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THE NEW FORMS OF TERRITORIAL ORGANISATION OF THE STATE IN EUROPE



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EUROPA ASSOCIATION

Based in:
Site des Jacobins - 88 rue du Pont Saint-Martial,
87000 Limoges
Site Internet : www.europaong.org

EDITORIAL STAFF AND SUBSCRIPTION

Tél. : +33 6 82 80 21 39
Courriel : europa@unilim.fr

EDITOR : Hélène PAULIAT, President of EUROPA

RÉDACTION

Editor-in-Chief: Christophe BONNOTTE, Secretary General of EUROPA; Caroline BOYER-CAPELLE, Deputy Secretary General of EUROPA

Editorial Secretariat and Reading Committee: Michel SENIMON, EUROPA Delegate General; Christophe BONNOTTE, EUROPA Secretary General; Caroline BOYER-CAPELLE, EUROPA Deputy Secretary General

Contributor to this issue:

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Slovakia: • Maria HOREHAJOVA, Senior Lecturer, Faculty of Economics, Matej Bel University of Banská Bystrica • Jana MARASOVA, Senior Lecturer, Faculty of Economics, Matej Bel University of Banská Bystrica

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A burial without funeral: the demise of the Portuguese prefect

Luis FABRICA

PROFESSOR OF ADMINISTRATIVE LAW

FACULTY OF LAW OF THE PORTUGUESE CATHOLIC UNIVERSITY OF LISBON

Lisbon, June 2017: Despite air conditioning, the atmosphere in the House of Parliament is particularly heavy. In a shaking voice, the Minister of the Interior is trying to explain herself to the MPs, following the death of 66 people killed in the worst forest fire that Portugal has ever seen. Faced with accusations of opposition MPs who point to the responsibility of a government lacking leadership, incompetence of leaders, poor preparation of firefighters and malfunctioning telecommunications, the Minister mentioned other culprits of the disaster: a year of drought, extreme heat, extreme weather phenomena, the downburst which spread the flames, etc. And, faced with the risk of repetition of such tragedies, she uttered a striking sentence. *“During these four days of fire, there were two sites of complicated operations, in two different districts. I was present at one of these sites of operation and my Secretary of State on the other. But if three, four or five districts had been affected, we would have faced a problem of the lack of political authorities at the district level.”* Then the Minister paid an unexpected tribute to an institution that has been missing for the last few years: *“We must distinguish between the civil governor as a representative of the state in the district and the civil governor as a decentralised service. Regarding the latter, there is a major gap”*.

In October, the tragedy recurred and more than 46 people lost their lives in a second forest fire. Could things have been different if civil governors still existed?

The proposal to resuscitate civil governors seemed all the more astonishing as their disappearance, while non-official as we will see later, did not give rise to great debates and, during the following years, no authorised voice called for their return. And for a good reason: Portuguese civil governors have never had good reputation nor enjoyed a marked prestige.

This body was created in 1832 modelled upon the French prefect. Like in France, where each department had a prefect, in Portugal each district had a civil governor. However, the competences of these entities did not fully overlap and these differences were reflected in the mode of recruitment.

Civil governors have not been properly removed *de jure*, but they have disappeared *de facto*

The civil governor, like the French prefect, was an organism of the state, organically attached to the Ministry of the Interior and having competence in matters of public order and security, guarantee of the legality and administrative supervision on the local authorities. However, unlike the French prefect, the civil governor has never been the “custodian of state authority” in the district. He reported only to the Minister of the Interior, his sole superior, and he had no powers over other local bodies and services of the state not under his ministry. The civil governor was not, strictly speaking, a representative of the state, but simply a local official of the Ministry of the Interior, with no particular competence vis-à-vis the deconcentrated administrative services of other ministries. The governor did not manage or coordinate local government agencies and services.

Civil governors were not to be confused with offices of local authorities either. The district has never been a local authority, but a simple administrative district with general administrative purposes, and the civil governor has never had the status and functions of a representative of the people. He presented himself, on the contrary, as a representative of the government.

For historical and political reasons, the civil governor was generally regarded as the instrument of central power for the purposes of electoral control, political surveillance and restriction of local autonomy. In the 19th century and well into the 20th century, the civil governor was mostly considered a *longa manus* of the executive power at the local level intended, depending on the political regime, to get votes for the parties in power, to remain vigilant vis-à-vis political

opponents and to ensure tranquility in the streets.

EAs political agents, civil governors were freely appointed and dismissed by the Minister of the Interior, based on political criteria. They did not belong to the category of civil servants and did not benefit from the guarantees associated with this status, particularly in terms of career. They were not recruited into a state body following specific training and their qualifications were very diverse. Indeed, political loyalty was much more important than technical competences.

In essence, the status of civil governors has always remained very close to this original model, surviving regime changes, from the constitutional monarchy to the republic, and from the republic to the authoritarian regime. Even after 1974, in the new democratic framework, the elements of continuity remained obvious.

The 1976 Constitution mentions the civil governor only in the final and transitional provisions because a new local authority, the administrative region, was to replace the district. This alternative would have involved the disappearance of the civil governor. However, the constitutional norm is ambiguous: was it the intention of the constituents to convert districts into transitional local authorities while awaiting the arrival of the administrative regions? Should the district remain a mere territorial constituency where the civil governor was to continue to perform his traditional functions, now accompanied by a deliberative assembly composed of representatives of the communities included in the district? In any case, the 1976 Constitution retained the civil governor until the creation of the still pending administrative regions and expressly vested him with the powers of government representation and the exercise of administrative supervision, which were part of the hard core of traditional functions.

With regard to the provisions of the ordinary law, the many competences of civil governors could be grouped into three categories: competences (a) as representatives of the government; (b) as supervisory bodies; and (c) as supreme police authorities in the district. But the

practical importance of these competences was far below what one could imagine.

As a representative of the government, the civil governor limited himself to informing Lisbon of the discontent of various local interest groups: street rallies ended ritually with a meeting with the civil governor, with the submission of grievances by the unions, environmental groups or farmers' associations. The powers of supervision, especially over local authorities, were largely a fiction, since the control of administrative and financial legality was exercised by the state inspection bodies, which were subordinated to their ministries, respectively. The solution was the same in terms of policing: the maintenance of public order belonged to the security forces, under the direct control of the minister. The authority of the civil governor was purely nominal, with the only real powers being the issue of certificates, authorisations and licenses, whose bureaucratic insignificance illustrated the governor's decline. At the end of the 20th century, the designation of civil governors consisted of a rather benign form of reward, a dubious position of prestige, rewarding political loyalty of second-rank politicians on the eve of their retirement. In an attempt to justify the survival of this body, a 1992 law attempted to redesign the status of the civil governor, adding to its functions as a representative of the government a new competence, that of fostering adequate cooperation between various local services under the guidance of their respective ministers. Obviously, this model was borrowed from the French prefect and was intended to provide a new impetus to the institution. But it was

already too late: this trial failed and everyone continued to regard the civil governor as an anachronistic entity, waiting for the coup de grace that his constitutional consecration made difficult. However, either because of inertia or because of the fear of the consequences for the process of regionalisation, none of the successive revisions of the Constitution has removed the transitional norm for civil governors. And the atmosphere of political tension that has accompanied the crisis of public finances since 2010 has removed the possibility of new constitutional reforms, due to the lack of agreement between the major parties.

This constitutional blockage did not prevent the government, at the end of 2011, from using a surprising solution. Seeking a direct saving of EUR 3 million (!), the governmental voluntarism in this area resulted in the dismissal of all civil governors and the approval of laws attributing to other organisations all competences belonging to this institution. In short, the position of civil governor no longer had any incumbents or competences. The government seemed proud of this Egg of Columbus, in spite of the stupefaction of constitutionalists. But in a country plagued by the economic crisis, the fate of civil governors seemed far from deserving priority attention. Against a background of general indifference, some isolated voices denounced a serious violation of the Constitution. But this question of the constitutionality of the reform has not even been brought before the Constitutional Court.

And that was all about it. The civil governors were not properly removed de jure, but

they disappeared de facto. And until the unexpected proposal of the Minister, no one seemed to have noticed, let alone deplored, the disappearance of the civil governors.

Ministers now have simplified local intervention channels, through the decentralised services of their respective ministries, without the intervention of a second-rank political officer, without specific qualifications. Local municipalities were happy to see the disappearance of an entity that had, even though nominally, a few powers of administrative supervision. Finally, as far as the citizens were concerned, this led mainly to a change of the administrative counterpart, which seems all the less important since many grievances can be processed via the internet.

That is why, when the new socialist government, supported by the far left, pledged to reverse many of the previous government's measures by proclaiming a return to absolute respect for the Constitution, nothing has changed in this regard. These posts remained vacant, as well as the legislation organising the transfer of the powers of civil governors: not even a word on the subject... This consensus between two executives who diverge on almost everything went unnoticed. It seems that the parties are only waiting for the political climate to calm down to launch the constitutional revision that would legalise the elimination of the civil governor.

As for the Minister, who was hoping for the return of civil governors, she was dismissed from office.



Territorial reform of public administration in Hungary

Viktória LINDER
LECTURER

NATIONAL UNIVERSITY OF PUBLIC SERVICE IN HUNGARY, BUDAPEST

Since the change of regime in the early 1990s, Hungarian territorial public administration has continued to evolve. This constant evolution accelerated on the back of new concepts after 2010, when the Parliament decided to redistribute tasks and competences between the state administration and local governments and to reorganise the structure of the state administration at the local level.

The government wanted to subject different types of bodies to uniform regulation and unified management. The key words of the public administration reform were formulated in 2011 in the *Zoltán Magyar* programmes⁽¹⁾. Parallel to these

developments, due to the adoption of the new Basic Law, the legislators initiated a reform of the whole Hungarian public law. From the entry into force of the new Constitution on 1 January 2012, new regulations were gradually adopted in public administration, in the form of laws, government decrees, government statements, etc. The new legal instruments governed (i) the organisational structure of the public administration; (ii) the division of tasks and competences determining the administrative action and (iii) the new statutes of the personnel (civil servants) working in different branches of the administration.

Organisational structure and division of tasks and competences, determining factors of the action of the territorial public administration

Since 2010, the principle of centralisation has been reinforced in Hungary in accordance with the new legislation. At the local level, the deconcentrated bodies of state administration have been progressively

⁽¹⁾ Magyar Zoltán (1888-1945) - a university professor, specialist in administrative sciences, civil servant, government commissioner responsible for the reform of public administration in the 1930s.