



Consideration Regarding Community Services of the Romanian Public Utilities

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ARTICLE INFO

Article history:

Accepted June 2012

Available online 1 August 2012

JEL Classification

H 75, I 18, L 95, L 97, L 98

Keywords:

Community services of public utilities; Supply of services of public utilities

ABSTRACT

The community service of public utilities has known all through time various regulations and revisions that have been done according to the political, economic and administrative views of that period. In the 1866 Constitution, they were considered as public utilities, whereas Law 129/1938 labelled them as communal exploitation and the communist regime revised them as public households. The current legislation, written according to the European principles established them as community service of public utilities. The present politics and administration encourage a certain openness of market of public services, but the community services of public utilities still implies a certain degree of monopole. That is due to the fact that this type of services are offered through a local administration infrastructure and also to the fact that they serve the public interest, enclosing accessibility and capacity to be supported by all users. The aim of this paper is to present the evolution of the way the community services of public utilities have been organized and have been supplied to the people. The analysis is done taking into consideration the different legal laws that regulate this field but also the relation between suppliers and users that functions in a monopole market. The decisions and the evolution in this particular market are only dependent on the local public authorities and the protective political measures taken by the authorities. This paper aims to point out the directions to be followed in the future regarding the community services of public utilities, monopole or liberalization.

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1. Introduction

Public service is a notion belonging to the administrative law and refers to those activities of general interest, coordinated by public authorities and available to all citizens, respectively to members of a local community, according to the national or local nature of that service.

According to the dictionary of public administration, the notion of *public service* – describes "the activity organized or authorized by a public authority in order to fulfill a public interest".

Public services, even if they take their conceptual origin in the field of the administrative law, appeared in order to fulfill the communities' social needs. [3] Starting from these social needs, the State ensures the provision and the supply of services so as to fulfill the general interest through organized or authorized activities. [4]

Romanian community services of public utilities, the term used nowadays, have had a series of denominations in conformity with the regulations of the time, being known under the following name: public utilities, communal operations, town management, town management community services, etc.

2. From communal exploitation to community services for public utilities

One of the first references regarding public utilities was done in the Constitution of 1866, article 19, paragraph 3 which defined them as follows "we understand by public utility only the public communication and sanitation, as well as the defense of our country". [6]

The inter-war period used the term *communal operations* not only in the Decree Law no. 129/1938 for the organization of communal operations, republished in the Official Gazette no. 48 from 26th February 1944, terminology of French origin, as the Romanian legislation experienced an important influence of the French administrative doctrine not only at the level of the service field.

The word *commune* appeared in the French language in the 12th century, from the Latin word *communia*, representing a small gathering of people who share a common life and the same things. For the following centuries, the term *commune* had been largely used in order to designate the French territorial administrative units and it is used at present, too. The expression *communal operations* used by the French doctrine, is used in Romania, too, and designates the use of public utility goods in the communities' interest within a territorial

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and administrative unit. [1] The communal operations are run by the State and by the territorial and administrative units, without excluding the participation of private organizations which can be authorized and controlled by public authorities when entering the market.

The Communist regime, which came into power after the Second World War, kept the terminology of communal operations until 1981, when the Great National Assembly passed Law no. 4 from 4th July 1981 regarding the communal homestead and published it in the Official Journal no. 48 from 9th July 1981. In conformity with the communist administrative thought "town management is performed according to the Party's policy and according to the level of economic and social development of the country's locality, in a unitary concept, for a rational organization, modernization, embellishment and the harmonious development of all localities, according to the self-administration, the use of financial and material means at their maximum level of efficiency in order to create better working and living conditions for its citizens, corresponding to the programme of life standard improvement". [8]

According to this normative act, the public services are performed by popular councils which have their whole activity around the consolidation of their relationship with citizens, by stimulating citizens' initiative and participation to road works, river beds regularizations, bank consolidation, water supply, town mains, green areas and pleasure areas organization, emphasizing all local resources, as well as other works in order to contribute to a good administration and to the embellishment of localities. [15][20]

Town management is done differently, according to the organization of the territorial and administrative units: municipalities, towns, communes, by some structures within the popular councils, named management units, as well as by citizens' direct involvement.

The communal management units' financial and material means are ensured by supplying economic activities and profitable services, as well as by the citizens' performance of some works and the payment of communal taxes established according to the law.

The development of the Romanian services of public utilities after 1990 imposed the elaboration of a specific legislation which, along with the general legislation (regarding the public local administration, the local public finances, the public property and its juridical regime, public works concession contracts and service concession contracts, environmental protection and waste regime, the quality of running water, commercial companies) enabled a legal and complex framework and a statutory legal regime.

A first step in this sense was the passing of Law no. 326/2001 of Town Management Services within the Romanian Parliament. At that time, this law, starting from Romanian economic, social and legal realities and by adopting European principles and rules, represented the main legal norm of the regulation of services of public utilities. In 2001, the law considered "public services for town management as a whole of utility and local interest activities and actions, under the authority of the local and public administration, having as main purpose the supply of services of public utilities". [9]

In 2006, there was the need of a new regulation in the field of services of public utilities to be in conformity with the European standards and norms of the treaties and agreements signed by Romania and the EU so as to join the European structures. Thus, the Romanian legislation adopted Law 51/2006 regarding the community services of public utilities which established a judiciary and institutional unitary framework, the objectives, the competencies, the prerogatives and the specific instruments required to set up, organize, administrate, finance, exploit, monitor and control the provision/supply of community services of public utilities.

According to the normative act above mentioned, the community services of public utilities are those public services of local, county and regional interest taking the form of a large social agreement expressed through a democratic decision adopted by the competent public administrative authorities, at the level of territorial administrative units for their citizens and which are managed or coordinated and fall into the responsibility and control of the local public authorities according to some specific rules which do not comply with the common rules applied to other services: universality, continuity, adaptability, accessibility, transparency in order to ensure the following utilities:

- water supply;
- sewerage and purification of used waters;
- storage, sewage and the clearing of pluvial waters;
- sanitation of cities and the management of solid waste;
- thermal energy supply within a centralized system;
- local public transportation;
- public illumination [10].

The new economic and legislative measure adopted in the period 2001 – 2006 had a positive impact on the development of the community services for public utilities, as seen in the chart below [21],[22]:

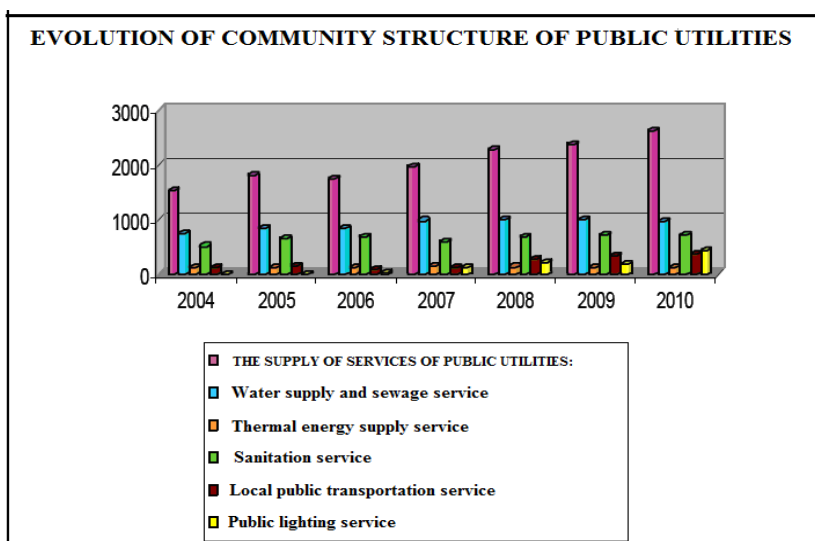


Figure 1. The evolution of community structure of public utilities

Source: Balance of 2010 - A.N.R.S.C. Bucharest, January 2011

YEAR	2004	2005	2006	2007	2008	2009	2010
TOTAL NUMBER OF PUBLIC UTILITIES SERVICES	1522	1511	1525	1572	1967	1977	2208
THE COMMUNITY SERVICES OF PUBLIC UTILITIES	1522	1816	1750	1982	2293	2366	2621
Water supply and sewage service	742	848	849	983	985	986	978
The thermal energy supply service	133	125	109	141	138	132	126
The sewerage and purification used waters service	514	667	676	607	687	709	715
The local public transportation service	121	164	96	127	274	350	359
The public lighting service	12	12	20	124	209	189	443

Figure 2. The evolution of market participants in public utilities

Source: Balance of 2010 - A.N.R.S.C., Bucharest, January 2011

As outlined in the above charts, there is a positive evolution regarding the growth in number of communities in the urban and rural areas that offer people community services for public utilities meant to enhance the comfort and satisfy the social needs of all users in that specific area. This upward trend shown in the last few years is due to a number of factors: the adjustment of national legislation to the European community acquis, which supported the process of management delegation and the creation of associations for intercommunity development and the regional operators; and European funds that have been accessed and used for the modernization and enhancement of the infrastructure in the public utilities field.

The services that have met the best evolution are water and sewerage, as well as sanitation. That is due to the fact that these services are needed both in rural and urban areas and the investment done in these areas have thus benefited from a large financial support from the EU through funds such as SAPHARD, PHARE, SAMTID, ISPA, etc.

3. Characteristics of the market of public utilities services

The present concept of service of public utilities has new meanings as opposed to the concept in the communist period and just after the revolution in December, when the idea was that only the State could ensure general services.

From the establishment of the notion of public service in the Romanian law before the First World War up until now, the present legal frame has suffered numerous changes. The present legislation creates the legal basis which gives the central public and local administration the possibility to name, in certain fields, juridical private entities in order to supply, in their name and under the control of the administration, some public services of general interest.

For example, according to the Law 51/2006, in the field of community services of public utilities, services like water supply, local public transportation, sanitation, thermal energy supply, public illumination can be provided/supplied by private juridical entities on the basis of a concession agreement signed with the competent public authorities.

The more or less opening of the service market of public utilities is due to the rapid development need of the specific infrastructure. Its rehabilitation and enlargement was estimated, for 2003 – 2007, at an amount of investments of over 1 billion euros a year. It also ensured the unrestricted access of all communities in order to benefit from qualitative services by private capital and external financial resources. [2], [5]

Thus, the services of public utilities are organized under the direct management of administrative and territorial units through some public services, offices and departments which are under the subordination of the specialized department of local councils or town halls under the indirect management (delegated) of commercial companies having the status of operators.

The management of services of public utilities is decided by the public administrative authorities, according to the nature of the service, the present and future interest of the administrative and territorial units, as well as according to the size and the complexity of the public systems of town management. [2], [9]

The private capital can be used in order to develop the market of services of public utilities either by granting some services, or by private or public partnerships.

The granting of public services is foreseen by Law no. 15/1990 regarding the legal regime of the public goods which states that the object of the concessions can be an economic activity, public services, state-owned properties, etc. [11], [12]

The granting of goods belonging to the state's public domain or to some administrative and territorial units is done, in the case of services, by transmitting the administrative and prerogatives and duties from the central and local public administration to the private juridical entities. Practically speaking, there is a delegation of the management through which the private juridical entities acquire competencies which enable them to ensure services of public interest, while the public administrative structures keep their monitoring prerogatives and control regarding the way in which the granted services are being handled.

The management granting and delegation lead to the situation in which the public services can be supplied by any public entity authorized by the public authorities and which meets the juridical competencies and the technical and economic capacities to ensure them.

Apart from the obligations related to the supply/provision of certain public services acquired through management delegation agreements, the private operators also acquire the right to perceive a price in exchange of their services. [14], [16], [17].

As they take the form of community services of general interest, their social character determines its tariffs/prices with special regulation which limit the profit margin to a necessary minimum. The State, in his capacity of regulation body, and the administrative and territorial units, as delegates, directly monitor the amount of prices and tariffs perceived on the market of services of public utilities, the operators regarding the legal aspect as they have to obtain the official notice, respectively their approval.

Another way of managing the community services of public utilities is represented by the association of inter-community development which, according to the new regulation, takes the form of a central point of the development of services, as well as an economic aspect in general of two or several local communities which decide to jointly manage issues of general interest.

This association offers local communities the possibility to ensure the economic development not only from the point of view of the conjugated effort, but from the point of view of meeting the eligibility conditions set by the European financing programmes, accessible due to Romania's adhesion to the European Community area. [25].

The implications on the organization, supply and provision of services, as well as on tariff policies have regulations from other fields also with incidence in the area of community services of public utilities. Thus, selective collecting, recycling and energy capitalization or under another way of waste, need not only a certain service supply but also a specific price; water supply has to be done by complying with the environment and public health norms and these, in their turn, influence the price perceived by consumers. [13], [16]

In connection with the public field, public services are formed and organized in a direct relations with the public goods, whose usage is intended to fulfill the general interest. The use of public goods in the form of service supply, if the services are directly supplied/provided by the State or by territorial and administrative units, benefit from a juridical regulation specific to the administrative law, and supply of public services by private entities entails commercial regulations.

The commercial society of private law which supplies public services and the owner of public goods develop juridical relationships of administrative law, but the same company regarded as operator and the consumer also develop commercial law with the private juridical entities.

The use of public goods forces the company to pay a ground rent which, even if it is the duty of the commercial company, is also a cost element to be bore by the third beneficiary, although the latter and the owner of public goods do not develop a juridical or economic relationship.

The public services, according to their cost, can be free, almost free and onerous. Those services which are considered to be free of charge bear an indirect cost as they are financed through local or national budget grants which come from the taxes paid by citizens. According to the law, community services of public utilities are financially autonomous, but this is valid only if they are supplied by operators which take the form of commercial companies with private capital, state capital or capital from the administrative and territorial units; only then can we talk about regaining the cost of the service supplied through price or tariff.

The organization of these services within the specialized department of the mayor or of the Local Council, irrespective of the fact that this service has juridical personality or not, does not provide them with full financial autonomy because the costs of the public services supplied in these cases are most of the times covered by budget grants.

The supply of services of public utilities implies their quantization, translated into a tariff or price paid in the unit of measure used by the service supplied; this aspect has the most correct application of the principle that the beneficiary pays as there is a direct relation between cost and consumption.

The provision of services of public utilities is sometimes done under a direct measurable form, which enables an individual tariff for unit of measure but, most of the times, the community services do not entail a benefit which directly opposes the users, but the community on the whole; this leads to the regaining of the cost of services through a tax applied equally to the community, relating less to the application of the principle that the beneficiary pays, but to the establishment of social solidarity regarding the payment.

The community services of public utilities have a specific organization, management and development in every State because, at a European level, they are guided by general rules and regulations which make them fundamental right of the European citizens and the economic support of the community contributes to their development through legal and administrative instruments, adequate for each national regulation. [25], [26]

The general field of services at a European level is more comprising than the national level (telecommunications, gas, postal services). In Romania, the field decreased because of the successive regulation from 2011 and 2006, as well as from considerations pertaining to the freeing of certain service fields following the agreements with European and International bodies (telecommunications, electric energy, GDF Suez Gaz, etc).

For the remaining services within the field of public utilities, the present regulation allows for a relative opening of the market through private capital, still being acquainted with the regulations of a monopoly market, with an active intervention of the State in the field of social protection, tariff policies, regulation, monitoring and control. This may be the reason for which the Romanian legislation considers the consumer of services of public utilities as users, as opposed to the free markets, where he is considered as service consumer.

The introduction of private capital in the field of services for general interest is both a necessity to cover the development costs that the State of the administrative and territorial units can no longer bear, and a need of private entities to place their capital on a market whose consumers are sure, the desideratum of the access to these services being that norms and principles grant non discrimination and equal access of all citizens.

Year 2010 brings, through O.U.G. (Government Emergency Ordinance) 63 of 30th June 2010 for the modification and completion of Law no. 273/2006 regarding local public finances, as well as for the establishment of some financial measures, a rethinking of the organization, as the reduction of the budget expenses of the administrative and territorial units/subunits is imposed by governmental policies and programmes adopted following the agreements signed by the International Monetary Fund, the European Commission and the International Bank.[12] Thus, confronted with the reduction of expenses, public administrations resorted to the reduction of organization charts which had direct implications on the specialized apparatus dealing with the service supply. The public local administrations resorted either to the organization of companies subordinated to local councils or to the delegation of their management to private operators.

4. Conclusions

We can conclude by saying that the need to fulfill more and more diversified social needs, as well as the need to ensure services at qualitative and quantitative norms required by the European norms, determined a change regarding the Romanian administrative and legislative perspective in as far as the public service notion is interested; the sense of the service supplied is of more interest than the sense of the body or administrative structure as public services can be supplied, at present, by private juridical entities, too. Contrary to the change of the administrative perspective which favours a certain opening of the market of public services, the community services of public utilities – bearing in mind they are supplied by a technical and urban infrastructure belonging to administrative and territorial units, but also due to the fact that they are maintained in order to serve general interest and to be accessible to all consumers – still have a monopoly trait directly reflected upon the price and tariff system in the field and which have from the State grounding, adjusting and modifications rules conceived so as to ensure the social protection to its beneficiaries. The monopoly trait of the majority of public services for town management is, thus, determined, on the one hand,

by the situation of captive clients of the beneficiaries connected to centralized systems of water supply, town mains, thermal energy, and natural gases.

On the other hand, the monopoly is determined by the fact that community services of public utilities have an essential contribution to the lasting development of the local community, conditioning their economic and social development through a balanced, fair and reasonable distribution of resources on its territory. They are one of the expressions of the autonomy of the local activities and a powerful means to serve the general interest. They also contribute to keeping the social cohesion as the supply of social services helps putting into practice the policies of social welfare decided at national or local levels.

Analyzing the community service market for public utilities, we have observed a growth in the number of private operators that ensure these services, especially in town and villages where the local authorities do not hold the necessary resources to support this type of services. This situation represents a benefic tendency of the market that is more open and favors a more competitive system, where the users have more options to choose for the best price-quality ratio. The competitive system is only valid in the first moment of the public auction and not during the contract, where the prices depend not on the negotiations between the request and the offer, but on the differences in price for primary resources such as: gas, electrical energy or depend on the economic variations implied by inflation.

Also, we can mention as a tendency on this market the large number of regional operators, that have been formed as a result of the association of a few local public administrations that serve their communities as a unitary entity in the public utilities field.

This phenomenon has also been encouraged by the increasing number of UE funds and the conditions to access external loans. Moreover, this tendency allows for a more balanced and uniform offer for the public utilities services in the same region. This also enhances the role played by local public authorities and limits the access of private operators, for the regional operators have as primary shareholders the local council.

The development of community services of public utilities and the need to ensure qualitative and quantitative parameters for all its consumers will farther determine a thorough analysis of the direction to be taken, freeing the market or keeping the monopoly trait and the State intervention through social protection measures.

ACKNOWLEDGEMENTS

The work of Alina Florentina CUCOS was supported by Project SOP HRD /107/1.5/S/76822- TOP ACADEMIC

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