

WHAT HAPPENS WITH GOODS RECEIVED FREE OF CHARGE ON THE OCCASION OF PROTOCOL EVENTS IN THE EXERCISE OF THE MANDATE OR PUBLIC OFFICE?

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Abstract

One of the concerns of the public authorities governing us should, without doubt, be to make sure that, the trust of the population in the state institutions is increased by means of the activity carried out in respect of the country administration. From this perspective, the article proposes for analysis a current topic on the transparency of the activity of public authorities, viewed from the perspective of the citizen who may wonder if a public official or a civil servant who receives a good during his mandate or position can still be objective?

In this respect, we consider that the topic is of interest both to legal specialists and to citizens, future public officials or civil servants, as it provides information on how they should act if they find themselves in such a situation and to avoid conflicts of interests.

The study also presents and summarizes information on French legislation regarding the analyzed topic in order to be able to know, from the point of view of comparative law, some aspects related to the approach of this rather sensitive issue of gifts and invitations that can be offered or requested by a public servant and the legal risks that are entailed. Our analysis will emphasize the importance of respecting both the legality of the activity of public authorities and integrity, seen as a fundamental ethical value.

Keywords: public authorities, conflict of interests, transparency, integrity, protocol.

1. Introduction

The persons who temporarily hold a position in the state apparatus, public official or civil servant, shall have, in addition to the obligation to comply with the law, the obligation to be honest. In this way, citizens will perceive public administration as a standard of legality and appropriate behavior, in the light of public officials or civil servants. From this point of view, the Administrative Code regulates the general principles¹ of public administration² in the first place and the institutions in the second place.

The conflict of interests shall mean: „the situation whereby a person exercising a public office has a personal patrimonial interest, which could influence the objective fulfillment of the duties incumbent on him/her according to the Constitution and other normative acts³”. Furthermore, the Administrative Code regulates the obligation to fulfill the legal regime of the conflict of interests⁴ and of incompatibilities for public officials and civil servants, as well as the fulfillment of the rules of conduct. From the analysis of this normative act, emerges, among others, the philosophy of a traditional principle of the administrative law, namely the subordination of citizens to public authorities⁵.

According to the doctrine, „the Constitution uses the terms of public positions and offices⁶”. The scope of this study is to analyze the legal regime of the goods received free of charge on the occasion of protocol events, in the exercise of the mandate or office, in order to know the risks entailed by such situation. We do not want to

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¹ In detail, on the principles of the law, in paperwork E. Anghel, *General principles of law*, in LESIJ.JS XXIII nr. 2/2016, Lex ET Scientia International Journal - Juridical Series, pp. 364-370 and E. Anghel, *The lawfulness principle*, published in the proceedings CKS-eBook 2010, vol. I, Pro Universitaria Publishing House, Bucharest, 2010, ISSN 2068-7796, p. 799.

² On the case law of the ECJ regarding public administration, see R.M. Popescu, *ECJ case-law on the concept of “public administration” used in article 45 paragraph (4) TFUE*, in proceeding CKS e-book 2017, pp. 528-532.

³ Art. 70 of Law no. 161/2003 regarding certain measures to ensure transparency in the exercise of public offices and positions and in the business environment, for preventing and sanctioning corruption, published in the Official Gazette of Romania no. 279/21.04.2003.

⁴ [„The principles underlying the prevention of the conflict of interest (...) are the following: impartiality, integrity, transparency of decision and supremacy of public interest”] - D. Apostol Tofan, *Drept administrativ Part I*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2008, p. 177.

⁵ On public authorities, see M.C. Cliza, *Drept administrativ Part I*, Pro Universitaria Publishing House, Bucharest, 2011, pp. 12-20.

⁶ I. Muraru (coord.), A. Muraru, V. Bărbățeanu, D. Big, *Drept constituțional și instituții politice. Caiet de seminar*, C.H. Beck Publishing House, Bucharest, 2020, p. 117.

develop more in this article on the proposed subject, by analyzing the EU legislation⁷ on the legal regime of protocol goods or the ECtHR case law or the CJEU case law, this will be done in a future research.

The paperwork has the following structure: on the one hand, analyzes the national legislation and verifies whether public authorities comply with legal obligations and, on the other hand, provides legal information on the analyzed topic.

2. Legal regime of the goods received free of charge on the occasion of protocol events in the exercise of the mandate or office

The legal framework for the measures concerning the goods received free of charge on the occasion of protocol events in the exercise of the mandate or office consists of Law no. 251/2004 on the measures concerning goods received free of charge on the occasion of protocol events in the exercise of the mandate or office⁸ and of Government Resolution no. 1126/2004 for the approval of the Regulation for the implementation of Law no. 251/2004⁹.

2.1. Who are the persons obliged to declare goods received?

Law no. 251/2004 (...) provides the following *rule*: „the persons holding the capacity of public official and those holding public offices, magistrates and those assimilated to them, persons holding management and control positions, civil servants within public authorities and institutions or of public interest, as well as the other persons who have the obligation to declare their assets, according to the law”. Therefore, the law obliges several categories of persons to declare goods they received, by emphasizing the holding by them of a position or a certain capacity.

2.2. What goods should be declared?

The aforementioned persons shall be bound to declare, within 30 days as of the receipt, the goods received free of charge, within certain protocol events in the exercise of the mandate or office, on the contrary, they shall be held liable for¹⁰.

The law also provides an *exception*: „medals, decorations, badges, orders, scarves, collars and the like received in the exercise of a public office, as well as office objects with a value of up to 50 euros” shall not be declared. By way of interpretation¹¹, we note that the exception takes into account, on the one hand certain goods in such a category, expressly nominated, as well as other similar ones, and on the other hand, the threshold value of 50 euros for office objects.

2.3. What is the content of the declaration?

The declaration together with the good/goods is submitted to a committee especially appointed for this purpose. The declaration shall contain the following mentions: surname, name, workplace and position held by the person in question; the detailed description of the submitted good; description of the circumstances in which the good was received; date and signature.

2.4. What is the procedure for declaring the respective goods?

The law requires that each authority, institution or legal entity sets up a commission to assess and make an inventory of the goods the persons in question received free of charge, within protocol events in the exercise of

⁷ In what concerns the EU legal order, see A. Fuerea, *Manualul Uniunii Europene*, VIth ed., revised and supplemented, Universul Juridic Publishing House, Bucharest, 2016, pp. 228-252 or on the EU policies and competencies, see A.-M. Conea, *Politicile Uniunii Europene. Curs universitar*, Universul Juridic Publishing House, Bucharest, 2020, pp. 10-20.

⁸ Law no. 251/2004 on the measures concerning goods received free of charge on the occasion of protocol events in the exercise of the mandate or office, published in the Official Gazette of Romania no. 561/24.06.2004.

⁹ Government Resolution no. 1126/2004 for the approval of the Regulation for the implementation of Law no. 251/2004 (...), published in the Official Gazette of Romania no. 680/28.07.2004.

¹⁰ In what concerns the liability of constitutional judges, see Barbu S.-G., A. Muraru A., V. Bărbățeanu V., *Elemente de contencios constituțional*, C.H. Beck Publishing House, Bucharest, 2021, pp. 46-49.

¹¹ In what concerns the interpretation of the legal regulation, see N. Popa (coord.), E. Anghel, C. Ene-Dinu, L.-C. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, 3rd ed., C.H. Beck Publishing House, Bucharest, 2017, pp. 197-202.

the mandate or office. The head of the institution shall appoint the respective commission, consisting of 3 specialized persons, the commission's term of office being of 3 years with a single renewal possibility.

All goods in this category shall be registered and the commission shall propose to the head of the institution to resolve the situation of the respective good by the end of the year. The assessment of the good shall be performed by the commission, by taking into account the market price, but experts in the field can also be consulted, who were selected for this operation, according to the law.

There are two possibilities, depending on the value of the good, the threshold established by the law being of 200 euros:

Possibility 1- if the value of the goods established by the commission is higher than the equivalent in RON of the amount of 200 euros, the persons who has received the goods can request to keep them, by paying the difference. If the value of the goods established by the commission is under the equivalent of 200 euros, they shall be kept by the recipient.

Possibility 2- If the person who has received the goods has not requested to keep them, upon the commission's proposal, the goods remain in the assets of the institution or can be transferred free of charge to a relevant public institution or sold at auction, according to the law. By capitalizing such goods, the amounts obtained shall represent income to the state budget, local budget or the budgets of authorities, public institutions or legal entities.

In the recitals¹² of the draft law, the threshold value of goods was proposed to be 300 euros and following the legislative process, it remained at 200 euros.

2.5. What are the obligations of public authorities?

The law requires the authorities, institutions and legal entities to publish the list of the submitted goods and their destination, on the website of the respective legal entity or in the Official Gazette of Romania, Part III, at the end of the year.

3. Case study

3.1. Case study – national plan

In order to be able to note practical applicability of the law, we have conducted a case study by researching the website of several public authorities to see if they display on the institution's website information on the goods received on the occasion of certain protocol events, in the exercise of the mandate. Representative public authorities were selected at central level: The Chamber of Deputies and the Presidential Administration. The time period that we have documented covers 3 years, respectively 2020-2022.

3.1.1. The Chamber of Deputies

The scientific research performed showed that no declaration was filed in what concerns the receipt of any good by the deputies/employees of the services of the Chamber of Deputies in 2020¹³.

In 2021¹⁴, 13 gifts were offered to certain deputies, most of them being returned to the recipient and the rest kept in the assets of the institutions:

- (I) *returned*: tea set with floral design, consisting of 6 cups and 6 saucers and a teapot, made of Bohemian porcelain, amounting to 50 euros; decorative object, logo with the insignia of the Ministry of Defense, amounting to 26 euros; decorative office object, amounting to 30 euros; logo of the Commission I of the Chamber of Representatives of Indonesia, amounting to 24 euros; printed textile material, amounting to 24 euros; traditional decorative bowl, amounting to 56 euros (...).
- (II) *kept*: painting with Theodor Pallady stamps, 150 years since his birth, amounting to 108 euro; plaque with the official insignia of the President of the Republic of Poland, amounting to 56 euros; anniversary plaque of Club Sportiv Dinamo; official plaque with the image of the Indonesian Parliament, amounting to 24 euros (...).

¹² Public information, available online: <https://www.cdep.ro/proiecte/2004/100/10/6/em116.pdf>, accessed on 19.01.2023.

¹³ Public information, available online: <https://www.cdep.ro/pdfs/cadouri/cadouri2020.pdf>, accessed on 18.01.2023.

¹⁴ Public information, available online: <https://www.cdep.ro/pdfs/cadouri/cadouri2021.pdf>, accessed on 18.01.2023.

Among the goods received by the deputies as gift in 2022¹⁵, we mention the following: artwork painting in mixed technique, amounting to 50.6 euros (kept in the assets of the institution) and decorative porcelain plate, amounting to 152 euros (kept in the assets of the institution – Parliament Museum).

3.1.2. Presidential Administration

A number of 14 goods were received in 2020¹⁶, free of charge, by the President of Romania, on the occasion of certain protocol events and submitted to the Evaluation Commission within the Presidential Administration, the destination of the goods in the Assets of the Presidential Administration.

The total amount of the goods received free of charge in 2020 is of 1,801 euros and includes, for example: metal and marble statuette, height 26 cm., black color, representing a female character next to a lion, amounting to 150 euro; painting representing the image of ruler Alexandru Ioan Cuza¹⁷, amounting to 105 euro; silver ship, amounting to 300 euros; replica after the sword of Voivode Ștefan cel Mare, amounting to 300 euros; distinctive mark representing the flag of Romania, amounting to 50 euros etc.

In 2021¹⁸, 18 goods were received, with a total value of 1,883 euros, goods intended for the Assets of the Presidential Administration: gold emblem/statue, amounting to 150 euros; two silver coins, amounting to 85 euros; black and white engraving with wooden frame, amounting to 40 euros; copy after Byzantine icon in 950% silver, lithograph, representing Jesus Christ, amounting to 200 euros etc.

In 2022¹⁹, 26 goods were received, with a total value of 4,753 euros: pen, amounting to 94 euros; writing set, amounting to 30 euros; Republic flag, amounting to 410 euros; mirror, amounting to 70 euros; philatelic painting, amounting to 25 euros; amber painting, amounting to 1,125 euros; traditional design tie, amounting to 60 euros etc.

3.2. Case study France - how are gifts and invitations managed within public authorities?

One of the laws concerning transparency in public life and known as Law Sapin II is one of the most relevant laws of France on our subject matter. French Anti-Corruption Agency – A. F. A.²⁰ issued practical Guidelines called: *Public officials - the risks of breach of probity in relation to gifts and invitations*²¹, document made available in September 2022 and delivered to all public authorities.

According to art. 1 of the law for the promotion of transparency, combating corruption and the modernization of the economy, French Anti-Corruption Agency is: „a national competence service subordinated to the Ministry of Justice and the Ministry in charge with the budget the mission of which is to help competent authorities and the persons dealing with them prevent and detect corruption, influence peddling, misappropriation of public funds and favoritism²²”.

In our analysis, we firstly noted the main obligations of public officials and then developed the actual subject of gifts and/or invitations, in order to understand that the philosophy of the practical Guidelines is precisely based on the care of public authorities that officials do not make mistakes in their actions, being bound by legal obligations. Therefore, we find in the General Civil Service Code the obligations of public agents referred to in art. L 121. French legislator imposes as obligations, for example: „the public agent shall exercise his functions

¹⁵ Public information, available online: <https://www.cdep.ro/pdfs/cadouri/cadouri2022.pdf>, accessed on 18.01.2023.

¹⁶ Public information, available online: https://www.presidency.ro/files/documente/Lista_bunurilor_prime_titlu_gratuit_cu_prilejul_unor_actiuni_de_protocol_in_anul_2020.pdf, accessed on 18.01.2023.

¹⁷ The painting was received on the 200th anniversary of the birth of ruler Alexandru Ioan Cuza. See in this respect, C. Ene-Dinu, *Istoria statului și a dreptului românesc*, 1st ed., Universul Juridic Publishing House, Bucharest, 2020, p. 223 et seq.

¹⁸ Public information, available online: https://www.presidency.ro/files/documente/Lista_bunurilor_prime_titlu_gratuit_cu_prilejul_unor_actiuni_de_protocol_in_anul_2021.pdf, accessed on 18.01.2023.

¹⁹ Public information, available online: https://www.presidency.ro/files/documente/Lista_bunurilor_prime_titlu_gratuit_cu_prilejul_unor_actiuni_de_protocol_in_anul_2022.pdf, accessed on 18.01.2023.

²⁰ Public information, available online: <https://www.agence-francaise-anticorruption.gouv.fr/fr>, accessed on 18.01.2023.

²¹ Public information, available online: https://www.fonction-publique.gouv.fr/files/files/publications/hors_collections/GuideCadeauInvitation_AFA.pdf, accessed on 18.01.2023.

²² We refer to Loi n°2016-1691 du 9 decembre 2016, relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique, available online at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528>, accessed on 18.01.2023.

with dignity, impartiality, integrity and probity and shall be bound by the obligation of neutrality” (art. L 121- 1 and L 121-2).

We do not detail the aspects of criminal nature that could intervene in the daily activity of civil servants, the Guide being such a tool that also warns of criminal risks, derived from possible temptations to accept gifts and invitations. Notwithstanding, in addition to the risks of criminal nature, there may also be risks of disciplinary nature or even the risk of contentious administrative litigations associated with gifts and invitations, which may disrupt the activity of the public administration, according to the Guidelines. Examples of such situations are provided: the annulment of a public procurement contract, of a contract or administrative decisions for abuse of power following the acceptance by a public official of a gift, advantage or invitation²³.

The General Civil Service Code²⁴ defines the conflict of interests in art. L 121-5, as follows: „all situations of interference between a public interest and public or private interests that are likely to influence or appear to influence the independence, impartiality and objectivity of the public official's functions”. Another applicable normative act is Law no. 2013 - 907 of 12 October 2013 on transparency in public life. The normative act defines in art. 2²⁵ thesis 1, the conflict of interest in the same terms as the General Civil Service Code.

The Practical Guidelines are structured in 2 parts and 6 Appendices: Part I - *Understanding the risks related to gifts and invitations* and Part II – *Establishing an appropriate set of rules for gifts and invitations*. According to the Guidelines: „Requesting or accepting gifts or invitations carries the risk of compromising probity. In all cases, in order to avoid criminal risk, disciplinary risk and the risk of affecting the good operation and reputation of the administration, it is advisable to refer, in close and permanent connection with the hierarchical authority, to a series of ethical principles and to take into account the specific circumstances of each gift or invitation: the recipient’s functions and missions; the capacity and interest of the giver; characteristics and circumstances in which the gift or invitation was offered.”

In France, the law does not set a value threshold for gifts and invitations. In analyzing the condition of accepting a gift or invitation, the Guidelines establish three criteria: the purpose of the gift; frequency and monetary value. French Anti-Corruption Agency provides that no public agent should either request or accept a gift or invitation in the exercise of his/her function and should always inform the direct supervisor²⁶.

4. Conclusions

In our analysis, we tried, by means of the documentation carried out, to offer more information on the legal regime of the goods received free of charge within protocol events, during mandate or office. On this occasion, we found out that the value threshold regulated by the legislator for the good received is 200 euros, and the applicable normative act is Law no. 251/2004. Furthermore, from the computer research it appears that, during the analyzed period, both the Chamber of Deputies and the Presidential Administration published the list of goods received free of charge on the occasion of some protocol actions and submitted to the Evaluation Commission.

The paperwork also presented the legislation in France in order to be able to know, at a summary level, how gifts or invitations received free of charge by public agents are dealt with in this state. In this way, we noted the important role played by French Anti-Corruption Agency in the prevention of corruption deeds by issuing practical Guidelines called: *Public officials - the risks of breach of probity in relation to gifts and invitations* and delivered to all public authorities.

²³ Public information, available online: https://www.fonction-publique.gouv.fr/files/files/publications/hors_collections/GuideCadeauInvitation_AFA.pdf, page 23, accessed on 18.01.2023.

²⁴ Public information, available online: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000044416551/LEGISCTA000044420673/, accessed on 18.01.2023.

²⁵ Art. 2 is part of Chapter I- „Prevention of conflict of interests”, Section 1- „Abstain obligations” of Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique, available online at <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028056315>, accessed on 18.01.2023.

²⁶ Public Information available online: https://www.fonction-publique.gouv.fr/files/files/publications/hors_collections/GuideCadeauInvitation_AFA.pdf, p. 13, accessed on 18.01.2023.

The final conclusion of the paperwork is that, regardless of the temporary position held by a citizen, public official or civil servant, in addition to the obligation to comply with the law, he/she shall have the obligation to be honest²⁷.

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²⁷ From another perspective, see E. Anghel, *The lawfulness principle*, published in proceedings of CKS-eBook 2010, vol. I, Pro Universitaria Publishing House, Bucharest, 2010, ISSN 2068-7796, p. 799 or E.E. Ștefan, *Legalitate și moralitate în activitatea autorităților publice*, in Revista de Drept Public no. 4/2017, pp. 95-105.