SECRETARIAT GENERAL

Directorate General II – Democracy

Democratic Governance Directorate

Strasbourg, 17 September 2015

CELGR /LEX (2015)2

REPORT ON EUROPEAN PRACTICE AND LEGAL FRAMEWORK ON PREFECT INSTITUTION, LOCAL GOVERNMENT IN EMERGENCY SITUATIONS

The present Report was prepared by the Democratic Institutions and Governance Department of Directorate General II - Democracy, in co-operation with Prof. Gérard Marcou, Council of Europe expert, University Paris I Panthéon-Sorbonne, Director of GRALE (Research Group on Local Administration in Europe), France.

Introduction

The present Report was requested by the Ministry of Regional Development, Construction and Municipal Economy of Ukraine within the framework of the Council of Europe Programme "Decentralisation and territorial consolidation in Ukraine" (2015-2017, funded by the Government of the Swiss Confederation).

The government of Ukraine is again considering further steps of decentralisation of its territorial administrative organisation, through a constitutional review involving a separation between State administration and the administration serving local self-government bodies. Such a reform has been discussed for about ten years under various governments and political coalitions. The present constitutional draft law amending the Constitution of Ukraine should in effect introduce such a reform. At the same time, Ukraine is still under pressure on its Eastern border and contemplates new reforms to keep its capacity to protect the territorial integrity of Ukraine in the framework of releasing more autonomy to Eastern oblasts. The present Report is targeted on the issues presently at stake in Ukraine, in order to help the authorities of Ukraine to decide upon best options.

The mandate given for this Report is the following: 1) provide elements of information on the institution of prefects in various European countries; 2) provide elements of information on special commissioners / appointed State representatives in case of martial law, emergency, nature disaster.

It should be pointed out at the outset that security is always a key function of prefects, as a local authority of the central government, in all countries where such an institution has been implemented. The Report is focused on three countries having established and maintained the prefect as a permanent institution, as a local branch of central government: France, Italy and Spain. In all countries, it is possible to involve commissioners of the central government or committees on an ad hoc basis; but this is always provided in relation to permanent authorities. By contrast, the UK has developed different emergency procedures involving temporary authorities, because the UK has no equivalent of the prefect at present at the local level.

As a consequence, the first section of the Report is devoted to the presentation of the prefect institution or equivalents in reviewed countries, with consideration for status and powers of prefects. The second section is devoted to the specifics of emergency powers, exercised by permanent or ad hoc authorities, and the case of the UK will be presented in this section[1].

[1]This Report is based on own research results, mainly: G. Marcou, *La déconcentration dans l'organisation administrative. Etude comparative sur sept Etats unitaires européens (Angleterre, Danemark, France, Pays-Bas, Portugal, Suède, Turquie)*, Paris, OCDE, SIGMA, 2013; G. Marcou, "Le représentant territorial de l'Etat et le fait régional dans les Etats européens", *Revue française d'Administration publique* 2010, No.135, pp.567-582.

I. The prefect as a local authority of the central government, and some equivalents

It is necessary to sort out basic features of the prefect as an institution beyond the various national institutions of that kind, and make the difference with institutions apparently similar but which diverge on some key points. Therefore the status and the powers of prefects and prefect-like institutions are to be distinguished.

A) The institution

The key model is the French prefect, introduced by the law of "28 pluviôse an VIII" (1799) under Napoleon Bonaparte. This is a rationalisation and systematisation of the requirements of the State building process: the State needs relaying authorities under its command in order to keep control over its territory and population. According to La Palombara, such relaying authorities reflect what he called the "penetration function", which conditions the effective authority of State over its territory[2]. They have existed in all countries under different forms, and there are a lot of local agencies of central government departments, depending on the level of decentralisation of these countries, without necessarily taking the legal form of the "prefect like" institutions. Remarkably such an institution was maintained in countries having established regional political autonomies, and with functional equivalents in federal countries, although with more limited powers but in security matters.

A main feature of the institution in modern times is that the prefect is a professional civil servant, not a political appointee, although the appointment can consider (require) political loyalty to the State (not to the ruling party) due to the nature of the functions.

1) <u>French prefects</u>

The prefect was devised from the beginning as a delegate of the central government within a strict hierarchy, from central government to the prefect at the level of each *département*, and from the prefect down to sub-prefects (one sub-prefect in each district, equivalent to *raion*). The prefect was originally vested with very wide powers for general administration and security only. When the development of local self-government, initiated at the time of the French Revolution, resumed in the years 1830 and especially with the rise of stronger parliament under the Third Republic, from the early 1880s, then the prefect also became the supervisory authority over local self-government bodies. During that period and until the 1960s, central government departments also developed their own local agencies for the execution of their own tasks, usually at the level of the *département.* At that time the relationships between prefects and local agencies of central government ministerial departments were perceived as a major problem of the State administration. In 1964 it was

[2] "Penetration: a crisis of government capacity", in: Binder / Coleman / La Palombara / Pye / Verba / Werner, *Crisis and sequences in political development*, Princeton, 1971.

decided to establish regional prefects (the prefect of the main *département* was appointed as regional prefect) and give the prefect authority (not only co-ordinating powers) upon the heads of local agencies of central government departments (with some significant exceptions) at the departmental and regional levels. Since then, individual ministers' powers can be delegated only to the prefect, not to the heads of their respective local agencies. Then the prefect usually delegates its signature to the heads of these agencies but keeps the power to annul the delegation and take the decision him/herself. This is the true meaning of what was called "*déconcentration*": a network of local agencies of central government departments ***and*** delegations of power from the ministers upon prefects. However, it took time to enforce this reform, which was reiterated and strengthened in 1982, 1997, 2004 and 2010.

Until the reform of 1982, however, the prefect was not only the local State authority; he/she was also the executive body of the elected departmental assembly. He/she was at the same time an agent of a local self-government body and the representative of the central government. The prefecture, as the administration directly under the authority of the prefect is called, was in charge of State tasks (for example, security, various police powers, organising elections…) and decentralised tasks (public works decided by the departmental assembly, social care). An executive committee of the departmental assembly had to supervise the execution of the decisions of the departmental assembly by the prefect, but this assembly did not have its own administration. The same scheme was applied when regional councils (not elected directly) were introduced in 1972: the prefect of the region was also the executive body of the regional council. Until 1940, there was also an elected council at the district level (*conseil d'arrondissement*), with limited powers but in taxation matters; they disappeared with the war and were not restored after the war.

To sum up, this organisation was very close to the present organisation of the State executive power at local level in Ukraine.

The decentralisation reforms have in some way supported the reform initiated in 1964, with the transfer of a lot of personnel and tasks from local agencies of central government departments to local self-government bodies (departmental assemblies and regional councils). As a consequence, a lot of operational tasks were transferred, local agencies of central government had to focus on regulation, supervision, policy implementation and, in that respect, the authority of the prefect became more justified, technically and politically.

But, the main change resulting from the decentralisation reform of 1982 was to separate strictly local self-government bodies and local State administration. From that time, powers, personnel and resources related to tasks devolved upon the departmental assemblies, or respectively to the regional councils, were transferred to the (elected) president of the respective assembly or council. The prefect remains exclusively, with the prefecture and the personnel devoted to State functions, the representative of the central government. He/she is in charge of the implementation of the law, of the implementation of central government

policy, when necessary he/she has to seek the agreement of local self-government bodies; he/she is the supervisory authority with regard to local self-government bodies; he/she is in charge of the protection of the population in the widest sense of the terms.

As regards the prefect itself, he/she has a dual function. He/she is the representative of the State at the regional and departmental levels, and as such he/she embodies the political dimension of the State as a political body. But he/she was also recognised from the beginning as a higher administrative authority vested with general purpose functions and powers. Accordingly he/she was considered to be a professional civil servant. However, and for a long time, there have been only piecemeal regulations on the status of prefects. This changed after World War II with the establishment of the *Ecole Nationale d'Administration* (*ENA* - National School of Administration). From that time, prefects used to be appointed among sub-prefects, and sub-prefects were appointed among higher civil servants of the Ministry of Interior (*administrateurs civils*), first as seconded officers and then confirmed in their new functions. In 1964 the first fully fledged career status of prefects and of sub-prefects was published (two government decrees, still in force with some further amendments). These reforms have consolidated the professional profile of prefects as high State officials.

As a consequence, the word "prefect" nowadays has two meanings: 1) this is a function: the higher State authority at the level of the *département* or of the region; 2) this is a rank, subdivided into several classes for the career development. Then a prefect, as a member of the corps (*corps préfectoral*), may be appointed to different functions: for example, head of a public law corporation, head a ministerial division, project manager, etc. Some of them are also recruited as director-general of their administration by presidents of region or *département*. In their function of prefect of a *département* or of a region they are appointed by a decree of the President of the Republic in Council of Ministers. Such positions are at the discretion of the government, which may appoint or dismiss *ad nutum* a prefect.

Nowadays, most prefects are alumni of the National School of Administration. According to the status regulation, one third of members of the corps may be recruited freely by the government, and also outside of the administration. However in practice this procedure is used to give the opportunity of a greater mobility within the State civil service, and usually members of other corps of the higher civil service are integrated as prefects through this procedure, and they are also usually alumni of the ENA. Nevertheless, it happened that experienced people from outside were appointed as prefects (for example, former trade union leaders).

It is remarkable that, despite all political upheavals that France has got through in its history, the institution of the prefect was never seriously disputed. The worst that happened to them was to have their name changed: for example, "*commissaire de la République*" in 1944-45, and between 1982 and 1988. All governments have appreciated the reliability and the capacities of such higher officers to implement their policies and ensure the security and the

unity of the country. Despite further steps of the decentralisation reforms, the present government has declared its will to strengthen the powers of prefects. In the second section of the Report the implications on their functions is seen; but there is no basic change to be expected with regard to their status.

2) Prefects in regionalised countries: Italy and Spain

The French model of administration has exercised a profound influence on a number of countries during the 19th century: Belgium, Greece, Italy, the Netherlands, Portugal, Spain, and even some southern German states such as Bavaria. They have all evolved later in different ways: Portugal has suppressed the civil governors in 2013; Greece has introduced in 1994 the election of the prefects, a reform based on a misunderstanding with regard to the function, but Greece restored later a similar function at the level of large regions.

The focus shall be put on Italy and Spain, because of the relevance of their case as regional countries.

In Italy, the Consulate of Napoleon Bonaparte introduced the same system as in France in 1802: prefects at the level of departments, sub-prefects at the district level, and mayors, all appointed by the head of the State or delegates. The system was maintained after the collapse of the Empire and the restoration of the monarchy in Piedmont-Sardinia, since it had proved useful and efficient, only with a change of name and changes in the design of provinces. In 1861, with the Italian unification, the system was extended to the rest of Italy by a law of 1865. As the French prefect, the Italian prefect was vested with powers of general administration and special powers for security and public order. As in France, the prefect was the executive of the elected provincial council. But, by contrast with France, he was even the president of the provincial council and, from 1889, Italian legislation separated State and provincial administration. Another difference is that the appointment of prefects among politicians lasted until the end of the 19th century, whereas, sub-prefects were usually recruited among civil servants of the prefectures. The Fascist power made wide use of prefects, but only one third of prefects appointed during this period (1922-1943) were affiliated to the Fascist party: in 1937 the ratio of 2 out of 5 prefects appointed outside of the career civil service was introduced. After the war, the suppression of the prefects was discussed; prefects are not mentioned in the Constitution of 1948, but they were maintained.

In Spain, the term “prefect” was not used, but the territorial organisation of the State administration derived from the French model. A royal decree of 1833 established the provinces with a high official in charge of general administration and of the “development” of the province as a sub-delegate of the State (*subdelegado de Fomento*); the instruction for the implementation of the reform referred explicitly to the French prefect.

In 1834 a prefect became a “civil governor” (*gobernador civil*) with more emphasis on public order in the province. Later on, the political linkage of this function to central government

turned the civil governor into a “body of political and social control” (M. Sanchez Moron), which influenced the development of local agencies of central government departments throughout the monarchy and the authoritarian rule of General Franco (at that time – 1939-1975 – the civil governor had little powers). As in France and Italy, the civil governor was also the executive body of the provincial assembly (*deputacion provincial*). After the new democratic constitution of 1978, the State administration was maintained as such by the Constitution with its local branches, whereas most functions and personnel of the local agencies of central government departments passed step by step to regional governments. Remaining services of local agencies of central government departments were then shifted under the authority of the representative of the State in each “autonomous community” (*comunidad autonoma*), with a new name, the “delegate of the government” (*delegado del gobierno en la comunidad autonoma*). Paradoxically, the regionalisation resulted in a horizontal extension of the effective responsibilities of the delegate of the government, compared to the former civil governor, plus security and police functions. In each province a sub-delegate (*subdelegado*) is appointed by the delegate of the government and subordinated to him/her.

By contrast with France, Italy and Spain are no longer unitary States; they are “compounded States”, according to the qualification issued by the Spanish constitutional court. Compounded States are federal States and regionalised States as far as all regional entities are vested with legislative power and most of the functions of domestic administration usually performed by central government. In France, regions do not have such a profile. They are an additional level of decentralisation devoted to planning and delivery functions without any legislative power. This type of regionalisation has also to be explained by the historical development of the State in these two countries. To some extent, the legitimacy of State authority was undermined by long lasting authoritarian rule, during which prefects were also used as instruments of central government policy and authoritarianism. Regions were thus perceived as a means of democratising government, and a way also to maintain the unity of the country at a time when the collapse of the authoritarian rule (in Italy the end of World War II) gave rise to centrifugal forces that could have threatened the unity of the country. In Spain, the Second Republic (1936-1939) had provided in its constitution for the political autonomy of some regions in recognition of their historical and linguistic peculiarities (namely Catalonia and the Basque Country). After 1975, regions were formally included in the new democratic constitution of Spain.

As a consequence of political regionalisation, prefects have lost most of their powers in terms of general administration (but in Spain they had fewer powers of that kind than in Italy) and most personnel capacities of local agencies of central government departments were transferred under the authority of new regional executive bodies. But they keep supervisory powers and key powers in the field of security.

Remarkably, the institution of the prefect was maintained in both countries, despite the fact that it was perceived as an institution of centralism, because it could balance the political autonomy of regions with an authority representing national interests.

In both countries, as in France, the progress of democracy was accompanied by the professionalisation of prefects.

In Spain, *delegados del gobierno* and *subdelegados* are listed by the law as "executive bodies" (*organos directivos*), that are under the authority of "superior bodies" (*organos superiores*) which correspond to the political level (Law 6/1997 on the organisation and the operation of the general State administration: art.6). Delegates have the rank of a sub-secretary, the highest administrative level, just below members of the government (minister and secretary of State). This is a way to upgrade their position with regard to powerful presidents of regional governments. They are appointed and dismissed by royal decree of the Council of Ministers (art. 22). They can be appointed outside of the public service, but paragraph 10 requires that appointments be based on criteria of "professional capacity and experience". They receive instructions and guidance directly from the President of the government and from the minister of the Interior. By contrast, sub-delegates are appointed among career civil servants from the State administration, from regional administrations or from municipal / provincial administration subject to diploma requirements. They have the rank of sub-director general, which corresponds to the third level of "executive bodies", after under-secretary general and director-general. Sub-delegates are appointed and dismissed freely by the delegate. In practice, delegates are usually appointed among higher career civil servants.

In Italy, prefects bear this name (*prefetti*) and are nowadays career civil servants. One prefect is appointed in each province (*provincia* - equivalent to French *département*) as the head of the prefecture (official name: prefecture - territorial government office: *ufficio territoriale del governo*). Administrative units of the prefecture are headed by a deputy prefect, assisted by an associate deputy prefect. There is no regional prefect in Italy, notwithstanding the existence and role of regions. Until 2001 there was a "government commissioner" appointed at the regional level (usually the prefect of the province where the region has its seat) as a counterpart of the president of the region; he/she was the head of the control commission in charge of the supervision upon local governments and regional government. But the constitutional review of 2001 removed this commission and the function of the government commissioner. However, the prefect of the province where the region has its seat keeps some additional responsibilities with regard to relationships between central government and regional government. But he/she does not have equivalent powers to those vested in the French regional prefect.

Whereas State, regional and local government employees are nowadays subject to labour law on the basis of collective contracts, prefects as well as a small number of higher civil servants and members of the judiciary are excluded from this regulation and they are still

under a public law status (legislative decree of 19 May 2000, No 139). This regulation organises the career through 4 ranks, corresponding to the hierarchy of the status of "*dirigente*", higher civil servants deemed to occupy top executive positions in public administrations. The recruitment in the career of prefect is based on specific competitive examination opened to graduates in law, economics, history-sociology, less than 35 years old. Successful candidates admitted as counsels (*consiglieri*) follow a training course of two years with theoretical-practical seminars and activities which alternate with periods of work in operational tasks. The evaluation at the end of the first year determines the access to the rank of associate deputy prefect. This two year training course is organised by the Higher School of Administration of the Interior (*Scuola Superiore dell'Amministrazione dell'Interno*). Associate deputy prefects are promoted to the rank of deputy prefect after a minimum 9 years of practice and after an evaluation and list by merit order proposed to the minister by an independent commission; this list is not fully binding for the minister, who may deviate from it for some appointments. Prefects are appointed as prefects and as head of a territorial government office by a decree of the President of the Republic after deliberation of the council of ministers on proposals presented by the minister of the Interior. As in France, Italian law distinguishes the rank and the function. As regards the function as a head of a territorial government office, the government is only bound to appoint 3 members of the prefect career (deputy prefects) among five appointments; other persons may be appointed from outside of the prefect career. The government is however vested with broad discretion to appoint, dismiss, set aside prefects on "leave" (without office). They are nevertheless protected by their rank.

B) Functions and powers

In this sub-section, the focus is put on prefects as professional civil servants with functions of general administration in territorial subdivisions of the country. Decentralisation reforms have involved a loss of substance in prefects' functions as a consequence of the transfer of tasks from State administration to local self-government bodies.

Prefects' functions can be divided in three categories: 1) general administration, including powers over local branches of central government departments; 2) oversight on local self-government bodies; 3) security and protection of the population. The loss of substance has affected the functions in the field of general administration; especially in countries having developed regional autonomies, prefects have only residual functions in the field of general administration. The supervisory function has also been lightened or focused on fewer, key issues. But in all countries, security functions remain the core of the prefects' functions.

<u>France</u>

In France, prefects still have significant powers in the field of general administration. The undergoing local and regional government reform (mainly: laws of 27 January 2014, 16 January 2015 and 7 August 2015) that has resulted in a smaller number of regions (12 +

Corsica on the European territory of France) requires a reshaping of regional prefectures and regional branches of central government departments. Whereas the reform should result into the transfer of new powers to regional self-government bodies, the government declared its will to strengthen prefects' powers (which may sound contradictory).

Regarding general administration, the decree of 7 May 2015 has restated the principle of "*déconcentration*", as the basic principle for the distribution of tasks and means between central and local tiers of the civil State administration. Deconcentration is not new and, as an administrative policy, it dates back to the middle of 20th century, before being made universal in 1964 and codified by the decree 1 July 1992 (replaced by the decree of 7 May 2015). Deconcentration also received a constitutional basis with the new formulation of article 72 by the constitutional review of 28 March 2003: it is stated that the State representative in "local communities of the Republic" is also the representative of all government members, meaning that he/she will be acting under their direct authority.

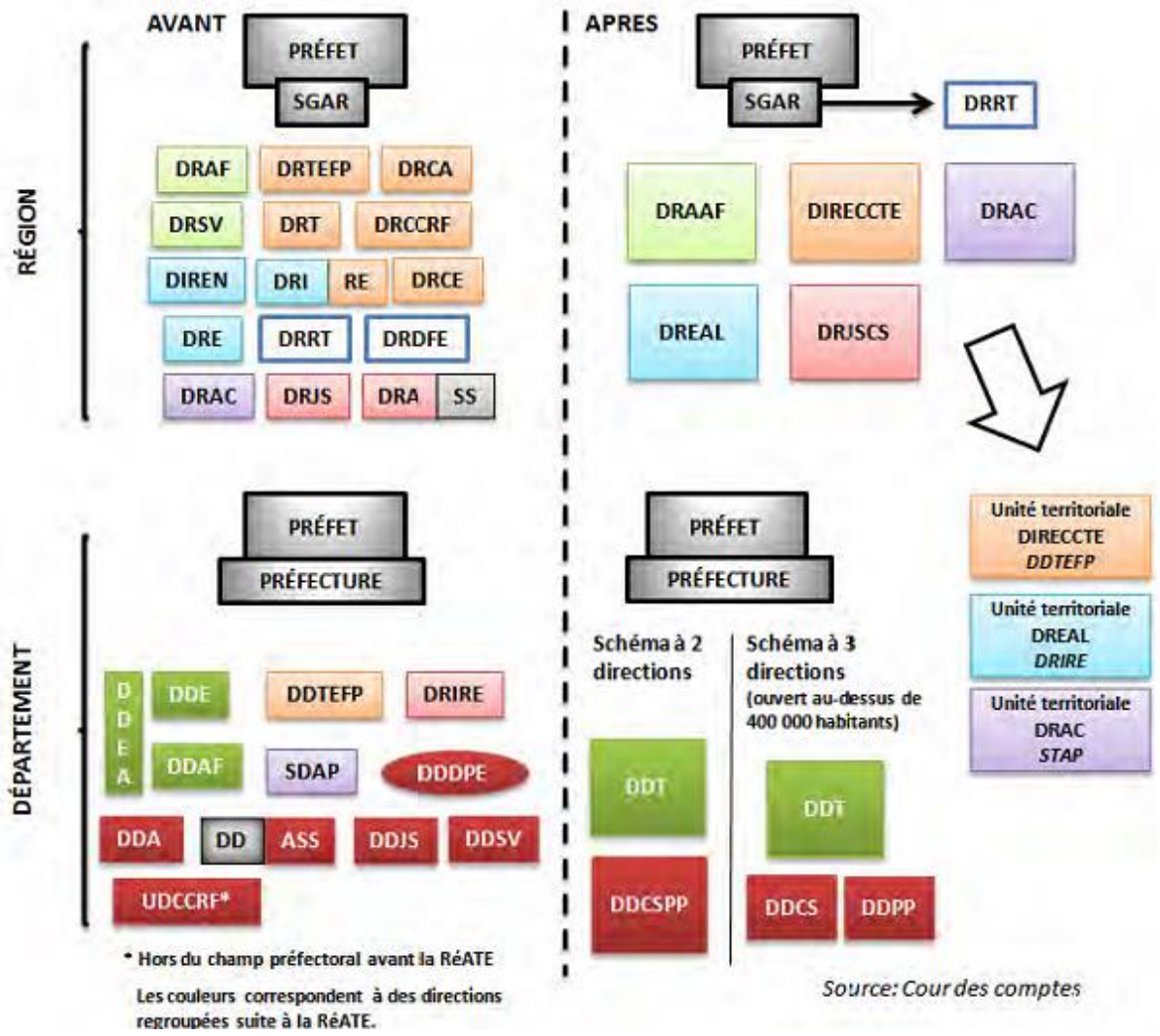
According to the decree of 7 May 2015, "déconcentration" consists in allocating to territorial tiers of the State administration "the powers, means and initiative capacity" needed to "implement national (and European) public policies". It is based on the network of prefectures and local branches of central government departments acting as State administrative units subordinated to central government, and on the delegation of decision-making power upon prefects for these administrations. The functions of central government administrations have to be focused on the conception, enhancement and support, as well as guidance, evaluation and supervision of "deconcentrated services" (*services déconcentrés*). This includes policy formulation, law drafting, general administrative organisation and management. Guidance takes the form of "pluri-annual national guidance directives" issued by ministers in order to determine priorities of action, with objectives. Then, the decree of 7 May 2015 distinguishes the respective functions of the regional and departmental tiers of the territorial State administration. The regional tier is deemed to drive and co-ordinate the implementation of central government policies, to support administrative modernisation and the improvement of relationships with users and local governments by prefectures and other deconcentrated services, to rationalise the use of premises of administrations and personnel allocation. The departmental tier continues to be the "general purpose" tier for implementing locally national policies.

Previous reforms had already strengthened prefects' powers with regard to local branches of central government departments. The decree of 7 May 2015 goes a few steps further. As a matter of fact, the State territorial administration is distributed in France on four levels: 1) the region; 2) the *département*; 3) the district; 4) the municipality. At the municipal level, a number of State functions are performed by the municipal administration under the authority of the mayor, and for these tasks the mayor is subordinated to the prefect (for example, the organisation of elections, delivering identity cards and passports; as regard civil registration he/she is subject to the authority of the judiciary). At the regional, departmental

and district levels there is a proper State administration: the prefecture, and sub-prefectures at the district level; and local branches of central government departments. The prefecture itself can be seen as the local branch of the ministry of the Interior, and as regards the prefecture of the region, as the local branch of the ministry in charge of planning and territorial development. Because of the transfer of numerous units and personnel to local governments (departmental and regional self-government bodies), those remaining in charge of State functions have been amalgamated in multifunctional units. But, since the reform of 1982, prefects have direct authority upon local branches of central government departments, and the heads of these local branches are subordinated to prefects. Ministers delegate powers to prefects only, not to the heads of the local branches of their ministries. Consequently, administrative decisions on individual civil servants employed in deconcentrated State services may be delegated, as a rule, to the prefect who will take them subject to the advice of the head of the service (this reform took a long time because of the resistance of ministries and unions, and there are limits to this delegation).

The following figure represents the results of this reform of the State territorial administration, implemented from 2007. This reform was aimed at saving administrative costs after the transfer of services and personnel under the authority of presidents of *départements* and regions, and at streamlining the functional divisions of the deconcentrated State administration. The organisation of the prefecture itself is not represented. The prefect of the region is assisted by a secretary-general for regional affairs and a staff (about 900 civil servants as a whole, including overseas regions) in charge of the monitoring of the implementation of national public policies by the regional branches of central government departments, and in particular to negotiate and monitor with the president of the region the State-region plan convention. The prefect of the *département* is assisted by a cabinet for his/her direct support and a secretary-general as the head prefecture administration; this includes departments for regulation and elections, for local government, for the co-ordination of inter-ministerial policies, a support division (means and personnel), and units for security and for civil protection. The prefect of region is always at the same time the prefect of the main *département* of the region.

Scheme of deconcentrated State administration before and after the reform of the State territorial administration[3]



The colours reflect administrative units that were amalgamated by the reform. This figure reflects the simplification and the concentration of means achieved by this reorganisation. At the regional level there exist only 5 regional divisions:

– Cultural Affairs (DRAC);

– Food, Agriculture and Forestry (DRAF);

– Environment, Planning and Housing (DREAL);

– Enterprises, Competition, Consumer affairs, Labour and Employment, deemed to be the unique counterpart for enterprises (DIRECCTE);

[3] Cour des Comptes, *L'organisation territoriale de l'État*, Public thematic report, July 2013, pp.68 et suiv.

– Youth, Sports and Social Cohesion (DRJSCS)

Beyond these divisions, there is a regional delegate for research and technology under the secretary-general for regional affairs.

At the *département* level, there are two or three (depending on the population) inter-ministerial divisions:

– Territorial questions;

– Social cohesion and protection of the population;

– (in more populated *départements*) Protection of population is a separate division.

There is also the Division for Public Security, usually headed by a higher police officer, directly under the authority of the prefect.

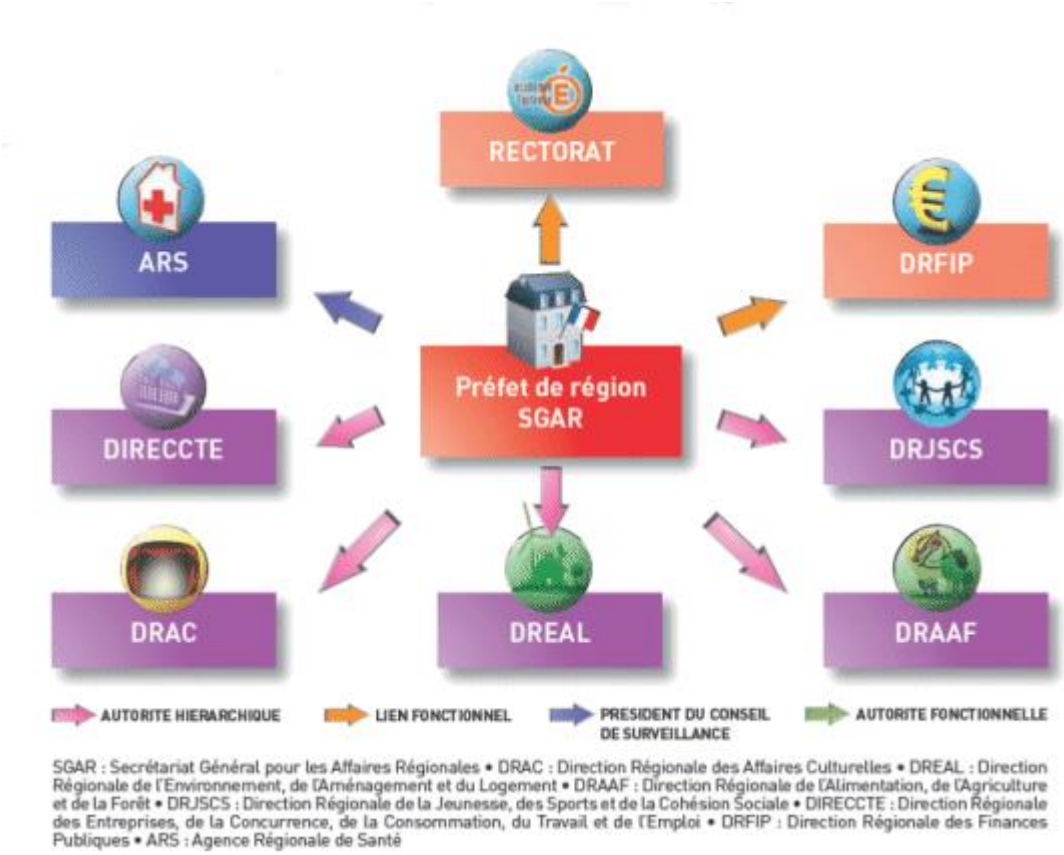
Furthermore, three regional divisions have units at the *département* level under their own authority: for Cultural Affairs, for Environment, Planning and Housing and the Labour inspectorate, under the DIRECCTE.

However, local branches of several departments are not subordinated to the prefect for their main functions: the Directorates of Public finance at the level of the region and of the *département* (they are in charge of establishing tax bases, collecting tax and executing public expenditure); of Education and the Labour law inspection. Obviously, the administration of justice and the military remain outside of the authority of the prefects. Nevertheless, prefects have more general powers to implement a unified policy as regards State properties and premises.

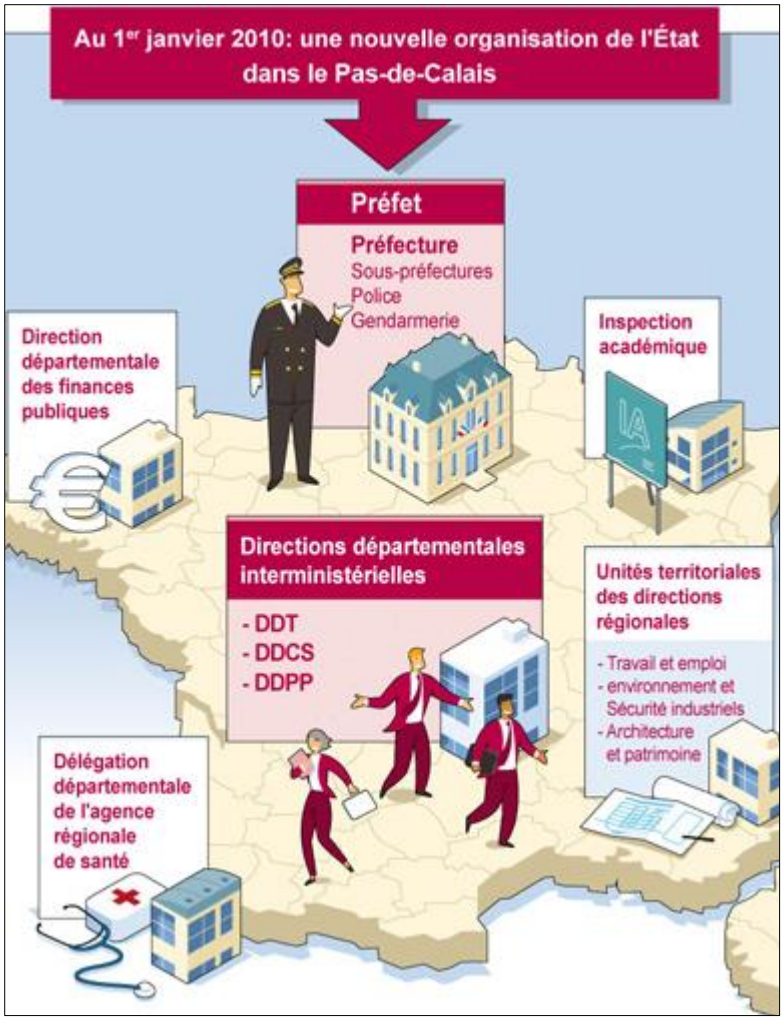
Furthermore, there exist a number of national agencies subordinated to ministries which have their own territorial branches. Among most important ones, “Regional Health Agencies” (*Agences régionales de santé*) can be quoted: these are public law corporations in charge of the general public health policy, monitoring hospital capacities and management, and planning responses to specific health problems of a particular region. The chair of the board is the prefect of the region. In France, there was no decentralisation of health services, by contrast with social care which is decentralised. Other examples are the Agency for energy savings and energy development (ADEME), the Public Investment Bank (BPI), the *Caisse des dépôts et consignations*, a major public bank involved in particular in the funding of social housing. The decree of 7 May 2015 extends the prefect powers with regard to these agencies: from now on, “State agencies with territorial branches that are involved in the implementation of national public policies have to fulfil their functions under the co-ordination of the prefect, consistently with deconcentrated State services”, and they can also designate the prefect as their local representative (art. 15).

The following figures summarise the organisation of a prefecture of a region (Midi-Pyrénées) and of the prefecture of a *département* (Pas-de-Calais).

Services Régionaux de l'Etat



SGAR : Secrétariat Général pour les Affaires Régionales • DRAC : Direction Régionale des Affaires Culturelles • DREAL : Direction Régionale de l'Environnement, de l'Aménagement et du Logement • DRAAF : Direction Régionale de l'Alimentation, de l'Agriculture et de la Forêt • DRJSCS : Direction Régionale de la Jeunesse, des Sports et de la Cohésion Sociale • DIRECCTE : Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi • DRFIP : Direction Régionale des Finances Publiques • ARS : Agence Régionale de Santé



A major responsibility of prefects in the field of general administration is law enforcement. Since a decree of 15 January 1997, the prefect of *département* has been the authority to adjudicate all individual decisions belonging to the competence of the State, subject to exceptions listed by decrees for decisions referred to other authorities (for example, the prefect of the region or the minister). The prefect of *département* is also the general police authority: in terms of issuing police regulations and authorisations, and in terms of authority upon police forces for the safeguard of security and public order.

Traditionally, prefects are directly subordinated to central government. This applies to both the prefect of *département* and the prefect of region. However, the decree of 16 February 2010 (amending the decree of 29 April 2004 on prefects' powers and deconcentrated services in regions and *départements*) has introduced a hierarchical link between the prefect of region and the prefects of *département*. The prefect of the region has "authority" upon the prefects of the *départements* for the implementation in the region of State policies, and of EU policies within the State competence, and prefects of the *départements* have to execute instructions from the prefect of the region (art. 2 of the decree of 29 April 2004, as amended). However the implementation of health policy was excluded from the competence of the prefects of regions with the creation of the Regional Health Agencies (but the prefects

of *département* step in again as soon as public order is affected) and the prefects of *département* report directly to the minister of the Interior (not to the prefect of the region) in matters of public order and security of the population, immigration and asylum.

In order to ensure unity and cohesiveness in the implementation of State policies, the prefect of the region chairs the Committee of regional administration. Members of this Committee are the prefects of the *départements*, the head of education administration (recteur), the regional director of public finance, the secretary general for regional affairs, the directors of deconcentrated regional branches of central government departments, the director of the Regional Health Agency; heads of regional branches of national agencies are invited to the committee.

Lastly, the prefect is the supervisory authority of local self-government bodies. Main administrative acts and procurement / concession contracts are referred to the prefect for legality assessment; the prefect will lodge with the administrative court an appeal against those he/she thinks unlawful. The prefect is also in charge of the budgetary control with the support of regional audit chambers. For regional self-government bodies, the prefect of the region is the supervisory authority.

Security and emergency powers will be summed up in the last section.

Italy and Spain

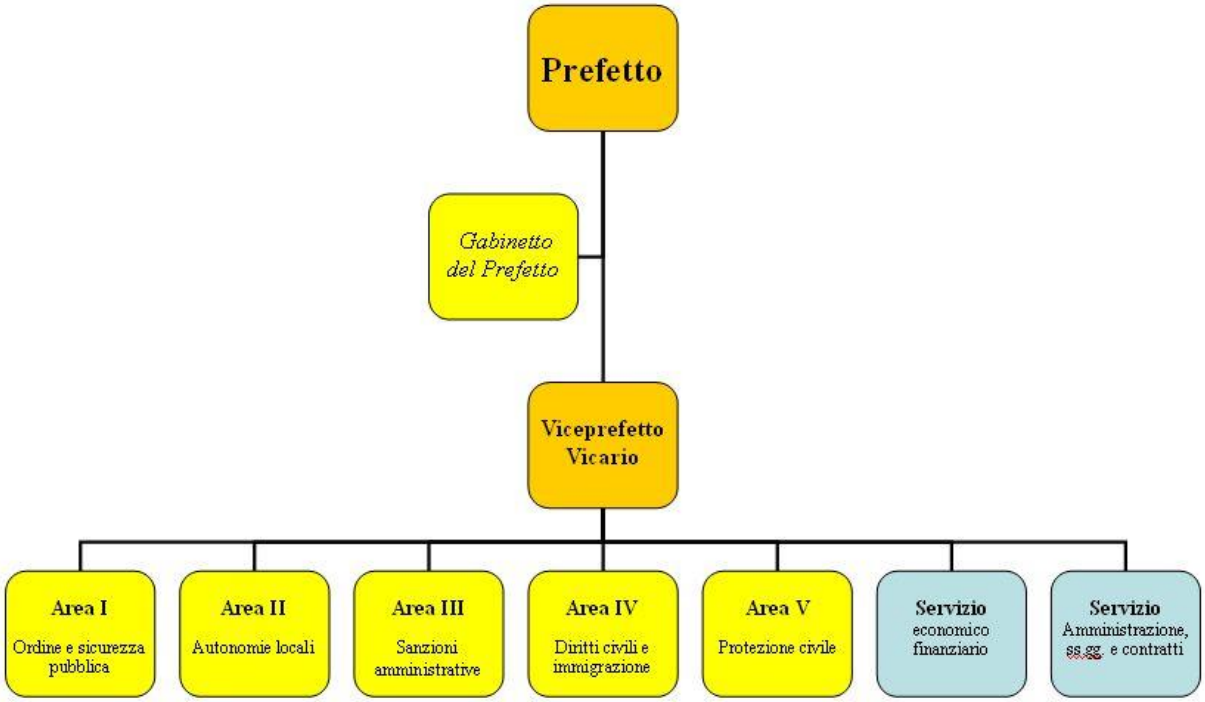
Due to the transfer to regional governments of a large part of State functions, the scope of the powers of Italian prefects and of Spanish government delegates in general administration matters has been much more considerably reduced compared to French prefects, and they are nowadays focused on security issues. Nevertheless, their functions in general administration matters are not negligible and Italian prefects have kept more powers than their Spanish counterparts.

a) Italy

In Italy, the prefect is, in the province, the representative of the government and the head of the "prefecture – territorial office of the government". According to the legislative decree 300/1999, the prefecture has to perform own tasks resulting from piecemeal legislation and to co-ordinate the activities of various local branches ("peripheral administration") of central government that have been maintained at the local level and ensure their co-operation with regional and local self-government bodies.

The standard organisation of an Italian prefecture is the following. There is a relatively flat organisation with five functional areas and two support areas. Functional areas are: 1) Public order and public security; 2) local self-government; 3) administrative sanctions; 4) civil rights and immigration; 5) civil protection. Support areas are: 1) economic and financial service; 2) general administration and procurement. Deputy prefects are appointed as the head of

cabinet, as the vicar of the prefect and as heads of functional areas. This is summarised in the following figure.



It has to be distinguished between direct functions of the prefecture and the problem of relationships between the prefecture and other peripheral State administrations. The system is easier to understand if to begin from the last point.

In line with the rise of regional autonomy, the law 59/1997 had mandated the government to reshaping the State peripheral administrations. The legislative decree 300/1999 has then established the "territorial offices of the government" (*uffici territoriali del governo*), at provincial level, with the purpose of integrating into these offices all peripheral administrations of central government departments, subject to some important exceptions (treasury, finance, education, cultural heritage, agencies created by the law)[4]. A decree of the President of the Republic (DPR 287/2001) established the lists of services to be transferred into the territorial offices of the government. After the constitutional review of 2001, which enlarged considerably the powers of regional self-governments, the prefect of the province

[4]Laura Lega, *Prospettive del riordino dell'amministrazione periferica dello Stato*, 1999, http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/15/0254_valore_aggiunto_UTG.pdf

being the seat of the regional government became the State representative with regard to regional and local self-government bodies[5].

However, the governments did not succeed in implementing this reform and in 2004 the territorial offices of the government became again "prefectures – territorial offices of the government".[6] The basic change was to give the prefect only a role of co-ordination of peripheral services; the integration and full subordination to the prefects was abandoned[7]. As a consequence, the DPR 287/2001 was abrogated and a new DPR (180/2006) mitigated the role of the prefect and of the permanent provincial conference chaired by the prefect, consisting in all heads of peripheral services and major elected local officials. The prefect lost the power to substitute him/herself to defective heads of peripheral services and could only first undertake mediation, then convene a meeting of the provincial conference on the issue, request the necessary measures and only in last resort take directly the required measures.

Under the pressure of the economic and financial crisis, the Italian government resumed its policy to rationalise and streamline its administrative organisation. Main step was the legislative decree 138/2011 of 13 August 2011 on the "spending review" programme, which provided for a rationalisation of all peripheral structures with the aim of integrating them into a unique government office at the provincial level, again with several exceptions. This was implemented by the legislative decree 2012/95 of 6 July 2012, as modified by the law No 135/2012 of 7 August 2012. Again, the prefecture – territorial office of the government is vested with the function to ensure the "unitarian representation of the State on the territory" but this time the function is operationalised with practical measures (art.10). The law provides for a unique office for the relationships between citizens and the State, and all instrumental and logistic functions needed by all peripheral offices of the State administrations have to be carried out by a unique office, with "direct and exclusive responsibility" under the prefect (in particular as regards premises, vehicles, digital administration...). The province remains the territorial constituency for the State administration, subject to adaptations where there is a metropolitan city (città metropolitana), or where special problems of public order or regarding the guaranty of the level of satisfaction of essential needs require a different scale of action. Again, by the law 124/2015 of 7 August, the government is mandated to issue legislative decrees within next twelve months to replace the "prefecture – territorial government office" by a "State territorial office" (*Ufficio territoriale dello Stato*) as the unique contact point between the

[5]B.G. Mattarella, "Il prefetto come autorità amministrativa generale dopo le recenti riforme", *Amministrazione pubblica* 2003, n°29-30-31, p.46 sq.

[6]Camera dei Deputati – Servizio Studi, *Riorganizzazione della presenza dello Stato sul territorio*, 10 May 2013.

[7]L. Fiorentino, "La periferia, nuova frontiera dell'amministrazione", in: L. Fiorentino / H. Caroli-Casanova /L. Casini / E. Chiti / M. Conticelli / A. Fioritto / M. Gnes / C. Lacava / M. Macchia / A. Mari / C. Meoli / A. Natalini / C. Notarmuzi / L. Saltari / M. Savino, *Le amministrazioni pubbliche tra conservazione e riforme*, Milan, Giuffrè, 2008.

State peripheral administration and citizens, and give full authority to the prefect on all managers (*dirigenti*) of services integrated in the State territorial office, including substitutive powers. This has to be accomplished with suppression of overlapping or duplicating units. A legislative decree has also to determine precisely the responsibilities of the State territorial office in public security matters. In essence the reform of 2012-2015 is a new attempt to achieve the objectives of the reform of 1999. Moreover, the aim is also to tighten functional links with peripheral administrations that will remain outside of the State territorial office (namely treasury, finance, education, cultural heritage).

Beyond this issue of relationships with other peripheral services, the prefect and the prefecture have also specific responsibilities and powers.

The prefect is the general authority in the province for public order and public security. He/she has the power to command and co-ordinate all services concerned and dispose of police forces as well as *Carabinieri*, which are a military corps. The prefect is assisted in this matter by the "provincial committee for public order and public security".

The prefect has also important supervisory powers upon regional and local self-government bodies. The constitutional review of 2001 suppressed the provisions on legality control by a regional committee over general and individual acts issued by regional and local self-government bodies. But the prefect may suspend temporarily mayors and presidents of local government entities in case of a violation of the Constitution or of serious and repeated violation of the law, or where there are serious reasons related to public order, subject to a final decision of the minister of the Interior; he/she may engage the procedure of dissolution of a local council. The prefect may also operate inspections on public services of local competence. In case of necessity, the prefect may appoint an "extraordinary commissioner" (*commissario straordinario*) as the head of the administration of a local entity whose self-government bodies were dismissed or dissolved (see legislative decree 267/200, art.141). Such commissioners are usually members of the corps of prefects. These powers are used in particular in case of purported influence or control by organised crime over local assemblies. The prefect of the province where the seat of the regional capital is established may also refer to the central government regional laws which purportedly are in breach of the constitution (in a limited number of cases). The government can request a second reading of the law or lodge an appeal with the Constitutional Court against the regional law.

The prefect has also the power to take all necessary measures in case of emergency resulting from serious threats to security and integrity of persons, in order to prevent or overcome these threats, or in case of serious disorders, or in the framework of "state of emergency" as declared by central government following natural or man-made disasters.

The prefect is also vested with a great variety of powers: for example, he/she can intervene for a mediation in labour disputes; he/she has to guarantee the provision of essential public

services; he/she is vested with the power to issue administrative sanctions in various matters where the offence is no longer of criminal nature (for instance, road traffic tickets).

b) Spain

Whereas the constitutional framework of regional governments is relatively similar in Spain and Italy, the Spanish regional governments have more powers. In terms of regional competence, the main differences are on education and police. In Italy, education and the personnel thereof is still in the central government's competence, whereas in Spain it was devolved to regional governments, and several regional governments have extensive responsibilities in security and police matters, in contrast with Italy.

Again by contrast with Italy, the governments of Spain succeeded in integrating peripheral administrations (same terminology as in Italy) in the structures of the (central) government at the regional level. This is another difference: the State representative is appointed in Spain as a counterpart of the regional government. The law 6/1997 on the organisation and operation of the State general administration provided for the integration of regional branches of central government departments in general administration bodies: the "delegations" and "sub-delegations" of the government. This integration was organised by the royal decree 1330/1997 of 1 August, with subsequent amendments when further transfers of tasks and personnel took place. However the integration of peripheral administrations concerned only the following departments: 1) Development (*fomento*); 2) Education and Culture: services of the Higher Inspection of Education and administrative units of the former department of culture that was removed; 3) Industry and Energy; 4) Agriculture, Food and Environment, with exception of two laboratories that will remain under the direct authority of the minister; 5) Health and Consumption. Most operational capacities were indeed transferred step by step to regional governments, and State administrations are vested mainly with regulatory and oversight functions. Financial administrations and the Legal State service remain outside of government delegations.

Government "delegations" are referred to the department of public administrations of the central government. "Sub-delegations" are also integrated in the government delegations and sub-delegates, as already mentioned, are subordinated to the delegate. The general secretariat of the government delegation includes divisions in charge of support functions, of relationships between citizens and territorial administrations. Sub-delegations fulfil various tasks regarding citizens' rights, elections, licenses, civil protection, immigration and asylum.

Government delegations include functional areas that depend on the respective departments of the central government. There are four functional areas: 1) Development; 2) Industry and Energy; 3) Agriculture, or Agriculture and Fisheries in coastal regions; 4) Health. Only seven regions have a branch of the Higher Inspection of Education as a functional area. The government delegate is assisted by a cabinet. The directors of functional areas have competence for the whole territory of the autonomous community (*comunidad*

autonoma - region) directly or through services of the lower territorial level when this is necessary. In the latter case, corresponding functional areas are established in the sub-delegations.

Government delegates exercise various powers determined for the various functional areas by article 5 of the royal decree 1330/1997. In general terms, the delegate represents the respective central government departments at the regional level; he/she is responsible for the co-operation, co-ordination and communication with the regional government and local governments; and ensures the overall direction of functional areas. Furthermore, the government delegate, in relation of the Development Department, takes emergency measures in relation with infrastructures under its responsibilities, fulfils tasks that are not assigned to a particular administrative unit, supervises and monitors the issuance of building permits and housing. In relation with the department of Industry and Energy, he/she exercises the power of expropriation for electricity infrastructures, promotes government programmes for modernisation and competitiveness of the industry, and delivers licenses for weapons and explosives. Inspection reports in schools and high schools are transmitted to the regional government (in charge of education) by the government delegate. For the department of Agriculture, Fisheries and Food, as well as for the department of Health and Consumption, the government delegate monitors the follow up to inspection reports, and to issues administrative sanctions for infringement of the law. The government delegate has a number of powers with regard to the personnel of the delegation. Lastly, he/she adjudicates in first instance on claims against administrative acts and regulations issued by lower authorities of the delegation.

Beyond general administration, the government delegate is also the head of police and security forces of the State, under the authority of the minister of the Interior. The power to issue administrative sanctions formerly attributed to the civil governor of the province was transferred to the government delegate. At provincial level, the sub-delegate is the head of security forces of the State, and directs and co-ordinates provincial forces of civil protection.

However, there exist in several regions police forces of the regional government that substitute for the national police and the Civil Guard (*Guardia civil* = a military corps comparable to Italian *carabinieri* and to the French *gendarmerie*) in most of their functions. The most important one is the regional police of the Basque Country (8,000 members), which is responsible for public order, public security, traffic, games and entertainment, antiterrorist police, judicial police. This police force is under the Security department of the regional government. In such a case national police and the Civil Guard have to co-operate with the regional police. There is also a regional police in Catalonia. By contrast, police forces of the regions of Navarra and Canarias do not substitute for national police but only have a supplementary function. Other regional police forces are integrated to the national police.

II. Emergency powers, exercised by permanent or *ad hoc* authorities

Emergency powers in case of natural or industrial disasters or in case of serious threats to public order and State security are usually exercised by permanent authorities, but on the basis of special provisions. The main significant case of a different solution, involving temporary commissioners, is the UK, because in this country local State representatives have not existed for centuries and were established briefly (between 1994 and 2011) in the XXth century only. In Italy, the possibility to appoint "extraordinary commissioners" also exists. Therefore this section is focused on three countries: France, Italy and the UK. In all countries reviewed, military forces are involved only in last resort and always under civil command, except in a war situation.

A) France

In France there is a special organisation of powers for emergency cases on the basis of central government, prefects and dedicated forces: national police, firemen and *gendarmerie*.

1) Exceptional legal regimes

According to the Constitution in extreme situations, three legal regimes may be involved.

The first ones are extraordinary powers of the President of the Republic (art.16):

"Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council.

He shall address the Nation and inform it of such measures.

The measures shall be designed to provide the constitutional public authorities as swiftly as possible, with the means to carry out their duties. The Constitutional Council shall be consulted with regard to such measures.

Parliament shall sit as of right.

The National Assembly shall not be dissolved during the exercise of such emergency powers.

After thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down in paragraph one still apply. It shall make its decision by public announcement as soon as possible. It shall, as of right, carry out such an examination and shall make its

decision in the same manner after sixty days of the exercise of emergency powers or at any moment thereafter".

In such a case the President of the Republic concentrates all legislative and executive powers in own hands. However measures taken by the President in legislative matters remain administrative acts subject to judicial review by the Council of State. This was used once in 1961 to face a tentative military coup at the end of the war of Algeria.

The second legal regime for emergency situations is the "*état de siège*" (martial law) which may be declared by the Council of Ministers and after 12 days may be maintained only by an act of Parliament (art. 36). This is possible only in case of imminent peril resulting from foreign war or armed upheaval, and it may be limited to specific areas of the territory (Code of Defence: art. L.2121-1 and L.2121-2). In that situation, the competence of military courts is extended, and the military authority may suspend or restrict various civil rights, instead of the civil authority.

The third special legal regime is the so-called "état d'urgence" (state of emergency). It is based on a law of 3 April 1955 (No. 55-385). It can be declared by the Council of Ministers on any part of the territory, in case of imminent peril resulting from serious breach of public order, or in case of other events having the character of a disaster; the areas concerned are determined by a decree of the Prime Minister. Beyond 12 days, the emergency state may be maintained only by an act of Parliament. In that situation, all powers remain in the hands of the civil authority. The prefect of the *département* may limit or forbid traffic and movement of persons, create special zones with restrictions, take measures targeted at specific persons. The minister of the Interior may decide to close entertainment places, pubs, and other places for public attendance. There were several applications during the war of Algeria, in the seventies in New Caledonia, and in the overseas territories in a case of a volcano eruption.

But in case of emergency situations resulting from natural or technological disasters as witnessed in the last decades, only "standard" emergency measures were taken.

2) Security organisation and powers in situations of emergency

For the organisation of measures deemed to cope with emergency situations, France is divided into "defence zones" (*zones de défense*). The powers related to the protection of the population are assigned on zone prefects, prefects of *département* and mayors; the prefect of region is mainly in charge of measures of "economic defence". This organisation is regulated by the Defence code and by the Code of security of the interior. Defence zones were first delineated in 1950; nowadays there are 7 defence zones on the European territory of France and 5 overseas (Code of the security of the interior: art. R.1211-4). Zone prefect is the prefect of the main region of the Defence zone. In the region Ile-de-France it is the police prefect of Paris.

Key powers belong to prefects of *département* (in Paris and the first three *départements* around Paris to the police prefect). The prefect has command upon national police forces and *gendarmerie* units as needed by the protection of public order and administrative police. He/she has also the operational command of the firemen and rescue service of the *département* ("standard" command belongs to the president of the departmental council). The prefect is assisted by the departmental committee for security (members are higher civil servants of the various State administrations), jointly chaired with the State prosecutor (art. R. 122-56 and R. 122-57), and by the civil security council, including representatives of local governments and of public service providers; the latter is involved in risk evaluation, crisis management and information of the population (art. D.711-10).

The command of assistance operation to the population belong first to the mayor, and then to the prefect of the *département* when the situation is beyond the capacity of the municipality – which is usually the case. If the impact of the situation spreads beyond the limits of the *département*, the zone prefect activates all means of State and local government. The prefect of *département* or the zone prefect, as the case may be, may requisition all assistance capacities of public or private entities.

Assistance and rescue plans (*plans Orsec* – for *organisation des secours*) are issued at the levels of each *département* and of each defence zone. These plans are issued by the respective prefects. They are based on risks analysis and the listing of all available means and they provide for general conditions for the prefects to use them; there are provisions for special risks (for example, flood, chemical accident...). There are special plans for particular infrastructures (for example, railways, nuclear plants...) and for sea disasters (namely coastal pollutions...). Plans are made public (see Code of security of the interior: art. L.741-1 and sq).

Prefects of region are the main authority for economic defence under the authority of the zone prefect, with the assistance of a regional commission of economic defence and the support of prefects of *département* (Code of defence: art. R.1311-30 sq). The priority areas are transport, catering and the capacities of all forces involved.

Two kinds of events are distinguished by the code of security of the interior: 1) national security, and 2) crisis or events of particular seriousness. In the latter case, which is relevant also for situations affecting the national security, the zone prefect is vested with wide powers of administrative police to protect the population, requisition all necessary means, dispatch forces and equipment, ensure public order by police regulations (Code of the security of the interior: art. R.122-8). When events affect national security, additional powers are exercised regarding co-ordination with the military, including the air force, and intelligence (art. R.122-4).

The zone prefect is assisted by a delegated prefect for defence and security (art. R.122-20), vested with the command on the inter-ministerial staff of the zone for operational decisions. He/she chairs the "zone security committee" for civil and economic security. The zone

prefect has also authority over the Secretariat general for police administration, essential for dispatching police forces (art. R.122-30).

In case of circumstances affecting State security on all or part of the territory, the Prime minister may extend the powers of the zone prefect. This includes the extension of his/her hierarchical authority over prefects in all matters; superior control and general co-ordination over all services, corporations and personnel of the State; power to suspend any civil servant for serious mistakes; full authority upon all police forces and means, including the gendarmerie and municipal police forces and military forces; power to decide on all services and personnel of local governments and public law corporations (art. R.122-7).

To sum up, whereas it remains possible for the government to appoint a special commissioner in a specific emergency situation, this did not occur. The whole system is based on the permanent organisation of the State at various territorial levels. The government can increase powers of prefects, especially of the zone prefect according to circumstances. The advantage is to make it possible to draw up and have ready "risk and intervention plans" and to possess a clear and stable distribution of responsibilities in advance of a crisis.

B) Italy

In Italy, the administrative organisation of security and civil protection matters has much similarity with France, but with some important differences. The prefect of the province (equivalent to French *départements*) is also the key authority for security and for emergency situations. But the State has no stable civil administration for security and emergency situations at a larger scale. The military has its own territorial organisation, with large areas for the North, the South, Roma and Sardinia, but these territorial units have no function in civil matters. In regions with special status, part of the powers of the State in these matters is devolved upon regional governments. To overcome the difficulties that might result of the lack of an intermediate tier, the solution has been to involve so called "extraordinary commissioners" (*commissari straordinari del Governo*) (law 400/1988, 23 August, art. 11).

As regards public security, the authority at the local level is exercised by the prefect and the *questore* (head of the police forces at the level of a province). According to the law 121/81 of 1 April 1981 (art.13 and 14), the prefect is the provincial authority for public security[8]. He/she has the general responsibility for public order and public security in the province, and the *questore* as well as the commanders of the *Arma dei Carabinieri* and of the *Guardia di finanza*, the three heads of police forces in the province, have to report to him/her. The prefect has authority upon these forces and decides on their involvement. On the other hand, the *questore* is the provincial authority for public security; he/she is vested with the powers of direction and co-ordination at operational level of police forces. There exist also 6

[8]F. Carrer (a cura di) (2014), *La polizia di Stato a trent' anni dalla legge di riforma*, Franco Angeli, Milan.

interregional directorates for operational needs and the management of forces but these directorates have no authority for the involvement of police forces at that level.

The prefect is also empowered to take urgent measures deemed to prevent and eliminate serious threats on public security and persons' physical integrity, once the mayor has taken the necessary measures (code of local self-government: art. 54). However he/she can still take all measures needed for the protection of public order and public security on the basis of the Royal decree 733/1931, integrated in the Code of public security.

The prefect is also in charge of civil protection and civil defence under the minister of the interior. He/she is assisted by the provincial committee on public order and public security, and by the provincial committee of civil defence.

The provincial committee on public order and public security is quite important: it includes the *questore*, the commanders of Carabinieri and the Guardia di finanza, and also of the Forrest protection and management corps (to be in part amalgamated in other police forces according to the law of 7 August 2015 – art.8.1, a), the mayor of the provincial capital, the president of the provincial council and as well other mayors depending on the matters and areas concerned.

As regards civil protection the prefect relies on the department of firemen, rescue and civil defence (*Dipartimento dei Vigili del Fuoco, del Soccorso Pubblico e della Difesa Civile*) of the ministry of the interior, and in this department on the Central directorate for civil defence and civil protection policies. There is a command of the Firemen in each province, and regional and interregional directorates. On the basis of the law 225/92 of 24 February, the prefect has the general responsibility for civil protection. He/she has to prepare and implement the plan of emergency (*piano per fronteggiare l'emergenza*) for the whole territory of the province, he/she is vested with the direction of all services required for civil protection, in relation with mayors, and he/she has the power to take all measures of administrative police required by the situation. The powers of the prefect are extended by the declaration of the state of emergency by the government. In this function, the prefect of the province has to cooperate with the regional government.

But the scale or the nature of crisis may not be limited to a single province. In a number of circumstances, the government will therefore appoint extraordinary commissioners for all kinds of purposes. According to article 11 of the law 400/1988, an extraordinary commissioner may be appointed to achieve specific objectives in relation with programmes or guidelines adopted by the government or the parliament or for temporary necessities of operational co-ordination of State administrations. The commissioner is appointed by a decree of the President of the Republic on proposal of the head of the government after deliberation of the Council of Ministers. This decree determines the task assigned to the commissioner, on the means put at his/her disposal, and the term of the mission. There is no indication on who can be appointed as an extraordinary commissioner: this can be a higher

civil servant (usually a prefect), or sometimes a politician, depending on the matter and on circumstances; the same person may also be vested with several missions.

The extraordinary commissioner is not used only to deal with emergency situations, but this institution has been used frequently for such situations. For example, extraordinary commissioners were appointed in the last past years for waste emergency in the region of Campania (mainly the city of Napoli) and in the region of Sicilia, the earthquake of L'Aquila, the state of environment in the region of Puglia, or to cope with important migration waves. At the local level, extraordinary commissioners (or commissions) were appointed to deal with cases of criminal infiltration of municipal governments, or to cope with high floods in Venice.

This is then a very flexible instrument that made it possible to cope with a number of difficult situations. Commissioners have to report at the end of their mission. Some have criticised the lack of control, in particular in case of renewing the mandate of the commissioner, and the fact that the practice of this institution reflects insufficiencies in the ordinary administration at central or local level. But, on the other hand, even if improvements are made, this remains a tool useful to the government facing critical situations.

C) United Kingdom

1) <u>The short experience of the Government offices in the region</u>

In the modern times the UK has had no tradition of a general administration at the local level to support the implementation of national policies and enforce the law. There existed only local branches of some national departments such as tax and excises, social allowances and others. In the sixties of the 20th Century, planning boards were created but suppressed by the Thatcher government. More generally, local governments worked very often as agents of the central government. Under the government of Mr Major, government offices of the region were established, in London and in 8 regions of England. In 1998 regional governments were established. Over time, 12 central government departments (including the Home Office) created units in these government offices, in order to implement their national policies jointly with local government on the basis of programme agreements. With the current financial crisis, the Cameron government decided severe budgetary cuts, in particular in the programmes implemented with local governments. As a consequence all government offices were suppressed 2011. Several departments have maintained small units or have developed new forms of intervention on the basis of various partnerships (with the private and with local governments) but on an ad hoc basis. This is important to understand the way emergency situations are dealt with by the UK government.

2) <u>Civil contingencies act</u>

The Civil Contingencies Act 2004 provides a large-scale consolidation of the law and replaces the Civil Defence Act of 1948. The Act is broadly defined in scope to include war or attack by

a foreign power but also terrorism and any serious damage to the state. Local bodies in England, Wales, Scotland and Northern Ireland are provided with large defined duties as Category 1 responders. These include the health service, the environment (the Environment Agency) and also local government. There are a wide range of civil protection duties and category 2 responders are required to co-operate in the discharge of their functions. The Act also repealed the Emergency Powers Act of 1920 and creates a single source of legal powers to address food, water, fuel, light and transport or any of the "essentials of life".

Considerable ministerial powers are granted under the Civil Contingencies Act 2004 to allow a response to an emergency and maintain public information, formulate planning and take action (sections 1 to 7). Various local bodies are required to advise the public and give assistance and support to maintain commercial activities and the necessities for the maintenance of life. Potentially these powers and general measures are all embracing and would allow Ministers and local bodies to take over the running of the country in a time of civil or military emergency. Some of the powers under sections 5-7 are sweeping in their breadth and are capable of being added to by order without the necessity for Parliamentary approval in cases of urgency. Details are provided for the various devolved administrations to have similar powers and duties.

Part 2 of the Civil Contingencies Act 2004 provides a definition of the procedural requirements needed to satisfy an emergency and the steps that may be taken by the authorities. Section 20 has powers for emergency legislation and how regional emergency co-ordination may take place (section 24). There is also the potential for a Tribunal to be established under section 25 for the adjudication of disputes. There is also the position of an emergency co-ordinator for each of the regions in England. There are similar regional co-ordinators appointed for each of the devolved administrations. This means that at the apex of control is the Executive government in London with command/control oversight over local public bodies.

3) Final remarks on UK experience

The UK has had both colonial and local experiences in coping with a variety of civil emergencies. There are historical examples of protest leading to emergency such as the birth of trade unions, miners' strike, emancipation of women, Irish home rule, and a large numbers of strikes known in the 1930 as the General Strike.

The current legislation is wide ranging and could effectively replace the running of the state with centralised London based Executive power which might include confiscation of property and the operation of the main utilities. This is a model of local delivery through central control.

III. General conclusion

The review of various European experiences shows that the most current organisation for the State administration includes local branches of central government departments, and usually with a higher State representative with general administration functions. Where it does not exist or where it was removed, one can observe a tendency to develop substitutes for the needs of the implementation of national government policies.

A second lesson of the review is that decentralisation policies involve the transfer of services and personnel from the local State administrations to local self-government bodies. As a consequence, the local branches of central government departments relinquish operational functions and are more easily integrated under the authority of the territorial representative of the central government.

A third lesson is that security, police and civil protection are always at the core of the functions of the territorial State representative. Current threats on the security of population, be they environmental disasters or terrorist attacks, can only result in strengthening their powers and resources in this area.

Lastly, what distinguishes the prefect institution, as it exists in France, Italy or Spain, and in a different form in larger German Länder, is its “professional” character. The prefect is not a political appointee but a career civil servant of high level. This is a guarantee both for central government and for citizens and local elected officials. It is an institution that can represent for citizens the neutrality and the permanence of the State, help resolve local disputes and build confidence.