

Considerations on the public services in the XXI century

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Abstract

The article analyzes from a comparative law perspective the notion of public service, underlining that outlines the administrative framework applicable legal regime. Public administration currently is defined both by its attribute of organization and execution of the law by setting specific binding behavior and by its attribute to meet social requirements through the provision of services under administrative law. The article analyzes the characteristics and principles underlying public service organization in the XXI century and modern public service categories, underscoring the blurring of the classical distinction now between administrative public services, and industrial and commercial services.

Keywords: public service, administrative public service, industrial and commercial public services, outsourcing of public activities, administrative law.

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1. The notion of public service

Larousse dictionary defines service as "occupations" (duties) of people, "functions", "action" or "work performed in one's interest", "bodies" or subdivision part of an overall administrative or economic"². By "service" Kotler understands "any action or execution that can perform a topic for another that is essentially intangible and does not result in the transfer of ownership of a thing"³.

When a community needs emerged for the first time or that have been completed before individuals, dress features a public interest needs, becoming a social phenomenon, it is necessary to organize a public service⁴.

The term of public service is used both in sense by organization, by social organism, as well as in functional sense, by activity carried out by this organism⁵.

Over time the concept of public service has evolved contradictory. Thus, conventional definitions of public service highlight the legal nature of the body providing the service and is a public person (state, local community or other public institution). Classic definition content will vary between the wars by the conditions imposed by the practice of public administration, namely the delimitation of the

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² Le Petit Larousse, Paris, 1993, p. 934.

³ Philip Kotler, *Marketing Management, Analysis, Planning, Implementation and Control*, 8th Edition, Prentice Hall Inc., 1993.

⁴ Ion Popescu-Slăniceanu, *Funcția publică*, Infodial Publishing House , Bucharest, 2000, p. 7.

⁵ Ioan Alexandru, *Administrația publică. Teorii. Realități. Perspective*, Lumina Lex Publishing House, Bucharest, 1999, p. 290.

parties, the general interest by the individual, emphasizing that the major goal of public service is to manage the public interest and not the profit motive; public power means influencing the ratio of authority between the private person that serves the general interests and third parties in favor of the provider, and the last condition "government control" over the activity by provision of public services⁶.

In France the term "public service" was an essential element in shaping the administrative legal system⁷. Thus in the process "Blanco" (1873), the Court of conflicts concentrated first on the criterion of „*service public*” to determine jurisdiction (sphere of authority) to administrative courts. It has been shown so clearly the independence enjoyed by administrative law in relation to private law. The idea that liberates the decision Blanco of 1873 is that the liability of public authorities should be subject not fundamental principles of the Civil Code that regulate relations between individuals, but those special rules vary depending on service requirements and the need to balance the rights of the State with private rights („*regle speciales qui varient suivant les besoins du service et la necessite de concilier les droits de l'Etat avec les droits prives*”). Such liability of public authorities was subject to a special set of rules of public law. France will create a true „*École du service publique*” which will begin to gain influence by the late nineteenth, represented by Duguit, Jéze, Bonnard, Rolland. Administration will now begin to be defined by current, joining the concept of „*service public*” to „*puissance publique*”. Thus, the administration will be defined both by its attribute of organization and execution of the law by setting specific binding behavior and by its attribute to meet social requirements through the provision of services under administrative law. By „public service” Laubadère understand "an activity undertaken by a public authority in order to satisfy a need of general interest"⁸.

Through the public service P. Negulescu understand "an administrative body created by the state, county or municipal with a competence and powers determined, purchased with funds from general government assets creative, publicly available to meet regularly and continuously a need a general nature, whose private initiative could not give him satisfaction than intermittent and incomplete"⁹. Nowadays, I. Alexandru defines public service as "any entity of state or local authority, established by the competent authorities in order to ensure meeting the requirements of society members in administrative or civil law regime in the execution process law"¹⁰.

⁶ Paul Negulescu, *Tratat de drept administrativ*, vol. I, IVth ed., Marvan Publishing House, Bucharest, 1934, p. 126.

⁷ See Ioan Alexandru, *Drept administrativ comparat*, Lumina Lex Publishing House, Bucharest, 2000, p. 26 and 33, 34.

⁸ „Une activite assumee par une collectivite publique en vue de donner satisfaction a un besoin d'interet general”– A de Laubadère, *Traite de droit administratif*, L.G.D.J., Paris 1984, p. 41 et seq.

⁹ Paul Negulescu, *op. cit.*, vol. I, p. 126.

¹⁰ Ioan Alexandru (coord.), *Drept administrativ*, Omnia, Braşov, 1999, p. 110.

2. The features and principles underlying public service organization in the XXI century

Public services have the following **characteristics**:

- satisfying of the public needs responds at the general interest;
- The establishment of public services is the exclusive attribute of deliberative bodies (parliament, local councils, county councils);
- Coordinating and managing public services are performed by an executive authority of the public administration (such at national level the government manages the services for which the state is responsible, at county level county council chairman coordinates the realization of public services and public utility services of county interest and in villages, towns and municipalities coordinate mayor achieving local public services);
- Subjecting a legal regime governed by public law principles.

Economic doctrine characterizes public services by¹¹:

a) Intangibility. Public services can not be seen or felt rendered before being purchased. The public service can be perceived by potential buyers through tangible parties highlighted those aspects: facilities granted to the consumer / user, the human component of the environment, communication skills through public service and, where appropriate, price;

b) Inseparability of services is that the supply and consumption occur simultaneously, the provider being part of the service. In the case of public services (education, health, culture), the simultaneity of supply and service consumption, requires the participation of the consumer / user to providing the service;

c) Variability of services is a feature that means the impossibility of repeating them in the same way from a benefit to another provider they depend on the human factor and the time variable;

d) Standardization of public services can not be provided, meeting the situation of personalization services. This feature requires public institutions and / or private exercise quality control service;

e) Perishability of public services is the ability to not be stored or inventoried.

In legal literature¹² it was appreciated that the organization and functioning of public services must stand following principles:

- the **principle of continuity** expressing that were designed to operate continuously, without interruption;

¹¹ See Ioan Alexandru, Lucica Matei, *Servicii publice*, Economic Publishing House, Bucharest, 2000, pp. 94-95.

¹² Jean-Philippe Colson, *Droit public économique*, 3e édition, L.G.D.J., Paris, 2001, p. 107-111; Jean Fougere, *Le droit administratif en schémas*, Ellipses Édition Marketing S.A., Paris, 2008, p. 32-39; Corneliu Manda, Doina Banciu, Cezar Manda, *Administrația Publică și Cetățeanul. Structuri. Autorități. Informație publică*, Technical Publishing House, Bucharest, 1997, p. 73-74; M. Văraru, *Tratat de drept administrativ român*, Socec & Co. Publishing House, Bucharest, 1928, pp. 94-103.

- the **principle of adaptability** expressing public service need to adapt to changes and demands of the general interest¹³;
- the **principle of neutrality** which implies the creation and operation of public services solely to serve the general interests and not to the advantage of some vested interests;
- the **principle of equality** that is related to the previous and express that all stakeholders have equal access without distinction or discrimination, to meet the needs that fall within the competence of the respective public service.

In positive law, art. 6 of Law no. 51/2006 *on public utilities services*¹⁴ shows that these services are organized and administered by the legal provisions in force on local government, administrative and financial decentralization, regional development, local government finances and compliance with the principles: local autonomy; decentralization of public services; subsidiarity and proportionality; responsibility and legality; intercommunity associating; sustainable development¹⁵ and correlation requirements with resources; protection and preservation of natural and built environment; ensuring hygiene and health; efficient management of public property or private property of the administrative territorial units; participation and consultation of citizens; free access to information on public services.

The public service can be organized at national level for the whole country (public service of air, rail) or locally (transport within a municipality).

On the provider of a public European countries meet the following conditions¹⁶:

- provider can be public, but without distinction as public authority responsible for determining the rules of the service organization;
- provider can be public, with public law status, but distinct corporate body responsible for organizing the service. It is management by a public body (in French law it is the system of public establishments);
- provider can have public capital, but to be subjected to a regime of private law. It is management by a private company with public capital;

¹³ In France by judgment of January 10, 1902 *Gaz de Deville-lès-Rouen*, the State Council decided that if a public service concession, the contracting authority must ensure that the concessionaire ensure normal operation and service modernization conceded – cited by Jean-Philippe Colson, *op. cit.*, 2001, p. 109.

¹⁴ Republished in the Official Gazette, Part I no. 121 of March 5, 2013, as amended.

¹⁵ Sustainable development requires suitable Brundtland Commission "Our Common Future", convened by the United States in 1987 to examine the degradation of the global environment, reconciliation and bringing together under a single concept three principles: satisfying the needs (economic principle), respect ecological balances (ecological principle) and consideration of inter and intra-generational equity (the solidarity principle) – see Marilena Uliescu, *Curs de dreptul mediului*, Economic Publishing House, Bucharest, 2001, p. 10.

¹⁶ Lucica Matei, *Management public*, Economic Publishing House, Bucharest, 2001, p. 109. For methods of managing public services, see Ioan Alexandru, Lucica Matei, *op. cit.*, 2000, pp. 99-115.

- provider may be private, but have an act of public power, privileges of public law. It is delegated administration model of comparable models French law and Anglo-Saxon law;
- provider may be private and not have any particular privilege. It's a competitive management.

3. Typology of public services

About the number of public services in a country M. Djuvara asks: "How many and which services are? Everything depends on the needs and enterprise"¹⁷. However literature distinguishes broadly:

- the public service of legislation, achieved at national level by Parliament, which adopts the legal standards that govern uniformly nationwide, social relations;
- the judicial public service is done by the courts and deal with the "power of truth legal" juridical conflicts;
- public administrative services that ensure enforcement of laws and judgments, public order, national security, creating optimal conditions for health, public education, culture etc. So, for example, civil status offices, hospitals, police, army etc. They have the sole purpose of satisfying the public interest, the financial resources being provided by the state budget or, where appropriate, local budgets¹⁸;
- industrial and commercial public services, which involve carrying out activities in return for which the user or customer is liable to pay a tax service provider¹⁹. As community services of public utilities are regulated by Law no. 51/2006 which provide essential needs of utility and general interest of a social character of local communities with respect to: a) water supply; b) sewerage and wastewater treatment; c) collection, sewerage and drainage of rainwater; d) production, transmission, distribution and supply of heat in a centralized system; e) localities sanitation; f) public lighting; g) management of public and private domain of administrative-territorial units, and the like; h) local public transport. These included the doctrine in public services of private management²⁰, unlike the other three set out above are regarded as public services of public management. Public service industrial and commercial preserves the fundamental purpose of public service: satisfaction of the general interest, but his work is not financed usually from the central / local, but get trade benefits by offering individuals by

¹⁷ Mircea Djuvara, *Teoria generală a dreptului*, vol. I, COSA Publishing House, Bucharest, 1930, p. 173. Also in the interwar doctrine M. Văraru show that "generally, the number of public services is directly related to the degree of civilization in inverse ratio with the private initiative" – M. Văraru, *op. cit.*, p. 90, 91.

¹⁸ Aladar Sebeni, *Noțiunea contractului de concesiune și încheierea acestuia*, „Dreptul” no. 8/1999, p. 6.

¹⁹ *Ibidem*.

²⁰ Sorin David, *Contractul de concesiune*, „Dreptul” no. 9/1991, p. 40.

supplies or services for remuneration (direct payment services by users). Therefore, unlike the others that are made subject to public law, public industrial and commercial are subject to a mixed system of private law and public law, but private law is the rule²¹ (administrative law governing the regime of the authority acts issued by these organs and the status of some of the staff that they service and have the capacity by civil servants).

4. Conclusion

The doctrine emphasizes that only industrial and commercial public services may be covered by concession outsourcing²², because of its nature lucrative.

By outsourcing, the traditional administrative structures are placed between hierarchy and market. The purpose of outsourcing is to improve the way public activities serving the interests of citizens.

In our opinion, outsourcing is not an abandonment of an activity by the private sector made before public authorities²³. In this regard, we emphasize that the transfer activity is temporary and the public authority retains the right to control how public interest is satisfied by providing activity.

French doctrine recent highlights the blurring of the distinction between public administrative services and industrial and commercial services, on the one hand, by authorizing the concession of public services administrative (such as hospitals, educational institutions, theaters) and, secondly, by supporting by government authorities of part of the cost of services that could not be covered by charges to users²⁴.

The development of the services demand, the extent of the investments involved in the public service sector and the increase of its economic role,

²¹ See Prosper Weil, *Le droit administratif*, 15^e édition, Presses Universitaires de France, Paris, 1992, p. 68; Jean Fougerouse, *op. cit.*, p. 25.

²² In this regard Lucica Matei, *op. cit.*, p. 343 („type of management problem shall be given only for industrial and commercial services”), Sorin David, *op. cit.*, p. 41 („Industrial and commercial public services are those that can be managed through concession”), Aladar Sebeni, *op. cit.*, p. 6 („Only industrial and commercial public services may be subject to concession”), A. Gressier, in „Economie și administrație locală” no. 4/2000, p. 43 („marketability of industrial and commercial public services and the method of financing (collection of fees from users) and operational and organization are very similar to those in the private sector. Such services may be subject to concession”); Mihai T. Oroveanu, *Concesiunea serviciului public*, „Studii de drept românesc”, April-June 1995, p. 158 („concession process has a limited range of action. He can not apply only to services where the recipient is possible to request a financial equivalent for services rendered, which by definition exclude free services and those that can not individualize users”).

²³ In the private sector, outsourcing is currently defined as "the abandonment of a branch of a business carried on by a company that gives another undertaking after the latter assured, however, production or service for which the branch of activity He was devoted " – J. Dupouey, *Propos sur l'externalisation*, „Droit et patrimoine”, n°59/avril 1998, p. 42.

²⁴ Olivier Raymundie, *Gestion delegue des services publics en France et en Europe*, Ed. Le Moniteur, Paris, 1995, *apud* Aladar Sebeni, *op. cit.*, p. 6.

necessitate the improvement of the quality of the services, this being a decisive advantage of the operators' competitiveness, regardless of their size and activity²⁵.

Bibliography

1. Aladar Sebeni, *Noțiunea contractului de concesiune și încheierea acestuia*, „Dreptul” no. 8/1999;
2. André de Laubadère, *Traite de droit administratif*, L.G.D.J., Paris 1984;
3. Corneliu Manda, Doina Banciu, Cezar Manda, *Administrația Publică și Cetățeanul. Structuri. Autorități. Informație publică*, Technical Publishing House, Bucharest, 1997;
4. Ioan Alexandru (coord.), *Drept administrativ*, Omnia, Brașov, 1999;
5. Ioan Alexandru, *Administrația publică. Teorii. Realități. Perspective*, Lumina Lex Publishing House, Bucharest, 1999;
6. Ioan Alexandru, *Drept administrativ comparat*, Lumina Lex Publishing House, Bucharest, 2000;
7. Ioan Alexandru, Lucica Matei, *Servicii publice*, Economic Publishing House, Bucharest, 2000;
8. Ion Popescu-Slăniceanu, *Funcția publică*, Infodial Publishing House, Bucharest, 2000;
9. Jacques Dupouey, *Propos sur l'externalisation*, „Droit et patrimoine”, n°59/avril 1998;
10. Jean Fougerouse, *Le droit administratif en schémas*, Ellipses Édition Marketing S.A., Paris, 2008;
11. Jean-Philippe Colson, *Droit public économique*, 3e édition, L.G.D.J., Paris, 2001;
12. Lucica Matei, *Management public*, Economic Publishing House, Bucharest, 2001;
13. M. Văraru, *Tratat de drept administrativ român*, Socec & Co. Publishing House, Bucharest, 1928;
14. Mihai T. Oroveanu, *Concesiunea serviciului public*, „Studii de drept românesc”, April-June 1995;
15. Mircea Djuvara, *Teoria generală a dreptului*, vol. I, COSA Publishing House, Bucharest, 1930;
16. Paul Negulescu, *Tratat de drept administrativ*, vol. I, IVth ed., Marvan Publishing House, Bucharest, 1934;
17. Philip Kotler, *Marketing Management, Analysis, Planning, Implementation and Control*, 8th Edition, Prentice Hall Inc., 1993;
18. Prosper Weil, *Le droit administratif*, 15^e édition, Presses Universitaires de France, Paris, 1992;
19. Sorin David, *Contractul de concesiune*, „Dreptul” no. 9/1991;
20. Vasile Dinu, *Dimensions of Quality in Services*, „Amfiteatru Economic”, Vol. 11, Issue 26, 2009, p. 243-244.

²⁵ Vasile Dinu, *Dimensions of Quality in Services*, „Amfiteatru Economic”, Vol. 11, Issue 26, 2009, p. 243.