

Liability of Public Authorities in Case of Road Events. Case Study

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ABSTRACT

Recently, several cases have been registered before the courts in Bucharest, for attracting accountability and payment of compensations, directed against some public entities, for car accidents. Starting from this reality, I intended following the study of a concrete case, to identify the causes for which the intervention of the courts was requested and where the public entities acted wrongly, so as to raise the issue of attracting their accountability. With this purpose in mind, the following research questions arise: which public entity has a public road under administration? What are the obligations of the public road administrator? What is the responsibility of a public entity? Under what conditions is a public entity accountable for?, questions that I will try to answer within the paper.

In order to answer these questions, firstly I will analyse the relevant legislation and literature, and the presentation of the case study will focus on the manner in which several public entities decline their accountability and on highlighting the way in which they disregard the legislative provisions about their given powers under decentralization and administrative delegation and how these actions have led to the creation of situations such as the one described in the case study.

In the end of the paper, I will emphasize the conclusions drawn from the actual study, with emphasis on the reported errors and also, I will try to sketch some proposals in order to improve the respective public service.

KEYWORDS: *public administration, decentralization, delegation, public institution, public utility institution, public service, accountability, responsibility.*



1.Introduction

In recent years, more and more cases have been filed, requesting the intervention of the courts to hold public authorities accountable and oblige them to cover damages done to individuals or legal entities and their property in road events, due to non-fulfilment or defective fulfilment of the administration obligations incumbent on the respective authorities.

The courts were requested to oblige the guilty authorities to pay in full the respective damages, by virtue of the right to compensation from the person responsible for the occurrence of the road accident as a result of which the alleged damage occurred.

In order for the courts to be able to rule on these claims, they must consider whether the authority summoned has failed to fulfil its obligations under the law and whether this is the causal link between the notified road accident and the damage claimed.

Thus, it is extremely important, in order to establish the causal link, to analyse in concrete terms the obligations and attributions of the public institutions summoned to court.

In what follows, I will try to present, briefly and generally, the relevant legislation and literature, before moving on to the presentation of the case whose study is the subject of this paper.

Following the presentation of the case under study, I will try to conclude on the points where, in my opinion, the summoned authorities are guilty of non-fulfilment of their obligations, and will try to formulate proposals to improve the quality of public service.

Starting from the definition given by the Administrative Code, the public administration represents the “totality of the activities carried out, in regime of public power, of organizing the execution and concrete execution of the law and of providing public services, in order to satisfy the public interest”¹.

1.1.The Public Administration

Public administration, as a field (domain), represents a system in perpetual change, and this reality has led to the need for continuous adjustment and improvement of the existing theories².

¹Art. 5, OUG 57/2019, M. Of. 555/05 July 20019.

²Hiñtea, C. E., 2008, *Management public*, Cluj, Romania: Accent Publishing House, p. 8.



When we talk about public administration, we must discuss both the theoretical dimension and its practical dimension³, dimensions that are not always convergent, given the fact that, as shown, the public administration system, through its practical side, is in a continuous change. Given the difficulty of implementing a quality management in the absence of theoretical knowledge in the field⁴, it is absolutely necessary to present, briefly, the relevant literature, which interests us for the study undertaken.

Summarizing the existing literature, D. Rosenbloom⁵ was the theorist who concluded that the main approaches of public administration are the political approach, the managerial approach and the legal approach, each of the theorists emphasizing one or the other of the approaches, but none of them being able to properly define the public administration. The conclusion is that the public administration has an interdisciplinary character⁶, and the role of administrative theory is extremely important in understanding and applying its specific mechanisms.

The purpose of the public administration and the very core of its existence is to implement the legal provisions, serving the public interest, by providing quality services to the community and the city inhabitants⁷. In a formal-organic sense, public administration means all the structures belonging to a state, which carry out activities established to satisfy the general public interests, based on the law and in order to execute it, and in a material-functional sense, by public administration means the concrete, specific activity of the respective organizational structures.⁸ For this study, the second meaning stated is relevant and, in close relation with it, the public management.

1.2. The Public Management

The science of public management began to take shape in the early 19th century, when the father of administrative science Charles-Jean Bonnin published the paper “Principes

³Hințea, C.E., *Op. cit.*, p. 7.

⁴Hințea, C. E, *Op. cit.*, p. 8.

⁵Rosenbloom D., 1986, *Public Administration. Understanding Management, Politics and Law in Public Sector*, New York, USA: Ransom House, p. 219.

⁶Hințea, C. E, *Op. cit.*, p. 9.

⁷Hințea, C. E, *Op. cit.*, p. 10.

⁸Preda, M., (Phd, coordinator), 1992, *Drept administrativ*, Bucharest, Romania: AMIVA Publishing House; Matei, L., 2006, *Managementul public*, Bucharest, Romania: Economica Publishing House, pp. 24-68.



d'administration public” in 1812, followed by famous professors such as Lorenz von Stein, Alecsandre-François, Vivien Henry Fayol and Frederic Taylor, who all, through their theories, contributed to the development of the science of administration and especially of public management, in response to the traditional model of administration, promoted by Max Weber⁹, as a new field of management science, with clear determined objectives, presenting clear general principles and well-defined specific laws¹⁰.

Public management has emerged as a new way of perceiving the management of public institutions and their mission in the public sector, practically finding that public administration faces major problems, rigid bureaucratic and hierarchical structures no longer being able to respond positively to the needs of changing society. Specialists in the field (Isaac Henry-Kester, Chris Painter¹¹ and Kieron Walsh¹² among others), through their works demonstrated the need to reform the managerial conception in the public sector, reflecting a new way of perceiving the management of public institutions and their mission in the public sector¹³ so that, through results, the public sector can have a direct impact on the life of the country's inhabitants by improving it, through a functional and efficient public management system.

Moreover, in the face of the arguments given by these specialists of public management, public administration practitioners have understood that a system cannot be functional, efficient and truly fulfill its role only based on the normative provisions applied by generally trained staff. It was understood that the system should be oriented towards the values of public management, which aims to ensure the efficient functioning of administrative structures to meet the needs of residents, general and individual interests of community members, perceived in the theory of public management as customers of a huge market, that market being the society as a whole.

The main objective of public management is to increase the satisfaction degree of the public interest, determined by social needs. This implies responsibility in the management of all

⁹German sociologist and political economist best known for his for his ideas on bureaucracy.

¹⁰Matei L., *Op. cit.*

¹¹*Management in the Public Sector: Challenge and Change*, 1993, London, UK: Chapman and Hall.

¹²*Public Service and Market Mechanisms*, 1988, London, UK: Palgrave Macmillan,.

¹³Matei L., *Op cit.*



categories of resources available to the public sector (human, informational, material and financial resources) used in the management and the execution processes in public institutions. Towards the end of the 20th century, the concept of New Public Management appeared, promoted by David Osborn and Ted Gaebler¹⁴, highlighting the role of the public sector and according to which the central and local administration must be innovative, market-oriented, decentralized and focused on providing the best quality services to citizens-customers.

The implementation of the principles of public management was done in stages, through complex process of replacing hierarchical structures and bureaucracies, by transferring responsibilities to sub-central levels, the public administration trying to streamline its services and increase coverage, by deconcentration, decentralization and delegation. For the present study, only decentralization and delegation strategies are relevant, so I will continue to discuss only those relevant aspects.

2.Decentralization and Delegation

“National governments in almost all developing countries, have begun to decentralize policies and decision making related to development, public services, and the environment”¹⁵ shows E. Ostrom, who laid the foundations of the theory of common resources and collective self-government.

2.1.The notion of decentralization

In order to be able to discuss about decentralization, it is important to show how the administrative system looks like in Romania and what the central and local public administration represents.

¹⁴*Reinventing Government: How the entrepreneurial spirit is transforming the public sector*, 1992, New York, USA: Addison-Wesley Publ. Co.

¹⁵Agrawal, A., Ostrom, E., *Collective action, Property Rights and Decentralization in Resource use in India and Nepal*, in *Politics & Society Journal*, V.29, issue 4, 2001.



The Administrative Code of Romania¹⁶ represents the general law that regulates the organization and functioning of public authorities and institutions, the status of administrative staff, administrative liability, public services, as well as specific rules on public and private property of the state or territorial administrative units¹⁷.

Local councils, town halls and county councils are defined by the administrative code as local public administration authorities, in contrast to the central public administration bodies, represented by the Government, Ministries, other specialized bodies under the government or ministries and autonomous administrative authorities.

I also consider important to present the meaning the law provides to the terms relevant for this study, as they are defined in art. 5 of the Administrative Code:

- “Central and local public administration - represents the totality of activities carried out to organize the execution and concrete execution of the law and to provide public services, in public power, in order to satisfy national or general public interests, and in the case of local public administration, the difference lies in the nature of the interest, which is no longer general, but local”;

- “Local autonomy - represents both the right and the effective capacity of the local public administration authorities to solve and manage public affairs, according to law provisions, in the name and in the interest of the local communities by whom they are elected”;

- “Public authority - represents that state body or of the territorial administrative authority that acts in the regime of public power in order to satisfy some public interests”;

- “Public administration authority—represents that public authority that acts for the organization of the execution or the concrete execution of the law or for the provision of public services”;

- “Administrative capacity - represents the set of material, financial, institutional and human resources available to an administrative-territorial unit, the legal framework that regulates the field

¹⁶OUG 57/2019, Administrative Code, M.Of. 555/05 July 2019.

¹⁷Art. 1, OUG cit.



of activity, as well as the way in which they are capitalized in their own activity according to the competence established by law”;

- “Competence—represents all the attributions established by law, that confer to the authorities and institutions of the public administration rights and obligations to carry out, in the regime of public power and under their own responsibility, an activity of an administrative nature”;

- “Delegated competence—represents the powers established by law and transferred, together with the appropriate financial resources, to the local public administration authorities by the central public administration authorities to exercise them in the name and within the limits established by the latter”;

- “Shared competence—represents the attributions exercised according to the law of local public administration authorities, together with other public administration authorities, specifically and limitedly established, with the setting of financial resources and the limits of the right of decision for each public authority”;

- “Public institution—represents that functional structure that acts in public power and / or provides public services and which is financed from budgetary revenues and / or from its own revenues, under the conditions of the law”;

- “Public utility institution—represents that legal person of private law that has obtained the status of public utility, according to legal provisions”;

- “Administrative accountability - represents that form of legal liability which consists in the sum of all the rights and obligations of an administrative nature that, according to the law, are born as a result of committing an illegal act which usually violates the rules of administrative law”;

- “The regime of public power—represents the set of prerogatives and constraints provided by law in order to exercise the powers of public administration authorities and institutions, giving those entities the opportunity to impose legally binding force in their relations with individuals or legal entities, in defending the public interest”;

- “Public service—represents the activity or set of activities organized by a public administration authority or by a public institution or authorized / authorized or delegated by it, in order to satisfy a general need or a public interest, regularly and continuously,,;

- “Decentralization—represents the transfer of administrative and financial competencies from the central level of the public administration to the local level of the public administration of the administrative-territorial units, together with the financial resources necessary for their exercise”.

As shown by the provisions above, decentralization represents that strategy in which the local public administration has been given by law authority, responsibilities and resources in order to provide services and infrastructure, protect public order and health, as well as to decide and implement local policies. As Rondinelli and Cheema¹⁸ try to theorize, decentralization represents the transfer of responsibility for the planning, financing and management of certain public functions from the central administration, being the expression of the hierarchical and functional change of the distribution of powers from central to local level¹⁹.

2.2. The notion of delegation

Delegation represents a broader form of decentralization and it refers to the transfer of decision-making and administrative authority and / or responsibility for clearly established tasks from central authorities to institutions and organizations that are not directly subordinated to the central administration, but are accountable to them. One of the most common forms is the delegation of tasks from the central level to semi-autonomous entities, such as state-owned enterprises and urban or regional development corporations. These organizations are usually given the right to make decisions, may be exempt from certain personnel status constraints and may be empowered to charge users directly through the service provided. These entities have independent legal status and autonomous budgets, but are still required to report to the central authorities.

Local authorities as well use this strategy, more and more often, local entities delegate certain very specific services or tasks, such as waste collection, administration, surveillance and road

¹⁸Rondinelli, D.A., Shabbir Cheema, G., 2007, *Decentralizing Governance, Emerging Concepts and Practices*, Washington D.C., USA: Brookings Institution Press.

¹⁹Cornea S., 2019, *Reorganizarea teritorială a puterii locale – imperativ al modernizării Republicii Moldova*, Cluj, Romania: Presa Universitară Clujeană, p. 88.



maintenance, administration of local water networks or public transportation and so on, to autonomous entities or even by contracting private companies²⁰.

As a conclusion, delegation is the way in which managerial responsibility is transferred, in certain cases to semi-autonomous entities or private law organizations, the aim of this policy being to reduce the attributions of the local public authorities and enhance the efficiency of public services. At the same time, the accountability of those entities is increased, as far as the manner in which they provide those services are concerned. Therefore, as a result of these strategies, the decentralized entities or those that have received more tasks, are responsible for the correct fulfilment. It is important to underline this, because, in practice, most of the time, the delegated entities pass the responsibility from one to the other and it is necessary for the courts to intervene to attract the administrative accountability, as presented in the case study.

3. Case Study

As stated before, I chose to make this study on a concrete case, in which, even to this moment, the Courts still haven't reached a solution.

Late at night, a car is involved in a road accident, caused by the car colliding with an unmarked fence mounted on the road, due to non-signalling of works, which were carried out on that section of road, near the road tram run, on a Bucharest boulevard. At the time of the impact, the fence was fixed at a distance of about one meter from the marking line that limits the safety area of the tram, directly on the road. The driver involved in the event took photos that testify how the fences were mounted on the road, on the lane adjacent to the tram line and not on the line delimiting the safety zone of the tram lane. It is well known that these fences mounted between the safety area of the trams and the lane of cars have a protective and preventive role, in order to increase traffic safety, but only when they are installed properly. In the present case, the installation of the respective fences was defective, the fences becoming a real danger for all traffic participants for being mounted on the road, directly on the car lane, narrowing it and hindering the traffic. The

²⁰Cornea S., *Op cit.*



presented case is not singular on the respective road section, numerous incidents of the same kind taking place frequently.

As a result of the car colliding with the fence, it was damaged, so the car owner asked the Courts to oblige the entities responsible to pay for the repairs.

3.1. Analysis of the entities responsible for the road incident

According to the legislation, the Bucharest Streets Administration (BSA) is a public service of local interest of the Municipality of Bucharest, organized as a public institution with legal personality, financed entirely from the local budget of the Municipality of Bucharest, established by HCLMB no. 72/1992, and the object of its activity is, among other things, the administration, maintenance and rehabilitation of the road network, as well as the operation, maintenance and repair of the system for directing and signalling roads (traffic lights, indicators and road markings), according to the decisions of the General Council of Bucharest, for the main streets, respectively where public transport runs. At the same time, it ensures the monitoring of the road system of the road network (roadway - roadway and sidewalks), of signalling systems and traffic safety (traffic lights, indicators and road markings) in order that the entire system under its administration to operate under safety conditions (safely). It also performs, on its own or through specialized companies, current maintenance and repair works (road junction - road and sidewalks), signalling systems and installations (traffic lights, road signs and road markings).

Summoned before the Court, this entity defended itself, claiming that it is not responsible for the occurrence of the road incident, because the works carried out in that area consisting in the instalment of dividing fences for trams, is a work within the competence of another entity of public interest - Bucharest Transport Company (BTC).

According to the Regulation of the community service of local public passenger transport in the Bucharest - Ilfov region, July 2018²¹, the transport service operator has, in turn, obligations in the maintenance and monitoring of the tramway, therefore BTC, as a public interest entity has also a legal responsibility in this case.

²¹http://stbsa.ro/doclege/Regulamentul_Serviciului_de_Transport.pdf



This entity was also summoned before the Court, and in its own defence BTC claimed that it did not have the obligation to signal the works, but the executing company, according to the contract that BTC and that company had concluded. Currently, the case is under appeal, so we will not be able to provide a legal solution to it, but we can analyse the legal obligations of the public entities involved and identify the defective way they fulfil their duties.

3.2. Analysis of the legal provisions that establish obligations for both Bucharest Street Administration and Bucharest Transport Company

Corroborating the legal provisions of HCGMB 254/29.05.2008, with those of HCGMB 406/2017, by which the General Council of Bucharest decides to perform works on the tramway, consisting in dividing fences, and explicitly states that the departments within the working apparatus of the Mayor General of the Municipality of Bucharest and the Bucharest Autonomous Transport Authority will carry out the terms of this decision²², it is very clear that the obligation to administer, monitor and supervise the performance of those works fell to these public entities. The fact that both the BSA and BTC pass the responsibility to a subcontractor, with whom they have third-parties non-enforceable contract, does not exonerate them, from a legal point of view, from the accountability established to them by the normative acts shown. Therefore, the responsibility falls, mainly, to BSA entity, as being the administrator of the respective road sector and in subsidiary to BTC entity, for not fulfilling the obligations to monitor and control the works performed.

The nonaccountability stated by these public entities is in clear contradiction with the express provisions of the Decision of the deliberative body of the local authority, which expressly delegated to BTC to execute the provisions of HCGMB 406/2017, and also with the provisions of art. 1, para. 1, of Government Ordinance 43/1997²³, and art. 5 of GEO 1955/2002²⁴, which clearly

²²Art. 3, HCGMB 406/2017.

²³OG no. 43 / 28 August 1997, republished, regarding circulation on public roads, M.Of. no. 237 from 29 June 1998.

²⁴OUG 1955/2002 republished, privind circulația pe drumurile publice, GUVERNUL, M.Of. nr. 670 din 3 august 2006.



establishes that the obligation to signal the works belongs to the executor of the work, but also to the beneficiary, who has the obligation to monitor it accordingly.

The non-fulfilment of their obligations by these entities does not refer only to the aspect of inadequate signalling, but also to the non-monitoring and non-verification of the defective way the subcontracting company executed the works, violating the legal provisions indicated above.

And due to this causal chain – the instalment of dividing fence in the middle of the roadway, when the legal express provisions stated that the road must remain free and unobstructed, in order to prevent accidents, the absence of any road indicator to signal the narrowing of the road, the way these public entities failed in fulfilling their attributions of administration and monitorization of the respective works, led to the occurrence of the road event and the damage of the car involved in.

As the beneficiary of the public service may say, this situation is clearly an example of the failure of the public sector in responding to societal needs promptly and efficiently.

4. Conclusions

The purpose of this case study was to highlight the non-fulfilment of public service obligations, and the possible outcome.

As shown, due to decentralization and administrative delegation, a series of attributions in the public transport service area and in the administration of public roads are transferred to semi-autonomous public entities, or even to public interest entities, including the responsibility regarding the manner of fulfilling those attributions.

The case study presented shows that the public entities studied not only manifested indifference in performing their obligations, but also did not fulfil their duties transmitted by the local public authority, and even refused to admit that they had such obligations.

In such a situation, the public service provided to the community is of inferior quality to the standards required by the New Public Management and is also likely to weaken the community's



trust in public authority and its ability to provide quality public services to residents and to satisfy their needs promptly and efficiently.

As a proposal, following the conclusions of the case study presented, I believe that sanctions should be enhanced against those managers of public services who, through negligence or incompetence allow the entire service to function improperly, generating situations such as the one described in the case studied, or even with much worse consequences.

In addition, I believe that in case of delegation, the delegative entity must carry out inspections and all officials who have been identified not fulfilling their duties shall be sanctioned, in such a way that the sanction given to serve both as a punishment and as an example, in order to prevent the recurrence of such behaviours.

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