RESEARCH ARTICLE:

Administrative contract in Romanian Legislation and the doctrine during the inter-war period

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ABSTRACT

Administrative contracts are some of the most used dynamic legal instruments – on the one hand – to efficiently and flexibly carry the fulfilment of the objectives of administration, and – on the other hand – for the development of sustainable and lasting relations between economic organizations and institutions and the decision-making factors which control public administration.

In the work "*New law on administrative litigation, Genesis and explanations*", Professor Antonie Iorgovan pointed out that "*The philosophy of administrative contracts presupposes that the agreement of the parties be subordinated to the public interest. The administrative contract is not an end in itself, such as civil or commercial contract, like unilateral administrative act, they are legal means by which public administration is carried out, either under the form of application to concrete cases of law, or under the form of provision of public services, in the broad sense of the term, within the limits of the law*"[1].

Professors Jean Rivero and Jean Waline, in their textbook of administrative law – at the 19th edition –, consider that "*given the economic importance of operations carried out through administrative contract, its regime presents a considerable practical interest*"[2].

The published literature, the works of some reference authors in this field emphasised the importance of the criteria which determine the existence of an administrative contract, the regime of these contracts regarding both the conclusion manner – with inherent limits brought to contractual liberties – as well the specific procedures of execution of administrative contracts, and in the end the specific modalities by which is made the termination, the cessation of administrative contracts.

KEYWORDS: *administrative contract, European law of contracts, doctrine, compared law.*

[1]Iorgovan, A. 2004. *New law on administrative litigation, Geneses and explanations*, Bucharest, Romania: Roata Publishing House, p. 318.

[2]Rivero, J, Waline, J. 2002. *Droit administratif*, 19edition, Paris, France: Dalloz Publishing House, p.111.

1. Introduction

Generally, it is accepted the idea that what doctrine understands today by administrative contract is a notion different from what it is understood by private law contracts. We keep in mind that in French doctrine the focus is especially on the fact that what characterizes administrative contracts is the circumstance that they fall within the competence of administrative judge, while private law contracts fall within the competence of common law judge. "*If the administration is entitled to conclude the contracts regulated by private law, the latter could not be evoked even if they will arrive being partially subject to a regime of administrative law*"[3].

Administrative contracts present a social importance for "*public*" persons, especially as a means of ensuring their intervention in economy. This importance is measured on the one hand by the considerable number of contracts which are concluded every day by national and local administrations. But this importance can also be evaluated in terms of quality, in so far as the recourse to contracts became so frequent so that it transformed the methods of administration so as one can talk about " *contractual administration*", in order to designate a new form to manage the interests of collectivity, less authoritarian and more consensual.

This circumstance does not mean that the administration will always appeal to contracts, as a large number of its acts will essentially remain a number of unilateral administrative acts.

The particular importance of the role of contracts, of the procedure of the use of contracts, as an essential mechanism of legal life, was revealed by the circumstance that the European Commission itself influenced in a very strong way the evolution of "*public contracts*", and the law of administrative contracts acquired important community sources.

A series of French authors revealed, with pertinent arguments, the importance of the "*phenomenon of contractualization*" of relations of law, on the one hand between the administration, and on the other hand between individuals or administrative entities[4].

The contractual phenomenon, as tool for action of public persons, constantly developed during the 20th century, and a series of authors tried to correlate this phenomenon with the assertion of decentralization, especially along with the award of new competences to territorial collectivities.

This recourse to contracts acquired, gradually, the significance it has nowadays.

A historical examination of the phenomenon of occurrence and assertion of administrative contracts means that this type of contract is far from being a novelty[5].

2.Evolution in time of administrative contracts

In France, under the old regime, prior the French revolution, there were open numerous domains of "*delegation*" and were progressively implemented various types of public contracts. Then, during the 19th century, were invented the modalities of financing the concessions, which constituted an essential support for the development of the country.

During these times, *two fundamental different objectives justified the contracts concluded by the public power*. Some of them were aimed to obtain benefit with

[3]Guettier, Chr. 2004. *Droit des contrats administratifs*, Paris, France: Themis, Presses Universitaires de France, p. 1

[4]Caillose, J. 1978. *Sur la progression en cours des techniques contractuelles d'administration, in Le droit contemporain des contrats*, sous la direction de Loïc Cadiet, Paris, France: Economica Publishing House, p. 89 and the following.

[5]Guettier, Chr., *op.cit*, p. 3-4.

unique object, being concluded on a short period and essentially for the State's profit. They were regulated by a set of heavy and restrictive measures. The other contracts were aimed to obligate a third party delegate (concessionaire) to get a result of his works. Such contracts were concluded on a long period and involved an investment in a certain time of development, providing as consideration a "*state-owned*" right, a monopoly for operation, allowing to facilitate the performance of the contract, but such contracts also involved the risk that the contractual partner be deprived of the contract in case of failure to perform it within the prescribed time.

Before the 14th century, the kings rented for consideration the operation of royal domains and functions related to them: currency, taxation, customs fees for passage of bridges or mooring.

The object of these contracts was to extract the resources and to rationally manage a private property, ensuring it the production and circulation of wealth, pursuing an identical model. Subsequently, the communes acted in the same way in order to obtain "*granting*" resources by pure and simple awarding. They intended to get for the king a bigger profit by exploitation of objectives such as ovens, fisheries, mills, halls, butcheries, under "*monopolised*" form, by obliging the population to obligatorily use the concessionaire's services (to mill the products in leased mills, to use only the slaughter houses of those with the necessary authorization, etc.).

Such type of contract, although made by delegation, it was too important in the eyes of the power at that time to be freely organized, therefore such agreements were always closely monitored by the legal authorities.

Sales contracts of the public authority were in fact simple contracts which object was well determined and limited in time. They corresponded to a management conceived, directed, monitored and corrected by the public authority, the characteristic elements of such contracts aiming at totally conducting the benefit process by the public person, the content of the contract not being negotiated at all or very little. The co-contractor was not requested provision of services or construction of infrastructure, the responsibility for the results of the service for which the benefit was bought by the public person remaining, fundamentally, in its hands[6].

Besides the contracts with unique content and concluded for a short period, to which we have referred, occurred also contracts with multiple benefits, performed in time, generally complex by themselves and by the involvement in public affairs. In case of such contracts, their regulatory content was much diminished than in the case of contracts which we mentioned above, much liberty being given to "*entrepreneurs*", term which is more adequate than that of "*concessionaire*". Such contracts were concluded on long term, sometimes being perpetual and concluded *intuitu personae*.

In the category of these contracts are mentioned the contracts for enhancing a domain, which included an investment in the national or communal domain, and the procurement and services contracts to the benefit of the collectivity.

The contracts in the first category occurred in the 13th century, out of the preoccupation to increase agricultural and mining wealth, to develop growths of towns in order to receive an increasing population, as well as to systematically create new urban centres.

Within this context a new contractual framework occurred. A high-ranking official or a close person to the king was in

[6]Bezancon, X. 1999. *Essai sur les contrats de travaux et de services publics, Contribution à l'histoire administrative de la délégation de mission publique*, Paris, France: LGDJ, Bibliotheque de Droit Public, Tome 206, p. 169.

charge to develop the concessions or to become himself concessionaire at is own expenses. In order to execute such programme (concessions of mines, colonies, drying-up of marshes, construction of new towns, town planning, planning of fortified towns, etc.), the long-term contract transferred to the king's contractor the obligation to finance, conceive, execute and maintain the work or the service and to make it to run. The concessionaire had the possibility to lease works and to establish the infrastructures necessary for the main object of his contract, which was that to create wealth for the collectivity, to feed the royal treasury and to develop economy[7].

As regards the procurement and services contracts for the benefit of the community, they had as main subject the carrying out of some public works and their maintenance (roads, bridges, canals). Such contracts increased in time their objectives, aiming, among other things, to make available to the public permanent services, such as post office, public transportation. A characteristic of these contracts was that they provided greater freedom of management and conception for the carrying out of the works given to the entrepreneur, especially due to the innovative, complex, expensive and even advantageous character of such works. In such contracts, the main objective was to create a monopoly meant to protect the concessionaire's investments.

Nevertheless, in France, under the old regime, monopoly was not so specific to these contracts, as they were performed by other means and facilities which the royalty gave to those who committed to execute such contracts, such as, for instance, by granting the title of nobility to that who successfully executed such works[8].

The financial aspects of contracts were essential, the king himself fixing the tariff of the services. The entrepreneur could not derogate from these provisions. In most of the cases recourse was made to a deposit of a guarantee un in order to verify the reality of the concessionaire's commitment. Such deposits increased to such extent that at the moment of the French revolution lots of projects had fallen because of the lack of transferring enough sureties by those who wanted to get these concessions.

During the 19th century the methods of "*delegation*" will multiply and will thus allow facilitation of the evolution of some techniques and the occurrence of modern public services. The process of concessions will find new bases, in line with the liberal principles, knowing a systematic development in all the areas where public authority will consider necessary to intervene. The contractual technique will also tend to improve in order to better adapt to the new requirements of some societies on the track to a deep transformation.

In the 20th century new forms of collaboration occurred, such as contractual partnerships between the administrative units and private persons, and the contractual partnership between administrative entities.

There is talk about the existence of a public-private partnership when public actors and private actors decide to commonly act in order to respond in a manner as efficient as possible to a collective requirement, by dividing the resources, the risks and the profits.

3.Administrative contracts in Romanian legislation and doctrine – inter-war period

The theory of administrative contracts represents, as we pointed out, a construction of the modern French law. It arose from the jurisprudence of the State

[7]Lichere F. 2002. *L'evolution du critere organique du contrat administrative*, RFDA, p. 341.
[8]Guettier, Chr. *op. cit., p. 6-7;* Bezancon, X. *op.cit., p. 63* and the following.

Council, jurisprudence conceptualized then by the administrative doctrine[9]. The theory of the State Council was based on the existence of such administrative courts falling within the executive power and on the positive law which regulated this matter.

This theory is based on a conception of the separation of powers, characteristic to French law (which allowed the creation of administrative courts within the executive power), jurisprudential construction determined by the fact that the fundamental principle of equality of contracting parties enshrined in private law – *does not work when the administration concludes a contract with an individual in respect of the functioning of a public service*[10]. Ensuring the carrying out of a public service (by which is satisfied a social need of special interest), the administration promotes a public interest, and in light of this fact the will of the administration (exercised under power regime) exceeds and dominates the will of the individual.

The jurisprudence of the State Council was taken by notorious doctrinaires of the French law who developed this theory in reference works, some of them monumental[11].

Through the demarche of the jurisprudence and doctrinaires during the classical period, the administrative contract became a solid institution of the French public law, with consistent fundament not only in the practice, but also in the doctrine[12].

In our country, this theory came against the background of the economic development in the first decades of the 20th century, development which also determined the intensification of legal relations between the public administrations and individual entrepreneurs in order to lease different public works or public services. Considering that the "*individuals*" were usually companies with foreign share capitals and, why not, the political characteristic of the time, the institution of the administrative contract was received differently by the jurisprudence and the doctrine.

The French doctrine in the Romanian law was impinged from the beginning by two matters:

- the inexistence of a special administrative jurisdiction[13] to be part of the sphere of the executive;
- the lack of a positive law to expressly regulate the existence of administrative contracts.

Nevertheless, the economic, social and political realities imposed the necessity to perform some public services or the enhancement of some goods in the public domain into a private operation form.

Against the background of these matters it is raised, of course, the question if the institution of the administrative contract is compatible with the law system in Romania or it represents an "exogenous institution which cannot evoke the essence of endogenous realities"?

[9]Iorgovan, A. 1996. *Administrative Law Treaty* vol.I,, Bucharest, Romania: Nemica Publishing House, p. 351.

[10]Jean H. Vermeulen shows that, for example, the contract between an authority and an individual does not imply this balance of interests which characterises the contracts in Civil Code, as the authority represents the public service itself which crystallises the interest of the collectivity. Or, as Marcel Waline very well noticed, "*all happens as if one of those wills would be superior to the other, would be more respectable*" in 1943, *Evolution of Romanian administrative law*, Institute of Graphic Arts Vremea, Bucharest, Romania, p. 209.

[11]Jezze, G. 1925. *Les contrats adminsitratifs*, 4 vol., Paris, France: Girard Publishing House, p. 1297.

[12]Among the most important works fully consacrated to administrative contracts are Jeze, G. 1925. *Les contrats administratifs*, Paris, France: Marcel Giard Publishing House; Rivero, J. *Les contrats administratifs.*

[13]Art.107 par.2 of the Constitution of 1923 definitely shows that: "*Special authorities of any kind with duties of administrative litigation cannot be created. The administrative litigation falls within the judicial power*".

We consider that the answer to this question would be that the problem would have not cause controversy and would have not produced discussions – in practice but also in doctrine – if it had not been a real ground of the application of this institution in our inter-war system, too.

In respect of the first aspect it must be shown that at the level of the Court of Cassation and Justice there were non-unitary practices, especially during the fourth decade, in relation to this aspect being serious reactions in the published literature, too.[14]

In case of positive law in the mentioned period, indeed, there is no express regulation of the notion of administrative contract, with one exception[15] and that one was differently commented in the doctrine[16]. However, in the important normative acts of the time there are provisions regarding the contracts concluded by the administration with the individuals, in order to perform some public services.

These provisions have derogatory grounds from the common law, which brings us to the idea that reality imposed the creation, by the legislator, of some norms to be outside the contractual framework stipulated by law.

The opinions expressed during the inter-war period in relation to the institution of administrative contracts cover the entire range, from negation to a large acceptance. This is why it is necessary a comprehensive analysis of the law: positive law, jurisprudence, doctrine, aiming:

- the way in which the doctrine of public law accepted and emphasized the derogatory character from the common right of the contracts concluded by the administration;
- solutions of judicial practice;
- the way in which the positive law regulated this type of contracts trying to depict the derogatory elements from the common law.

Analysing the opinions expressed in the inter-war doctrine, Antonie Iorgovan, determining the period until the adoption of the Constitution from 1948, considers that in the literature were expressed three great opinions:

- of acceptance of the theory of administrative contracts, in *stricto sensu* (prof. J.H.Vermeulen, Erast Diti Tarangul, Ion Vântu);
- of rejection of any theory of administrative contracts (Anibal Teodorescu, Paul Negulescu);
- of acceptance of the theory of administrative contracts *lato sensu* (Petre Strihan)[17].

Petre Strihan, developing a similar analysis, identifies as criteria for structuring the doctrine:

- authors who took over and sought to introduce the French theory (Ion G.Vântu, Jean H.Vermeulen);
- authors who deny the theory of administrative contracts (Paul Negulescu, Anibal Teodorescu);
- authors who admit the existence of two categories of contracts: contracts of public law, subject to a public law regime, and contracts of private law subject, of course, to a private law regime; not calling into question the juridical nature of the first category, even contracts of private law have a derogatory regime (Erast Diti Tarangul);

[14]The dispute was between the Section I and Section III of the Court of Cassation and Justice, the first being competent to solve the appeals in civil matters (Article 31 par.l of Law on the Court of Cassation and Justice, published in the Official Journal no.282/20 December 1925, republished with amendments in the Official Journal no.142/1938.), and the second was both in the appeals in commercial matters and in the appeals in administrative litigation matters or in administrative and fiscal matters which are not given by special laws within the competence of other courts.

[15]That decree-law no. 3557 din 22 octombrie 1940 reguarding the termination of public service contracts

[16]Jean, H.Vermeulen, *op.cit., p.238.*

[17]Iorgovan, A. *op.cit.,* p.358.

- authors who consider as being administrative all the contracts concluded by the public administrations and which are subject to a regime of administrative law resulting from principles and laws of public law (Emil Botiș, George Costi)[18].

For his part, Paul Negulescu admits the idea according to which the contract of concession cannot be assimilated with any of the contracts regulated in civil or commercial law. "*The concession* – says the author –*we must recognise that it was not stipulated and regulated neither by the Civil Code nor the Commercial Code; the concession is not like the sale, because it does not take place any transfer of property and it is not constituted in favour of the concessionaire any perpetual right; it cannot be like rental, as the concessionaire does not pay a rent; on the contrary, he is authorised to charge fees from those who use the conceded service; the concession is more like the contract of society, in the sense that the granting authority has a participation of benefits. In a concession we find contributions brought by both parties, by the grantor (temporary use of public domain), and by the concessionaire (share capital, work, skilfulness); we find the intention to make benefits and to share the benefits. However, the differences between the concession and the contract of society are very large, as the administrative authority brings as contribution a part of the public domain, over which it has a right of public authority. Such right cannot be alienated, but only its use can be granted for a certain duration. The associates have equal rights, while the concessionaire has higher rights; the associate who manages the business works for the account of all the associates, while the concessionaire works for his account: he bears the risks and he is in charge with the losses of the operation*"[19].

Although he took into consideration the distinction between concession and contracts stipulated in private law the moment it is discussed the presence of administrative contracts in our law, Paul Negulescu appreciates: "*We believe, at least for our country, that the idea of administrative contract does not present any interest, as in our country these contracts are governed by the civil law in respect of the relations between the parties and, if they are subject to certain formalities and authorizations, it does not modify the situation.[...] In such conditions, how can be asserted that, for example, the concession would be a contract of public law, as the idea of regulatory disposition excludes the idea of contract where is required concurrence of wills. This is why we do not share the opinion of those who support, together with prof. Gaston Jeze, that such administrative contracts would exist*".

To the opinion of Professor Negulescu aligns the opinion of Anibal Teodorescu, who places these contracts among the management documents of the administration. The author does not accept the idea of an administrative contract (the contract aiming by essence a consensual situation) as long as "*in the act of authority, the administration does not discuss and does not treat anything with anybody, does not agree anything, but only manifests his will ...the act of authority thus appears as an unilateral act of will of the State, which distinguishes it from the act of management*." Unlike the act of authority, which has unilateral character, the act of management is a bilateral one, contractual, as it consists always in consent of wills. "*Because of this it will always have the*

[18]Costi, G. 1945. *Notion of administrative contract*, Bucharest, Romania: Official Journal and State Printing Shops, p. 23. In the same category is also included Petre Strihan, who shares the listed ideas regarding this variant.

[19]Negulescu, P. 1934. *Romanian administrative law treaty, IV*^{edition}, Bucharest, Romania: United Romania Publishing House p. 154.

usual form of contractual deeds in private law"[20].

Another author, Jean H. Vermeulen, considered, in turn, that in our doctrine and jurisprudence there is a theory of administrative contracts, pertaining to public law, marking a significant stage in the evolution of administrative law[21]. The author considers that, as the contract between the authority and an individual does not involve the balance of interests which characterizes the contracts of private law, as the authority represents the public service itself which crystallizes the interest of the collectivity. This element "*involves the application of some rules alien to the private law, having as purpose the protection of the interest of the collectivity which is that of the regular and continuous functioning, it cannot be assured only with the norms established in the Civil Code, but, doubtless, it could not respond to the necessities of the pursued purpose: the functioning of a public service continuously and regularly. Just to be able to ensure this purpose, taking into account all the time the needs of the public, the parties can agree to adopt certain rules which alienate more and more the respective contract from the private law contracts*"[22].

In the opinion of Erast Diti Tarangul, contracts concluded with individuals in order to collaborate to perform a public service or a general interest, are contracts of public law or administrative contracts[23]. The particularities of these contracts reside in their special legal regime concretised in special forms for their conclusion and execution. The author marks the distinction between the regime of administrative contracts and that of civil contracts retaining as follows: the individual who concluded a contract with the administration could not assign it totally or partially to other person unless it has the approval of the administration; some clauses of the administrative contract are regulatory; the administration reserves the right, if the general interest so requires or when the concessionaire did not fulfil the obligations stipulated in the concession deed, to terminate the contract, either directly ex officio, by administrative decision given unilaterally, or by means of legal action; to administrative contracts is applied the theory of unpredictability, which does not apply to common law contracts.

One of the partisans of the theory of administrative contracts in *lato sensu* is George Costi. In his opinion "*by administrative contract we understand the agreement of will, manifested in a certain form and concluded between the competent representatives of an administrative person and individuals or agents of other public administration, on some determined objects, in order to produce juridical effects necessary to satisfy the general interest*"[24].

4.From sporadic contractual forms to a law of administrative contracts

The lack of a positive law to expressly regulate the existence of administrative contracts and the opinions expressed in the doctrine had a decisive role regarding the optics of courts, especially the supreme court over the institution in the cause.

The evolutions which we mentioned at previous points determined the constitution of a set of rules structures in respect of the administrative contracts. Professor Christophe Guettier, from the University of

[20]Teodorescu, A. 1929. *Administrative Law Treaty*, vol. I, Bucjarest, Romania: "Eminescu" Graphic Art Institute *Publishing House,* p. 397.
[21]*Ibidem*, p. 239.
[22]1930. *Public service concession contract*, Craiova, Romania: Scrisul Românesc Publishing House, p. 30.
[23]Diti Tarangul, E.. 1944. *Romanian administrative law treaty*, Cernăuți, Ukraine: "Glasul Bucovinei" Publishing House, p. 413 and the following.
[24]Notion of administrative contract, Official Journal State printing shops, Bucharest, 1945, p. 23.

Main, raises this problem in his monograph consecrated to administrative contracts[25].

The French author notices that, in general, the problem of administrative contracts was less treated, and the textbooks of administrative law approach it generally in a classical manner, creating the impression that it would be a theory of the administrative contract which starts from a coherent set of rules. Consequently, he examines the problem of the existence of a right of administrative contracts, under two aspects: a) under the aspect of material construction and b) under the aspect of formal construction.

From the point of view of material construction, it is found out that the law of administrative contracts was not spontaneously created, at the beginning of the 20th century, as rules in this matter occurred long before. The applicable substantive principles referred in reality to certain categories of conventions, such as concessions and works or procurement markets, which were subject of special studies. During the reference period between the 19th and the 20th century, a theory of the administrative contract was progressively elaborated[26].

In terms of formal construction of a law of administrative contracts it is found out a diversification of internal sources, but also a phenomenon of a stronger application of community norms in internal law. In respect of internal sources, it is noticed the diversification of internal regulations, but also a strong role of jurisprudence.

In Romania, always the question has arisen regarding the adoption of a point of view according to which public administration uses the administrative contracts or the point of view that is more correct the notion of management administrative act.

5.Conclusions

Nowadays, except from one point of view[27], where one opts to use the term "*management administrative act*", the other specialists express the adhesion to the notion of "administrative contract".

I consider that the notion of "*administrative contract*" is fully justified; moreover, by the law on administrative litigations no.554/2004 with subsequent amendments and completions, this notion was consecrated, with the specification that in public administration is not exclusively used the administrative contract, public-law persons being able to conclude private law contracts, too.

In favour of this option we have the following arguments: in case of administrative contract is fulfilled the condition of the consent of will, so, bilateral or multilateral manifestation of will, as we are all the time in the presence of a public institution or public authority which makes a request under the form stipulated by law, on the one hand, and on the other hand by the offers of those interested expressed according to the legal provisions and inversely, on the one hand is the request of the individual, and on the other hand it is necessary to express the consent of the public institution, both expressed in compliance with the legislation in force; in case of non-acceptance of some clauses in the contract, the individual is not obligated to adhere to that contract thus the act is not concluded, therefore it does not produce juridical effects, the same happens in the case when the public person does not accept the offer, so we are not in the presence of an administrative act of authority or an administrative act with jurisdictional character; the juridical inequality manifested between the public-law person and the individual partner when

[25]Guettier, Chr. *op.cit.*, p. 25.
[26]E. Perriquet. 1890. *Les contrats de l'Etat*, 2nd edition, Paris, France, cited by Ch. Guettier, *op.cit.*, p. 26; Bezancon, X., *op.cit.*.
[27]Prisecaru, V. 1996. *Administrative Law Treaty*, 3rd editon, Bucharest, Romania: Juridica Publishing House, p. 187-188.

establishing the contractual clauses, differs from the point of view of the effects of juridical inequality materialized in the unilateral manifestation of will expressed in the administrative act of authority or in the administrative act with jurisdictional character because, although pre-established, the contractual clauses do not produce effects by themselves, but they must be taken by the individual partner, which is optional, while the provisions of the administrative act of authority – normative or intuitu persoane – are obligatory for the recipients and their beneficiaries, like the provisions of the administrative acts with jurisdictional character which are binding for the parties.

As for community law, this one became an important source of French administrative law, whether with regard to primary community law or the law resulting from subsequent acts.

In community law, the intervention of rules especially in respect of "*public markets*" is relatively recent. This is within the will to open to concurrence the compartmented national markets. Such rules refer especially to the procedures for the organization of markets and the regulation of litigations. Thus, the community courts have the mission to ensure the full compliance of the objectives of treaties and the rules arising from them: the principle of non discrimination, of equality of treatment, of mutual recognition.

The Court of Justice of the European Community specified that the directives regarding the public markets intend, on the one hand, to facilitate the carrying out inside the Community of liberties to establish and free provision of services, and on the other hand to guarantee the effectiveness of the rights recognised by treaty.

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