

CONTINUITY OF PUBLIC SERVICES IN ROMANIA: LEGAL CHALLENGES AND INSTITUTIONAL IMPLICATIONS IN THE CONTEXT OF SYSTEMIC DYSFUNCTIONALITY

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Abstract: *In any democratic state, public services play an important role, serving as a fundamental pillar not only for its functioning, but also for ensuring the well-being of its citizens. Today, one of the main objectives of the state is to address the needs and fundamental rights of all citizens, with public services being the means through which this goal is achieved. Through these services, the state not only ensures equitable and quality access to education, healthcare, infrastructure, and social protection, but this access is also considered essential for the development of any society.*

This article aims to analyze the challenges faced by public administration in Romania in ensuring the continuity of public services, a fundamental principle of administrative law. In this context, the main causes of dysfunctions are identified, such as underfunding, political instability, the lack of coherent public policies, strikes, and a shortage of resources. All the consequences of these disruptions have significant repercussions on citizens and institutions, leading to violations of fundamental rights and, not least, the loss of public trust in state authorities and the public sector. At the end of the article, concrete solutions are proposed to strengthen the state's ability to provide continuous and efficient public services. Therefore, the study advocates for a coherent reform of the public sector in Romania, based on responsibility, professionalism, and institutional resilience.

Keywords: *public administration; continuity of public services; legal regulations; dysfunctions; reform.*

Introduction

In any state governed by the rule of law, the public sector plays an important role since, on the one hand, it provides public services that are otherwise considered to be “too costly for citizens to provide” (Tanzi, 2000, 8), and, on the other hand, it manages resources that contribute to the development of the whole society.

Public services such as health, education, transportation, infrastructure or public order, regardless of how they are financed, from citizens’ taxes and government funds, have a major impact on economic growth, ensuring prosperity (Baa & Chatteraj, 2022, p. 2) stability and development directions.

Public services, by the way in which they are provided to all members of society, are designed to reduce poverty and inequality, thereby contributing to a fair and socially cohesive society.

As the scope of social needs has grown, states have had to adapt and expand the scope of public services, entrusting their management to the private sector and administrative regulatory mechanisms, thus ensuring a fair and transparent distribution of public services (Afeez, 2020, p.5).

1. Public service – conceptual delimitations, normative regulation in Romania, operating principles

Unlike other institutions specific to administrative law, in Romania, public service is a concept that has evolved with society and especially with the needs of its recipients, its definition giving rise to much controversy between theorists, practitioners and beneficiaries.

These controversies concerned both the material aspects, such as the scope of the activities without which the company could not exist, and the organic aspects, i.e. the authorities which, by virtue of the law,

may set up or administer such activities and the legal regime to which they must be subjected to.

Tributaries to the French administrative law system, in the Romanian administrative doctrine, public services have been defined, from a functional point of view, and not organically, as:

- “that activity of public authorities which aims to satisfy a need in the general interest and which must be carried out regularly and continuously (e.g. police, rail transport, education, social assistance, etc.)” (Tarangul, 1944, p. 15 as quoted by Iorgovan, 1996, p. 62);

- “an organizational structure with or without legal personality, established under the law by the state, municipality, city or county or by private individuals, endowed with adequate material and financial means, which carries out an activity or a set of homogeneous activities established by the act of establishment, with the aim of continuously and permanently satisfying the general interests of a community” (Preda, 1999, p. 616);

- “human activity involving a certain specialization, having useful, immaterial and intangible results, intended to satisfy a social need” (Dincă, 2018, p.24).

As far as the legal regulation in Romania is concerned, it should be noted that the notion of “public service” is found primarily in the Constitution, where there are either express or implicit references. Thus, by way of example we mention: Art 120 Para 1 which provides that “public administration in the administrative-territorial units is based on the principles of decentralization, local autonomy and de-concentration of public services”; Art 122 Para 1 “the county council is defined as the public administration authority for the coordination of the activity of the municipal and city councils in order to realize public services of county interest”; Art 123 Para 2 specifies that “the prefect shall manage the deconcentrated public services of the ministries and other bodies of the central public administration in the administrative-territorial units”.

The express use of the notion of public service in the Constitution has led scholars to consider that it has become in recent decades “an institution of constitutional order” (Iorgovan, 2005, p. 185).

As regards sector-specific regulation, the concept of public service is defined as follows:

- “an activity organized or, as the case may be, authorized by a public authority for the purpose of satisfying a legitimate public interest (Art 2 Para 1, Letter m) of the Administrative Litigation Law no 554/2000);
- “the activity or set of activities organized by a public administration authority or a public institution or authorized or delegated by it, in order to satisfy a general need or public interest on a regular and continuous basis” (Art 5 letter k) of the Romanian Administrative Code adopted in 2019).

The doctrinal point of view was also maintained in the case law of the Romanian courts, the scope of public services being analyzed from a material and functional point of view, i.e. by reference to the activities carried out by the provider, and not from an organic or formal point of view (HCCJ Decision no 28/24 April 2017, published in the Official Gazette, Part I no 378/22 May 2017, Decision no 20/29 September 2014, rendered by the Panel for the resolution of certain questions of law in criminal matters, published in the Official Gazette of Romania, Part I, no 766/22 October 2014).

The principles underlying the establishment, organization and functioning of a public service in Romania are set out in Art 580 of the Administrative Code and are as follows:

- Transparency;
- Equal treatment;
- Continuity;
- Adaptability;
- Accessibility;
- Responsibility;
- Provision of public services at quality standards.

2. The principle of continuity of public service in Romania

Unlike the other principles listed above, the content of which is defined in the Administrative Code, in relation to the principle of continuity, the Romanian legislator only mentions in Art 580 Para 4 that “in the provision of public services, public administration authorities and public institutions, as well as bodies providing public services have the obligation to ensure continuity, under the conditions laid down in Art 123, which in turn provides that “the activity of public administration shall be exercised without interruption, in compliance with the legal provisions”.

It follows from the above-mentioned two legal texts that continuity is not only a feature of a public service, but also a fundamental principle of operation which implies that the activity offered in the form of a public service must be carried out without interruption and consistently, except for the limitations imposed by mandatory legal rules aimed at ensuring a legitimate purpose.

For these reasons, the state, through its public authorities and institutions, must constantly monitor how social requirements are changing and adapt the public service model to the new needs, as citizens have the right to good quality public services at all times. This adaptation requires the adoption of mechanisms and the implementation of new technologies to make access to public services much easier and more constant for all beneficiaries.

Continuity, as a fundamental principle of public administration, concerns all those public services that carry out fundamental activities for society, such as health, education, defense and public order, and an interruption in their provision can have significant, sometimes even destructive effects, including in the form of fundamental rights such as the right to health protection or education.

Also, the literature has consistently shown that the principle of continuity in the provision of public services should not be “absolutized”, in the sense that “a public service once established is not forever”, on the contrary, it may be abolished by the body that created it if the public

interest no longer justifies it (Negruț, 2008, p. 103) or may be subject to limitations determined either by the existence of a work program or a duration of realization (Vedinaș, 2018, p. 407).

3. Shortcomings and challenges in applying the principle

In recent years, public services in Romania have faced a number of multi-sectoral challenges, some of which are likely to affect the continuity of their provision.

Among the major dysfunctions that have affected the principle of continuity we mention:

- *Institutional crises generated by strikes of public service workers*

In Romania, the right to strike is recognized both for civil servants (Art 416 of the Administrative Code) and for those who work in the public sector, i.e. those who have to contribute to the continuous functioning of the public service, but this right is considered one of the most controversial, the controversy arising from the pre-emption of general interests achieved through public services over private interests followed by the strike (Ciubotaru, 2009, p. 120).

A relevant example of this is the strike of teachers in pre-university education. In May 2023, more than 150,000 teachers and around 60,000-70,000 auxiliary teachers stopped their work altogether (Ilie, M., July 2024).

The dissatisfaction of the participants in this form of protest was generated by the low level of salaries in the field, in contrast to other socio-professional categories working in the public sector, the impact being felt not only on the living standards of teachers, but also on the quality of education. The reports on the state of pre-university education in Romania 2022-2023 and 2023-2024 demonstrate that the education system was underfunded, being allocated less than 6% of GDP as mentioned in Art 8 of the National Education Law no 1/ 2011 in force at that time.

This radical form of protest has profoundly disrupted the Romanian education system, jeopardizing even important exams such as the national assessment or the baccalaureate.

- *Lack of financial or human resources*

The pandemic crisis in Romania has revealed the existence of a health system that does not provide adequate demographic and regional coverage, and a poorly developed health infrastructure.

The number of doctors and nurses is relatively low compared to the EU average, as many health workers have emigrated. This shortage has led in recent years to an overstretched workforce remaining in the country and limited availability of health services.

On the other hand, the problem of underfunding and lack of qualified personnel in systems such as education, health or law and order in Romania is a chronic one with long-term effects, which despite government reforms has not received concrete and firm solutions.

- *Political crisis*

Uncertainty about the continuation or not of public policies in key areas and the political instability that has led to frequent changes at government level affect the long-term development strategies of public authorities, so that there is currently a lack of synchronization between national policies and government decisions.

The lack of common vision of the Romanian political class still demonstrates the institutional fragility of the Romanian state in the face of political deadlocks.

A relevant example of this is the political crisis generated by the annulment of the presidential elections of December 2024, which led to strong economic and social instability in Romania.

- *Problems caused by incomplete or faulty digitization*

Technological advances should not only facilitate access to public services, but also improve their quality, ensuring social progress by improving the quality of life of all citizens.

The pandemic crisis has shown that access to digital platforms can ensure continuity in the provision of public services even in situations of major crisis, but nevertheless, the digitization process in Romania must be configured in such a way that it does not hinder access to public services for citizens who lack digital skills, such as the elderly or those living in rural areas or who do not have access to the internet and who still represent a high percentage of the country's population.

- *Romania's uneven social and economic development*

The OECD report for the year 2024 states that in Romania there is a wide discrepancy between the way essential public services are provided in rural and urban areas.

In big cities, people have permanent access to public services, while in rural areas, they are provided with interruptions or not at all due to lack of funds or human resources. Despite record economic growth in recent years, Romania still faces large spatial disparities (Fina, Heider, & Raț, 2021, pp. 5 -7).

4. The impact of not respecting the continuity principle – implications for public administration and citizens

The dysfunctions listed briefly above have had the effect first and foremost of decreasing citizens' trust in the state and its authorities.

Drafting strategic plans in public sectors providing essential services is not sufficient if they are not continuously monitored and evaluated so that they meet current social needs.

Administrative inefficiency, in this context, has only led to the fragmentation of projects to reform public services, which means a waste of public money and loss of credibility in public institutions and authorities.

The lack of real and effective public administration reforms has led to widening social and regional disparities, which threatens and fuels citizens' discontent.

In this respect, it should be mentioned that, unfortunately, according to Eurostat statistics, Romania occupies one of the last places in terms of the increase in child poverty and social exclusion, at a time when access to education is the only means of success in life.

5. Possible solutions to mitigate malfunctions in the application of the principle of continuity of public services

Planning for continuity in the provision of essential public services means putting in place systems and mechanisms that can be quickly adapted to new circumstances when disruptive or unforeseen events occur.

It is imperative that public sector governance be strong and resilient, creating the conditions for it to be exercised both through existing authorities and through the appropriate development of new institutions and tools for objectivizing and prioritizing public policies that respond to the current and future needs of the sector and the expectations of the population.

Directions for action and measures that can be taken at government level are designed to ensure the development of the public system through means such as: increased administrative capacity, partnerships between public authorities and private providers, adoption of a coherent and transparent public policy framework.

I believe that the principle of continuity should be ensured in line with the principle of adaptation of public services, which implies a dynamic approach to changing circumstances and situations.

Through the efficient use of government funds and those attracted through the EU-funded National Recovery and Resilience Plan 2021-2026, Romania has the opportunity to develop essential public services by modernizing and streamlining the activities providing essential public services. Their adequate funding will have the effect of attracting a well-trained and responsible human resource actively involved in change projects.

In this context, human resources policies need to be in line not only with public sector objectives, but also with citizens' expectations as beneficiaries of public services.

As far as the implementation of digital solutions in Romania is concerned, this is an ongoing process, but it still requires political will and flexibility because their development must support all citizens.

From this perspective, the implementation of digital solutions in the sphere of public services needs to be done with caution, taking into account the specific delivery of the service, as services such as transport or the supply of electricity, water or gas cannot be dematerialized and delivered online. It should also be kept in mind that continuity in a digital administration means ensuring the constant provision of services online, only when this is possible without human input.

In this context, the "digital revolution" must be and remain beneficiary-oriented, becoming a tool to improve people's lives.

Creating essential infrastructure by attracting new public and private investment is another viable tool to ensure the sustainable and durable development of all communities, thus reducing the major disparities.

Another remedy is the adoption of legal rules to effectively protect citizens, not only in situations where there are interruptions or discontinuities in service provision, but also in situations where the services provided are not of a quality that meets standards. In this respect, the normative regulation of the re-liability of authorities and private organizations providing public services will be an essential pillar in ensuring the principle of continuity.

Conclusions

Continuity is the ability of a public service provided by public or private entities to maintain its normal activity without compromise, regardless of external conditions.

The principle of continuity of public services, although legally enshrined in Romania, has proved insufficiently protected in practice,

with numerous situations where citizens have had no access or access has been interrupted.

In this period of rapid social and technological change, continuity requires public authorities and private entities to adapt their work to properly address any change and to become truly effective in serving the public interest.

References

- Afeez, K. S. (2020). Public service and service delivery. *Global Encyclopedia of Public Administration, Public Policy, and Governance*, https://doi.org/10.1007/978-3-319-31816-5_4005-1
- Baa, R., & Chatteraj, A. K. (2022). The Significance, Role, and Need for Public Sector Enterprises in Economic Growth. *Intern. Journal of Profess. Bus. Review.*, Miami, v. 7 n. 5.
- Ciubotaru, B. M. (2009). Certain aspects regarding the right of public servants in the European Union to strike. Positive statutory regulation of the right to strike in Roma. *Scientific Bulletin of the "Mihail Kogalniceanu" University*, 18. Cugetarea.
- Dincă, D, V. (2018). *Serviciile publice*. Economic.
- Fina Ș., Heider B., & Raț C. (2021). *România inegală. Disparitățile socio-economice regionale din România*. Friedrich-Ebert-Stiftung – Policy for Europe.
- Iorgovan, A. (2005). *Tratat de drept administrativ*, 2nd Vol., 4th Edition. C.H. Beck.
- Negruț, V. (2008). Regimul juridic al serviciilor comunitare de utilități publice. *Revista Transilvană de Științe Administrative*, 1(21)
- Preda, M. (1999). *Autoritățile administrației publice – sistemul constituțional român*, Lumina Lex.
- Tanzi, V. (2000). The role of the State in the quality of the public sector. *CEPAL Review*, 71.
- Tarangul, E.D. (1944). *Tratat de drept administrativ român* Glasul Bucovinei, Cernăuți, quoted in Iorgovan, A. (1996). *Tratat de drept administrative*. Nemira.

Vedinaș, V. (2018). *Tratat teoretic și practic de drept administrativ*, 2nd Vol. Universul Juridic.

Romanian Constitution, in its initial form, has been adopted during the meeting of the Constituent Meeting of 21 November 1991, has been published in the Official Gazette of Romania, Part 1, no 233/21 November 1991 and entered into force after its approval through the national referendum of 8 December 1991. The Romanian Constitution Revision Law No 429/2003 was approved by the national referendum of October 18-19, 2003 and entered into force on October 29, 2003, the date of publication in the Official Journal of Romania, Part I, no 758 of October 29, 2003 of the Constitutional Court Decision no 3 of October 22, 2003 confirming the result of the national referendum of October 18-19, 2003 on the Romanian Constitution Revision Law.

The Administrative Code adopted by the G.E.O no 57/3 July 2019, published in the Official Gazette no 555/5 July 2019.

Law no 554/2 December 2004 on the administrative contentious published in the Official Gazette no 1154/7 December 2004 modified by Law no 262/19 July 2007, published in the Official Gazette no 510/30 July 2007.

National Education Law no 1/2011 published in the Official Gazette, Part 1, no 18/10 January 2011, in force since February 9, 2011, replaced by the Law no 198/2023 – the Law of pre-university education, published in the Official Gazette, Part 1, no 613/5 July 2023, in force since September 3, 2023 and the Law no 199/2023 on superior education, published in the Official Gazette, Part 1, no 614/5 July 2023.

Raportul privind starea învățământului preuniversitar din România 2022-2023, available at: https://www.edu.ro/sites/default/files/fi%C8%99iere/Minister/2023/Transparenta/Rapoarte_sistem/Raport-Starea-Invatamantului-preuniversitar-2022-2023.pdf

Raportul privind starea învățământului preuniversitar din România 2023-2024, available at:

https://www.edu.ro/sites/default/files/fi%C8%99iere/Minister/2024/div/Rapoarte_sistem/Raport_Stare_invatamant_preuniv-2023-2024.pdf

OECD 2024 Report is available at: https://www.oecd.org/en/publications/oecd-economic-surveys-romania-2024_106b32c4-en.html

Eurostat Statistics is available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Children_at_risk_of_poverty_or_social_exclusion

High Court of Cassation and Justice Decision no 28/24 April 2017, published in the Official Gazette, Part 1, no 378/22 May 2017

High Court of Cassation and Justice Decision no 20/29 September 2014, ruled by the Panel for solving certain matters of criminal law, published in the Official Gazette, Part 1, no 766/22 October 2014

Ilie, M. (2024), article available at: <https://www.rfi.fr/ro/rom%C3%A2nia/20240605-un-an-de-la-greva-profesorilor-s-a-schimbata-%C8%99teptarea-p%C4%83rin%C8%9Bilor-%C8%99i-a-societ%C4%83%C8%9Bii-fa%C8%9B%C4%83-de-profesori-interviu>