

# SOME ASPECTS REGARDING THE CESSATION DE JURE OF THE EMPLOYMENT RELATIONSHIP OF CIVIL SERVANTS

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## **Abstract**

*The legal regime regarding the career of civil servants is regulated by the Administrative Code. The termination of the employment relationship of civil servants follows, in principle, the same legal regime with the employment relationship of employees, with the specific features of the civil service. However, the termination of employment of civil servants contains certain provisions more favorable to civil servants, in particular as regards the termination of employment for the purpose of meeting the standard age and contribution conditions for retirement. In this study, we will present some considerations regarding the approach of the legislator in the matter of cessation de jure of the employment relationship of civil servants, taking into account the regulation of the Labor Code for employees.*

**Keywords:** public servants, cessation de jure, comparison with the employees, Administrative Code, Labor Code.

**JEL Classification:** K23, M00, M19

## **1. Introductory considerations**

The Administrative Code<sup>2</sup> establishes in art. 516 - 517 the legal regime of the termination of the service relations of the civil servants.

As provided in the previous regulation, the legislator established a special regime for the termination of employment of civil servants, taking into account the particularities and specificity of the civil service<sup>3</sup>.

The termination of the service relationship of the civil servants is made by administrative act of the person who has the legal competence of appointment in the public position, as provided by art. 516 of the Administrative Code<sup>4</sup>.

According to art. 516 of the Administrative Code, the employment relationship of civil servants ceases in the following situations: a) de jure, b) by agreement of the parties, recorded in writing, c) by dismissal from public office, d) by dismissal from public office, e) by resignation.

We will present, in the following, the main regulatory elements regarding the legal regime of the cessation de jure of the employment relationship of civil servants.

## **2. Cessation de jure of the employment relationship of civil servants<sup>5</sup>**

The employment relationship of civil servants ceases de jure in the following situations established in art. 517 of the Administrative Code:

- a) on the date of death of the civil servant,
- b) on the date of finality of the court decision declaring the death of the civil servant,
- c) if the civil servant no longer meets one of the conditions provided in art. 465 para. (1) letter a) and d)<sup>6</sup>,

- d) on the date of cumulative fulfillment of the standard age conditions and of the minimum contribution period for retirement, if the person who has the competence to appoint to the public office does not order the application of the provisions of para (2);

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<sup>2</sup> Approved by Emergency Ordinance no. 57 of July 3, 2019, published in Official Gazette no. 555 of July 5, 2019.

<sup>3</sup> For general aspects, see V. Vedinaș, *Statutul funcționarilor publici*. 2<sup>nd</sup> ed., Universul Juridic Publishing House, Bucharest, 2016, p. 270-289.

<sup>4</sup> See E. E. Ștefan, *Curs de drept administrativ. Manual de drept administrativ (curs+caiet de seminar). Partea I, Caiet de seminar*, 3<sup>rd</sup> edition revised, completed and updated. Universul Juridic Publishing House, Bucharest, 2016, p. 195 and the next pages.

<sup>5</sup> See D. A. Tofan, *Drept administrativ. Volumul I. Partea introductivă. Administratie publica. Personalul din administratie*, C. H. Beck, Publishing House, Bucharest, 2020, p. 359-362.

<sup>6</sup> The legislator refers to the Romanian citizenship and domicile in Romania and to the full capacity of exercise.

e) on the date of issuance of the medical decision on work capacity in case of first or second degree disability, in case the civil servant is irreversibly affected by work capacity;

f) as a result of the finding of the absolute nullity of the administrative act of appointment in the public office, from the date on which the nullity was ascertained by a final court decision;

g) when by a final court decision, the conviction for an act provided in art. 465 para. (1) letter h)<sup>7</sup> or it has been ordered the application of a custodial sentence, at the date of finality of the conviction, regardless of the manner of individualization of the execution of the sentence;

h) as a result of the prohibition of exercising the right to hold a public function, or to exercise the profession or trade or to carry on the activity used for the commission of the criminal act, as additional penalties, or as a result of the prohibition of holding a position or of exercising a profession, as a security measure, from the date of finality of the court decision ordering the interdiction;

i) as a result of the finding that the public office was held in breach of the legal provisions by a person who executes on the date of appointment to the public office an additional penalty for prohibiting the exercise of the right to hold a position involving the exercise of state authority;

j) following the finding that the public office was held in breach of the legal provisions by a person who was a worker or collaborator of the State Security Service, before 1989, based on the final court decision;

k) on the date of expiration of the term in which the public position was occupied for a determined period, except for the application of the provisions of art. 376 para. (2)<sup>8</sup>;

l) other cases expressly provided by law.

The cessation de jure of the employment relationship of civil servants has certain peculiarities, compared to the situation of employees regulated by the Labor Code.

Thus, letter c) of art. 517 of Administrative Code, stipulates that the employment relationship of civil servants ceases in the situation when they no longer meet the conditions regarding Romanian citizenship, domicile in Romania and full capacity to exercise.

The specificity of the service relationship of civil servants, which involves the exercise of state authority by public office holders, imposes certain special conditions that must be met by civil servants.

If the holder of the civil service does not meet the above conditions, which ensure a special link between civil servants and the state, the employment relationship ceases de jure.

Letter d) of art. 517 of Administrative Code, establishes a situation derogating from the common law ensured by the Labor Code, in the matter of labor relations, thus the date of cumulative fulfillment of the standard age conditions and of the minimum contribution period for retirement, if the person who has the competence to appoint in public office does not order the application of para. (2) of the same article.

According to art. 517 para. (2), exceptionally, on the basis of a request made with two months before the date of cumulative fulfillment of the standard age conditions and the minimum contribution period for retirement and with the approval of the head of the public authority or institution, the civil servant may be retained in public office held for a maximum of three years above the standard retirement age, with the possibility of annual extension of employment.

This legal provision establishes a different legal regime for civil servants, in relation to employees. The Labor Code at art. 56 letter c), stipulates regarding the legal termination of the employee's employment relationship for reaching the retirement age the following: on the date of cumulative fulfillment of the standard age conditions and the minimum contribution period for retirement or, exceptionally, for the opting employee in writing for the continuation of the execution of the individual employment contract, within 60 calendar days prior to the fulfillment of the standard

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<sup>7</sup> These are crimes against humanity, against the state or against the authority, crimes of corruption or service, crimes that prevent the administration of justice, crimes of forgery or a crime committed with intent that would make it incompatible with the exercise of public office, unless the situation in which the rehabilitation, the post-conviction amnesty or the decriminalization of the deed took place.

<sup>8</sup> According to this article, in the situation were, during the occupation of the public position of temporarily vacant execution according to art. 375 para. (1) letters a) and b), it is vacated in accordance with the law, the person who has the legal competence to appoint in the public office has, in duly justified cases, the appointment of the civil servant, with his consent, for an indefinite period.

age conditions and of the minimum contribution period for retirement, at the age of 65; on the date of communication of the pension decision in the case of the third degree invalidity pension, the partial early retirement pension, the early retirement pension, the old-age pension with the reduction of the standard retirement age; on the date of communication of the medical decision on work capacity in case of first or second degree disability<sup>9</sup>.

We mention that, in the old regulation, the individual employment contract of the employees did not cease de jure at the moment of cumulative fulfillment of the standard age conditions and of the minimum contribution period for retirement, but from the moment of communication of the retirement decision.

The current regulation, which recorded the fundamental change of the legislator's perspective in this matter, has as main foundation the ensuring of the equitable evolution of the employees' career, but also the possibility of inserting young people on the labor market.

In the situation where the employer wants to keep the employee whose employment relationship has ended in accordance with art. 56 letter c), may conclude with him an individual fixed-term employment contract.

In the matter of civil servants, the legislator is much more lenient, in the sense that, as we presented, they have the possibility to extend their employment relationship for a maximum of three years.

This situation, which establishes a preferential regime for civil servants in relation to employees, is debatable, since the reasons which led to such a decision on the termination of the individual employment contract for employees are all the more applicable in the case of civil service.

Currently, the legislator has opted for an atypical solution, in the sense that it has established a much more relaxed and favorable legal regime for civil servants than for employees.

Given that the establishment of a legal framework to promote equitable career development of workers, but also the inclusion of young people in the labor market, are also applicable to the civil service, we believe that this approach of the legislator, regarding the possibility of extending the employment relationship by civil servants in the mentioned context, is not safe from criticism.

We mention that, given the importance of the civil service, the legislator has established a series of situations in which the employment relationship of civil servants ceases de jure and as a result of decisions issued by the courts.

Given the importance of the employment relationship, which involves the exercise of state power, the legislator imposed in letters f), g), h), i), j), of art. 517 of Administrative Code certain cases of termination of employment of civil servants, as a result of solutions pronounced by the courts.

Another element of the particularization of the termination of the civil service is the possibility given to the person who has the legal competence to appoint to the civil service to order, in duly justified cases, the appointment of the civil servant, with his consent, for an indefinite period, in if initially the civil servant was employed in the institution or public authority for a fixed period.

This legal provision brings the legal regime of civil servants closer to that of employees, by flexibly establishing the possibility of indefinite employment of civil servants who are initially employed for a fixed period.

For example, in France, there are three categories of civil servants (at central and state level,

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<sup>9</sup> By Decision no. 759 of November 23, 2017 regarding the exception of unconstitutionality of the provisions of art. 56 para. (1) letter c) the second thesis, the first hypothesis from Law no. 53/2003 - Labor Code, published in the Official Gazette. no. 108 of February 5, 2018, the Constitutional Court found that the provisions of art. 56 para. (1) letter c) the second thesis, the first hypothesis from Law no. 53/2003 is unconstitutional. In this context, the Court established, inter alia, that ...*considering all the above, the Court considers that the restriction on the exercise of the right to work resulting from the provisions of art. 56 para. (1) letter c) the second thesis, the first hypothesis from Law no. 53/2003 represents a disproportionate measure in relation to the reasons considered by the legislator and creates an imbalance in terms of protection granted to the two parties to the employment relationship, thus defeating the provisions of art. 41 para. (1) of the Constitution. This conclusion is all the more clear given that it refers to people who have a low chance of integration into the labor market, as a result of disability. Also, referring to the entire regulation of the Labor Code, the Court considers that the legal provisions subject to constitutional review place the beneficiaries of the third-degree disability pension in an unfavorable situation compared to other employees who have the right to renegotiate the terms of the individual contract so that they can continue working relationships in conditions appropriate to their work capacity.*

respectively, at the territorial level and in the field of health, hospitals), their employment relationship ending by resignation, dismissal, dismissal from public office, in the situation where the civil servant abandons the post and when he retires<sup>10</sup>.

### 3. Conclusions

The cessation de jure of the employment relationship of civil servants, enshrines an original approach of the legislator, which provides this institution of administrative law with specific elements in relation to the provisions of the Labor Code in this field.

It should be noted that the legislator establishes a preferential legal regime for civil servants, in relation to employees, an aspect that contradicts the rigors specific to the civil service.

An example would be the possibility for the civil servants to withdraw their resignation, which can cause serious disturbances at the level of an institution or public authority, or the possibility for the civil servants to extend their employment relationship for another three years.

These aspects lead to the conclusion that in the Romanian legal system, regarding the cessation de jure of the employment relationship of civil servants the legislator establishes, generally, a more favorable legal regime than that of employees.

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<sup>10</sup> See website: <https://www.fonction-publique.gouv.fr/abandon-de-poste>, accessed in 26.10.2020.