

PUBLIC SERVICES AND PUBLIC UTILITIES

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ABSTRACT. Public service is a way of satisfying human needs, each need having as correspondent an activity carried out by national or local authorities, to the benefit of the concerned community. The establishment of the public service is organically connected to the coexistence of the two essential elements: social requirement and the law. The legal regime applicable to public service is a public administrative law regime, guaranteeing and ensuring a good and effective organization and functioning of the public service. Industrial and commercial public services are regulated under the name of public utility community services. To satisfy the general interests, public services compete with private legal persons of public utility.

KEY WORDS: public service, public utility service, private legal persons of public utility.

In special literature civil service was defined as „a body set up by the state, county, community, with limited jurisdiction and powers, with funds from General Heritage of Public Creative Administration publicly available to satisfy regularly and continuously a general need, that private enterprise could not give more than incomplete and disrupted satisfaction”.[1]

„The importance of public services is greater for society as the state, as well as its dismemberments, town, city and county appear as indispensable tools designed to ensure to its citizens that sumnum of welfare that they can not find otherwise. Thus the authorities of public administration must ensure the transportation of goods and cargo, to build and maintain lines of communication, to ensure public order, to protect the national community from attacks from outside, to provide education, health, culture, taking all measures for all corporate citizens to be able to feed themselves, to have a decent living. All these are interests of society as a whole, but also, individual interests, they are still primarily the general interest of any civilized society, to be met by central government and by the local one”.[2]

French legal literature defines public service under a double aspect[3]:

- financially speaking, public service is an activity of general interest which is run by the local administration or by an authorized individual to do so;
- From the formal point of view, the public service can be defined as a set of structures of local administration or private bodies that carry out this activity. From this point of view, local administration is, itself, a network of public services.

Public service is a way of satisfying human needs, each need having as correspondent an activity carried out by national or local authorities, to the benefit of the concerned community

Public Service Activity is closely linked to the idea of general interest that animates it, and finally by the will of public authorities to decide at what time and what ways of meeting will

be chosen. Public authorities will have to ensure material, financial and human resources for the establishment and functioning of public service.

The establishment of the public service is organically connected to the coexistence of two essential elements, namely social requirement (general interest) and law (act of will of the legislative authority).

Thus the public service is „work done by an administrative authority (administrative body) or public official (public or private) to meet a general interest”[4].

This definition refers to the two branches of the civil service:

- material component - the business of satisfying some general interests

- formal-organizational component - bodies or specialized agencies that perform that activity.

This establishment of a public service also includes beside the conditions of substance and form, the compliance with basic principles of its organization and operation, which are widely accepted in public law[5]:

- The principle of continuity - involves the permanent civil service while interruptions are not accepted;

- The principle of adaptability - requires the need of public service to adapt permanently to the changes and demands of the general interest;

- The principle of neutrality - public service must operate for the sole purpose of satisfying the public interest, and not other interests, so that the endorser of a public service can not use it as a tool for achieving certain benefits, interests or for the detriment of others;

- The principle of equality - means that all interested persons may request and receive the satisfaction of certain needs, equally, without distinction or discrimination.

Literature formulated the following principles that need to be considered by the public authorities to establish a public service; these being taken from literature[6] of doctrine and law:

- The principle of sustainable development;

- The principle of local autonomy;

- The principle of decentralization of public services;

- The principle of accountability and legality;

- The principle of participation and consultation of citizens;

- The principle of intercounty association and partnership ;

- The principle of correlating requirements with resources;

- The principle of protection and preservation of natural and built environment;

- The principle of efficient management of assets in public ownership of administrative and territorial units;

- The principle of ensuring competitive environment;

- The principle of free access to information of public services.

In literature, public services were classified according to several criteria, as follows: depending on the form of organization, after the type of activity, depending on their place in relation with the public authorities, according to the level of achievement and satisfied interest, the mandatory criteria of their establishments, by the form of ownership and legal applicable rules, the method of financing, depending on their location in relation to public administrative authorities based on the nature of their object of activity etc.

Depending on the type of organization[7]:

- government bodies;
- public institutions[8];
- autonomous regies of public interest;

According to the type of activity, public services are divided into:

- services for protection of public order and country's defense;
- financial and fiscal services;
- educational services;
- social assistance and hygiene;
- arts and culture;
- economic activities.

According to the attainment and satisfied interest:

- public services of national interest, established by the central public administration.
- local public services, established by and under the authority of local or county councils,

local government under Law no. 215/2001, as amended and supplemented, or by private bodies approved for that purpose, which limit their activity to the level of an administrative-territorial units. Within these local public services we find community public services as a direct result of the decentralization process and local government reform. As an example we remind the Public Service of Local Police, the Community Public Service for the track of People.

After the criteria of their mandatory establishment[9]:

- mandatory public services – those absolutely necessary for the smooth running of public administration in territorial-administrative units. Such is the case of the civil and the guardianship authority services.
- voluntary public services - those whose establishment is not mandatory and aimed at ensuring citizens' needs depending on the available funds of the administrative - territorial unit.

Apart from the difference arising between the two types of services, from their obligatory or voluntary character, it can be noticed another important distinction: the organization and functioning of the obligatory public services is regulated by numerous normative acts, generated for national interest to be satisfied, while the organization, functioning and jurisdiction of optional public services are established at regular level, according to the decisions of the communal, town and municipal local governments under Law no. 215/2001, republished, and Law no. 273/2006 on local public finances.

By ownership and legal applicable rules[10]:

- monopolized public services / administrative regime;
- public services performed by the public and / or private district

By way of financing[11]:

- Local public services fully funded from local budgets;
- Local public services partly financed by local budgets;
- Local self-funded public services.

Depending on their place in relation to the authorities of public administration[12]:

- indoor public administration services, which are represented by work compartments of public authorities;
- outdoor public services, established by public administration in the form of separate structures with or without legal personality (autonomous regies, public institutions);

• public services organized by individuals - they take the form of autonomous entities that must be empowered under the law, by the competent public authorities to carry out such activity (ex. Private Universities). These services must comply with legal provisions under which they function under the penalty of withdrawing their administrative authorization.

Depending on the nature of activity[13]:

- public administrative services
- public industrial and commercial services

As regards the legal regime applicable to public services, this is a public administrative law regime, guaranteeing and ensuring good and effective organization and functioning of public service.

Law no. 51/2006 on community services of public utility states that relations between local public administrative authorities and users are legal administrative relations, subjected to legal rules of public law (Article 9 paragraph 1) and the legal relationships between these authorities and operators are subjected to legal norms of public or private law, as appropriate, depending on the adopted form (article 9 para. 2).

Issuing a legal regime applicable to public services in general and local public services, in particular, should be consistent with the types of public services depending on the nature of the object of activity (public administrative services and public industrial and commercial services) as well with the legal relations that arise between public services and administration[14].

Public administrative services (in the form of institutions, public establishments, their administrative structures of administrative authority) are subject to public law in terms of both their organization and their relations with public service users. There are public administrative services: in terms of education, schools, colleges, kindergartens, nurseries; social protection; hygiene; cultural and sporting services; road maintenance service; various administrative services - marital status, urban service etc.

Industrial and commercial public services (as regies and companies) are allocated to public law with regard to their organization, but also private law rules regarding relationships with users. There are industrial and commercial public services: in sanitation, water supply, sewerage; energy, electricity distribution, natural gas distribution; in communications, public domestic and inetrurbane transport etc.

Industrial and commercial public services are found under the name of community services of public utility regulated in Law 51/2006, republished[15], as amended and supplemented[16].

Thus, according to art. 1, para 2 of this law, public utilities are defined as all activities covered by this law and special laws, which ensures meeting the essential needs of utility and general interest with social character of local communities, with respect to: supply with water; sewage and wastewater treatment; collection, sewerage and drainage of rainwater; production, transmission, distribution and supply of heat in a centralized system; localities sanitation; public lighting; management of public and private domain of administrative-territorial units, and others; local public transport.

Community services of public utility are set up, organized and delivered / rendered in communes, towns, cities, counties, Bucharest and, where appropriate, under the law on the territorial-administrative subdivisions of municipalities or in the intercommunity development

associations, under the direction, coordination, control and responsibility of local administrative authorities, whether by special laws it was agreed otherwise.

Public utilities services are part of the public services of general interest and have the following features:

- a) an economic-social character;
- b) fulfill requirements and needs of public interest and utility;
- c) a technical and edilitarian character;
- d) a permanent and continuous operating mode;
- e) the operation may have monopoly characteristics;
- f) imply the existence of adequate technical edilitarian infrastructure;
- g) coverage has local scale: villages, towns, municipal or county;
- h) are set up, organized and coordinated by local public administrative authorities;
- i) are organized on economic principles and efficiency;
- j) can be supplied / provided by operators, license holders who are organized and operate either under the rules of public law or under private law regulations;
- k) supplied / provided under the principle "beneficiary pays";
- l) recovery of operating costs or investment is made by regulated prices and tariffs or special taxes.

Public utilities services are part of the public services. Depending on the nature of the object of activity, we can classify public services in public administrative and public utility services.

To satisfy the of general interests public services compete with private legal persons[17] of public utility.

The concept of public utility is relatively new in our country. Thus, for the first time in our country, GO no. 26/2000 on associations and foundations[18], as amended and supplemented[19], establishes the concept of public utility status granted to associations and foundations that meet certain conditions.

According to the Government Ordinance no. 26/2000, the public utility is any activity that takes place in areas of public interest or of a community

Under art. 38, paragraph 1 of this ordinance, an association, foundation or federation may be recognized by the Government as a public utility if the following conditions are met:

- a) its work is conducted in the public interest or of corporate bodies, as appropriate;
- b) it has been working for at least three years and achieved some of the objectives established by evidence of uninterrupted activity of significant actions;
- c) submits an activity report showing an significant prior activity, by carrying out programs or projects specific to its purpose, together with the annual financial statements and the revenue and expenditure for the last 3 years preceding the date of application concerning the recognition of public utility;
- d) holds a collection, logistics, members and staff, fulfilling properly its purpose;
- e) proves the existence of cooperation agreements and partnerships with public institutions or associations or foundations in the country and abroad;
- f) proves to obtain significant results in terms of its purpose or submits letters of recommendation from the competent authorities in the country or abroad, recommending further work.

The recognition of an association or foundation as a public utility is made by a Government decision. For this reason, the association or foundation interested in addresses a request to the Government General Secretariate, which shall submit it, within 15 days, to the specialized body of the central government in whose itoperates.

The recognition of public utility status is indefinite period of time;

Law no. 554/2004 on administrative includes within public authorities private legal persons which, by law, have obtained the status of a public utility.

At the end of our research we can conclude that public utility services can be satisfied both by public and private legal persons.

By recognizing the usefulness of public benefit association or foundation, a series that is held rights (rights: to maintain at least the level of activity and performance right to be awarded free use goods of public utilities to mention all the documents which he draws that association or foundation is recognized as a public utility) and obligations (obligations: the obligation to communicate the competent administrative authority of any changes to the memorandum and articles of status and activity reports and annual financial statements, obligation to publish the extract within 3 months after the end of the calendar year activity reports and annual financial statements in the Official Gazette)[20].

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- [15] Official Gazette of Romania, Part I, no. 121 of 05.03. 2013.
- [16] Last modified by Government Emergency Ordinance no. 68/2014, published in the Official Gazette of Romania, Part I, no. 803/2014.

[17] For the concept of a legal person, as a subject of civil legal relationship, see R. Peptan, *Drept civil. Teoria generală a dreptului civil*, Tg-Jiu, 2009, pp. 58-66.

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