

PERFECT MANAGEMENT AND DISCRIMINATORY EXPEDITIOUSLY OBTAIN OFFICIAL DOCUMENTS BY ROMANIAN CITIZENS RESIDING ABROAD

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Abstract *Public services have been established to meet a general interest of society. Quality of service is closely linked to the public perception of issuance of the requested documents within a short time, claiming a small number of documents required and significant reduction in waiting queues. A recent parliamentary initiative aims to support the Romanian citizens residing abroad for the latter, only between 1 to 31 August each year to obtain within 5 working days various official documents (papers IDs, passports, permits, registration certificates, diploma, etc.). Although it is intended to help the Romanian citizens residing abroad, the installation of the project can generate discrimination and failure to inconsistent application implementation.*

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JEL classification: H73, J71

1. Introduction

Romanian Public services or other services from any state represent entities founded by the state with the purpose to satisfy a public necessity. These entities have their own budget, human and material resources in the service of citizens, in order to access them in modern and civilized conditions, in reasonable terms for their own needs or particular interests.

Public services represents, in opinion of Leon Duguit [2], the activity which the persons who govern are obligated to provide in the in the best interests of those they govern, considering that, in a public service are met three basic elements, namely:

1. a mission considered essential and mandatory for the state;
2. an adequate number of officials specialized to fulfill this mission (objectives organization);

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3. a certain number of affected goods and funds to accomplish this mission [2], public service objectives. The plan analysis public services, the basic mission of SPCLEP is essentially the application of legal acts in order to issue, in terms of efficiency and effectiveness, identity documents, certificates of birth, marriage and death of citizens and performance of all other duties expressly and exhaustively provided by law.

According to the majority opinion formulated in doctrine [3], are peculiar to public service the following features:

- a) is a specialized organization that satisfies a need of public interest;
- b) is established by law¹, or by an administrative act adopted by administrative authorities under a power conferred by law;
- c) the activity is performed based on public power prerogatives conferred by the act of constitution of public service provider;
- d) its having a continuous and rhythmic activity under a program approved² by public administration authority and made public.

We agree with the opinion that public service is a specialized structure of the state, created and authorized by law or through an administrative act of public authority (administrative act with normative character), in order to satisfy continuous and permanent a public interest. This structure is having specialized personnel who is exercising public functions. The material base is assured by public or administrative-territorial unit's budgets, by case. According to Article 2 All. 1, m, of law no. 554/2004 regarding administrative contentious, by public service is understood the activity organized, or, by case, authorized by an public authority, with the purpose of satisfying a legitimate public interest³.

After the events from December 1989, the Romanian state has manifested pursuits more or less consistent or efficient, regarding efficiency and increasing the degree

¹ See O.G. 84/2001 regarding the foundation, organize and function of community public services. According to Article 1 of these Ordinance, SPCLEP, named as community public services are organized by local councils of communes, towns and municipalities, and for Bucharest.

² The work program of all public institutions that operate public works is done under the provisions oh HG1723/2004. It is published in the Official Gazette no. 1009 of 2 November 2004, on the approval of measures to combat bureaucracy in public relations work amended and supplemented by HG 1487/2005. According to Article I of Annex of the judgment, working with the public is such that on weekdays to ensure citizens' access between 8.30 and 16.30 and, one day a week, between 8.30 and 18.30, excluding Saturdays, which will be determined by an administrative act by head teachers or local authorities and central government.

³ According to Art. 2, All. 1, l. r of law 554 from 2004, legitimate public interest, the interest of the rule of law and constitutional democracy, guaranteeing the rights, freedoms and duties of citizens' basis needs are met, achieving competence of public authorities.

of satisfaction of citizen who use different public services. Stated goal, putted into practice has been providing quality public services at European level, to citizen who pay taxes, reducing waiting queues, increasing the professionalism of the staff who is engaged in the organization of these services, increasing the celerity of issuing documents, combating bureaucracy.

Alleged combating bureaucracy has been, officially, a major objective of any government in the past 26 years in Romania. More often formally incriminated, claimed or proclaimed enemy no. 1 of modern administrative systems, whose fight was considered one of the main objectives of public policy assumed and publicized in mass media, bureaucracy installed increasingly in public institutions in our country, generating negative effects, including significant reducing of human and material resources, bureaucracy. The state tried, for the above reasons to firmly legally regulate the combating bureaucracy in 2004 by adopting H.G. no. 1723 which approves the program of measures to combat bureaucracy in working with the public. Through this normative act has been established the mandatory frame program of any public service of state who involves public activities, short, medium and long term measures to facilitate access of citizen to public services, proper informing, effective support for accessing key information's and completing certain forms, their scheduling to reduce queues waiting, increasing the transparency of the entire activity, enhancing qualities of good communicators for officials engaged in working with the public and others.

The good intention of the legislator has produced, in large vision, positive effects, registering significant progress on improving the efficiency and effectiveness of activities of public work of public services in Romania, decreased queues waiting, reducing the number of days needed to obtain some official documents, streamlining communication working relationship with the public, the professionalization fund some of the officials carrying out such activities. However, no one can say that at this time would not be able to do anything for that public services deliver significant progress on efficiency, effectiveness and public satisfaction perceived by the public who access them. Starting from the dictum "better is the mortal enemy of the good" both the legislator and the managers who run public services can identify, permanent, new tools, methods and ways to improve the performance of employment, reduction possible queues waiting but and time limits for issuing official documents, lowering the cost of these services, increasing the satisfaction of citizens accessing public services.

On this line of thought, it seems that there are the concerns of a group of Mps who want through a project of law recently launched, to decrease to 5 days issuing of several official documents, but only for the Romanian citizen with residence and domicile abroad and only for a period of a month, from 1up to 31 August, when it is assumed that this category of citizens return to their country, has little time

available and the state should support them in order to obtain a swift manner, of official documents.

2. Perfect management and discriminatory expeditiously obtain official documents by Romanian citizens residing abroad

During May 2016, a parliamentary group has elaborated a law project to establish measurements on the emission or prompt release of documents for Romania citizen residing abroad. As practitioners in the field of person evidence, one of the public services who is directly related by this project, we will analyze its content and justification of its adoption in order to realize the advantages but also its vulnerabilities, with the purpose to improve and increase the quality of public services offered to Romanian citizen, regardless of their domiciles or residence.

In the explanatory memorandum to justify the necessity for celerity issuing of documents, within 5 days, only for Romanian citizen with domicile or residence abroad, it mentions that “according to the latest estimations, almost 5 millions of Romanians have left the country for a better paid job, based on the large number of Romanian emigrants. According to official dates from 2013, over 2.340.000 persons, has been ascertain a large flow of Romanian citizen who returns in the country for short term periods, especially in august during scholar holidays. In this period, Romanian citizen with domicile or residence abroad, appeals to public institutions in the country for solving personal problems that the release of documents, requests for notices, approvals and personal demands.

Before proceeding to analyze the motives evoked by the initiators of the project, we must bring into attention the ranking constitutional provisions stipulated in Article no. 16 of the Romanian Constitution, according to which Romanian citizen are equal before the law, *without privileges and discrimination*. From this point of view, the initiators refers exclusively to Romanian citizen with domicile or residence abroad, who should benefit, one moth per year, from the facilities of short deadlines, priority in solving several categories of applications, and Romanian citizen residing in Romania must be understanding and polite, generous and empathetic and understand that only the whole month of August each year, those who left to work abroad must be resolved preeminent lodge applications to various institutions and public authorities.

According to Article 1 paragraph 2 letter f from OG37 2000 on preventing and combating all forms of discrimination, equality between citizens, exclusion of privileges and discrimination are guaranteed especially in the exercise of several legal rights, including the right of access to all places and services intended for public use. Public services to which they refer the project initiators falls obviously into this category so it can easily observe the existence of discrimination based solely on grounds of domicile or residence of Romanian citizens, only Romanian

citizens residing abroad benefitting in August, from services under celerity (5 working days of application) for obtaining passports, driving licenses, identity cards, fiscal record, baccalaureate diplomas and others.

According to Article 2 of the 2000 OG37, discrimination is considered any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, disability, contagious chronic disease, HIV infection, belonging to a disadvantaged group and any other criterion which has the purpose or effect of restricting, removing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms or rights recognized law, in the political, economic, social, cultural or any other field of public life.

(2) The disposition of person discrimination by any of the grounds stipulated at article no. (1) is considered discrimination in the sense of present ordinance.

(3) Are discriminatory, according to the present ordinance, the stipulations, criteria or practices apparently neutral which disadvantages some persons, based on the criteria provided at all. (1), towards other people, except if these provisions, criteria or practices are objectively justified by a legitimate purpose, and the methods of reaching this purpose are appropriate and necessary.

From constitutional and legal perspective, without identifying the existence of a objective, rational and reasonable motivations, based on which this project of law can be justified, it will be declared unconstitutional a priori or a posteriori referral made to the Romania Constitutional Court.

According to settled case-law of the RCC, inspired by CEDO, the constitutional principle of equality before the law and non-discrimination require equal treatment of situations which, depending on the purpose pursued, they are not different. Therefore, it does not exclude, but rather involves different solutions for different situations. By judgment of 6 April 2000, CEDO, in Thlimenos C. Grece, has decided that the right of not being discriminated guaranteed by the Convention, is violated not only when the states treats differently the persons in similarly situations, without the existence of objective and reasonable justifications, but also when the stats omit to treat differently, also without existence of reasonable and objective justifications, persons in different situations.

In order not to be considered discriminatory, the law who will adopt only for Romanian citizen with domicile and residence abroad the facilities offered by the state, should be identified the objective and reasonable justification, by the initiators of the law that do not encourage discrimination based on the only criteria of residence of persons, prohibited by Constitution and Article 2 of Governmental Ordinance no. 37 form 2000.

The social reality described according to the present motivation, reveals that there are a lot of Romanian citizen left to work abroad returning with capital flows during august holidays. These should be legally awarded or rewarded with emergency services (5 day from application), but without emergency taxes, with the provision of different public services, does not seem relevant or compelling enough.

Living abroad has been the free option of these persons to work in a country that presents bigger guaranties than Romania, a decent level of living based on the income from activity carried. Capital flows about whom the initiators of the draft law are talking about represents revenues brought into the country by Romanians left to work abroad. This fact cannot be per se, just by itself, a solid argument to confer upon them only during the holidays supposed to perform preeminent in August, additional rights other Romanian citizens residing in Romania need to make two steps back, understand and respect the priority to servicing compatriots in the Diaspora returning capital flows to the country, we are also supporting new work her and will to quickly resolve various bureaucratic problems.

In the same vein, "the positive discrimination" that the project initiators want to legislate, in no way excusable, Romanian citizens residing abroad not constitutes a disadvantaged group that should be supported by legislative measures that are not considered discriminations.

According to the doctrine [5], „positive discrimination represents an interruption of equality justified by an unequal situation and who is destined to reestablish equality.

In reality, “the positive discriminations” aren’t “discriminations”, but rather “differences” that are admissible who are particularly objective and reasonable ”.

Referring to positive discrimination, instituted in Canada and USA „*affirmative action*”, these are measures that refer to social programs of protection with the purpose to ameliorate the statute of underprivileged citizen or groups.

The Constitutional council of France also has pronounced in the issue of “positive discrimination”, it has established that the legislator can create certain positive discriminations that can be defined as “legal differences of treatment which expressly asserts that the regulatory authority aims favoring a specific category of natural or legal person over others in order to compensate for pre-existing inequity of state between them.

Arbitration Court of the Kingdom of Belgium has defined “positive discrimination” as “measure favoring one group or category through a voluntarist policy”.

According to Constitutional Court, the principle of equity is closely linked to the principle of non-discrimination, but it is not restrictive to it, which is why, in order to protect certain social categories, it does not preclude the adoption of appropriate measures whose meaning is contrary to the principle of equality, but in the rebalancing equality of opportunity [10].

In conclusion, the analyzed law project is discriminatory, because it is not based on objective and objective reasons, Romanian citizen being equal in rights and legal treatment, whether the domicile or residence is established in the country or abroad.

Regarding *the possibility of putting in practice of such law project*, if it would be adopted, acting as managers of a community public service of person record in Romania, we consider that it has little chance of being put into practice in the form known today.

Thereby, in the explanatory statement, the initiators are talking about administrative measures that can be taken at institutions or public authorities/public services to implement the proposed legal provisions, such us:

- Institutions to have special counters dedicated to these citizens;
- Work program should be extended to these counters;
- Requests from these citizens to be treated urgently, without surcharge for the scheme.

From the perspective of effective organization of a counter working with the public, none of these proposals it does not seem reliable or serious to be implemented. Thus, the establishment of special counters dedicated exclusively to Romanian citizens residing abroad, opened only in August, will only generate negative effects, the most important being the following:

- Negative and adverse reactions of citizen who notes that certain categories of persons are treated differently and privileged on submitting documents to namely counters, properly labeled and that releases documents in shorter periods of time; Romanian citizen with residence in Romania would be harder to convince that they are not equally with Romanian citizens with domicile or residence abroad, and for this reason they will present requests, complains and notifications in order to beneficiate in the same conditions, with equal rights of the same type of service and in the same time (least five days since submission);
- Impossibility to respect short deadlines for certain categories of citizen, given that the law of each public institution or public authority performing public work has his one special regulations, including the terms of issue of

documents and the impetuous necessity to perform certain verifications/meeting certain mandatory procedures who consume time.

For example, simple electronic passports are personalized at central level and there are delivered in territory in approximately 10 days after application. This term was not established accidentally by the legislator but is closely linked to technical possibilities of that production center (unique nationwide) to solve a limited number of demands in a period of time; ID cards are issued, as well, at timeframes prescribed by law. The proposed regulation does not change these special and derogating regulations from common right, proposed by the project; the period of time chosen by the initiators (august) represents, for some of the services concerned, the busiest period of time reporting to human resource available and the higher number of demands to solve; *exempli grati*, in august it solves most applications for insurance of identity documents and passports with the fewest officials available, part of them being on holidays. So it is difficult to achieve the desiderate project, increase of celerity in these real conditions of work; the same period of time represents scholar holiday for public institutions who must issue baccalaureate diplomas duplicates and license also in five days (we do not understand why the lay is not valid also for doctorate diplomas), so it is at least unrealistic this project, regarding these latter documents.

Regarding to the solution proposed by initiators, to extend the work program exclusively for Romanian citizen residing abroad, this formula seems unrealistic.

A public service does not operate in part by opening one wicket in two, three or four existing public agencies working directly with citizens or works with the public in all aspects of interest or not conducted at all, *tertium non datur*.

We cannot imagine a situation where the rest of the institution is closed, with only the Romanian citizens residing a small counter with longer working hours, only in August of each year, to serve their interests.

In the third project plan analysis problems, apart from the fact that it is manifestly discriminatory and almost impossible to implement without more than Pono benefits to quote him great professor Ion Deleanu. It violates the norms of legislative technique on the smooth integration of the whole law any legislation¹ already approved so far; 3 items "thrown" in an official gazette is not a panacea that solves a complex problem of speeding fire nationwide public service activity

¹ According to article 58 all.3 of Law 24 from 2000 regarding norms of technique law, legislatives events can be disposed through future normative acts at the same or superior hierarchical level, having as exclusively object the namely event, but also through other normative acts witch principally regulates a specific problem, and as related measure they dispose that events in order to ensure the correlation between two normative acts.

and will apply preeminent in special and exceptional competition regulations¹ already adopted for each public service issuing documents should be issued within five working days of the relevant public services.

Fourth, the project does not have any sanctions provided for the institution or official who later became project would not apply point (dead) by law; in the first year of law school was taught in the subject General Theory of Law that any legal norm has hypothesis, provision and sanction this project has only assumptions and provisions, without specifying that any penalties for not applying its practice. To hope for minimal effects that would occur in practice, the developers recommend longer insert an article to provide for such sanctions.

Fifth, although we have legal studies depth and we are familiar with legal texts and legal norms of various laws passed, I did not read until now the existence of any law that takes effect only one month during a calendar year (except electoral laws that apply once every four years or temporary laws, aimed at specific regulations reached a certain limited period of time).

Sixthly, the project concerns the issue for Romanian citizens residing abroad identity cards, but for this category of citizens, under GEO 97/2005 R1 and application methodology, this is possible only for those who restored in Romania domicile as Romanian citizens who maintain their residence abroad are no longer entitled to an identity card, but the passport CRDS and a possible book temporary ID which is identification but no ID card, the purpose of the proposed project. Restoring home involves procedures that consumes more time than the five days of the project, involving at least two institutions which have distinct regulations and deadlines in resolving claims and submissions conducted so that the project does not account for them and they will not be implemented as adopted.

On our solutions of timeliness issue various official acts, they are circumscribed obviously optimize work processes within each organization concerned and reduction of settlement for all citizens applying for the shorter duration of a document or another, irrespective of the domicile or residence. Celerity not be developed or encouraged the categories of citizens but is an indication of a competent and efficient management act, which leads naturally to the finality of this issue in decent conditions and within a short time of those documents.

This requires a human resources sufficient and well trained, resourceful appropriate materials for IT infrastructure performance, a very good cooperation with various institutions for the final outcome of specific activities and

¹ On which the officers of public services will apply in practice with priority, on the known principle of law *specialia generalibus derogant*.

inspections conducted to lead naturally in time as small to prompt settlement of all requests for Romanian citizens, regardless of their domicile or residence. We appreciate that it's not a serious solution to propose populist projects in order to check possible interest of some lawmakers for diaspora issues, but should first consult the best specialists in each area covered in part to understand the mechanisms of the system and adjust/optimize its operation in order to reduce as far as possible, the periods of time that can be issued various documents official.

Basically, we are for combating bureaucracy and reduce the time limits for issuing official documents by public institutions, but through an appropriate management, based on a simplified legal framework and who respects the constitutional principle of equality of citizen before the law, without any privilege or discrimination of any kind.

Not lastly, some of the solutions proposed by citizens but also already adopted in some areas (egg. system records people, we know very well) will produce effects contrary to the purpose for which were adopted, leading to risks, vulnerabilities and increasing instead of decreasing the waiting times for citizens and also rigor decreased activity.

Conclusions

The desideratum of issuing official documents in shorter periods is one of the main objectives of the managers who run public services in Romania, one of the major indications of an act of responsible driving, modern, European and performance.

Legal provisions adopted in this matter must be based on the legal realities of the legal framework already adopted to reconcile the principles of constitutional status of equal rights for all Romanian citizens with the best interests of the benefit of services civilized rendered for short time.

As European citizens, paying taxes, Romanian citizens, regardless of domicile or residence, must benefit from quality public services accessed in reasonable time, preserving the principles of legality and rigor specific activities of each public service in part.

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