PUBLIC PROCUREMENT IN ROMANIA. EVOLUTION AND HARMONIZATION WITH THE EUROPEAN UNION LEGAL FRAMEWORK

Emilia Lucia CĂTANĂ,
Dimitrie Cantemir University, Bodoni Sandor 3-5, Tîrgu Mureș, Mureș, România.

Abstract: The study investigating the situation of the public procurement system both at European and national level, from the legal and historical perspective, in particular. The survey shows concern Romanian authorities to respect the principles and rules of EU law and understanding the imperative need for tighter legal standards to fight corruption and eliminate factors that exist now in the public administration system, mainly in the controversial area of public procurement.

Keywords: public procurement, European Union, national legal framework

INTRODUCTION

On the basis of institutional changes generated by globalization and having in view the EU enlargement with new Member States, we observe that the collocation "public procurement" is used more frequently in the public area by the specialists in the domain and especially by the representatives of the civil society and those of media and communication.

Starting from these premises, the general objective of this study is to investigate the situation of the public procurement system both at European and national level, from the legal and historical perspective, in particular.

Methodological, the author has customary means specific research approaches such as law doctrine and legislation in the field of public procurement, presenting various theories and interpretations of these laws.

1. PUBLIC PROCUREMENT. THE EUROPEAN LEGAL CONTEXT

Beginning from January 1\textsuperscript{st} 2007, in the context of Romania’s accession to the European Union, the public procurement domain was subject to major changes. The compulsoriness of harmonizing the public procurement legislation and practices to the European Directives \cite{1} brought about changes concerning both the applicable legislation and management.

The European policy in the public procurement domain has as a goal to create a competitive and non-discriminatory market which allows the free movement of goods and services, this making sure that there is an efficient use of the public money, as well as the raise of the European providers competitiveness on national and international markets. The policy of the Common Market is directed to enlarging and strengthening the regime of public procurement in the European Union, by means of extending the legal framework upon services and utilities, and by establishing specific procedures that would guarantee the contract assignment for purchasing certain values in a competitive, transparent and non-discriminatory manner.

The European legislation package on public procurement consists of: Directive 18/2004/CE on the coordination of the assignment procedures for works, goods and services contracts, Directive 17/2004/CE on the coordination of procurement procedures applied to the entities that operate in the following sectors: water, energy, transportation and postal services [3], as well as the remedy Directives – Directive 89/665/CEE on the coordination of legislation, regulations and administrative dispositions on applying the assignment procedures for public goods and works contracts [4] and Directive 92/13/CEE on the coordination of legislation, regulations and administrative dispositions on applying the community regulations for procurement procedures of the entities that operate in the sectors: water, energy, transportation and telecommunication [5].

The development of the public procurement legal framework needs to clarify the structure of the activities performed in the process of public procurement in centralized or decentralized manner. Both variants were supported by various theories, and mention should be made that the European Union Directives in the domain are not very clear in this respect, as it is considered to be subject to subsidiarity, respectively to national level decision making process. The only stipulation imposed by the EU Directives is that the administrative arrangements adopted by the Member States to respect the principles of competition and transparency in the procurement process. In practice, specific elements both to centralized and to decentralized systems can be found in the process of public procurement in many European Union Member States.

European Union had made explicit requirements all States candidates for EU full membership to adopt a certain behaviour in the public procurement domain, which led to the elaboration of regulatory documents whose final goal was an efficient expenditure of the financial resources by means of a real and transparent competition among economic operators that take part in the procedures of public procurement.

2. EVOLUTION AND HARMONIZATION OF PUBLIC PROCUREMENT IN ROMANIA WITH THE EUROPEAN UNION LEGAL FRAMEWORK

2.1. THE CONCEPT OF PUBLIC PROCUREMENT ACCORDING TO THE DOCTRINE

Due to the fact that there was no definition of public procurement, it is the doctrine’s role to define the concept. Up to the present, there were various opinions that reflect the importance of the concept for the scientific research, and especially that from abroad; this also reveals the importance of the domain in resource ensurance and administration in the public administration.

In this study we present two of the definitions of the public procurement, which are the following:

- it represent the situation in which the public institution gets the necessary goods and services, based on a contract established with another entity which is part of the private sector [6, pg. 6];
- as a wider concept than that of government procurement, as it does not refer only to the public procurement performed by the central government, but also to those performed by public institutions and organisations, such as those having as a main objective to perform public services (energy, public transportation, postal services, telecommunications, water supplies, etc.) [7, pg. 3].

2.2. THE EVOLUTION OF PUBLIC PROCUREMENT NATIONAL LEGAL FRAMEWORK. IS THE NATIONAL LEGISLATION OF PUBLIC PROCUREMENT HARMONIZED WITH EU DIRECTIVES?

Whereas during the interwar period the system of public procurement in Romania was at the same level like any other European state, at the end of the Communist period, the Romanian state was confronted with a situation at least tragi cal – that is to say, for getting to the same level as the Western European countries, it should have paid enormous efforts and should have made many concessions. However, looking back, one can state that Romania, during the 21 years of democracy, compensated the 45 years of Communism.
The nowadays legislation of Romania sets limits and constrictions for the purchase done by the institutions and public authorities or authorities of public interest, which brings about a different approach concerning the systems of public procurement they can adopt, fundamentally different from those applicable in a private company. This is the reason why profound differences appeared between the private companies procurement management, which are subject to general managerial trends based on the growth of effectiveness and efficiency of the money use, and the public procurement management, ruled by the compulsoriness of obeying the laws.

To this extent, after Romania gained the statute of full Member State, facing inevitable pressures aiming to adapt its legislation to the Community one, the analysis of the public procurement evolution has both a scientific value and a document one, as it testifies the manner in which social, political and economic changes and the reform in domain were influenced by the issues approached.

2006 year marked the moment when, in the context of Romania’s imminent accession to the European Union, it was forced to harmonize its legislation to the European provisions in force, according to the commitments assumed toward the European institutions. The public procurement was one of the most important domains to be observed and monitored in this respect by the European Union institutions, due to its importance for the proper functioning of the public authorities, institutions and public services and for the guarantee of the free circulation and free competition on the public procurement market.

This is why a series of regulations was adopted in the public procurement domain; the most important was the Government Emergency Ordinance no 34/2006 on assigning public procurement contracts, lease contracts for public works and services [8]. For this ordinance application and to amend its provisions other regulations were issued: Government Decision no 925/2006 for approving the application regulations of the provisions concerning public procurement contracts assignment as mentioned in the Government Emergency Ordinance no 34/2006 on assignment of public procurement contracts, lease contracts for public works and services [9], the Regulation issued on 22 November 2006 for application of the provisions on assigning ePublic Procurement contracts provisioned by the Government Emergency Ordinance no 34/2006 on assigning public procurement contracts, lease contracts for public works and services [10], the Regulation issued on January 24th 2007 for application of the provisions on assigning public procurement contracts, lease contracts for public works and services provisioned in the Government Emergency Ordinance no 34/2006 on assigning public procurement contracts, lease contracts for public works and services [11], the Regulation on the National Authority for the Regulation and Supervision of Public Procurement (ANRMAP) issued in 2007 regarding the supervision of the manner of assignment public procurement contracts, lease contracts for public works and lease contracts for services [12], the Government Emergency Ordinance no 30/2006 on the function of verification of the procedure aspects on the assignment process of public procurement contracts, lease contracts for public works and lease contracts for services [13], the Regulation issued on July 19th 2006 for the application of the Government Emergency Ordinance no 30/2006 on the function of verification of the procedure aspects on the assignment process of public procurement contracts, lease contracts for public works and lease contracts for services [14], the Regulation issued on June 14th 2006 for organising and functioning the National Council for Deciding upon Appeals [15], the Guidelines for NARSPP issued on October 2nd 2006 for assignment of public procurement contracts [16], Order of the Ministry of Economy and Finances no 2.181 issued on November 23rd 2006 for perfecting and making the public procurement system flexible and to avoid the inappropriate behaviour of the operators which, when noticing that they have no chance of winning, they delay the procedures application, Government Emergency Ordinance no 76 was issued on July 19th 2006 on assigning public procurement contracts, lease contracts for public works and services.

In 2010, as a result of adopting urgent measures for perfecting and making the public procurement system flexible and to avoid the inappropriate behaviour of the operators which, when noticing that they have no chance of winning, they delay the procedures application, Government Emergency Ordinance no 76 was issued on July 2nd 2010 that modifies and amends the provisions of Government Emergency Ordinance no 34/2006 on assigning public procurement contracts, lease contracts for public works and services.

Thus, taking into consideration all the legal changes presented above and especially the Government Emergency Ordinance no 76 issued on July 2nd 2010 that modifies and amends the provisions of Government Emergency Ordinance no 34/2006 on assigning public procurement contracts, lease contracts
for public works and services, we are going to use as reference the Government Emergency Ordinance no 76, that modifies and amends the provisions of Government Emergency Ordinance no 34/2006 on assigning public procurement contracts, lease contracts for public works and services, modified and amended.

Also, in 2011 Romania was adopted three regulations of significant importance especially for procurement practitioners but for their correct interpretation and application, can hardly be ignored by the doctrine of administrative law. We refer to Government Emergency Ordinance nr.66/2011, Order of the National Authority for Regulating and Monitoring Public Procurement no. 509/2011 and Government Decision no. 1045/2011, regulations have been developed to enhance the activity of absorption of EU funds, namely the need to streamline and improve the public procurement system to improve absorption of EU funds allocated to Romania, their analysis research subject of study.

Today, we may say that the romanian legislation for public procurement achieved at last the harmonization with the European Union Directives, fact confirmed by the disappearance of the red flag awarded for this domain and by its replacement with the green one, fact that confirms the elimination of the existing issues as the legislation is concerned.

The provisions of the ex-ante control on public procurement processes were positively appreciated, and also the regulations concerning the participants’ eligibility and the appeals against the public procurement processes.

CONCLUSIONS

The general objective of this study was to investigate the situation of the public procurement system both at European and national level, from the legal and historical perspective, in particular. The survey shows concern Romanian authorities to respect the principles and rules of EU law and understanding the imperative need for tighter legal standards to fight corruption and eliminate factors that exist now in the public administration system, mainly in the controversial area of public procurement. Also, we may say that the romanian legislation for public procurement achieved at last the harmonization with the European Union Directives, fact confirmed by the disappearance of the red flag awarded for this domain and by its replacement with the green one, fact that confirms the elimination of the existing issues as the legislation is concerned.

BIODATA

Emilia Lucia CÂTANĂ is Associate professor at Dimitrie Cantemir University, Bodoni Sandor 3-5, Tîrgu Mureş, Mureş, România

REFERENCES


2. The European Council in Hanovre, in June 1988, charged a committee chaired by the current president of the European Commission, Jacques Delors, to elaborate a report on the concrete stages that were to be taken for establishin a Economic and Monetary Union (UEM), objective on the agenda of European Communities from the beginning of the ‘70s, when the System Breton-Woods collapsed. The committee, composed of the presidents or governorns of central banks in the community countries, presented in the report on 17.04.1989. This document, known as Delors Report, proposed to achieve UEM in three steps, the last was to irrevocable fix the exchange parities among the currencies that composed ECU, introducing a unique currency that was to replace the national currencies and to create an independent Central European Bank, responsible, with the elaboration of a monetary policy in the whole European Union area.

3. Mention should be made that both Directive 18/2004/CE for coordinating procurement procedures in water, energy, transportation and postal services, and Directive 17/2004/CE for coordinating procurement


10. Government Emergency Ordinance no 34/2006 on assigning public procurement contracts, lease contracts for public works and services, published in the Official Gazette of Romania, Part I, no 978 on 07 December 2006;


12. Regulation on the National Authority for the Regulation and Supervision of Public Procurement (ANRMAP) issued in 2007 on the supervising the manner of assignment public procurement contracts, lease contracts for public works and lease contracts for services, published in the Official Gazette of Romania, Part I, no 609 on 04 September 2007.


