi-direct democracy in the Swiss communal plan tends to expand, in the recent period, notably by making frequent use of the optional referendum. However, in relation to the mass of decisions taken by municipal authorities, the issues subject to popular vote are still very few, apart from the mandatory referendum, especially known in Germanic Switzerland. The phenomenon remains so modest in scale.

### **§3. Local regime and provincial skills in Canada**

There is a legislative assembly in each province, very much like the House of Commons. It debates draft laws on provincial issues, which are then promulgated by the queen's representative in the respective territory - the lieutenant governor. This is, in fact, the head of the province's executive. The members of the legislative assembly are elected on electoral constituencies, determined according to the number of inhabitants.

The exclusive powers of the provincial assemblies



include the development of regulations on direct taxes and duties, necessary for provincial expenses, charity works and hospitals, municipal institutions, works of local interest, property and civil rights, creation of local courts, penalties for failure to comply with provincial laws.

The power restrictions of Provincial Legislative Assemblies are laid down in the 1982 Constitutional Law. According to the provinces, they can modify their own provincial constitutions, but can not legislate on the powers of the lieutenant governor, the right to vote of their own citizens or secession. Also, the Federal Parliament can not arrogate its powers to exclude a province from the Confederation.

The federal parliament and provincial legislative assemblies share their powers in agriculture, immigration and some aspects of natural resources. In the event of a legislative conflict, the provisions of federal laws prevail. The same procedure for sharing competencies exists in the field of social protection and protection of the disabled and the elderly. The Constitution of 1867 provides that all areas that are not expressly envisaged to come under the jurisdiction of provincial assemblies are the federal parliament.

At first glance, it can be said that the powers of the Federal Government are very high. But the provinces have wide competencies, especially in the field of labor and social protection legislation (working time, minimum wage, workplace indemnities, work safety and other aspects of labor relations). The exception for provincial competences is the areas considered to be of national interest to Canada, such as banking, broadcasting, rail, naval and maritime transport, atomic energy, post, grain silos, state-owned enterprises, etc.

Although social security is in principle the competence of the provinces, the federal government has established a health and social care system under which the provinces receive subsidies, provided they are used to raise standards in those areas. So, through the federal government's control over the use of provincial subsidies, there is also a tendency to centralize

competencies, opposed to the "self-government" specific to the Anglo-Saxon countries.

Local collectivities are created by law, which determines their structure, capacity, resources and is also free in the law, enjoying "self-government". However, they are subject to control on three levels: judicial, governmental and parliamentary.

Throughout Canada, there are almost 5,000 municipal administrations, divided into different categories, similar to British local communities: counties, burgs, county-burgs, urban and rural districts, communes.

**Counties** are intermediate administrative-territorial structures between provinces and other local communities. In the counties there were some cities, which have the title of burgers, as well as urban agglomerations, established in urban districts. There are also rural districts, divided into communes. In each of these constituencies there is a council elected by secret ballot. To be elected, you must have a house or a land in the constituency, or be registered in the electoral rolls. Women have the right to vote and are eligible.

**Communes** are run by a mayor and a communal council, consisting of three - ten members elected by secret ballot.

Above the communes there are rural and urban districts, each commune choosing a councilor in the district council. The chairman of the district council may be elected from or outside the council.

Major urban agglomerations are considered burgers and are set up by an act of the Provincial Legislative Assembly. The burgers are administered by elected councils, composed of mayors, aldermen, and councilors. The mayor is elected by councilors, among them or among the *aldermens*. The council has different committees, each dealing with various important issues. An important role is played by the secretary of the council, who is the head of the municipal offices and, being a legal entity, is the legal counselor of the elected councilors. He keeps the minutes of the sessions and watches the execution of

the judgments. The burg council is under the control of the county, but it has great autonomy, especially in financial matters.

The counties have an organization almost the same as the burgs, with the distinction that, instead of the mayor, they have a chairman. The number of county councilors is fixed by the Provincial Government, basically one for each parliamentary constituency in the county. The counties have responsibilities with regard to health, unemployment, education and control of lower local authorities, exercising supervision over districts and communes.

**The city-burgers** are the big cities that, although they are burgers, have been assimilated to the counties. The duties of their councils bring together those of an ordinary burg council and those of a county council.

Within local governments, services are numerous, requiring rich resources and a large staff. The provincial government exercises control over them. These services are some mandatory, others optional for local authorities; all, however, must be authorized by law and operate under the law. Local services can be classified into:

- police and protection services: police, firefighters, health control, consumer protection;
- services required by the necessities of joint existence: urban planning, construction, sewage, cleaning, roads and bridges, parks and gardens;
- education, libraries;
- social services: maternity wards, crèches, dwellings, charity settlements;
- services necessary for commercial and industrial needs: water, markets, public transport, gas, electricity, municipal kitchens.

Local officials are not a single body, like the federal ones. Each local authority freely recruits its agents, with some categories being required by the provincial government. In addition to these rules, local authorities hire and revoke the rules they set themselves. However, there is a tendency to unify

provisions regarding local officials and to unify their situation with those in the federal public service.

Local budgets have elasticity. Budget sources are either local taxes on real estate, or government subsidies for services of national interest, or extraordinary resources resulting from loans that can be made with legal authorization.

Government control is being exercised, especially in terms of remittances, on - usually - government-subsidized services. If irregularities are detected, the local authority may be provisionally suspended.

The call for state subsidies leads to a subordination of local authorities and the displacement or transfer of attributions between local authorities. Many areas that seemed to be reserved for local authorities were transferred to the central administration.

#### **§4. The local government system in the United States of America**

Local authorities base their powers on state law by forbidding them to exercise their authority out of the law.

The most important local authorities are those of cities (cities) and counties. Currently, 3/4 of US residents live in cities, the largest being Chicago and New York, with millions of inhabitants.

There are several municipal government systems. A first system is that of the special charter. The state grants to each city a charter, which is its own and continues to exercise some supervision over municipal administration, a system operated in 24 states.

Another system is that of the **classified charter**, the laws in this case setting different types of cards, which correspond to different categories of cities, by importance and population.

In municipal government there are three organizational systems: 1. mayor and council; 2. governing by commission; 3.

governance through the administrator

**1. The first system** works in two ways: with primary or weak primary.

The first variant - **the mighty mayor**. In this case, the council is a small number, from 2 to 50 members: Chicago - 50, Philadelphia - 22, New York - 18, Los Angeles - 15, etc.

Elections based on this system take place in neighborhoods and the mandate is 1 to 6 years. Counselors have salaries. The Council exercises municipal legislative power, votes the budget, approves the main appointments of officials, but before it, the mayor's authority arises.

The mayor, as a rule, is not a member of the assembly; he is independent and possesses great powers: he is elected on a political basis for a period of two or four years, and in fact, through authority and firmness, carries out executive activity.

The mayor, in this system, intervenes in the issues that the council is voting on, recommends the adoption of some, and may oppose the entry into force of those who dislike it, having the right to veto. He prepares the budget, appoints the senior officials, with or without the council's consent. As a result, in a certain way, it acts in a manner similar to the president of the state.

The second variant - **the weak mayor**. In this case, the council appoints the heads of services and the main municipal officials and strictly controls the administration. In the case of measures proposed by the mayor, they can be removed, their veto being countered by the municipal council. In this situation, the mayor has only an honorary role, the system being practiced especially in small towns.

**2. The second system - governance through the committee.** This system of governance appeared in 1901 at Glavstone, after a cyclone that destroyed the city. Later, the system expanded, completed and modified in Detroit. Currently, the Commission's governance system is used by approximately 20% of cities, especially in the medium-sized ones. Two major cities, however, use this governance system through

commissions: New Orleans and Saint Paul.

In this system the power belongs to 3-5 or 7 commissioners, who are elected for two or four years, on constituencies, on the basis of the non-political distribution and can be revoked before the deadline. The elected commissioners work in college, under the chairmanship of one, each of whom is headed by a large municipal service.

**3. The third system - the city's administrator.** This system - "city manager system" - appeared in a small town in 1908; expanded after the First World War. Currently, 1/5 of US cities use it, including Boston, Cincinnati, Kansas.

In this system, besides the administrator, the council and the mayor function, but they do not have effective power: the manager-administrator ensures the entire management, controls the administration, appoints the officials and agencies, being a specialist in the municipal administration.

The administrator system has many advantages, ensuring honest and economical management. This system has the advantage of professional specialists trained in universities with faculties preparing municipal administrators. These specialists begin their careers in small towns or at the head of municipal services in larger cities. However, this system has a great disadvantage: the manager is not supported by a party, such as an elected mayor, who exercises some action on public opinion.

In addition to the municipal government system, the county system, created by the English counties, also works. Each state adapts to its needs: some are one thousand square miles, others have 20 square miles - some 300 inhabitants, others 4 million.

Counties have legal personality and benefit, like the state, from immunity from jurisdiction, other than contractual liability where applicable, common law. These counties are administered differently: some according to the special charter system, others by the optional charter system, and others by adopting their own governing rules, subject to compliance with

general principles set by state law.

In the county there is little practice of separation of powers. The council assembly elects a council and officers: in small counties, at most three members, the largest council being more numerous, from 15-25 members or even one hundred in the counties of the cities, the mandate being two to four years. The executive functions are performed by elected officers: auditor, treasurer, assistant, cleric, public ministry, sheriff, school superintendent. This system of officials and officers elected at the head of specialized services is analogous to that existing in the federation states.

Administration is assured in the United States by an ensemble of organs that is designed to meet public needs. All administrative bodies are set up to provide services.

## **§5. Belgium**

Belgium has an area of 30,500 km<sup>2</sup> and has 10.47 million inhabitants (2006). Parliamentary monarchy, bicameral parliament, federal state, comprising three regions, three communities, 10 provinces and 589 communes.

In 1830 Belgium was organized as a unitary state and preserved the characteristics of this form of the state for over a century and a half. Belgium was a state in which "the law was the same for all". The Belgian unitary state did not exist in a pure state. However, the state power was exercised in decent decentralized forms, taking into account the different linguistic characteristics of the population belonging to distinct cultures, unlike the typical unitary states. Communes and provinces with traditional, linguistic, distinct cultural features at the outset benefited from the right to administer their interests and to assert their own particularities of community life.

The efforts to federalize the country have intensified in the 1980s and eventually led to the adoption of a federal federation.

## **Communities and Regions**

Article 1 of the Constitution defines Belgium as a federal state, made up of **Communities** and **Regions**.

As far as Communities are concerned, they are defined by linguistic and cultural characteristics. These are the French Community, the Flemish Community and the German-speaking Community.

Belgium is divided into three major regions, namely: **Wallonia**, **Flanders** and the capital of the country, **Brussels**.

At the same time, the Constitution recognizes the existence of **four linguistic regions**, namely: the French-speaking region, the Dutch-speaking region, the bilingual Brussels region and the German-speaking region.

Each Common Kingdom is part of one of these linguistic regions.

Although there are distinct linguistic communities, which implies the existence of different ethnic groups, however, the Constitution uses the notion of "nation," that is, of ethnic compactness, which presents common traits in terms of historical, cultural, linguistic, spiritual etc. According to art. 33 of the Constitution, all powers emanate from the Nation and are exercised in the forms established by the Constitution.

Belgian federalism carries an original component: *the geographic cut-out follows the route of the linguistic regions*.

Each community of the three known form a linguistic region.

The regions are divided into provinces and communes. Provincial and communal institutions are regulated by law.

The Belgian legislator set out some guiding principles that apply to both provinces and communes, namely:

1. the direct election of the members of the provincial and communal councils;
2. the attribution of provincial and communal councils to all matters of provincial or communal interest;
3. decentralization;
4. the public character of the meetings of provincial and



communal councils, within the limits provided by the law;

5. the public character of budgets and accounts;

6. the intervention of the tutelage authority or federal legislative power to prevent the law from being violated or the general interest affected.

The Constitution offers provinces and communes the possibility to associate, and provincial and communal councils to meet together to deliberate.

### **Provinces**

Flanders are divided into 5 provinces: East Flanders, Antwerp, West Flanders, Limburg, Flemish Brabant.

Wallonia is divided into 5 provinces: Namur, Luxembourg, Hainaut, Liege, Walloon Brabant.

Provinces have a dual function. These are *subordinate local authorities* charged with executing certain decisions taken by other powers. On the other hand, they are *autonomous political collectivities*, endowed with their own decision-making power. Provinces are competent in all areas of provincial importance. Provinces are under the auspices of the Region.

Each province has an elected assembly, *Provincial Council* and an executive, *Provincial College*. At the head of each province is a Governor appointed by the Government of the Region.

*The Provincial Council* consists of 47-84 members elected directly by the polling station. Provincial elections are held every six years, at the same time as the municipal elections.

*The Provincial College* consists of six provincial deputies elected by the provincial council of its members, plus the Governor who does not have the right to vote. The provincial college is in charge of the provincial council. Both the Provincial Council and the Provincial College may adopt regulations and ordinances in areas of provincial interest.

*The Governor* is the representative of the Provincial Regional Government. He is appointed for an indefinite period and has specific competencies. The governor is part of the provincial college, but also exercises his own duties, which is his

role as representative of the regional government or entrusted to him by the federal authority or by a community. Among his competencies we mention the maintenance of order and administrative tutoring over the communes. Also, the Governor is watching for law enforcement. Each province organizes its administration differently.

### **Communes**

Communes are governed by a new communal law adopted on 1 January 2002. Each commune has its own administrative organization. At the Belgian federal state there are 589 communes. There are 262 communes in Wallonia, 9 of which are located in the German-speaking region, 19 in the Brussels-Capital region, and 308 in Flanders.

Communes are under the administrative tutelage of the Region. For German-speaking communes, since 2005 the administrative tutelage has been transferred to the German-speaking Community. Among the compulsory missions to the communes we mention: the organization of the primary communal education, the keeping of the civil status registers, the drawing up of the electoral lists, the maintenance of the order, the maintenance of the street infrastructure.

Within each community, we distinguish the following political bodies:

- The Communal Council;
- College.

*The Communal council* is made up of members elected by direct vote, in varying numbers, according to the number of inhabitants of the respective commune. Elections take place every six years, on the second Sunday of October. The Council shall meet when convening the College, when necessary, but not less than ten times a year. The Council decides on issues of common interest. He may also deliberate on other issues that are raised by a higher authority.

The commune is governed by a college, consisting of *the mayor (Bourgmestre)* and *the communal deputy presidents*

(*Echevins*). The College is a miniature Guvem. The College is not responsible to the Municipal Council.

The College meets once a week, at a time and hour set by the commune's organization and operation regulations. College sessions are not public.

The mayor is appointed by the Guvemator. The mayor presides over the communal council, having the right to vote there, and is the president of the College. This is, on the one hand, the representative of the commune outside it, and on the other, it is the representative of the state within it. The mayor applies the regulations and ordinances of the Municipal Council and the College. The mayor watches the general interest, which is beyond the local interest. It has the duty of maintaining public order, in this sense, he performs the function of chief of federal police in the exercise of administrative police missions.

#### **Other territorial entities**

*Agglomerations* and *communal federations* can be created by law (Article 165 §1 of the Constitution). Each agglomeration or federation of federations has a Council and an Executive College. The Chairperson of the Executive College is elected by the Council from among its members. His election is ratified by the King. Several communal federations can associate with each other or with more agglomerations of communes in order to regulate and jointly manage the issues that fall within their competence. However, their counselors are not allowed to deliberate in common.

### **Section 4 Local English Governance**

#### **§1. Territorial administrative units**

**The parish - the smallest administrative-territorial unit.**

The parishes appeared at the end of the sixth century as exclusively religious. Beginning with the 17<sup>th</sup> century, the

parishes also have some administrative functions, which have to take care of the life and existence of people without material possibilities.

In 1894 there was a reform of the parishes, which became real administrative-territorial units, different from the religious parish. Parishes generally have between 100 and 300 inhabitants. Parishes with more than 100 inhabitants are led by a council consisting of about 5-15 members, the number of which is directly proportional to that of the inhabitants; these members are elected for a determined period of 3 years by members of the same parish, by direct vote.

If a parish counts less than 100 inhabitants, the direct management system is used. This system consists in the fact that, twice a year, family leaders meet in assemblies, where they vote on how to solve the various problems of the parish.

### **District**

Originally, the districts were born by grouping several parishes. The Act on Local Organization of 1894 gave them exclusive sanitary duties, attributions which were subsequently enlarged but the main tasks remained with regard to the health protection of the members of that district.

The district is headed by a three-year council elected, consisting of one councilor of each parish. The president is elected directly by the councilors, either from the members of the council or from non-members of the council.

### **The city (burg)**

In order to become a burg, an urban district must seek the status which is granted by the Government, with the advice of the council in which the district concerned forms part.

If the Government rejects the request for granting the status of a burg, the collectivity that requested this status may address the Parliament, which will decide definitively.

Urban districts are interested in obtaining the status of a burg, because it gives them more importance in the administrative-territorial system of the country.

The Burg is managed by a board, elected for a period of 3 years. As a rule, each neighborhood is represented by 3 councilors.

The head of the Council is the Mayor, who is elected by councilors, either from the members of the Council or from persons outside the council, but who qualify for counseling. The mayor is elected for a period of one year. He leads Council meetings.

The actual activity of the Council is regularly held within the various committees and committees of the Council, each with competence in a particular field or sector of activity.

The council meets four times a year. An important role in the work of the Council is played by its Secretary, who is a permanent official with administrative and legal training. He is the head of the municipal office and a legal counselor of the council. The big cities are called burgundy counties. In order to become a burg - county, a city must have at least 50,000 inhabitants.

Burglary counties are run by a Council, whose composition and attributions are similar to burgs.

Although located on the territory of the counties, the burgers are not part of the administrative-territorial structure of the counties on whose territory they are. They form distinct administrative-territorial units, independent of the county.

### **The county - the largest administrative - territorial unit**

England is divided into the Ceremonial Community, sometimes called Geographical or Simple County. These counties are used by most people to describe where they live in England. However, many are not used as administrative subunits because they either are too large or include very populated urban areas. But they are taken into account in determining the constituencies.

Their way of organizing is similar to that of burgs, except that they are headed by a president instead of the mayor.

The number of county councilors is set by the

Government. In general, one counselor is elected for each parliamentary constituency within that county.

Councilors are not retired. That is why only persons with a proper material status are chosen as such. Both men and women who have reached the age of 25 and are living in the administrative-territorial unit in which they vote for at least 3 months are entitled to vote.

Within the county there are *peace judges*, persons with exclusive judicial attributions. They are appointed by the Lord Chancellor with the advice of the Lieutenant Lord in that county.

*Lieutenant Lord* is the representative of the king in the county, but he does not have proper administrative duties, but more honorable. Only sometimes is it required to give its opinion, as is the case with the designation of peace judges.

### **London - the capital of the country - assimilated to a county**

London is made up of a city called City, where mainly public institutions, banks, various offices, shops, etc. are located.

Apart from City, London also includes 32 London burgers, a kind of suburban city of London. Of these, only one has obtained the status of a burg from the beginning, namely Westminster, where the political and administrative center of the country is located, with its Parliament and the Royal Palace here.

Local concerns in the UK include social needs of local authorities such as public order, health care, the organization of education, public transport, drinking water supply, road construction, etc.

To cover the costs of providing these services, the local authorities need financial means, which they obtain from local taxes and fees, and a part, from the state budget, in the form of budget subsidies, as well as contributions from public corporations.

The Government exercises control over the use of subsidies received from the state budget through local government bodies, the control being exercised by inspectors

appointed by the government.

Greater London was created in 1965 and is sometimes considered as a metropolitan area, but is not defined as such. It is divided into two cities: *City of London* and *City of Westminster* and 31 *London Boroughs*.

## §2. Administrative decentralization

Looking at the surface, the British ruling system seems to be very centralized. Parliament, Prime Minister and Cabinet are operating in London, and the Civil Service is usually associated with Whitehall, that broad street linking Westminster Palace with Trafalgar Square.

Of the civil service civil servants, more than 1/3 are operating outside the capital. In addition, the rest of civil servants are added to them, reaching a total of more than two million people outside London.

All of them are ultimately controlled, in one way or another, by the central power.

Decentralization comprises two main forms:

- delegation of powers;
- the transfer of powers.

Delegation of powers refers to the possibility of taking administrative decisions at the local level, while the transfer also implies the attribution of political decision-making freedom.

If delegation is practiced, assignment of competencies is very precisely defined. If a person or institution whose power is delegated wishes to extend this power they need, first of all, the approval of the central power (s).

In the case of **transferred power**, the situation is quite different, in the sense that the limits, the powers are much wider and the possibility of maneuver is greater.

The Department of Health and Social Security (DHSS) is a good example of decentralization by delegation. Major policies are decided nationally (centrally), and then implemented locally through central and regional offices. The Ministry of

Labor is also organized in this way.

The Department of the Environment (DOE) and the Department of Trade and Industry (DTI) also have regional offices, headed by directors, who are empowered (delegated) to make major decisions in line with policies decided at Whitehall. For example, a regional DTI Director may authorize a company development allowance up to the £ 2 million cap.

On the other hand, offices in Scotland, Wales and Northern Ireland apply the center's policies at a local level, covering activities that are specific to several departments, not just one.

The National Health Service (NHS) is probably the best example of transferring minor political powers to local authorities.

In England, DHSS in London transferred many of its attributions to 14 regional health authorities (RHAs), and from them to a number of 193 district health authorities.

The British Local Government system demonstrates the concept and practice of transferring to the chosen organs in the territory.

The Scottish Bureau is currently a "mini-government", led by a state secretary who is a member of the Cabinet. More than 6,000 civil servants are employed here, most of whom work in St. Andrew's Edinburgh building.

Wales has a small number of transferred competencies. The Welsh Bureau was established in 1964 and most of its employees (about 1,000 civilian officials) are in Cardiff.

In the case of Northern Ireland, the situation is more complicated. Following the history of the conflict between the Irish Catholics and the Scottish (Protestant) Presbyterian colonists, the British Government was obliged to accept the principle of self-determination after the First World War. The Irish ruling of 1920 was, in fact, an internal regulation that provided for the division of the country into six counties in the north and 26 lands in the south.



In this way, two parliaments were born: one in Dublin, and the other in Stormont, near Belfast. But, in 1922, the *Treaty of Ireland Act* was reached, which provided for the complete separation of the north and the southern part, thus creating a free Irish state, which then became the Republic of Ireland.

Since 1922, the Northern Irish Parliament has been dominated by a single unionist party, representing the majority of Protestants, who are in favor of joining the United Kingdom. They have consistently won two-thirds of parliamentary seats, thus having the opportunity to make decisions on provincial policies.

The Catholic minority felt strongly discriminated, bearing the worst treatments and the highest unemployment rate. All these dissatisfactions gradually degenerated into violence in the 1960s, under the influence of the Irish Republican Army (IRA), who wanted a united Ireland led by a Catholic majority.

The violence so intensified that in 1969, at the request of the Northern Irish cabinet, British troops were sent. But the violence continued to manifest on both sides and the prospects of a political solution were worst, so in March 1972, the conservative government headed by Prime Minister Edward Heath announced the takeover by the British Cabinet of all responsibilities for the Northern Ireland business until the order in the province was restored.

The Stormont Parliament was dissolved, so that the Northern Ireland office was set up in order to apply the regulation directly. The first state secretary for Northern Ireland was William Whitelaw. Since then, many politicians, whether conservative or Labor, have occupied this position.

Northern Ireland's administration is regarded as a temporary solution, but it will continue until a long-term political solution is found for the problems of this country.

An intermediate solution could be the creation of a federal state with the central government in Dublin and a massive transfer of attributions to the northern and southern constituent states.

In the 19<sup>th</sup> century, Liberal Prime Minister William Gladstone once said that his mission in life was to try to find a way to solve the Irish problem.

It should be noted that on 10 April 1998 the peace agreement was signed. Artisans peace agreement in Northern Ireland, David Trimble and John Hume received Nobel Peace Prize for 1998.

### **§3. Structures of local authorities**

The local government system is mainly a product of the 19<sup>th</sup> century, but some major reorganizations in the 1960s and 1970s created the current structure.

Local leadership seeks, first of all, to provide services to local communities. Most local authorities are also engaged in commercial activities. Nearly 25 percent of the nation's expenditures are made by local government.

As with central government, local authorities operate in departments, which are controlled by committees of elected councilors.

Lawyers call local elected bodies "state creations". In other words, they were set up by acts of the Parliament, but they can be equally easily abolished. The closure of the work of the Council of the Great London and other councils of metropolitan lands (in April 1986) is an example in this respect.

The local structure is based on the distinction between urban and rural areas: the capital has a different regime, and due to its geography and population distribution, Scotland has another organization.

In England and Wales (except London), the highest authority was the County Council and at the lowest level was the Parish Council. Between them there were district councils.

The 47 councils of non-metropolitan lands were, in most cases, very old, historic counties, having as center a more important city.

The metropolitan areas consisted of the largest conurbations (6): Greater Manchester, Merseyside, West Midland, Tyne and Wear, South Yorkshire, West Yorkshire.

In each of these metropolitan areas there were 36 district councils, with populations ranging between 170,000 people and one million (Birmingham).

Non-metropolitan districts are a mix of urban and rural areas, including mainly rural areas. Not all districts have parish councils. If the parish has 200 or more voters, this is optional.

In London, GLC (Greater London Council) covered an area of nearly 800 square miles, with a population of 7 million. There were 32 London boroughs inside that area, plus the City, that square mile, which focuses on the main financial institutions, and which has maintained its independence of status, even having its own police force.

To coordinate education services, in a capital so densely populated as London, a new body - the "Inner London Education Authority (ILEA)" - was considered a GLC committee.

The changes in 1986 required a transfer of competencies from the metropolitan councils to the metropolitan district councils, and in the case of London, the abolition of the GLC generated new problems, to which another London Residuary Body (LRB) was created.

All LRB members are appointed for a five-year term, but this period may be prolonged unless another reform is made in London's administration. After all the changes made, London is in the position of being the only capital in the world (of the most important), which does not have a responsible authority for all the services and activities that any large city is entitled to ask for.

ILEA's hold on the coordination of education in the center of conurbation demonstrates that London, due to its size and complexity, requires a different way of organization than what is found in the rest of the country.

As far as Scotland is concerned, a major reorganization took place in 1975, when a two-tier system emerged, and a third, based on parishes in Great Britain and Wales.

As I have already mentioned, local authorities, like the central ones, act through departments that differ from one another by the rank of those who lead them at a political level.

While the central departments are headed by a minister, the local ones are controlled and accountable to the committees.

These committees include around 100,000 elected councilors across the country. They work temporarily and are unpaid. Another distinction between central and local government lies in the degree of training of department heads. Thus, secretaries are considered to be "generalists" in the sense that they do not have a specific specialization, while most of the local officers (as they are called) are specialists in various fields of activity (engineers, economists, doctors, etc.).

Major officials, also called officers, make an important contribution to solving the problems that arise, and their suggestions are generally accepted.

The current trend of local councilors is to pay more attention to how local services are provided.

Instead of the conclusions, it can be said that local government in the Great Britain is at its lowest at its lowest level.

The financial base is unsatisfactory, and the political composition of local councils has often led to an open conflict with central authorities. There are also large restrictions on public spending.

Due to these causes, there is a danger that local authorities (agencies) will become only agencies for the Whitehall departments, and decisions will be taken even harder than in peasant.

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Local authorities have been set up by acts of the Parliament in order to perform certain functions, services, for which they are better equipped than the central authorities.

Collaboration between the two levels should be a

partnership, but at some times this relationship has deteriorated, degenerating into conflict.

After the 1979 victory in general elections, the Conservatives, led by Mrs. Thatcher, had as their primary objective the reduction of inflation.

An important part of their economic strategy is control over public spending. Since local authorities were obliged to justify their share of about 25% of total public spending, it has become clear that these communities will be subject to financial restrictions.

In 1981, the allowance system was changed so that the central authorities gained more power, even having the possibility to discontinue the allocation of other high-cost authorities. Also, controls on credits that can be granted have become much more severe. Some of the laborers who were part of the local councils have decided to ignore the "backbone" of the central power, finding other money (other sources) by increasing local taxes. The government's immediate response consisted in introducing a new type of tax in 1985, setting limits that could not be overcome.

Thus, the inherent conflict between the Local Labourist Council and the Conservative Central Government has been aggravated.

So, having limited local dues and limited lending opportunities, even conservative councils began to protest, and thus a collaboration that was already threatened turned into a real conflict.

In addition, there were problems in the structural organization of cities, as well as a high unemployment rate in the old industrial areas, which led to a tense climate.

Although the central - local relationship deteriorated at that time, the problems were not entirely new.

If the Great Britain had a written constitution, then - perhaps - the powers of the local authorities would have been more clearly defined and protected, but without such a "defender" the partnership should only rely on mutual respect

and understanding.

Most Members of Parliament are, regrettably, ignorant of local government, and when they become ministers, ignorance often turns into disbelief.

The key to a possible solution is of a financial nature. As long as local authorities are largely dependent on the central government for financial support, any collaboration can only be unequal. Currently, the new Labor government is about to overcome these inconveniences, claimed by the local government.

### **Non-governmental organizations**

The public sector includes all organizations and activities that, in one way or another, are paid to raise public money.

Public organizations set up outside the industrial gang were called "quasi-non-guvernist organizations" or *quangos*.

The Civil Service Department published, before its abolition, in 1978 a report containing data on these organizations.

The report stated that there were 252 such institutions, defining them as "organizations that were set up by the departments and, having at their disposal important funds, in order to fulfill some functions that the Government wanted to accomplish, but for which could not take a direct responsibility (through ministry or department)".

In the same year as the report, a group of academics met at Essex University to discuss public administration issues. On that occasion, it was considered that the term *quangos* is best suited to non-governmental organizations.

In conclusion, we can say that these *quangos* include all organizations that are not part of the central or local government.

Currently, out of the 252 such organizations, some have been abolished. Some of the most important *quangos* are:

- The Arts Council of the UK, with the role of funding the arts by granting governmental allowances. (Paid by the Ministry of Education and Science);

- The British Broadcasting Company (BBC) - provides radio and television services (Ministry of the Interior);
- The British Council - finances and provides assistance in some countries and promotes British ideas outside the country (Foreign and Commonwealth Ministry);
- The British Film Institute - promotes British film production (Ministry of Education and Science);
- The Council for Economic and Social Research - Encourages and promotes social research (Ministry of Education and Science);
- National Economic Development Office - advises the government on economic development (Ministry of Treasury);
- Sports Council - Promotes and assists sport (Ministry of the Environment);
- The U.K. Authority on atomic energy - controls the research and development of atomic energy (Ministry of Energy).

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