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Legal Relationships between Public Service Operators, Users and Third Parties

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Abstract: In this article, we analyse the legal nature of the relations between the local public administration authorities or, as the case may be, between the intercommunity developments associations with the purpose of public utilities and users. Law no. 51/2006 on community services of public utilities establishes that they are subject to legal norms of public or private law, as the case may be. Therefore, the objectives of this paper are to identify the two categories of legal norms applicable to public utilities in the Community, as well as the modalities for regulating legal relations between public utility operators and users of these services, based on the analysis of legal texts, doctrine and jurisprudence.

Keywords: public services; users; legal relations; public service contract

1. Introduction

At present, the community services of public utilities are regulated by a normative act of general character, namely Law no. 51/2006, as well as by a series of normative acts of special character, among which: Law no. 101/2006 regarding the sanitation service of the localities; Law no. 241/2006 regarding the water supply and sewerage service; Law on the Public Power Supply Service no. 325/2006; Law no. 230/2006 regarding the public lighting service; Law on local public transport services no. 92/2007[2].

Public utilities[3] are organized and managed in accordance with the legal provisions, according to the decisions adopted by the deliberative authorities of the administrative-territorial units, given the degree

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[2] In November 2018, a draft Government Decision for the approval of the Preliminary Theses of the draft Community Services Code for Public Utilities "was launched in a public debate", able to facilitate the implementation of the Strategy for Strengthening Public Administration 2014-2020, approved by the Government Decision no. 909/2014, as amended." As stated in the project, "*The Community Services Code of Public Utilities will take into account:*
a) the definition of the community service of public utilities, taking into account both the national tradition and the legislation of the European Union and the jurisprudence of the Court of Justice of the European Union, as well as the definition of other fundamental concepts for the area concerned: services of general economic interest, obligations of public service, etc.;
b) regulating and defining the principles underlying the organization and delivery of public services (e.g. the principle of equal treatment, the principle of continuity, the principle of adaptability, the principle of accessibility, the principle of solidarity, the principle of regionalization, the principle of cost coverage, the principle of supportability, the principle of polluter pays, sustainability, etc.);
c) inclusion of details on the establishment and functioning of community services of public utilities;
d) regulating, in some chapters, the general aspects regarding the community services of public utilities, as well as the normative solutions applicable to each community utility of public utilities". See also (Negruț, 2008, pp. 99-104).

[3] According to art. 1 par. (2) of the Law no. 51/2006, through the community services of public utilities, it is intended to meet the essential needs of general social utility and public interest of the local communities with regard to: water supply; purge and

of urbanization, the economic and social importance of the localities, the size and degree of their development and the ratio with the existing technical infrastructure. Public utility services are provided / rendered through operators or regional operators.

If, by law, a public utility service operator is a "*public or private legal entity governed by public law, private or mixed, registered in Romania, in a Member State of the European Union or in another State which directly ensures the provision / performance of a public utilities service or one or more activities in the sphere of public utility services under the conditions of the current regulations*", a regional operator[1] refers to "*the operator of the company regulated by the Companies Act no. 31/1990, republished, with the subsequent amendments and completions, with integral social capital of some or all of the administrative-territorial units belonging to an intercommunity development association with the purpose of public utility services*".

2. Legal Relationships between Public Service Operators, Users and Third Parties

Law no. 51/2006 on community services of public utilities regulates the legal relations between the local public administration authorities or, as the case may be, between the intercommunity development associations with the purpose of public utility services and users[2].

According to art. 9 par. (1), these are legal relationships of administrative nature, subject to legal rules of public law.

The local public administration authorities have the following obligations towards users of public utilities: to ensure the management of public utilities so that specific public service obligations are respected; to develop and approve their own strategies for improving and developing public utility services, using the principle of multi-annual strategic planning; to promote the development and / or rehabilitation of the public-technical infrastructure related to the public utilities sector and environmental protection programs for the pollutant activities and services; to adopt measures to ensure the financing of the technical and public infrastructure related to the services; to consult user associations with a view to establishing local policies and strategies and ways of organizing and operating services; to periodically inform users about the state of public utilities and their development policies; mediate and solve conflicts between users and operators at the request of one of the parties; to monitor and control compliance with the obligations imposed on operators, including those assumed by operators through management delegation contracts regarding: observance of performance indicators and service levels, regular adjustment of tariffs according to the adjustment formulas negotiated upon the conclusion of management delegation contracts, in compliance with the provisions of the Competition Law no. 21/1996, republished, the efficient and safe operation of the public utilities or other assets belonging to the public and / or private patrimony of the administrative-territorial units related to the services, the realization of the investments stipulated in the delegation contract for the management, to ensure the

sewage treatment; collecting, channeling and evacuating rainwater; centralized heat supply; sanitation of localities; public lighting; natural gas supply; local public passenger transport.

[1] The regional operator, according to art. 2 letter h) shall be established on the basis of the decisions adopted by the deliberative authorities of the administrative-territorial units members of an intercommunity development association having the purpose of public utility services either by setting up a new company or by participating in the share capital of one of existing operators owned by an administrative-territorial unit, member of the intercommunity development association in accordance with the provisions of Law no. 31/1990, republished, as subsequently amended and supplemented.

[2] Users are natural or legal persons that benefit, under the conditions set by law, directly or indirectly, individually or collectively, by public utilities, that is, household users, physical entities or tenants / owners associations; economic operators; public institutions.

protection of the environment and the public domain, to ensure the protection of users (see Grigorescu, 2018, pp. 59-66).

Regarding the legal relations between the local public administration authorities and the operators, Law no. 51/2006 establishes that they are subject to legal rules of public or private law, as the case may be. As it can be seen, legal relationships between local government authorities and operators may also be subject to private legal rules, unlike legal relationships between these authorities or between intercommunity development associations for public utilities and users, which are subject only to the legal rules of public law.

In order to fulfil the above mentioned obligations, the local public administration authorities have the following rights in relation to the public utilities: to establish the requirements and the criteria for the participation and selection of the operators in the public procedures organized for awarding management delegation contracts; to request information on the level and quality of the service provided and on how to maintain, exploit and administer the assets of the public or private property of the administrative-territorial units entrusted to carry out the service; to invite the hearing operator to reconcile disputes with service users; approve setting, adjusting or, as appropriate, modifying the prices and tariffs of public utility services proposed by operators on the basis of methodologies developed by the regulators according to the competencies granted to them by the special law; to monitor and exercise control over the provision of public utility services and to take the necessary measures if the operator does not ensure the performance indicators and the continuity of the services for which he has been bound; to sanction the operator if it does not operate at the level of the performance and efficiency indicators it has been bound to and does not ensure the continuity of services; refuse, under duly justified conditions, to approve the prices and tariffs proposed by the operator; to terminate management delegation contracts under the terms and conditions set out in the contractual clauses (article 9 (2), second sentence).

If it finds and proves that operators have repeatedly failed to comply with their contractual obligations and that operators do not adopt programs of measures that comply with the contractual conditions and ensure that within the given timeframe the quality parameters are met, local authorities have the right to unilaterally terminate service delegation contracts and to organize a new procedure for the delegation of their management (article 9 (3) of Law No 51/2006).

The local public administration authorities also have obligations towards the operators / providers of public utilities, among which: to ensure equal treatment for all operators, regardless of the form of ownership, the country of origin, their organization and the adopted mode of management; to ensure a competitive, transparent and loyal business environment; to observe the commitments assumed by the operator through the decision to administer the service, respectively by the contractual clauses established by the contract for delegating the management of the service; to provide the necessary resources for the financing of the technical and public infrastructure related to the services, corresponding to the contractual clauses; to keep the confidentiality of data and economic and financial information on the activities of operators other than those of public interest (Article 9 paragraph (4) of Law No. 51/2006), according to the law.

According to art. 23 par. (1) of the Law no. 51/2006, the legal relations between the administrative-territorial units or, as the case may be, between the intercommunity development associations with the activity of the public utility services and the regional operators or operators, are regulated either by decisions regarding the administration of the provision of services public utilities to the public law operators referred to in art. 28 par. (2) letter a), respectively contracts for the delegation of the management of public utility services to the operators referred to in art. 28 par. (2) letter b) in the case

of direct management, or by delegation contracts for the management of public utility services, in the case of delegated management (Cătana, 2017, p. 213).

Regarding the legal relations between the operators of the public utility services and the users of these services, these are regulated by the contract for provision of public utilities concluded in compliance with the provisions of the framework contract for provision of public utilities, provisions (article 23 paragraph (2) of Law No 51/2006), the legal regulations in force, the regulations of the services and their specific tasks.

According to the administrative code, in art. 589, entitled "Public Service Obligations", defines the service obligations as "specific requirements and duties imposed on the service providers in each public service sector by the legislator or by the competent public administration authorities with the regulation, authorization or management of that public service". And which imply "mainly the provision of universal service, the continuity and supportability of the service, as well as the beneficiary's protection measures".

According to the Administrative Code, public utility services are part of the category of "non-economic services of general interest" which "represent activities that are not economic in nature and are conducted in order to meet a public interest need a public administration authority or public service bodies under its monitoring or control or mandated by it" (article 589).

3. Conclusions

Community public utilities are "tools to strengthen the public administration's capacity to effectively deliver high-quality public services for citizens". Therefore, the quality of life of those who receive them depends on how they are set up, organized, provided. As mentioned in the draft of the Community Utilities Code, from the studies carried out in the national and European doctrine, the improvement of the legislation in the field would also clarify the issues related to the legal relations between the public service operators, users and third parties.

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