

# NORMATIVE PREMISES AND APPROACHES FOR FLEXIBILIZING THE ACCESS IN THE CATEGORY OF SENIOR CIVIL SERVANTS

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## **Abstract:**

*Our investigations concerning the normative implementation process in the field of the public function (mostly, in the last three years), of the continuous training of civil servants, but also on the development of public function management have enabled us identify some weak aspects concerning the development of the public function in Romania. We mention that we have identified both legislative issues, as well as some of the problems relating to the efficient management of the public function. In the current procedure we are concentrating on addressing some issues related to the amendment and supplementing of the existing legal framework in order to flexibilize the modality of access in the body form of senior civil servants, through a national competition, after carrying out some references to the current context of the Romanian public administration.*

**Key words:** ANFP, national competition, the public servants' statute, normative customizations, public function, acceleration of procedures, appointment.

## **1. Introduction**

Human resources management, in its public constitution, also includes the vast problematic of the management of public functions/jobs. The achievement of the objectives specific to the public function, including those relating to the continuing training of civil servants, creates the prerequisites to achieve the general purpose – the modernization of the central and local public administration by increasing the administrative capacity based on the component of human resources [1].

In our opinion, the achievement of a modern and efficient public function is based on human resources' competences on the whole, this is why improvements made in this respect follow the general line of the procedure of change in the system in question, namely, the action on crucial factors.

As to the specific objectives relating to the public function, they cannot be out of the connection with the scientific management of human resources, which, as a matter of fact, we consider an essential support for the application of all the measures to modernizing [2].

## **2. The problematic of the Romanian human resources management system in the public function field**

As regards the problematic of the Romanian human resources management system in the public function field, we have to deal with a special complexity [3], because there is a disparate multitude of normative acts that make up the legal regime applicable for the matter. This denotes an insufficient integrated regulation for the management of human resources of the public administration.

For the contractual personnel of public services, including that of public administration, are determined, by the Labour Code provisions [4], obligations and rights similar to those of civil servants, with the exception of the fields of prohibitions

and incompatibilities. This situation reveals that the civil servants' statute [5] does not apply to contractual staff or to the personnel with special status.

As regards the wages system, in context of the current crisis, it is characterized by a relatively low level, from the point of view of the purchasing power, both when we talk about public servants, and about the contractual staff.

To it is added, given the adoption of the uniform wages system law in the public system [6], and the lack of alternative motivating methods [7], including the absence of compensations to take account of the level of supplementary expenditure for a fair standard of living in the big cities, in relation to other cities [8]. If we have in view also the severe regime of incompatibilities and restrictions imposed to the civil servants [3], we can see a certain demotivation and lack of attractiveness of the public function.

On the other hand, neither the subsystem of recruitment, promotion and assessment of the current system of management of public function is appropriate, and the continuous training of civil servants is, in its turn, a weak component.

We also remember, in the same context, some difficulties related to the absence of a structured network of suppliers of training in the public administration field, the insufficient financing of lifelong training in public administration and the absence of the direct relationship between the training of civil servants and the development of their career. Obviously, to all this is also added the absence of an external efficient system of monitoring and evaluation of the quality of the training process.

The difficulties of the system also include that the level of the current institutional capacity of the National Agency of Civil Servants (ANFP), of the direction of training and professional perfecting in the structure of ANFP (direction that appeared after the restructuring of the National Institute of Management), of the regional centres of continuous training is relatively reduced [9], as it is about limited material and human resources in relation to the complexity of current activities and the requirements of the process of applying modern methods of MRU in public administration.

Referring strictly to the problem of access in the body of senior civil servants, we show that, due to legal problems, during 2011 could not be organised competitions for the entry into this professional body. The solution they referred to [10] was to temporarily exercise these functions, but thus has been affected the continuity of the public service and the normal unfolding of the public institutions activities.

We remember that there has also been possible to permanently occupy such functions, through mobility, after the entry into this category through national competition on a public function of governmental inspector and after a minimum period of six months, but we deal with a significant disturbance of the unfolding of procedures and a delay in accomplishing certain needs and activities specific to the public administration.

### **3. The incidence of budgetary restrictions**

According to the Government Emergency Ordinance no. 34/2009 regarding the rectification of budget for the year 2009 [11] and the regulation of financial and fiscal measures of that year has been suspended the occupation made by competition or examination of vacant posts in the public institutions and authorities, irrespectively of the mode of financing. Exceptions include the possibility of occupation through competition of a percentage of maximum 15 % of the total posts available after the date entry into force of the emergency ordinance, but only under the conditions of respecting the expenditure for the staff approved through the budget, at the level of the main donors of credits, respectively at the occupation by competition or examination of unique vacant posts within the public institutions and authorities of the local public administration, with the obligation of their inclusion framing in the expenditure for the staff approved by the budget.

In these conditions, the occupation of public functions of management within public authorities and public institutions could have been made by the application of the institution of the temporary exercise of the public function, governed by the provisions of Article 92 of Law no. 188/1999 on civil servants' statute [5]. This legal institution [12] has been regulated in order to ensure the normal functioning of the public authorities and institutions even in the situation in which the management public functions were vacant or temporarily vacant, in the case of vacant functions being established a term for which the measure could apply, deadline considered sufficient and necessary for the public authorities and institutions to initiate the organization and unfolding of competitions in order to occupy vacant public functions.

While maintaining the decision on the policy of substitution of only an employee of seven who leave the public system, both in 2010 and in 2011, it was necessary to adopt a set of rules by which the deadline for which could be disposed the temporary exercise of a management public function to be extended.

In other words, this set of troubles caused by the budgetary anti-crisis measures prompted the adoption of a measure of crisis: the Emergency Ordinance no. 90/2009 on the regulation of measures in the area of public administration [13]. Its legal effects existed until the modification of the regulatory framework addressed in Chapter 5.

#### **4. The normative peculiarities on “the senior civil servant”**

The public functions related to senior civil servants category are stated in the Law No. 188/1999 republished [5]. The same law also governs the general rules concerning the entry into this category [10].

At the level of ministries and specialty organs of the central public administration, the public function corresponding to the category of senior civil servants is that of general secretary, respectively that of deputy general secretary, whose duties are covered explicitly in the Law no. 90/2001 [10,14], with subsequent amendments and supplements, coordinating the proper functioning of functional compartments and activities in ministries and providing the operative connection between the minister and the managers of all compartments in the ministries and their subordinate units. To these is added the function of governmental inspector.

At the territorial level – county (Prefect's institution) - it is about the functions of prefect, subprefect, general secretary of the prefecture, general secretary of the county and of Bucharest. According to the Romanian Constitution [15], as well as to provisions of Article 1 of Law no. 340/2004 on the prefect's institution [16], the prefect is the representative of the government in the territory, being helped in his activity by two subprefects and starting with 2010 by a single subprefect (exception to this is the Bucharest municipality where the number of three subprefects decreased to two).

The method of organization and unfolding of the national contest is laid down by H. G no. 341/2007 [17], which, according to article 7, stipulates that *the entry in the category of senior civil servants shall be made by national competition organised under the law, on a public vacant function of government inspector.*

For the years 2007, 2008 and 2009, the occupation of public functions corresponding to the category of senior civil servants has been done, either by the application of mobility, either by competition organized for occupying the vacant public functions, in situation of exception [10]. In 2010, the occupation of public functions corresponding to the category of senior civil servants has been done by applying the provisions of Article II of the Law No. 140/2010 [18], respectively by competition. An increased difficulty [10] has appeared in the fact that during 2011, because there were no express rules in this respect, and the project to amend and supplement the Civil Servants' Statute was in civil procedure of parliamentary adoption, competitions have not been organized for the entry in the category of senior civil servants.

## **5. The simplification of procedures of occupying public functions of the category of senior civil servants**

The former mechanism of entry in the category of senior civil servants and later, of definitive occupation of these functions, has proved difficult to apply. Practical needs and the various deficitary aspects have imposed the modification and the completion of the legal framework, regarding the flexibilization and simplification of procedures of permanent occupation – through competition – of the public functions corresponding to the category of senior civil servants.

Also, this solution is justified [10] for the implementation of effective and responsible management of the modality of transposition in practice of the functions exercised by civil servants who deal with such functions.

The orientation aimed at the organization of national competitions for access to this body, to occupy vacant public functions. This implies starting specific procedures according to the requests submitted by the main credit release authorities of the National Agency of Civil Servants and forwarded to the Commission of the contest for the recruitment of senior civil servants.

This is why the Government Order no. 260/2012 has been recently adopted, in order to bring changes and additions to the regulatory framework relating to the entry in the category of senior civil servants, the career management and the mobility of senior civil servants [19].

Briefly, by its entry into force the competitions which we refer to are fluidized, dealing with "national contests" (as a rule, annual). The main modification consists of the abolition of the restriction according to which the government inspectors were supposed to have an activity of at least six months in this function, and to have obtained a high rating order to take over a post of prefect or subprefect.

At the same time, is no longer valid the obligation of government inspectors, when passing to a function of general secretary or deputy general secretary within ministries or other specialized agencies of the central public administration or of general secretary or deputy general secretary of the Executive, to achieve an activity of at least one year, respectively minimum three years for the SGG, as government inspector.

It was also established the compulsoriness of public authorities and institutions to transmit ANFP, via the main credit release authorities, information regarding the vacant public functions for which is required the organization of the competition, as well as the specific conditions proposed, under the deadline of 30 days following the entry into force of that decision, for 2012, and in January, for each of the years to come.

It is considered admitted to the competition for occupying a vacant public function in the category of senior civil servants the candidate who has obtained the highest score among the candidates who have competed for the same public function, provided that it obtained the minimum score necessary for the promotion. The appointment shall be made by administrative act issued in accordance with the provisions of the Law no. 188/1999 [5], no later than 30 days from the date of display of the competition final result by the competition commission.

## **6. Conclusions**

Starting with 2009, the Romanian public administration has faced a series of trouble related to the institutional mechanism of entry in the category of senior civil servants and, subsequently, of definitive occupation of these functions, due to legal problems. The solution they referred to was to temporarily exercise these functions, but thus has been affected the continuity of the public service and the normal unfolding of the public institutions activities.

The implementation of effective and responsible management of the modality of transposition in practice of the functions exercised by civil servants who deal with such functions has imposed the unlocking, by the recent establishment of legal rules, of the organization of national competitions for access to this body.

The norms which we have referred to in our paper bring concrete advantages to a modern management of the career and to the mobility of senior civil servants from the national public administration.

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