

## **PERSPECTIVES FOR DEVELOPING THE CIVIL SERVICES IN ROMANIA**

### **VISION ON THE NEW DEVELOPMENT STRATEGY**

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#### **ABSTRACT**

*This study analyses the principles of legality, transparency, efficiency and effectiveness, proportionality, orientation, consistency, hierarchical subordination, accountability, accessibility and flexibility. All those principles underlines the exercise of public service in Romania.*

*Also, it aims to highlight that the civil service in Romania cannot be regarded as an occupation, but rather as a vocation, civil servants having an extremely important mission, which is to carry out public service.*

**Key-words:** *strategy, civil services, transparency, predictability, public information, non-discrimination.*

Romania will provide professional civil servants, politically neutral, capable in acting in terms of stability, transparency and predictability, responsible for their results and able to develop and implement effective public policies that will support sustainable development in Romania.

To implement the new strategy we will consider the following principles:

The legality and the respect for the rule of law – The public authorities and institutions should follow the Constitution and the laws of the country.

Transparency, openness and participation – The public authorities and institutions should provide free access to public information, the transparency in decision-making process and report their activities according to law. Also, public authorities and institutions should provide the proper conditions for stakeholders (public institutions / authorities, NGOs, civil servants, universities, private sector, citizens) to participate in preparing and implementing the proposed measures for this strategy, according to law.

Efficiency and effectiveness - Public authorities and institutions will make best use of available resources to achieve their targets for this strategy.

Proportionality, consistency and accountability – The proposed measures to be implemented under this strategy will be appropriate, necessary, gradual and in accordance with the targets. Public authorities and institutions will take responsibility for the actions they perform in implementing this strategy.

Promoting gender equality and non-discrimination – Regarding the implementation process of this strategy (for example, the implementation specialized training programs) public authorities and institutions shall not manifest discrimination regarding gender, age, religion, disabilities, people belonging to disadvantaged groups and other issues, according to law. This strategy assumes the equalization of opportunities by taking appropriate and specific measures to ensure equal opportunities, including people with disabilities throughout the entire career of the civil servant.

Accessibility – seen as a result of a process that requires the consideration of those aspects about availability and adaptation of the policies and programs on the civil service in order to prevent the creation of barriers throughout the civil servant's career.

Flexibility – Considering the role of public administration to implement the governmental program, the targets, actions and budget set out in this strategy can be adjusted according to the governmental priorities and the available financial and human resources.

### **1. Definition of civil service. The public power prerogative**

Before Romania joined the European structures, the European Union decided, as a condition to full membership, that the administrative capacity within candidate states should be developed, something that involved the establishment of a professional and depoliticised civil service. The civil service reform was going to rely on “the principles of a European Administrative Space”. The European principles had been developed by SIGMA at the end of the 1990s, as a result of the European Union demand for a model of public administration, meant to foresee the administrative reforms in the Central and Eastern European countries. However, the references to these general principles took into account the idea that the European Commission could not impose on the candidate states the adoption of a solution to their civil service management since, according to the signed treaties, the EU had no authority to intervene in the civil service of the member states.

The definition of civil service in Romania as the set of competences and responsibilities, established by law, aimed at fulfilling the public powers by central and local public administration, and self-contained administrative authorities, as stipulated by Law no. 188/1999 regarding the Civil Servant Statute, shows a tight connection to the prerogative of public power. The execution of this prerogative of the Romanian state, understood as the range of competences granted to civil servants by law, has brought about the necessity that civil servants take a loyalty oath. The application of the granted competences consists of deeds and actions, tied exclusively and directly to the fulfilment of the reasons why the public

institutions and authorities exist and is materialised through the duties stipulated by normative legislation, in the name and interest of the state, with a view to catering for a specific general interest. Any distortion of the meaning of this mission of civil servants may have serious consequences.

In 1915, Professor Anibal Teodorescu said that “political deals, the Government’s need to provide for at least a part of the supporters that helped it win the elections, have led to practices and justifications that do not correspond to the goal of civil service, such as:

- public offices invented to reward certain persons and not to fulfil the necessities of the general public;
- abolition of public offices so as to “evict” the “unmanageable” persons and, in parallel, the establishment of new offices to satisfy the demands of the political class;
- various trespassing of the principle of civil servant stability, resorting to rotation, relocation, transfer, promotion, dismissal, so as to make room for the “political clientele”.<sup>1</sup>

A civil servant has to be understood as the person who has been appointed to a public office and who represents the Romanian state by his or her endowment with public power. The Civil Servant Statute, adopted by an organic law, according to article 73 of Romania’s Constitution, lists the civil servants’ activities involving the execution of public power, namely<sup>2</sup>:

- a) application of laws and regulations;
- b) devising bills and other regulations specific to each authority or public institution;
- c) devising policies, strategies, programmes, surveys, analyses and statistics necessary to carry out and implement public policies, as well as writing the documentation needed to apply the legislation, with a view to fulfilling the competence of their public authority of institution;
- d) counselling, supervision and internal audit;
- e) managing human and financial resources;
- f) collecting debts owed to the state budget;
- g) standing for the interests of their public authority or institution in its dealings with natural persons or legal entities from home or abroad, within the limits of the competences assigned by the leadership of their public authority or institution, as well as representing their public authority or institution in a court of law;
- h) performing activities in accordance with the public administration computerization strategy.

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<sup>1</sup> Anibal Teodorescu, *Noțiuni de drept administrativ*, ed a II-a, Tipografia Eminescu, București, 1915, p. 146.

<sup>2</sup> Art. 2 paragraph (3) of Law no. 188/1999 regarding the Civil Servant Statute, with subsequent amendments and privind Statutul funcționarilor publici, cu modificările și completările ulterioare.

The attempt at distinguishing civil service from other categories of public offices has sparked many controversies both in the administrative practice and the relevant literature. As some authors point out, "considering the extent and variety of the network of public authorities and institutions and the complex tasks they have to perform in order to implement the legislation, as well as the fact that public administration means activities involving a relation between some people with other people, the subject matter of those working in public administration and their training is extremely important. An exercise of civil service must contribute to a fulfilment of public power, either in a direct way, as is the case of the executive positions that imply issuance of juridical documents of power or authority, or indirectly, through activities of preparation, execution and control, tightly connected or simply connected to the exercise of public authority."<sup>3</sup> Civil service has also been defined as "a complex of powers and competences, organised by law to cater for a general interest, temporarily performed by a natural or many natural persons who, exercising their powers within the limits of their competences, aim to attain the goal for which that service has been established."<sup>4</sup>

## **2. Principles in Romanian legislation that underlie the exercise of public service**

By creating the Civil Servant Statute, some principles underlying the civil service have been established, with a view to reaching the goal of having a stable, professional, transparent, efficient and unbiased service, to the advantage of the citizens. These principles are:

- a) legality, impartiality and objectivity;
- b) transparency;
- c) efficiency and effectiveness;
- d) responsibility according to legal provisions;
- e) orientation towards citizens;
- f) flexibility in exercising the service;
- g) hierarchical subordination.

All these principles must be regarded in agreement with those that govern civil servants' professional conduct, namely:<sup>5</sup>

- a) the Constitution and the law supremacy, a principle involving the respect due to the Constitution and the laws of the land by the civil servant;

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<sup>3</sup> Diana Marilena Popescu Petrovszki, *Statutul funcționarilor publici din România și din Uniunea Europeană: principii, drepturi și obligații*, București, Editura I.R.D.O, 2011, p. 8.

<sup>4</sup> Negulescu, Paul, *Tratat de drept administrativ, vol I și II*, Editura Mărvan, București, 1934, p. 571.

<sup>5</sup> Art. 3, Law no. 7/2004 regarding the Civil Servant Conduct Code.

b) the public interest priority, a principle stating that civil servants must put public interest on a higher level than their personal interest when performing civil service;

c) equal treatment of all citizens by public authorities and institutions, a principle stating that civil servants must apply the same juridical regime in identical or similar situations;

d) professional approach, a principle according to which civil servants must carry out their duties responsibly and conscientiously, with competence, efficiency and fairness;

e) impartiality and independence, a principle stating that civil servants must have an objective and neutral stance towards political, economic, religious or other interests when performing their duties;

f) moral integrity, a principle according to which civil servants are forbidden to demand or accept, directly or indirectly, for themselves or for others, any advantage or benefit and not to make any abuse of authority when performing their duties;

g) freedom of thought and speech, a principle according to which civil servants may express and support their opinions, abiding by the established order and good conduct;

h) honesty and fairness, a principle stating that public servants must be perform their duties in good faith;

i) openness and transparency, a principle stating that the activities performed by civil servants are public and may be monitored by citizens.

The application of these principles when performing civil service emphasizes the idea that the state pays special attention to its civil servants, who are given the prerogative of public power, this transfer of authority being nevertheless defined by a performance of duties in conditions of legality, impartiality, objectivity, transparency, responsibility and hierarchical subordination. One should consider that the work functions arise from and are performed in accordance to an administrative act of assignment, the appointment to civil service being possible only after taking the loyalty oath, otherwise the administrative act of assignment is revoked.

In this context, we notice that civil service in Romania cannot be regarded as an occupation but rather as a vocation, civil servants having an extremely important mission, that is to carry out public service. To attain this goal, the Romanian state, which endows its civil servants with the prerogative of public power, must take measures to ensure both the depoliticisation of civil service and the stability of the civil servant jobs. Thus, we may define the stability of the civil servant job as the stability of the juridical relations that arise from the administrative act of assignment, so that the state can fulfil its obligation to create a legislative framework meant to provide civil servants with the security and the guarantee of keeping their jobs.

### 3. Civil servant, public office – definition and meanings

Even since 1923, the Constitution of the Kingdom of Romania stated that the civil servants' statute was regulated by special laws, underlining the necessity that Romanian citizens only should have access to the prerogative of public power (foreigners had access to "public office but under exceptional circumstances stipulated by the law").<sup>6</sup>

Nowadays, there are two meanings attached to the notion of civil servant in the Romanian administration sector.

*In an extended sense*, the Romanian Penal Code<sup>7</sup> states that a civil servant is a person who, on a permanent or temporary contract, with or without wages,

a) carries out duties and responsibilities, provided by the law, so as to fulfil the prerogatives of the legislative, executive, or judicial powers;

b) holds a position of high public office or any other public office;

c) performs, alone or together with other persons, within an autonomous state company, an economic agency, or a legal entity, where the shareholder or the main shareholder is the state, tasks related to reaching the objectives of those institutions.

Also, in the sense of the penal law, a civil servant is a person who holds public office after being appointed in that position by the public authorities, or who is subject to control or supervision when carrying out the service of the respective public office.

*In a narrow sense*, the Law no. 188/1999 regarding the Civil Servant Statute stipulates that a civil servant is a person appointed, under legal conditions, to a public office. However, the law specifies that there is a particular category of civil servants, namely persons who have been dismissed from public office and are in the reserve list of civil servants who, nevertheless, keep their statute as civil servants. Also, in the Civil Servant Statute we can find the definition of civil service, which is *the set of competences and responsibilities, established by law, aimed at fulfilling the public powers by central and local public administration and self-contained administrative authorities*.

Analysing the two perspectives we notice the intention of the lawmakers to establish a distinctive administrative area of access to the prerogative of public power where, as M. Hauriou<sup>8</sup> showed, "the situation of the civil servant is a legal and juridical situation, governed by the objective law and subject to the variations of this law. This situation is not created by the act of appointment. The appointment is meant to apply an existent situation, the job of a certain individual".

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<sup>6</sup> The Constitution of the Kingdom of Romania, 29th March, 1923 - article 8.

<sup>7</sup> Romania's Penal Code, updated version on 1<sup>st</sup> February, 2014 - article 175.

<sup>8</sup> M. Hauriou, *Precis de droit administratif et de droit public*, Paris, 1919, p. 597.

This does not want to say that the activities involving the exercise of the prerogative of public power through which the civil service is performed should take place on a permanent basis, they can take place intermittently, at a single moment or never, depending on the context. In this respect, professor Romulus Ionescu said<sup>9</sup> that the existence of a public office should not be mistaken for its actual performance, in accordance with its particularity.

The general and specific duties of public institutions are fulfilled by assigning a natural person to a public office with a view to attaining the proposed objectives. The most flexible distinction of civil servants from other categories of staff, as we can distinguish the category of civil servants from other positions in the public administration, remains the one that says that a civil servant receives, together with the administrative act of assignment, competences belonging to the functional competences of the public institution where he or she are going to work. Thus, their activity will inextricably be linked to the main duties of their public institution, stipulated in the legal document on the organisation and operation thereof.

The organisational structure of a Romanian public institution represents the totality of staff and organisational subunits that ensure the completion of the duties specific to each public institution. The components of the organisational structure of a public institution or authority are *the leadership structure and the executive structure*. The size of the organisational chart of a public authority or institution depends both on the public interests that need to be fulfilled and on the human and material means which the respective public society or service can allot to satisfy those general interests.<sup>10</sup> In the framework of the public administration system, the competences pertaining to a certain civil service fall into posts. The posts corresponding to civil service and their distribution into departments are established according to:

- a) the competences and functions established through a normative document referring to the public authority or institution in question;
- b) the approved organisational chart;
- c) the activities that involve the exercise of the prerogatives of public power.

#### 4. Ways of occupying civil service vacancies

Public administration involves “an uninterrupted action aimed at ensuring the conditions for the rhythmic development of a state’s life, it is a continuous process and is subject to the rules of updating its functions, as a guarantee of its adjustment to the ever dynamic conditions of the social environment”.<sup>11</sup>

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<sup>9</sup> Romulus Ionescu, *Drept administrativ*, Editura Didactică și Pedagogică, București, 1970, p. 177.

<sup>10</sup> Al. Negoită, *Drept administrativ*, Editura Sylvi, București, 1996, p. 97.

<sup>11</sup> Ioan Alexandru, *Știința administrației*, Editura Economică, București, 2001.

To attain the goal envisaged by the establishment of an organisational structure, the civil service must be entrusted to natural persons, the ways of occupying public service vacancies being formulated annually in the plan of filling public service vacancies: promotion, transfer, redistribution and admission examinations. The planning instruments concerning the development of the civil service career are:

a) the plan of filling civil service vacancies, drafted and approved according to the law provisions.

b) internal instruments of managing and planning the human resource within each public authority or institution;

c) plans of civil servant training.

The job description of a certain civil service defines and marks off the following elements mainly:

a) the contribution to achieving the objectives, functions, competences and goals of the institution;

b) the contents and results of the work to be done;

c) the limits of authority corresponding to the exercise of civil service;

d) the requirements and conditions a person must meet in order to hold a certain office.

The admission to the civil service system is made by means of a recruitment examination, organised in accordance with the specific legal provisions or the rules established for the persons who legally occupy the position of public manager, and by turning the posts hired by contract into civil service posts. The recruitment competition or examination is organised so as to fill a civil service vacancy on an unlimited term. By way of exception, in the case of temporarily-vacant executive posts, the recruitment examination may also be organised to fill in a fixed-term civil service vacancy, in accordance with the legal provisions.

If the recruitment examination is organised to fill a fixed-term executive vacancy with the professional grade of debutant, the successful candidate will have the regime applicable to debutant civil servants throughout his or her whole exercise of public office.

## **5. The principles found in Romanian legislation that underlie the organisation and development of a civil servant's career**

The principles underlying the organisation and development of a civil servant's career are:<sup>12</sup>

a) skills

b) competition

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<sup>12</sup> Government Decision no. 611/2008 in relation to the organisation and development of the civil servants' career (consolidated version on 22.01.2013).

- c) equality of chances
- d) professionalism
- e) motivation
- f) transparency.

The **skills** represent the principle stating that the persons who wish to accede or be promoted to a civil service position must have and confirm their knowledge and skills necessary for the exercise of that civil service position. Romanian legislation seeks to hone the access to civil service by including the principle of professional merit among the principles governing the recruitment competition. Professional merit should determine a candidate's final result when there is an equal score between candidates and further selection criteria are needed. Thus, the concept of professional merit does not refer to the merit proven until the competition date in a certain or several positions but to the professional merit linked to the civil service position for which the competition is organised. From this viewpoint, merit implies thinking prospectively: does this candidate possess the best combination of skills, expertise, personal aptitudes and development potential to make him or her suitable for the vacant position?<sup>13</sup> Thus, **professionalism** is taken into account, a principle stating that civil service is carried out by efficiently fulfilling the competences pertaining to the exercise of public power prerogatives, within the legal provisions regulating those competences.

Another principle referring to the organisation and development of the civil service career is **competition**, a principle according to which the confirmation of the knowledge and skills necessary for the exercise of a public office is done by competition or examination. This principle, together with the **equality of chances**, a principle recognising the vocation for a career in civil service of any person meeting the legal requirements, is meant to encourage diversity and the representation of all Romanian regions in the civil service, be it at state, territorial or local level. We may notice in the specific legislation the fact that civil service vacancies are filled according to similar procedures, irrespective of the administrative level (central or local). Thus, the provisions of article 54 of the Civil Servant Statute mention that a civil service position can be occupied by a person who meets the following criteria:

- a) Romanian citizenship and residence in Romania;
- b) knowledge of written and spoken Romanian language;
- c) minimum 18 years old;
- d) full capacity to exercise his or her duties;

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<sup>13</sup> Diana Marilena Popescu Petrovszki, *Statutul funcționarilor publici din România și din Uniunea Europeană: principii, drepturi și obligații*, București, Editura I.R.D.O, 2011, p. 102-103.

- e) health suitable for the civil service to which he or she aspires, attested by a medical certificate;
- f) level of studies corresponding to the public office;
- g) meets the specific requirements of the public office;
- h) has never been convicted for crimes against humanity, the state, or authorities, for corruption or work-related offences, for hindering justice, forgery or any other crime that renders him or her incompatible with the exercise of civil service;
- i) has not been dismissed from public office or has not been fired from work due to disciplinary reasons in the last 7 years;
- j) has not conducted political police activities, as these are defined by law.

The principle of equality of chances is stipulated in Romania's Constitution as a fundamental right, formally expressing that "public and high office positions, civil or military, can be occupied, according to the legal provisions, by persons who are Romanian citizens and residents. The Romanian state guarantees equality of chances between women and men to occupy those positions."

**Motivation** is a principle stating that, with a view to developing the civil service career, public authorities and institutions must identify and apply, under legal conditions, instruments of financial and nonfinancial motivation of civil servants, as well as support their initiatives aimed at their professional development. Motivation is one of the essential tools used to ensure a stable, professional, transparent, efficient and impartial civil service, to the advantage of the citizens and of the public authorities and institutions within the central and local public administration. This principle, together with **transparency**, a principle stating the obligation of public authorities and institutions to make public information available to all people interested in a civil service career, emphasizes the right to be informed and the free access to public interest information, these being also stipulated in Romania's Constitution as fundamental rights.

The presentation of the principles underlying the organisation and development of the civil servants' career highlights an adjustment of the Romanian legislation and career system to the European norms in this matter. We must not forget to mention that several European experts were directly involved in the process of drafting the first version of the Civil Servant Statute after December 1989, so as to support the creation of a normative framework, necessary for the establishment of specific regulations for this category of staff. We notice a maintenance of the national identity when creating the framework of principles that are to govern a civil service career in Romania, in the sense of the point 39 of the Maastricht Treaty, which says that EU member states may reserve for their citizens certain positions in their national administrative systems, while keeping to the directions given by the European community.

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