

LAW FROM AUGUST 14, 1938 BETWEEN TRADITION AND INNOVATION, NECESSITY AND OPPORTUNITY

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Abstract:

The Administrative law of August 14, 1938 has organized the local public government by the principles of strict centralism meant to give the Government a full control over local communities. By this law were established the lands whose existence was justified by the fact that they, being strong administrative bodies, are considered to entail: personal spending economy and possibilities of large administrative achievements, exceeding the powers of counties.

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INTRODUCTION

The Constitution from February 1938 made the creation of administrative region in the form of *land* possible, which comprises several counties, invested with legal personality (art. 1). The land represent "local interests" and exercises at the same time, also the "general administration duties." All rights and obligations of the former counties of administrative laws were passed onto the land. The 1938 Act has followed also an administrative deconcentration by placing in the residence cities of the lands of ministries of external services, which operated in addition to royal residence.

The new Constitution made no reference to administrative-territorial units, but included in art. 79 of Chapter VI that county and municipal institutions shall be established by law. Stated purpose of this form of regulation was to avoid enshrining constitutional of some principles of administrative organization, under the supremacy of the Constitution, so that it can be more than an obstacle to the desired reforms. They would thus accuse the 1923 Constitution, whose provisions had given rise to unnecessary discussions and various legal subterfuges, which were strongly criticized in their time. "The new constitution of February 27, 1938 releases the state administrative organization of a series of obligations that are included in its 1923 Constitution. Principles included in that Constitution, on the country's administrative division into districts and communes, had given rise to many administrative unnecessary and meaningless discussions."

The 1938 Constitution maintained some principles such as: national sovereignty, separation of powers, ministerial responsibility, along with some principles such as: freedom of education, labour, media, individual freedom, equality before the law.

The characteristic feature of economic policy was the increase in state intervention, expressed in measures aimed at coordinating the activities of various economic sectors, massive orders made within the heavy industry, in purchasing large amounts of grains and their storage, in making domestic loans, in directing foreign trade and traffic control (Scurtu, 1982).

Reflecting the political regime in the period in which was developed, the *Administrative law of August 14, 1938* organized the public administration according to the principles of a rigorous centralism, designed to give the government a full control over local communities, to promote "the permanent interests of the homeland." To achieve this goal, the new regime has named prefects at county level, who were active militaries with the rank of lieutenant colonel and colonel.

By introducing new institutions and reforming the existing ones, the law initiators tried to solve a series of problems with which the public administration is confronted. Analyzing this normative law it's worth noting that the law is generally characterized by clarity and simplicity that were not specific to the previous laws in this area. By this law, many of the mistakes which

had been hitherto have been corrected through legislative experience from previous years, more developed specialty doctrine and collaboration with the Royal Institute of Administrative Sciences.

Administrative law of 14 August 1938 was developed during the government led by Patriarch Miron Cristea. The draft law stipulates that the mayors were appointed by the prefect for a period of six years. In contrast, Demostene Botez, director of the newspaper "Dreptatea" required to recognize the citizen's right to choose the mayor, act in which he sees embodied the notion of freedom and civic dignity (Botez, 1938).

A Regulation on Administrative law of August 14, 1938 appeared on November 28, 1939.

Armand Calinescu considers that "the project of administrative law of August 14, 1938 is the first organic law in the new constitutional settlement of the country, drawing the first and most important line of the future image of our state appearances. Of course, it is a beginning which we consider of a crucial importance, but which will still not bring its benefits than by labour and civil faith, understanding and support of governments. Only under these conditions the project can become a real administrative reform".

STRUCTURE AND CONTENT

In terms of Administrative law of August 14, 1938 content, it should be noted from the beginning that it is structured on 11 titles, comprising 197 articles, covering the following aspects: Title I contains general provisions, Title II governing the status of the village, Title III concerns the organization of land, Title IV administrative districts and control authorities, Title V summarizes a series of joint provision of local governments, Title VI refers to disciplinary actions against local government bodies, Title VII contains mandatory works, Title VIII aimed at local finances, Title IX refers to the control and protection of local governments, Title X presents the petition procedure, and Title XI includes transitional provisions.

Local administration is exercised through the following **territorial districts**: commune, post, county and province. The commune and land were juridical persons representing local interests and exercising at the same time general administrative duties conferred by law. Posts and counties were control precincts and deconcentration of general administration.

Deconcentrating state general administration services was done only on the basis of territorial constituencies under Administrative law of August 14, 1938.

By law, the **communes** were rural and urban areas. Rural communities were comprised of one or more villages. They must have sufficient ordinary funds to cover the required expenses of municipal administration.

Declaring the households as village settlements, declaring a village as rural commune, merging two or more rural communities, passing a village to a rural commune to another, the composition of rural communities from villages belonging to various different rural locations are decided by the commune councils that, under the chairmanship of the praetor, and shall require the prefect's approval.

Regarding the **organization of communes**, the law refers to the mayor, mayor's assistant, the delegate of the village, municipal secretary, composition, powers and operation of municipal council, regulations issued by mayor and municipal council.

The **Mayor** has the following attributions:

- ✓ manage the commune's interests, according to the rules established by the laws and regulations, carry out the decisions of the board;
- ✓ represent the commune in court, sign the documents signed on behalf of the commune, do any other acts necessary to preserve a right, personally or by proxy;
- ✓ call, proceed, license, grant leaves and disciplinary punishments applicable to municipal officials, according to the status of civil servants and this law;
- ✓ sign and approve payment orders for public tenders;

- ✓ be civil officer and make sure that civil status documents were made according to the law;
- ✓ was commune police chief, exert duties arising from this quality, either personally or through agents and police officers appointed for that purpose by the state police, if the public order and state security were threatened, was obliged to take necessary circumstances measures, reporting to the competent bodies, work under the leadership of central government bodies, the execution of general safety measures ordered by the government.

The **land** deals with its needs and carries out general interest measures ordered by the central authorities. This was the administrative unit with economic, cultural and social responsibility. Land administration was entrusted to the royal residence and its council.

Royal resident G. Alexianu recommends compiling a program for each administrative unit and then to be able to form the land activity program, following that on this basis to draw up budgets. Following these directives, in a very short time, with work and careful research, all local authorities have established activity programs for five years. It was the first time when was achieved a careful and objective examination of local authority needs and an enumeration in their order of urgency.

These administrative activity programs also had the role of structuring the needs inventory found by the administrative enforcement of August 14, 1938, thus being able to determine, based on their achievements of the newly created government. Thus we have an almost exact inventory of the situations and absences in which the administrative law of August 14, 1938 found the local government.

The royal resident had a double quality, namely, the representative of government in the land and land administrator. As a government representative, it fulfilled his duties under the general rules set by the government and execute orders given by Ministers in matters concerning their departments.

Land Council took the initiative and decided on local interest matters. It had deliberative and advisory functions.

In his county, the **prefect** was the government's representative and of the Ministry of Interior. It will have the following duties: supervision of officials and services, supervision and control of rural and urban communities in the county, except municipalities; execution and control of the county works based on the governor's delegation;

The **praetor** leading the place (which included more communes), as government representative and police chief from the place. It took measures to prevent crimes and ensure public order and safety.

Services necessary for each local government is established in relation to their financial needs and resources. Local government officials were of two categories: administrative and technical:

To the administrative officials mentioned in the law were applicable the statute of civil servants and special laws for the organization of special bodies which they belong to.

The grades in the local administrative hierarchy were as follows: notary, praetor, prefect, general administrative inspector, secretary general of the land.

A separate section summarizes the conditions of appointment of notary, praetor and the prefect. No one could be appointed administrative official in the central or local administration, unless it had administrative professional technical training. In addition, no one could be submitted in administrative functions unless it graduated the courses held for this purpose.

Technical professional administrative training and perfecting training courses were held in the administrative professional technical training centre, established by the Ministry of Interior in addition to the Royal Institute of Administrative Sciences of Romania and administrative technical training centres, which could be set up by the institute in Iasi and Cluj.

Administrative law of August 14, 1938 refers to the **obligatory works**, including topics such as: situation and systematization plans, plans of systematization commission, urban matters, building permits.

Regarding urban matter issues, Armand Calinescu appreciate that this law "establishes for the first time in our legislation a general concept, concerning the conditions of organization and development of municipal communes. We believe that this new framework will establish the beginning of the evolution of communal life to a real alignment, if it will be worked with diligently, a core of collective civilized life."

For executing public and permanent works: installations, buildings, facilities or any other of this kind, the local authorities were elaborating, through the technical department, projects, specifications and estimates.

In Title VIII - Local Finance – Administrative law of August 14, 1938 are presented aspects regarding the budget, it's execution and control.

In the report regarding this law, Armand Calinescu wishes to emphasize: "the success of an administrative organization law, however good it's provisions might be, is based on financial means. Communal and the county life is struggling today in a serious crisis due to the lack of sufficient financial means. This case is due to the fact that the state receives the entire fund and the county one, giving the communes a very insignificant amount, which can not even meet the financial needs basis."

The control authorities of the local government were the Minister of Interior, royal resident, the prefect and praetor. According to law, the following were guardianship authorities of the local administration:

- ✓ Minister of Interior for lands and city of Bucharest;
- ✓ Royal resident for municipalities, cities and resorts and spa residences;
- ✓ Prefect for other communities.

The provisions regarding the appointment of royal residents, prefects, mayors, village delegates and the ones for electing the councils were to be implemented gradually, by journal of the Council of Ministers.

Under the law, within two months of the promulgation of the law, prefects, together with the praetors had to examine the statement of rural communes' revenue and to make a new delimitation of communes, consulting the villages and taking into account the provisions of this law.

Only after the new delimitation of rural villages was approved by the Ministry of Interior, could proceed to appointing the mayors and village delegates in these communities.

Given that (perhaps) the most important newness of the law was the establishment of provinces, we present here the **effects of applying a new legislation** in this regard.

Administrative law of August 14, 1938, which brought the local government for the first time, a true and sincere basis of administrative decentralization and an important deconcentration of central administration services, finding its most full implementation in 1939/40 year budget.

The justification for establishing some provinces is the fact that these strong administrative bodies are considered that entail: personal spending economy and possibilities of large administrative achievements, exceeding the powers of counties.

In comparison to previous provinces budgets, some registered increases due to the new administrative law, which by article 163 has assigned the revenue for agricultural lands to communes and lands. For the first time in our country, the administrative law has succeeded to find serious financial means with which to begin a thorough administrative action. This allowed making investments to modernize communication pathways, to education and church, decorating villages, towns systematization, asphaltting the main roads, upgrading of roads, rehabilitation of roads in communes.

Regarding the land situation in Romania in the application of the 1938 administrative law the situation can be summarized in the following data:

Table no. 1 Lands area

Land	Surface/area (square km)
Bucegi	40 897
Dunărea de Jos	37 958
Someș	33 385
Timiș	32 658
Prut	31 775
Alba	30 297
Olt	26 941
Nistru	22 333
Marea	21 731
Suceava	17 070

Table no. 2 Lands population

Land	Number of inhabitants per lands
Bucegi	3 762 321
Prut	2 335 340
Someș	2 143 453
Dunărea de Jos	2 039 421
Olt	1 854 220
Timiș	1 705 180
Alba Iulia	1 642 343
Suceava	1 573 212
Nistru	1 446 395
Marea	1 033 513

Table no. 3 Inhabitants density in the lands

Lands	Population density (inhabitant per square km)
Bucegi	92
Suceava	89
Prut	73
Olt	68
Nistru	64
Someș	64
Alba	54
Dunărea de Jos	53
Timiș	52
Marea	47

According to government authorities of that time, in its first year of operation, the land has proven useful, and the results obtained corresponded to the expectations.

LAW OF AUGUST 14, 1938 IN THE TIME PRESS

In the article „Împotriva birocratismului” ("Against bureaucracy") published in the *Universul* newspaper no. 239, of September 3, 1938, it stated: "On the occasion of settling the royal residents in the capital of the lands in question, was highlighted the significance of the new administrative order by applying the principle of decentralization and strengthening the principle of state authority. Let's not forget the many administrative statutes we have had in recent decades, the last ones even with decentralizing trends and focusing on local development, have not offered the

results desired by their authors because of excessive bureaucracy and customs of the land on this faulty system. If the new administrative reform has been implemented with its sharp decentralizing trends will give more attention to local needs, it will bear fruit and be more beneficial, destroying excessive, complicated, expensive and paralyzing creative energies."

The article „Reforme administrative” (“Administrative reforms”) published in the newspaper *Universul* no. 95, of April 6, 1938, included, inter alia, the following findings: "By browsing the collection *Monitorul Oficial* (Official Gazette) the notice reserved to parliamentary debates, we see that the most discussed reform on closing the peace until the end of the last legislative of legislative bodies was the administrative reform. The new administrative reform will have to give more importance to rural bodies and remove the bureaucracy that kills the spirit of initiative and create so many hardships to the population."

The article „O nouă așezare administrativă” (“A new administrative settlement”) in the *Timpul* newspaper from March 5, 1938 it stated: "The administrative law, whose establishment concerns the government will use past experiences, stating the current development conditions of local administrations and new guidelines in this area, purely domestic reasons, that the local administrative settlement will have in the future. A fundamental reform of the administrative law will give a sense of stability and continuity of works to those to which will be entrusted with responsibility positions in the management of counties and municipalities. To ensure public wealth a strict control of local finances and the implementation of domestic plans of general interest will be established".

In the article titled „Noua reformă administrativă” (“New administrative reform”), published in the *Timpul* newspaper no. 364, of May 10, 1938, were brought some observations on the estimated reforms: "The reform announced by Mr. Minister Armand Calinescu removed from the country's administration body all that hinders a normal, intense and honest activity having a practical and effective value to all component elements of the administration.

CONCLUSIONS

The main innovation of this law is the establishment of provinces as administrative units with legal personality, counties are left as administrative districts and prefectures as state authorities, bodies of trusteeship and control in the rural and urban non-residential communes.

The importance and role of lands are related to the following fundamental principles:

- ✓ making a uniform progress, ensuring premises for developing undeveloped regions, that until then the counties could not do;
- ✓ elimination of interested partisans and political influence and superposition the common interest in all administrative areas;
- ✓ coordinating all local and state services under the uniform leadership of the royal resident and also limit the competence of these services to reach the region;
- ✓ a greater decentralization in all areas by providing the royal resident duties, from the department's competent, facilitating thereby resolving claims and interests of the administration.

The decentralization determined by the administrative law, brought out a first and important goal of the people's will, because it corresponded to criteria dictated by historical and geographical factors on the one hand, and economic and social needs, on the other.

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