



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2023), pp. 49-59

PUBLIC SERVICES AT THE SERVICE OF CITIZENS – CASE-STUDY: CLEANING SERVICES

M.C. CLIZA

Received 30.10.2023; accepted 29.11.2023

<https://doi.org/10.55516/ijlso.v3i1.130>

Marta Claudia CLIZA

Nicolae Titulescu University of Bucharest

E-mail: cliza_claudia@yahoo.com

ORCID ID: <https://orcid.org/0000-0001-7021-8249>

Abstract

Public services are unquestionably a pillar of society. The society develops and blooms on their importance, on the way they are organized, on their efficiency. This is why we could devote a case study to each public service that a nation, through its government representatives, organizes and operates, in order to analyze its efficiency and impact on the quality of life of its citizens. However, this article is focused on public cleaning service, as currently regulated in the legislation. The importance of public cleaning service cannot be denied, by being a comfort factor and the criterion indicating the level of civilization.

Key words: *public service; public authorities; cleaning service; local authorities; cleaning.*

INTRODUCTION

In the modern state, the entire responsibility for the quality of life of citizens falls on the administration, which should be able to organize itself in such a way as to ensure a perfectly functional economic and social climate. The society as a whole must meet the needs of its members, both globally and individually. The society must therefore organize itself legally and politically in such a way as to satisfy as many citizens as possible. Only then will we be able to talk about a functional state, functional administration, efficient public services, a population that is satisfied with what it is offered.

“The scope of the state is (or should be) the protection of the general interest, the happiness of the citizens” (N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.C. Spătaru-Negură, 2017, p. 57). This is why, this scope of the state also integrates public services, meant, as we will show further on, to satisfy the citizens’ interests of comfort.

From the etymological point of view, the word *service* comes from the Latin *servitum*, namely “to be at the service of someone”.

“From the organic point of view, public service shall mean a set of agents and means that a natural person or a private agent authorized by a public person uses in order to meet a need of public interest.

The functional meaning entails an activity of general interest, carried out by the administration, the mission of which is to satisfy a general interest.” (V. Vedinaş, 2020, p. 559)

Of all the public services, we have chosen to deal with the local cleaning service (hereinafter referred to as the “**Cleaning service**”). This is one of the community public services and includes all the activities regulated by special laws that ensure the satisfaction of the needs of local communities of the territorial and administrative divisions regarding the cleaning of localities.

The realities of recent years (see waste scandal in District 1) have shown how important this service is in the life of each of us, how much it affects the quality of life and what disputes can generate within the local authorities empowered by the law to deal with this issue. This is why we have chosen to present the legal framework governing this niche area and to analyze the implications of this legal framework for the way in which this public service is awarded and subsequently provided.

I. LEGISLATION IN THE FIELD OF CLEANING

1.1 Law no. 51/2006 on public services (“Law no. 51/2006”).¹²

Law no. 51/2006 establishes the unitary legal and institutional framework, objectives, powers, duties and specific instruments necessary for the establishment, organization, management, financing, operation, monitoring and control of the regulated provision of community public services. Law no. 51/2006 applies to public services established, organized and provided within each territorial and administrative division and territorial and administrative subdivisions of municipalities or within the intercommunity development associations. The whole management, as well as any elements regarding the coordination and control of these services shall fall under the responsibility of the local public authorities.

In other words, Law no. 51/2006 is the general legal framework in the field of public services, being the general law which also covers the cleaning services.

Public services (including cleaning services) are therefore regulated by the

¹ Law no. 51/2006 on public services was published in the Official Journal of Romania, Part I no. 254 of 21.03.2006 and republished in the Official Journal of Romania, Part I no. 121 of 05.03.2013

PUBLIC SERVICES AT THE SERVICE OF CITIZENS – CASE-STUDY: CLEANING SERVICES

legislation as a duty and dimension of the **local public authorities or**, as the case may be, **of the intercommunity development associations** (hereinafter referred to as “**IDA**”). However, they will not work in a discretionary manner, but they will fulfill the powers granted by means of the resolutions of the decisions making authorities of the member territorial and administrative divisions. It is self-evident that actions will be taken in order to comply exactly with what was decided by the decision-making authorities, starting with the purchase of the service until its execution, even if only in terms of the follow-up of this execution.

The particularization of the organization, development, financing, operation and management of each public service shall be performed by: “**a**) special laws, **b**) by sectoral rules and regulations adopted by means of Government resolutions, **c**) by orders of competent regulatory authorities, as well as **d**) by resolutions of the local public authorities of the territorial and administrative divisions.” It is thus obvious that we cannot conceive of the existence of this service outside of an organized legal framework, as long as we are talking about regulatory acts with the power of a normative act, regardless of whether it is a law or an act of a public authority.

The main entities involved in ensuring and providing public services (including cleaning service) are **a**) local public authorities (the mayor and local council), **b**) intercommunity development associations (IDA), **c**) operators of public services, **d**) competent regulatory authorities and **e**) users, namely the beneficiaries of these services.

Local public authorities have exclusive authority in what concerns the establishment, organization, management and operation of public services, thus delegating powers to the authorities directly concerned, as the central authorities are not involved in this matter. The same local public authorities shall maintain their powers in what concerns the creation, development, modernization and utilization of all public and private goods of territorial and administrative divisions that make up the public service systems. (In what concerns local public authorities of Romania, see: Maria Ureche, *Autoritățile publice în dreptul statelor europene (Public authorities under the law of the European States)*, Altip Publishing House, Alba Iulia, 2011, p.286-306).

All legal relations between the main actors involved in the performance of the cleaning service, respectively public authorities or intercommunity development associations, on the one hand **and users**, on the other hand, based on the provisions of Law no. 51/2006, shall be administrative legal relations, **subject to the legal regulations of public law**.

At the other end of the spectrum, the legal relations between local public authorities **and operators**, shall be **subject to the legal regulations of public or private law, as the case may be**, according to the relation to be established between them.

Depending on the two main branches of law, public law and private law, the legal relations were divided according to the two dimensions of the law, which are significantly different. (Cliza, 2022, p. 73)

The intercommunity development associations (ADI) consist of two or more territorial and administrative divisions. They establish associations in order to jointly supply or provide all matters relating to community public services or to the establishment, modernization, rehabilitation and/or development of public service systems.

The cleaning service shall be performed by means of the **public service operators**. They are defined as legal entities of public or private law with public, private or mixed capital, registered in Romania, in a member state of the European Union or in another state. They shall be held liable for the provision of a public service or of one or more activities within the scope of public services.

The legal relations between public service operators and users of such services shall be regulated on a contractual basis, based on the **public service contract**. This contract shall be concluded by observing the provisions of the public service framework contract, the legal provisions in force, service regulations and their specific tender books.

For cleaning service, the National Regulatory Authority for Public Services (“NRAPS”) **is the competent regulatory authority**. We shall come back and detail some of the powers of this authority in order to outline and justify its role in the appropriate performance of this public service.

Given that local public authorities have exclusive powers in this field, they shall decide, on their discretion, on the management of public services on their responsibility.

In this respect, public authorities can **directly manage** public services **based on a contracting out resolution** or can **entrust the management** thereof, **based on a delegated management contract**.

1.2 Law no. 101/2006 on localities cleaning service (“Law no. 101/2006”)³

Law no. 101/2006, special law in the field of public cleaning service, regulated the unitary legal framework on the establishment, organization, management, utilization, financing and control of the operation of localities cleaning service.

Therefore, Law no. 101/2006 is the **special law** applicable to the cleaning service, which is supplemented by Law no. 51/2006.

According to the provisions of this law, the powers of the **local public authorities** of all the territorial and administrative divisions consist in the **establishment and organization** of the public cleaning service.

³ Law no. 101/2006 on localities cleaning service was published in the Official Journal of Romania, Part I no. 393 of 08.05.2006 and republished in the Official Journal of Romania, Part I no. 920 of 12.10.2023

PUBLIC SERVICES AT THE SERVICE OF CITIZENS – CASE-STUDY: CLEANING SERVICES

Public cleaning service **falls under the scope of the public services** and shall be performed **under the control, management or coordination** of the local public authorities or of IDA, for the cleaning of the localities.

What is very important to clarify is that this law clearly establishes who is the **legal owner** of municipal waste and similar waste, stored in containers located in their territorial area, respectively it shows us that this waste is the property of the territorial and administrative divisions.

Local public authorities are once again involved in the matter of cleaning by issuing, approving and controlling the application of the local strategies on the medium and long-term development and operation of the cleaning service, including the Waste Management Plan for the Municipality of Bucharest. All these plans and programs are drawn up based on the legal provisions in force, in compliance with urban planning documentation, territorial development and environmental protection, by reference to the economic and social development programs of the territorial and administrative divisions (Regarding rural communities, see: Maria Ureche, *Social and economic role of the local administrative authorities in rural development in their community*, in Fiat Iustitia no.1/2015, p. 165-172).

II. THE IMPLICATIONS OF LEGISLATIVE AMENDMENTS IN THE FIELD OF CLEANING SERVICE IN BUCHAREST MUNICIPALITY

In this analysis, we have to take into account the provisions of Law no. **99/2014** for the amendment and supplementation of Law. 101/2006⁴ on localities cleaning service and of Emergency Ordinance no. **38/2022** for the amendment and supplementation of certain normative acts in order to improve waste management⁵ on cleaning services of Bucharest Municipality.

Furthermore, this analysis also starts from the provisions of the Administrative Code⁶, art. 164: “*Bucharest Municipality and its districts have a Mayor General, respectively one Mayor and two Deputy Mayors each.*”.

“The local public authorities of Bucharest Municipality are the General Council of Bucharest Municipality and the local councils of the districts, as decision-making authorities, as well as the Mayor General of Bucharest and the Mayors of districts, as executive authorities.”

The Administrative Code adopted for the first time in Romania in 2019 regulates the general framework for the organization and functioning of public administration authorities and institutions, staff status within them, administrative

⁴ Law no. 99/2014 was published in the Official Journal of Romania, Part I no. 505 of 08.07.2014

⁵ Emergency Ordinance no. 38/2022 for the amendment and supplementation of certain normative acts in order to improve waste management was published in the Official Journal of Romania, Part I no. 344 of 07.04.2022

⁶ The Administrative Code was published in the Official Journal of Romania, Part I no. 555 of 05.07.2019

responsibility, and public services, as well as some specific rules regarding public and private property of the state and of the administrative-territorial units. (Săraru, 2022, p. 4)

The importance of this normative act consists in that the **decision-making authorities of the districts of Bucharest Municipality** have **exclusive** powers in what concerns the establishment, organization, assignment and performance of the cleaning service activities.

There are also certain operations **which do not fall under the competence of the territorial and administrative division of Bucharest Municipality**, such as: pest control, disinfection, organization of processing, neutralization and material and energy recovery of waste, organization of mechano-biological treatment of municipal waste and similar waste, management of waste storage facilities and/or municipal and similar waste disposal facilities.

Given these normative acts, we can conclude that the decision-making authorities of the districts of Bucharest shall be **bound to comply with the local strategy on the medium and long term development of cleaning service**, approved by the General Council of Bucharest, which shows a general competence at the strategic level of the General Council, transposed at the district level by the Local Councils.

As an exception, by means of the **resolution of the General Council of Bucharest Municipality**, the decision-making authority of Bucharest Municipality can take over, in full or in part, the powers of the decision-making authorities of the districts of Bucharest municipality on the establishment, organization, assignment and performance of cleaning service activities, upon their substantiated request.

Notwithstanding, the provisions of GEO no. 38/2022 established that, in order to avoid abandonment and illegal storage of waste, **the decision-making authorities of the districts of Bucharest can take over the powers of the territorial and administrative divisions of Bucharest** on the organization of material and energy recovery of waste, organization of mechano-biological treatment of municipal waste and similar waste, management of waste storage facilities and/or municipal and similar waste disposal facilities. Therefore, over time, we had a transfer of responsibility from the Municipality to the districts. The solution of passing these responsibilities to the districts aimed to lead to an efficiency of this public service, considering that the territorial radius of the municipality of Bucharest is much wider, and the districts could be more effective in local waste management, through a proper organization.

The decision-making authorities of the districts of Bucharest can take over these powers by means of the resolution of the local council, which shall be notified to the General Council of Bucharest within 15 days as of the adoption thereof.

Provided that these powers are taken over by the districts, such taken over

PUBLIC SERVICES AT THE SERVICE OF CITIZENS – CASE-STUDY: CLEANING SERVICES

shall apply on a definite term, provided by the resolution of the local council, without exceeding the term provided by the Waste Management Plan of Bucharest Municipality, approved by Resolution no. 260 of the General Council of Bucharest Municipality of 01.09.2021 (respectively **year 2025**).

The importance of the cleaning service in Bucharest is undeniable as this city, given its specifics, is the largest producer of household waste in Romania. The expansion of the city, both vertically and horizontally, also affected cleaning, as this expansion generated waste (especially construction waste with a large volume and difficult to destroy), as well as other types of waste generated by an increasing population. This is why, the regulation of this service entails specific discussions at the level of Bucharest Municipality, an administrative and territorial division that failed to find a solution regarding waste collection and recovery.

III. SUBSEQUENT NORMATIVE ACTS RELEVANT IN THIS FIELD

3.1. Regulation on the granting of licenses in the field of community public services, approved by Government Resolution no. 745/2007⁷

As mentioned above, in order to operate in the cleaning sector, an economic operator has to hold a license in this respect from the regulatory authority, respectively NRAPS.

The Regulation is issued in accordance with the provisions of art. 21 para. (3) of Law no. 51/2006 and shall apply to all Romanian legal entities, to legal entities registered in other Member States of the European Union or non-EU foreign legal entities that request the issuance of a license for a public service or for one or more of its specific activities.

The Regulation establishes the following:

- a) the general terms on the granting of licenses which are under the competence of NRAPS;
- b) the procedure on the requesting and granting of the licenses;
- c) the terms under which the licenses and their conditions are modified;
- d) the procedure for suspending and withdrawing licenses, as well as withdrawing the permission to provide the service or to render an activity within a territorial and administrative division;
- e) the fees for granting licenses and the annual fees for maintaining licenses, charged by NRAPS from applicants, respectively license holders.

The provisions of the Government Resolution are quiet clear and, in addition to the other normative acts, complete the applicable legal framework.

⁷ Government Resolution no. 745 of 2007 was published in the Official Journal of Romania, Part I no. 531 of 06.08.2007

3.2 Regulation on the granting of licenses in the field of public services falling under the regulatory scope of the National Regulatory Authority for Public Services, approved by Order no. 100/2023⁸ of the President of NRAPS

The merit of this order is to judiciously list the activities specific to the public cleaning service of localities, for which NRAPS grants licenses:

a) “separate collection and transport of household waste and similar waste from commercial activities in industry and institutions, including separately collected fractions;

b) operation of collection centers, through voluntary contribution, of waste from natural persons;

c) the transfer of municipal waste to transfer stations, including separate transport of residual waste to non-hazardous waste storage facilities and/or to integrated treatment facilities, of paper, metal, plastic and glass waste collected separately to sorting facilities and of biowaste to composting facilities and/or anaerobic digestion systems;

d) sorting of paper, cardboard, metal, plastic and glass waste collected separately from municipal waste in sorting facilities, including the transport of residues resulting from sorting to waste storage facilities and/or to energy recovery facilities;

e) aerobic treatment of biowaste collected separately in composting facilities, including the transport of residues to waste storage facilities and/or to energy recovery facilities;

f) anaerobic treatment of biowaste collected separately in anaerobic digestion systems, including the transport of sanitized and stabilized semi-solid material to waste storage facilities and/or energy recovery facilities;

g) treatment of municipal waste with energy potential in incineration installations with high energy efficiency, including transport of residues resulting from incineration at waste storage facilities;

h) mechanical biological treatment of residual waste in integrated treatment facilities, including the transport of biologically stabilized waste to waste storage facilities and/or energy recovery facilities;

i) disposal, by storage, of residual waste, street waste, soil and stone waste from public roads, residues from municipal waste treatment facilities, as well as waste that cannot be recovered, from interior and/or exterior remodeling and rehabilitation activities of homes, to non-hazardous waste storage facilities;

j) sweeping, washing and sprinkling of public roads in the locality, including the collection and transport of soil and stone waste from public roads to waste storage facilities, as well as waste from street bins to waste storage facilities and/or treatment facilities;

⁸ Order no. 100/2023 of the President of NRAPS was published in the Official Journal of Romania, Part I no. 181 of 03.03.2023

PUBLIC SERVICES AT THE SERVICE OF CITIZENS – CASE-STUDY: CLEANING SERVICES

k) cleaning and transporting snow from the public roads in the locality and keeping them in operation during snow or frost;

l) pest control and disinfection within public and private facilities of the territorial and administrative divisions.”

As can be noted, the above list indicates all the activities required in order for a community to ensure cleanliness and a civilized standard of living in relation to this qualitative indicator. That is why, we felt that it was necessary to present it, in order to demonstrate that in terms of legislation we have a fairly well defined legal framework, going as far as clear enumerations, but implementation is sometimes cumbersome.

CONCLUSION

The issue of the cleaning service is of utmost importance, being an undeniable fact.

As proposals for actual improvement of this activity, with particular reference to Bucharest Municipality, we would like to list the following:

1) To track MBT tender performance and carefully monitor all fractions and their composition to find the best option to divert from landfill;

2) To implement measures to maximize diversion from landfill during the execution of delegation contracts. To implement dynamic waste management, i.e. encouraging exceeding the minimum targets, according to the offers presented in tenders, with the aim of reducing the amount of waste sent to landfill in accordance with the cleaning law;

3) To launch tenders for the rest of the cleaning activities, in order to reduce the amount of waste disposed of by landfill, based on the legal provisions referred to in this article;

4) To implement measures (to allow the exceeding of undertaken targets for recycling, recovery, total diversion from landfill) in order to stimulate investment and improve recycling and diversion from landfill.

Starting from what prof. Virginia Vedinas claims “regardless of the form in which it is carried out, public or private, the provision of a public service implies the existence of a public authority, which either provides the public service, or exercises a right of supervision over the legal entity it has authorized for the provision of the respective public service” (V. Vedinas, 2020, p. 562), we can conclude that in what concerns cleaning, public authorities remain fully involved in the assignment of this service and subsequently in the supervision of the way in which it is carried out.

The new regulations in the field tried to put this service in a new light, transferring as many powers as possible to the local authorities, in the awarding of cleaning contracts. Notwithstanding, at least at the level of Bucharest Municipality, this issue is still very topical.

BIBLIOGRAFIE

1. C.M. Cliza, *Legal relation. special point of view on the citizen's subordination relation with public authorities*, in *International Journal of Legal and Social Order*, no. 1, December 2022, <https://doi.org/10.55516/ijlso.v1i1.66>
2. Cătălin-Silviu Săraru *Regulation of Public Services in the Administrative Code of Romania: Challenges and Limitations*, 2022 Access to Justice in Eastern Europe 1-15. Published online: 07 Dec 2022 <https://doi.org/10.33327/AJEE-18-6.1-a000110>
3. Maria Ureche, *Autoritățile publice în dreptul statelor europene*, Altip Publishing House, Alba Iulia, 2011;
4. Maria Ureche, *Social and economic role of the local administrative authorities in rural development in their community*, in *Fiat Iustitia* no.1/2015
5. Nicolae Popa (coordinator), Elena Anghel, Cornelia Ene-Dinu, Laura Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, 3rd edition, revised and supplemented, C.H. Beck publishing house, Bucharest, 2017.
6. Verginia Vedinaș, *Drept administrativ*, 12th edition, revised and supplemented, Universul Juridic Publishing House, Bucharest, 2020.

Legislation

1. The Administrative Code published in the Official Journal of Romania, Part I no. 555 of 05.07.2019;
2. Law no. 51/2006 on public services, published in the Official Journal of Romania, Part I no. 254 of 21.03.2006 and republished in the Official Journal of Romania, Part I no. 121 of 05.03.2013;
3. Law no. 99/2014 for the amendment and supplementation of Law. 101/2006 on localities cleaning services, published in the Official Journal of Romania, Part I no. 505 of 08.07.2014;
- 4 Law no. 101/2006 on localities cleaning service, published in the Official Journal of Romania, Part I no. 393 of 08.05.2006 and republished in the Official Journal of Romania, Part I no. 920 of 12.10.2023;
5. Emergency Ordinance no. 38/2022 for the amendment and supplementation of certain normative acts in order to improve waste management, published in the Official Journal of Romania, Part I no. 344 of 07.04.2022;
6. Regulation on the granting of licenses in the field of community public services, approved by Government Resolution no. 745/2007, published in Official Journal of Romania, Part I no. 531 of 06.08.2007;
7. Regulation on the granting of licenses in the field of public services falling under the regulatory scope of the National Regulatory Authority for Public Services, approved by Order no. 100/2023 of the President of NRAPS, published in Official Journal of Romania, Part I no. 181 of 03.03.2023.

PUBLIC SERVICES AT THE SERVICE OF CITIZENS – CASE-STUDY:
CLEANING SERVICES



This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.