

Anamaria-Cristina ANDREI,  
Irene-Elena PAPUC

*The Bucharest Academy of Economic Studies*

# EVOLUTION OF PUBLIC UTILITY SERVICES OVER THE LAST 20 YEARS IN ROMANIA

Review  
Article

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## Abstract

*The specialized legislation on the regulation of public services reflected the specifics of each historical period. Public service is a complex notion, subject to evolution that has given rise over time to many contradictory discussions, being at the same time an essential notion for administrative law. Presenting the foundations of democracy, Aristotle outlined *suma divisio* between civil society, which relates to private interests, and the political society that defends "general utility" and "common good".*

## INTRODUCTION

Public service is a complex notion, subject to evolution, and, why not, a notion that has given rise, over time to many contradictory discussions, being at the same time an essential notion for administrative law. There is a clear difference in the understanding the concept of public service, on the one hand, the citizen, who, for the most part, has an overview of the notion and on the other being jurisprudence.

### THE NOTION OF PUBLIC SERVICE: DEFINITION, TRAITS, EVOLUTION

According to Dambu A. (2002), presenting the foundations of democracy, Aristotle outlined *summa divisio* between civil society, which relates to private interests, and the political society that defends "general utility" and "common good".

The notion of service originates from the Latin *servitium*. According to the *Explanatory Dictionary of the Romanian Language*, it is defined as "the action, the service; form of work done for the benefit or in the interest of someone", respectively "subdivision in the internal administration of an institution, enterprises etc."

The term of public service has been defined over time from different perspectives, being used both by public management and administrative law, the concept of public service being developed and expanded in the context of the general needs of human society.

Above, it has been said that the definition of the concept of public service has been subjected to the historical evolution that the society has traveled over time. Thus, at the end of the nineteenth century, at European level, political and social changes led to profound mutations in the manner in which the state referred to social problems (struggle against inequalities), economic (it is the era of industrial revolutions) or political (imposing the republican model). The second tendency was the need, on the one hand, to give a larger scope to the so-called administrative judges and, on the other hand, to ensure independence from the administration in the exercise of their activity, according to Morand-Deviller J.

Dambu A. considers that the extending the administrative law and the jurisdiction of the administrative judges generated, according to the literature, fierce disputes that ended with the adoption of several decisions, the best known being: the Blanco decision (1873), the Terrier judgments (1903), Feutry (1908), Therand (1910). At the end of the Terrier decision (1903), it is stated: "everything that the organization and operation of the actual services, general or local, whether the administration appreciates by contract

or the administration proceeds by authority, constitutes an administrative operation which is, by its nature, administrative".

As a consequence, the term of public service appeared for the first time in the French legal doctrine in the first edition of the Treaty of Administrative Law, edited by professor Maurice Hauriou in 1892, a fundamental work in public law which is at the origin of the controversy on the notion of public service between the school of Bordeaux (represented by Duguit or Jèze to remain the most important) and the school of Toulouse (represented by Hauriou), with through the dialectic public service-public power.

According to Plumb I., Androniceanu A., in western doctrine, three definitions have been formulated so far, which coexist and have been taken over in Community legislation.

The first definition is the so-called classic definition of the early twentieth century when Leon Duguit and the Bordeaux School laid the foundations for a genuine state doctrine around the notion of public service.

Duguit L. in its constitutional treaty said that according to this definition, the public service is that activity of general interest performed by only one public person. The term "public service" is closely related to the name of Leon Duguit, a professor in Bordeaux University, who was among the first jurists to be interested in the jurisprudence of this new jurisdiction, which was at that time the State Council. By this expression, Duguit justified a type of state intervention. For him, the term "public service" means any activity the provision of which must be regulated, ensured and controlled by the governors, since it is indispensable to the realization and development of social interdependence, by its nature, the public service being totally secured only by the intervention of the state.

According to Duguit L., so far, relevant to the public service is the fact that it is an activity that the governors must perform in the interests of those governed.

Until the 1930s, administrative law tended to use the term plural (public services) to refer to activities that were supposed to be relevant by the legal nature of the body exercising them in the general interest, which must necessarily be a public person, that is, the state, local authority or other public institution.

So the organic dimension - the presence of a public figure - is of major importance.

This organic dimension will be greatly reduced when the state (as well as other public figures) delegates to some individuals the provision of certain activities that it fails to carry out on its own, activities which the legislator considers to be of general interest. Therefore, the legislator uses the term singular, "public service" referring to a wide

range of activities, very different from one another, but with a strong social connotation.

Roger Bonnard also said that the state is "a social body constituted essentially from a set of public services". Public services are defined as activities designed to meet the needs of general interest, knowing the maximum development in the first half of the 20th century, at the peak of the social state (the so-called Providential State) that had the doctrine of helping citizens in their everyday lives. Given the development of capitalism and taking into account the appearance of its excesses, the state will be obliged to intervene more in order to ensure social cohesion and to alleviate the conjunctural fluctuations. From a historical point of view, this is the moment when, as Chevallier pointed out, "the state leaves its function as a simple guardian of the rules of social play, responsible for defending order. He becomes a social self-standing actor" thus laying the foundations of the state-providence.

Gaston Jeze defines his notion of public service, saying that "public service is the cornerstone of French administrative law. This notion remodels all institutions of public law".

In the twentieth century, the increase in decentralization has led the state to entrust the management of some of the public services to the decentralized authorities that have proven to be closer to the governed, respectively citizens, and therefore more aware of their expectations and needs, services being entrusted to public institutions through functional decentralization.

Thus, in the interwar period, **the second definition of the concept of public service** was formulated, the logical consequence of the economic development of a society demanding diverse, flexible and efficient public services. Thus, the notion of public service reached its maximum development in the middle of the 20th century, becoming the basis of the activity carried out by the public administration and the administrative authorities.

At the political level, the development of public services is closely linked to the emergence at European level of national states. An important role also played in defining the fundamental rights of the individual. Also at that time various public services (courier services, electricity supply, railways, telephony) were created.

Until the 1940s, these services belonged to the state and its institutions, which, however, could no longer meet the new social requirements, these seeing themselves obliged to entrust some public services to individuals / private firms.

In 1964 in A.J.D.A. (*Actualite juridique, droit administratif*) magazine Paris, Laubodere defines public service as "the activity of general interest, performed by a private person with the powers of the public authorities under the control of the

administration". What was reproached by this definition was that it did not specify under what conditions the activity of a private person / firm could be considered a public service.

Thus, according to Laubodere's definition, the essential conditions that a private person has to perform in a public service are: the general interest (in opposition to the private interest manifested in profitable activities), the means of public power (conferring on the person private authority in relation to third parties) and control of the administration over the activity of the private service provider.

According to the legislator, the condition that the administration's control over the activity of the private service provider results from the fact that a private person can perform a public service only through a delegation given by a public person either through a contract or by an explicit unilateral administrative act or implicitly, by delegation setting out the limits within which the empowered person can act.

The current definition of the concept of public service is defined in the late 1980s. It has started from the reality that some public services carried out by private persons must not necessarily enjoy the prerogatives of the public power.

At present, a number of public services of social interest (health, culture, education, etc.) are made by private individuals, but without the powers of the public authorities. The concept of decentralization has materialized in practice by taking over the management of public services from the state's hands and by handing it over to private persons, under the conditions mentioned above. However, the phrase "private services of general interest" used in the case-law does not fully comply with the three conditions laid down in the practice of public administration, even in developed countries, with regard to control, with public services being subordinated to the administration more than ever.

Chevallier J. defines the notion of public service from a triple perspective: the public service as a social entity. It includes various activities and structures that are dependent on public authorities; belonging to the public sphere, the public services have a number of peculiarities which prohibit any assimilation with private enterprises. Public service is also a legal notion.

Therefore, it must apply and apply the specific rules and derogations from the common law, "the public service condensing and summarizing what constitutes the particularity of administrative law". Chevallier J. considers that the third meaning of the notion of public service is that of an ideological operator that "outlines the myth of a generous, benevolent, unique state for the good of all; the public service is the axiological principle that is chosen to lead public management, the purpose to

which governors and officials tend, the norm on which the legitimacy of their activity depends. Since its birth, the term "public service" has been used in various contexts, becoming synonymous with "public interest," "public utility," "general interest."

According to the classic definition, the notion of public service is based on three criteria: *the organic criterion* (considering the legal nature of the body providing it, the public person, the state, the local community, the public institution, the creation of a public service necessarily involving a decision of the public authorities); *the material criterion* of the sphere of interest (the existence of the public service depends on its purpose, or to respond to a general interest); *the criterion of the applicable legal regime* (administrative law rules apply to public services).

The scope of the notion of public service has expanded over time as the interventions of the state and of the local collectivities have increased, the number of public bodies created has registered a positive trend, the users' demands have increased and diverged and, last but not least, administrative jurisprudence that also followed the trend of the weather, changing (not necessarily for good) with a dizzying speed.

#### **THE NOTION OF PUBLIC SERVICE IN ROMANIAN DOCTRINE**

From the analysis of the Romanian doctrine, it was stated that the administration represented the totality of public services, and the public service is the means by which the administration operates.

According to Iorgovan A. (1993), the notion of public service is the activity organized or authorized by a public administration authority to satisfy needs of public interest, or in another conception, the social bodies notified to satisfy the requirements of members of a human community.

In the opinion of another author, Apostol Tofan D. (2008) the public service designates the activity of a continuous and regular nature organized or authorized by a public administration authority in order to satisfy needs of public interest.

According to Negulescu P., a public service is defined as "an administrative body created by the state, county or commune, with a given competence and powers, with financial means procured from the general patrimony of the creative administration, made available to the public to satisfy in a way on a regular and continuous basis, a general need whose private initiative could only give her incomplete and intermediate satisfaction".

Analysing the doctrine, Ciobanu A.-S. considers that it can be said that the great Romanian specialists in administration from the first half of the 20th century generally approached the French

theories, promoting the thesis of the double purpose of the executive power: "governance" and "administration".

Alexandru I. (1996) states that "public services in a broad sense represent assemblies of people and things created to meet a public need by a public body subject to its authority and control" and "public service can be defined as that organization state or local authority, set up by the competent authorities in order to satisfy the requirements of the members of the society under administrative or civil law in the process of law enforcement".

According to Puie O. (2012), the notion of public service has acquired constitutional valences through the express use of this notion in the texts of the Constitution of Romania.

Thus, the public services, *lato sensu*, are part of the corollary of the state's obligations towards the fundamental rights of the citizens. First, the notion of public service is met in the text of article 120 paragraph (1) of the Constitution which enshrines the basic principles on which the local public administration is based and states that "the public administration in the administrative-territorial units is based on the principles of decentralization, local autonomy and the deconcentration of public services"; in article 122 paragraph (1) of the Constitution stipulates that: "the county council is the authority of the public administration for the coordination of the activity of the communal and town councils in order to achieve the public services of county interest"; article 123 paragraph (2) of the Constitution states that "the prefect is the representative of the Government at the local level and manages the decentralized public services of the ministries and other central public administration bodies in the administrative-territorial units."

Plumb I., Andorniceanu A. define the concept of public service as an activity of general interest, performed by a body (a legal person) authorized by a public administration authority. From this definition there are two possible meanings: on the one hand, a definition in a material sense as a kind of general interest activity that the administration understands to assume, and on the other hand an organic one, namely the body through which a general interest activity is carried out.

#### **CONCLUSIONS**

The specific character of the domains in which the public services are established, the multitude and the complexity of the citizens' needs determined the diversification of the organization and functioning of the public services.

As it results from the previous analysis, it can be argued that there is no unified definition of the

concept of public service, in the literature being used several criteria for the classification of public services, such as: *by the nature of public services* (administrative public services and industrial and commercial public services); *according to the way in which the general interest is achieved* (with the purpose of direct and individual satisfaction of citizens, public services that indirectly benefit individuals, public services for the community as a whole); *after the relations with the private services* (monopolized services, services that the public administration carries out in parallel with authorized persons, public services exercised by private persons, authorized under the control of a public administration authority); *from the point of view of their delegation* (public services of an exclusively administrative nature which public authorities cannot entrust to other persons, namely: civil protection, guardianship authority, civil status, etc., public services that can be delegated to other persons: sanitation, street lighting, etc.); *from the point of view of the social importance* (vital public services: water supply, sewerage, district heating, etc., optional public services: park and amusement facilities, information centers, etc.); *in relation to the public authorities on which they depend* (Internal and extra-territorial public services; Civil and military services); *by degree of coverage* (services of national importance, local services).

At present, in the international practice is used the Classification of Activities in the National Economy (CAEN). So the goods and services are systematized by their nature, the way of use, the technological process, organization and financing, the public services being classified into sections, subsections, divisions, groups and classes.

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