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RECENT LEGISLATIVE CHANGES IN THE FIELD OF COUNTY ROAD PASSENGER TRANSPORT

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ABSTRACT: *This article aims to capture the recent legislative evolution in the field of county road passenger transport and the impact of the new regulations on the material competence of the county councils in this matter. It highlights the succession of normative acts adopted in the field of county road passenger transport over the last two years, reviewing the legal regime changes generated by them, as well as the consequences of legislative instability on all actors involved in providing this service and, of course, on its beneficiaries.*

KEYWORDS: *county road passenger transport, public service, commercial regime, management delegation contract, county councils, passenger carriers, compensations.*

INTRODUCTION

Until December 31st 2018, the county road passenger transport had the characteristics of a commercial transport. The adoption of Law no. 328/2018 generated important changes in the Law on local public transport services no. 92/2007, and, under art. VI of the same amending text, the Order of the Minister of Interior and Administrative Reform no. 353/2007 for the approval of the Norms for the application of Law no. 92/2007 was repealed.

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The main changes determined in the field of road passenger transport by Law no. 328/2018 for the amendment and completion of Law no. 92/2007 aim to the following aspects:

- Changing the name of Law no. 92/2007 into the *Law on public passenger transport services in administrative-territorial units*;
- Removing special regular services from the text of Law no. 92/2007;
- Replacing the phrase "local public transport" with "local and county public transport";
- Extending the route license validity over a period that could ensure amortization of the means of transport in the local and county public transport;
- The procedure of issuing route licenses for the local and county public transport and their corresponding bid of specifications has been changed since the attributions of the Romanian Road Transport Authority were taken over by the County Councils;
- The abrogation of Order no.353/2007 on the approval of the application norms for the Law no. 92/2007 on local public transport services, with the subsequent amendments and completions, brought about changes in the competitive procedure for allocating the routes and the conditions for scoring the evaluation factors, the competent authority being the County Council;
- The validity of existing transport programs, route licenses and management delegation contracts has been extended by law until 2nd of December, 2019.

Basically, by adopting Law no.328/2018, the county road passenger transport was regulated as a **public transport service**, as referred to by Regulation (EC) no.1370/2007 of the European Parliament and of the Council of 23 October, 2007 on public passenger transport services by rail and by road and repealing Regulations (EEC) No 1191/69 and no. no.1107/70 of the Council, with the subsequent amendments and completions.

In terms of definition, art.2 paragraph (e) of Regulation (EC) No.1370/2007 clearly explains "public service obligation" as *"requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward"*.

According to the new provisions, the allocation of routes (new or no longer accepted by a transport operator) is made directly by the county councils based on Law no. 99/2016 on sectoral procurement via the SICAP system. Consequently, in compliance with art.231 paragraph (6) of Law no. 92/2007, with the subsequent amendments and completions, the county council has the obligation to establish the scoring grid based on the allocation criteria stipulated by paragraph (5) of the same article.

According to art.17 paragraph (1) letter (c) of the Law no.92/2007 on public passenger transport services in the administrative-territorial units, recently amended and completed by Law no.328/2018, one of the attributions of the county councils is "a periodic update of routes and transport programs based on the needs of the population and in correlation with the existing inter-county, international, railway, air or naval passenger transport, as well as the correlation of the various modes of local passenger transport services by buses, trolleybuses, trams, metro and taxi, as the case may be".

At the same time, according to art.18 paragraph (1) letter d) of Law no. 92/2007 with the subsequent amendments and completions, the local public administration authorities are expressly conferred, in their relations with the road transport operators or the authorized transporters providing local and county public transport services, the right to *"update the public passenger transport programs by regular rides in accordance with transport requirements"*.

Of the same importance is also the fact that, pursuant to art.20 paragraph (6) of the above-mentioned normative act, the county public administration authorities, "based on the mandate received, are **local regulatory authorities** in the field of local and county public transport service". Therefore, they have a regulatory competence in the field that allows them to harmonize with national legislation.

By the subsequent adoption of the G.E.O. no.51/2019, published in the Official Gazette no.535/28.06.2019, the Law no. 92/2007 on public passenger transport services in the administrative-territorial units has undergone important amendments concerning the attributions of the county councils in this field. The purpose of G.E.O. no.51/2019 was among others, to replace the paid road passenger transport by public regular services, provided at county level, as stipulated by Regulation (EC) no. 1370/2007. Shall the county administration authorities not comply with this Regulation, Romania will be liable for non-compliance, as shown in the preamble of the G.E.O. no.51/2019.

The text of the ordinance aims to ensure the distinction between the legal regime of local public transport services and that of county-level transport. Upon its entry into force, the county-level regular road passenger transport becomes commercial activity, falling under the provisions of G.O. no.27/2011 on road transport, with subsequent amendments and completions.

Regarding the socio-economic impact of the new regulation, as suggested by its preamble, the provisions of the G.E.O. no.51/2019 are meant to prevent the negative consequences of the previous regulation of the public road passenger transport at county level, as follows:

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- the clear intention of the transport operators, publicly expressed by the representative of the employers' federations, to boycott, at the end of June 2019, the extension of route licenses, which would have impeded the passengers' travelling throughout the counties, thus blocking the road passenger transport;

- substantial distortion of the competition in the field, in the sense of virtually disrupting the transport activity at national level, with consequences on the development of economic activities under market conditions;

- the negative impact on the county budgets due to an additional budgetary burden, which was quite significant;

- the current risk that at Community level, Romania might be liable for non-compliance with Regulation (EC) no.1.370/2007 by the county councils, as mentioned before.

The methodological norms for the application of the provisions regarding the organization and implementation of paid road passenger transport through regular services at county level, approved by Order no.1158 of 12 August 2019 of the Minister of Transport and of the Minister of Regional Development and Public Administration, establish the framework for the application of the provisions of art.V of G.E.O. no.51/2019 for the amendment and completion of some normative acts in the field of passenger transport.

Pursuant to art.2 paragraph (2) of G.O. no. 27/2011, as amended by G.E.O. no. 51/2019, *"the paid road passenger transport by regular services at county level is regulated by the county council, which represents the competent authority at county level, within the limits of the attributions conferred by this emergency ordinance"*. Thus, county councils maintain their quality of regulatory authorities in the field of paid road passenger transport at county level. However, the exercise of their regulatory power through the county transport authorities must comply with the national legislation in force based on the principle of the pyramid of sources of law, which requires rapid adaptation to the fluctuations of the legal regime in the matter.

The new art. 8¹ paragraph (2) of G.O. no.27/2011 points out the attributions of the county councils in the matter of road passenger transport. Given the new legislative context created by the G.E.O. no.51/2019, it is necessary to elaborate and approve a new Regulation on the organization and implementation of paid road passenger transport through regular services at county level, considering that under art. X of the G.E.O. no.51/2019, *"the validity of the current county transport programs and, as the case may be, of the route licenses for road passenger transport through regular services at county level shall be extended until June 30, 2023"*.

Also, by art.VI of G.E.O. no.51/2019, art.57 paragraph (1) of G.D. no.69/2012 is completed with a new letter - letter c), according to which the persons delegated by the presidents of the county councils for county transport acquire certain control attributions in contravention matters. However, it does not rule out the application, where appropriate, of art. 2 paragraph (2) of G.O. no.2/2001 on the legal regime of contraventions, with subsequent amendments and completions, which stipulates that: *"Decisions of public local or county administration authorities set up and sanction contraventions in all areas of activity that the law has established attributions for, insofar as no contraventions have been established in the respective fields by laws, ordinances or Government decisions"*.

The following year, Law no.34/2020, published in the Official Gazette no.271 of 01.04.2020, ruled out G.E.O. no.51/2019 for the amendment and completion of some normative acts in the field of passenger transport. As a result, in the county passenger transport, the applicable legislation becomes Law no.92/2007, as amended by Law no.

¹ The level of the travel fare is calculated according to the formula from art. 272 para. (1) lit. a) of Order no.134/2019, taking into account an average occupancy rate of 70% by bus, which may not be achieved in practice, which does not remove the operator's right to compensation and, implicitly, the obligation of the authority to payment.

328/2018. Under the new conditions, the legal regime of the county road passenger transport ceases to be commercial and becomes **public service** again.

Consequently, the operator will provide county public passenger transport service by regular rides in compliance with the public service job responsibilities established by the management delegation contract. Of the same importance is also the fact that upon entry into force of Law no.34/2020, the legislation applicable to the procedure for the award of contracts for public passenger transport services at county level is the legislation in the field of sectoral procurement, that is, Law no.99/2016 and the Methodological Norms for its application. The transport fare remains one of the most important factors in evaluating the submitted bids.

The argumentation of fares¹ is made in accordance with the provisions of the Order no.272/2007 of A.N.R.S.C. for the approval of the Framework Norms regarding the establishment, adjustment and modification of fares for public local passenger transport services, as amended by Order no.134/2019.

By adopting Law no.34/2020, the route licenses for paid road passenger transport services at county level whose validity has been extended until June 30, 2023, under art.X of G.E.O. no.51/2019, are no longer valid as a result of the ordinance rejection, although the transport operators have already paid the fees for the extension.

Once with the application of the public service regime, the financial impact on the county budget involves the granting of monthly compensations to the transport operators, calculated according to the national regulations implemented at county level. More specifically, the estimate is based on the provisions of the Joint Order no.131/1401/2019 of the A.N.R.S.C. and A.N.A.P. on the standard documents and the framework contract to be used within the procedures of delegating the management of the public passenger transport service in the administrative-territorial units.

Public service compensations are defined by art.2 lit. g) of Regulation (EC) no. 1370/2007 as any benefits, in particular financial, granted directly or indirectly by a competent authority, from public funds, during the fulfilment of a public service obligation or in connection with that period. The compensation amounts are included in the county budget and are estimated annually by the contracting entity based on a formula provided by Order no. 131/2019.

The implementation of the current compensation regime, as per Order no.131/2019, following the rejection of G.E.O no.51/2019, raises a number of important issues related to a possible unwise structuring of county routes, risk of overcompensation, quality of real-time passenger traffic monitoring, late or incomplete submission of documentation by operators in order to receive compensation, etc.

At the same year with the return to a public service regime, by art. 66-70 of the **G.E.O. no.70/2020**, new regulations have also been introduced regarding the county road passenger transport and student transport, in compliance with the global epidemiological context. More exactly, the provisions of art. 68-80 of the above mentioned normative act have amended art. 84 of the National Education Law no.1/2011 by providing free transport to pre-university students. Subsequently, this article has been amended again by **Law no.226/2020**, as currently the subsidies to county road transport services for students are impossible in the absence of implementation rules. In practice, this has led to uncertain situations, like providing free transport services, some operators` intention to give up providing the service or even charging the very beneficiaries of the recently granted "exemption".

CONCLUSIONS

To summarize, the succession of these normative acts in less than two years and the changes in the legal regime of the county road passenger transport have created a climate of legislative instability and unpredictability meant to equally affect all parties involved: transport operators, passengers, county councils. Their consequences simultaneously affect functionality on several levels: economic-financial, social, educational, administrative, institutional and even personal.

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Ensuring continuity in providing public road passenger transport at county level, especially for vulnerable communities, under the unusual conditions of route license expiration, establishment of new routes, or abandonment of certain routes by transporters has proved to be a real challenge.

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