

LEGISLATIVE UPDATES ON PUBLIC SERVICES

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Abstract

Meeting general interest needs has always been a concern of public authorities. The performance of the activity, both in the public and in the private sector was challenged to continuous adjustment in order to meet social needs and to provide certain services. On this occasion, on first sight, public medical services stood out as important from the rest of the public services, due to the fact that the concern of the authorities for the protection of public health was globally highlighted in the foreground. From this point of view, it is all the more necessary to have a coherent legal framework to regulate in an unitary way the general legal regime of public services, as there is a tendency to digitize public administration. Therefore, we are urged by the regulation of public services in the Administrative Code to analyze the legislator's perspective on this matter. At the same time, the states are concerned to transpose European normative acts, acts with binding legal force, into the national legislation. In this respect, this paperwork will be focused on certain public services, by way of a case study, namely it will analyze the way of transposing the European legislation on road transport into our national legislation. Finally, we will draw the conclusion that emerge from the documentation of the proposed topic.

Keywords: *Administrative Code, public service, public authority, directive, road transport.*

1. Introduction

We resume the topic dedicated to public services¹ from another perspective, topic on which we have reflected on another occasion. This time, the adoption of the Administrative Code in the summer of 2019, by our legislator, gives us the opportunity to present the regulation of public services in the content of this normative act. We refer to G.E.O. no. 57/2019 on the Administrative Code², a normative act that managed to bring a new spirit in this field.

The fact that this work of codifying the administrative law has been successful is undoubtedly a factor in the progress of the normative regulation. In terms of the content, we note that the Administrative Code, in its substance, regulates basic concepts necessary to understand the legal framework applicable to public administration³, such as: public authority, public domain, public service, administrative liability etc. According to the doctrine: “in order to extend the jurisdiction of the administrative tribunals, the concept of public service has been used in France,

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¹ E.E. Ștefan, *Brief considerations on deconcentrated public services as a consequence of coming into force of the Emergency Ordinance number 37 from 22.04.2009 concerning certain measures of improving the activity of public administration*, in *Lex et Scientia International Journal* nr.2/2009, pp. 239-252.

² G.E.O. no. 57/2019 on the Administrative Code, published in Official Journal no. 555 of 5 July 2019, with latest amendments by G.E.O. no. 1/2022 for the amendment and supplementation of G.E.O. no. 121/2021 on the establishment of measures at the level of the central public administration (...), published in Official Journal no. 41 of 13 January 2022.

³ See R.M. Popescu, ECJ case-law on the concept of „public administration” used in article 45 paragraph (4) TFUE, in the proceedings of CKS e-book 2017, pp. 528-532.

with the scope of designating any activity of a public body the purpose of which is to satisfy a general interest need: post office, rail transport, public education, national defense”⁴.

The structure of the paperwork is to highlight the regulation of public services⁵ in the Administrative Code, on the one hand and to present the stage of the transposition into the national legislation of the *Posting Directive* in the field of road transport, and at the same time to analyze the requirement of *good repute*, by using methods⁶ specific to the research in the field of the law.

2. Paperwork content

2.1. Regulation of public services in the Administrative Code

The structure of the Administrative Code comprises 10 parts and public services are regulated in two such parts, as follows: the 4th Part – *The Prefect, the Prefect's Institution and Deconcentrated Public Services*, (art. 277-283) and the 8th Part – *Public Services*, Title I – *Principles and Classification of Public Services*; Title II – *Regulation and Establishment of Public Services*; Title III – *Public Service Management*, (art. 580-596).

The Administrative Code defines public service in art. 5 letter kk) as being: “*the activity or the set of activities organized by a public administration authority or by a public institution or authorized or delegated by it, in*

order to satisfy a general need or a public interest, on a regular and continuous basis”. Previously, Law no. 554/2004 on the contentious administrative defined in its content public service in art. 2 para. (1) letter m.): “*an activity organized or authorized by a public authority for the purpose of satisfying a legitimate public interest*”.

The specific principles applicable to public services are provided by the legislator in art. 580 of the Administrative Code as follows: “the establishment, organization and provision of public services are carried out according to the specific principles applicable to public services, namely: transparency, equal treatment, continuity, adaptability, accessibility, responsibility and provision of public services to quality standards⁷.”

The specific principles⁸ applicable to public services are defined by the Administrative Code:

transparency principle represents the observance by the public administration authorities of the obligation to inform on the way of establishing the component activities and scopes, on the regulation, organization, functioning, financing, provision and evaluation of public services, as well as on the measures to protect users and the mechanisms used to settle claims and litigations.

a) *principle of equal treatment* in the provision of public services means the elimination of any discrimination against the

⁴ T. Drăganu, *Introducere în teoria și practica statului de drept*, Dacia Publishing House, Cluj Napoca, 1992, p. 150.

⁵ See M.C. Cliza, *Drept administrativ Partea a-II-a*, Universul Juridic Publishing House, Bucharest, 2012, pp.218-227.

⁶ On the construction of the legal regulation, N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.-C. Spătaru-Negură, *Teoria generală a dreptului*. Caiet de seminar, 3rd edition, C.H. Beck Publishing House, Bucharest, 2017, pp. 197-202 or M. Bădescu, *Teoria generală a dreptului*, Sitech Publishing House, Craiova, 2018, pp.167-187.

⁷ For a more detailed analysis of the principles of law, see E. Anghel, *General principles of law*, in LESIJ.JS XXIII no. 2/2016, Lex ET Scientia International Journal - Juridical Series, pp.364-370.

⁸ For a more detailed analysis of the topic, see E.L. Cătană, *Drept administrativ*, 2nd edition, C.H.Beck Publishing House, Bucharest, 2021, pp.487-492.

beneficiaries of public services based, as the case may be, on ethnic or racial criteria, on religion, age, gender, sexual orientation, disability, as well as the application of identical rules, requirements and criteria for all authorities and bodies providing public services, including in the process of delegating public service.

b) in the provision of public services, public authorities, as well as public service providers shall be bound to ensure *continuity* (...).

c) *adaptability principle*. The authorities and public administration institutions shall be bound to meet the needs of the society in order to fulfill the scopes.

d) *accessibility principle* involves ensuring access to public services for all beneficiaries, especially to those services that meet their basic needs; accessibility requires taking into account, even from the substantiation phase of public service establishment, the aspects related to cost, availability, adaptation, proximity.

e) *principle of responsibility* for the provision of public service represents the existence of a public administration authority, the competence of which is to provide the public service, independent of its management and provision to the beneficiary⁹.

f) *principle of providing public services* at a high-quality standard represents the establishing and monitoring of the quality indicators for each public service, throughout the term of the provision thereof. Public

administration authorities shall be bound to meet quality and/or cost standards established for public services”.

In what concerns *public service classification*, the following are referred to in the Administrative Code:

- “services of general economic interest and services of general non-economic interest, depending on the content of the activity;

- public services of national interest and public services of local interest, in terms of the territorial competence to meet public interest needs;

- public services provided in an unitary manner, either by a public administration authority, or by a public service provider and public services provided by one or more public administration authorities or by one or more bodies providing public services, depending on the ways in which the service is provided”.

The doctrine states that: “in the European legislation, public services are known as public services of general interest (SGI). These are services which the public authorities of the Member States consider to be of general interest and which are subject to specific public service obligations. This term refers to both economic activities, and to non-economic services¹⁰”. “Non-economic services are not contemplated by the specific legislation of the European Union and do not fall under the scope of the rules on the domestic market and competition¹¹ provided by the Treaty of Lisbon¹²”. In recent years,

⁹ For other details on the topic, from another perspective: E. Anghel, *The responsibility principle*, article published in the proceedings of CKS-eBook 2015, pp.120-130.

¹⁰ V. Negruț, *Serviciul public. Proprietatea publică*, C.H. Beck Publishing House, Bucharest, 2020, pp.9-10.

¹¹ For other details on this topic, see Cornelia Ene-Dinu, The term of „Relevant Market”, as element of dominant position, provided by art. 102 of Treaty on the functioning of the European Union, în *LESIJ Lex ET Scientia International Journal*, No. XXVI, ISSN 1583-039X, eISSN 2066-1886. vol. 1/2019, pp. 77 – 83 or L. Lazăr, *Abuzul de poziție dominantă. Evoluții și perspective în dreptul european și național al concurenței*, C.H.Beck Publishing House, Bucharest, 2013, p.2 and the following.

¹² V. Negruț, *op.cit.*, 2020, p.10.

there has been a growing trend towards digitization targeted by the activity of public authorities, such as the collection of taxes¹³ and fees by electronic means.

2.2. Case study

Within the European Union¹⁴, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) no.1.024/2012¹⁵ was adopted. This directive is also called the *Posting Directive* which provides the transposing rules in art. 9 para. (1)¹⁶: “Member States shall apply the respective provisions as of 2 February 2022”.

Posting Directive was transposed into our national legislation by means of Government Ordinance no. 12/2022 for the amendment and supplementation of certain

normative acts in the field of road transport¹⁷. Furthermore, from public information, it appears that: “until 7 February 2022, the countries that have implemented *Posting Directive* are Belgium, Denmark, Finland, France, Slovakia, Norway (although it is not an EU Member State and Directive (EU) 2020/1057 is not applicable, the payment of minimum wage for certain transport operation applies), Romania¹⁸”.

In this regard, we also mention Regulation (EU) no. 2020/1.055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector¹⁹. We do not intend to detail the content of the European normative acts or the case-law of the CJEU²⁰ in the field of transport, but we consider to analyze the conditions on the *requirement of good*

¹³ For other details, see R. Ciobanu, Z. Varga, *Romanian and hungarian fiscal systems. Regulations and fiscal apparatus*, Transilvania University of Braşov. Bulletin. Series VII: Social Sciences, Law, pp.307-317, 2020.

¹⁴ For other details on this topic, see A. Fuerea, *Manualul Uniunii Europene*, 4th edition, revised and supplemented after the Treaty of Lisbon (2007/2009), Universul Juridic Publishing House, Bucharest, 2010, pp. 13 and the following; L.-C. Spătaru – Negură, *Dreptul Uniunii Europene - o nouă tipologie juridică*, Hamangiu Publishing House, Bucharest, 2016, p.104 and the following.

¹⁵ Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) no. 1.024/2012, published in OJEU of 31.07.2020, L249/17, available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32020L1057>, visited on 19.02.2022.

¹⁶ From another perspective, see M.-C. Cliza, L.-C. Spătaru-Negură, *Towards a Cleaner Planet – The Implementation of the Deposit Guarantee System in Romania*, in *Perspectives of Law and Public Administration*, vol. 10, no. 1/2021, pp.54-64, online at <http://www.adjuris.ro/revista/articole/an10nr1/5.%20Cliza,%20Spataru.pdf>., visited on 19.02.2022.

¹⁷ G.O. no. 12/2022 for the amendment and supplementation of certain normative acts in the field of road transport, published in Official Journal no. 98 of 31 January 2022.

¹⁸ Public information, available online at <https://detasaretransport.ro/>, visited on 19.02.2022.

¹⁹ Regulation (EU) no. 2020/1.055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector, published in OJEU of 31.07.2020, L 249/17, available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32020R1055>, visited on 19.02.2022.

²⁰ For further details on the topic: A.M. Conea, *Politicile Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2020, pp. 71-82.

repute²¹, respectively the administrative procedure on the loss of good repute, by noting how important is for the European legislator the good repute in the field of public services²² in the sector of transport, but not only. Specifically, we refer to art. 6 of Regulation (EC) no.1.071/2009, as amended by Regulation (EU) 2020/1.055.

According to the national legal framework, in compliance with the European legislation, in order to fulfill the requirement of good repute, the transport undertaking and the transport manager shall comply with the following conditions (art. 14 of G. O. no.12/2022):

“a. the transport undertaking and/or transport manager have not been convicted or sanctioned according to the provisions of art. 6 para. (1) of Regulation (EC) no. 1.071/2009;

the transport undertaking and/or transport manager have lost good repute for serious infringements referred to in the 4th Appendix to Regulation (EC) no. 1.071/2009 being declared unfit to manage transport activities according to art. 14 of Regulation (EC) no.1. 071/2009 and rehabilitation has occurred”.

Furthermore, “in the case referred to in para. (1) letter b), the transport undertaking and/or transport manager shall be considered rehabilitated after a period of at least one year as of the loss of good repute and only after the transport manager proves that it has passed an examination (...) to regain the

certificate of professional competence”. Unless and until a rehabilitation measure is taken “in accordance with the provisions of para. (2) the certificate of professional competence of the transport manager declared to be unfit, shall no longer be valid in any Member State”.

G.O. no. 12/2022 provides that: “The body designated to issue the administrative procedure on the loss of good repute of the transport undertaking/manager referred to in art. 6 para. (2) of Regulation (EC) no. 1.071/2009 shall be I.S.C.T.R. (State Inspectorate for Road Transport Control)”. This administrative procedure shall be approved by order of the Minister of Transport and Infrastructure, by taking into account at least the following: “a check performed at the premises of the undertaking and the assessment of the sanctions applied to the transport undertaking/manager”.

Therefore, this procedure on the loss of good repute of the transport undertaking/transport manager is approved by means of an administrative act²³ of the line ministry, respectively Order of Minister. Furthermore, the French doctrine showed that “*the unilateral administrative act* is an act, taken either by an administrative authority, in the exercise of public power prerogatives, or by a private person who has been entrusted with the execution of a public service within the mission the person in question is invested with”²⁴. The normative act referred to in by the legislator is Order of the Minister of

²¹ From another perspective of good repute analysis, see I. Muraru (coord.), A. Muraru, V. Bărbățeanu, D. Big, *Drept constituțional și instituții politice. Caiet de seminar*, C.H. Beck Publishing House, Bucharest, 2020, pp.159-160.

²² Regarding public services prior to current regulations, see Roxana-Mariana Popescu, *Serviciile de interes general. Scurte considerații*, Annals of the University, Law series, Pro Universitaria Publishing House, 2006, pp.135-142.

²³ Other details on the administrative acts in M.C. Cliza, C.-C. Ulariu, *Limitele controlului judiciar asupra aprecierii oportunității în materia actelor administrative*, in *Dreptul* no.7/2021, pp.93-108 or P.-I. Nedelcu, *Puterea discreționară a administrației publice și legalitatea*, Revista de Științe Juridice no. 1/2014, Universul Juridic Publishing House, pp.240-243.

²⁴ C. Debbasch, J.C. Ricci, *Contentieux administratif*, Precus Publishing House, Paris, 2000, p. 107 *apud* I. Lazăr, *Jurisdicții administrative în materie financiară*, Universul Juridic Publishing House, Bucharest, 2011, p. 83.

Transport and Infrastructure no. 980/2011 approving the Methodological Norms on the application of the provisions regarding the organization and performance of road transports and their related activities established by Government Ordinance no 27/2011 on road transport²⁵.

The Methodological Norms (...) provide the following in art.12: “following the application of the administrative procedure, I.S.C.T.R. shall draw up a report motivating the decision to withdraw the good repute or the failure to do so”. Finally, “the administrative procedure shall be deemed completed after the report has been signed by the Chief State Inspector, after the report has been registered and after all the entries on good repute have been completed in the national electronic register of road transport operators” (art. 13 of the Norms).

Conclusions

We consider the proposed objective of the paperwork achieved, more precisely that of presenting the current legal framework applicable to public services and we hereby refer to the Administrative Code which dedicates several articles to this topic in the

4th Part – *The Prefect, the Prefect’s Institution and Deconcentrated Public Services* and in the 8th Part – *Public Services*. Therefore, this topic was presented in a personal manner, by detailing specific aspects in the field of road transport, such as the administrative procedure on the loss of good repute, in accordance with the European legislation. On this occasion, we noted that our country transposed Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020, also known as the *Posting Directive*, by adopting Government Ordinance no.12/2022.

In conclusion, as evidenced by the documentation of the topic, the body designated to issue the administrative procedure on the loss of good repute of the transport undertaking/ manager referred to in art. 6 para. (2) of Regulation (EC) no. 1.071/2009 is I.S.C.T.R. and the line ministry approves it by means of order. The topic remains open for analysis in future research on public services, from the jurisprudential perspective and maybe, in the not-too-distant future, the legislator will also adopt the Code of administrative procedure²⁶ which will complete the legal framework applicable to public administration.

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²⁵ Order of the Minister of Transport and Infrastructure no. 980/2011 approving the Methodological Norms on the application of the provisions regarding the organization and performance of road transports and their related activities established by Government Ordinance no 27/2011 on road transport, published in Official Journal no. 854 of 2.12.2011, with the latest amendment by Order no. 1.049/2021 of the Minister of Transport and Infrastructure (...), published in Official Journal no. 776 of 11 August 2021.

²⁶ For further information, see I. Nedelcu, *Considerații privind necesitatea adoptării unui Cod de procedură administrativă cu trimiteri la instituții juridice civile*, in Revista de Științe Juridice no. 2/2006, Craiova, p.116.

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