

Environmental Law Litigation – Brief Considerations on the Delegation of Management of the Public Water Supply Service and the Correlation with the Right to a Healthy Environment

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Abstract

The study aims to observe the legal regime of contraventional liability in the field of community public utilities services, a field regulated by the Law on Community Public Utilities Services No. 51/2006, respectively to highlight: 1. the essential utility needs and general public interest of a social nature of local communities; 2. types of legal entities that provide/render public utilities services (public utility service operators and regional operators); 3. the management method of public utility services under the responsibility of local public administration authorities (direct or entrusted/delegated management). Regarding the delegation of the management of the public water supply service, the study briefly presents the definition of the contract for the delegation of the management of the public service, the legal nature of the contract, types of contract for the delegation of the management of public utilities services (service concession contract or public service procurement contract). The study continues with details regarding the public water supply service regulated by the Law on Water Supply and Sewerage Service No. 241/2006 and the contraventional liability regulated by the special law and the framework law, culminating in the analysis of a recent case, all under the aegis of the right to a healthy environment in order to respect the principle of sustainable development.

Keywords: *environmental law, litigation, public water supply service, right to a healthy environment, right to water.*

JEL Classification: K32

1. Prolegómenae

The liability for contraventions in the field of public utility community services is regulated by the Law on Public Utility Community Services No. 51/2006², normative act representing the framework law of community public utility services, as well as through other normative acts specific to each public utility service.³

Law no. 51/2006 establishes the unitary legal and institutional framework, the

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² Romania, Law no. 51/2006 on Community Public Utility Services, republished in *Official Gazette of Romania*, pt. I, no. 121 (March 5, 2013). See also Government Decision no. 1,070 of August 24, 2022, approving the Preliminary Theses of the draft Code of Community Public Utility Services, *Official Gazette of Romania*, pt. I, no. 858 (September 1, 2022). The projected code covers (a) water supply, sewerage, wastewater treatment, intelligent alternative urban-wastewater processing, and rainwater collection and discharge; (b) sanitation; (c) public lighting; and (d) public passenger transport in administrative-territorial units.

³ For a detailed analysis of contraventional liability in public utility services, see Oliviu Puie, *Serviciile de utilități publice* [Public Utility Services] (Bucharest: Universul Juridic, 2012), 540–50. Article 46 of Law no. 51/2006 was expressly repealed, effective February 1, 2014, by Law no. 187/2012 implementing Law no. 286/2009 on the Criminal Code, art. 174. The repealed text is reproduced in the following note.

objectives, powers, attributions and specific instruments necessary for the establishment, organisation, management, financing, exploitation, monitoring and control of the regulated provision/performance of community public utility services, and according to art. 2 paragraph 2 of this normative act, community public utility services are defined as the totality of activities regulated by the framework law and by special laws, which ensure the satisfaction of the essential needs of utility and general public interest of a social nature of local communities, with regard to:

- a) water supply⁴;
- b) sewage and wastewater treatment⁵;
- b¹) wastewater processing within administrative-territorial units through an alternative smart public service;⁶
- c) rainwater collection, sewage and evacuation;
- d) heat supply in a centralized system⁷;
- e) sanitation of localities⁸;
- f) public lighting⁹;
- f¹) natural gas supply;¹⁰
- g) Abrogated;¹¹
- h) local public passenger transport ¹².

These public utility services are governed by a series of principles, such as ensuring a high level of quality, safety and accessibility, equal treatment, promoting universal access and users' rights.

It is necessary to specify that according to art. 4 of the aforementioned normative act, community public utility services present a series of particularities, namely:

⁴ Former art. 46 of Law no. 51/2006 provided: "An intentional act committed against a local community by mass poisoning, causing epidemics, contaminating water sources, or seriously damaging or destroying, in whole or in part, installations, machinery, equipment, and facilities belonging to public utility systems constitutes an act of terrorism and is punishable under the legislation in force." Law no. 225/2016 subsequently introduced art. 46¹, under which the intentional theft of water from the public supply system and users' failure to comply with deadlines for individual apartment metering constitute criminal offenses when the conditions of the Criminal Code are met. See also Romania, Law no. 241/2006 on Water Supply and Sewerage Services, art. 39, *Official Gazette of Romania*, pt. I, no. 563 (June 29, 2006).

⁵ See also Romania, Water Law no. 107/1996, *Official Gazette of Romania*, pt. I, no. 244 (October 8, 1996); and Government Decision no. 188/2002 approving NTPA-002/2002, the technical rules on discharging wastewater into municipal sewerage networks and directly into treatment plants, *Official Gazette of Romania*, pt. I, no. 187 (March 20, 2002).

⁶ Letter introduced by Government Emergency Ordinance no. 172 of October 14, 2020, *Official Gazette of Romania*, pt. I, no. 951 (October 15, 2020), approved with amendments by Law no. 121 of May 5, 2021, *Official Gazette of Romania*, pt. I, no. 473 (May 6, 2021).

⁷ Romania, Law no. 325/2006 on the Public Heat Supply Service, *Official Gazette of Romania*, pt. I, no. 651 (July 27, 2006).

⁸ Romania, Law no. 101/2006 on the Sanitation Service of Localities, *Official Gazette of Romania*, pt. I, no. 393 (May 8, 2006).

⁹ Romania, Law no. 230/2006 on the Public Lighting Service, *Official Gazette of Romania*, pt. I, no. 517 (June 15, 2006).

¹⁰ Romania, Law no. 123/2012 on Electricity and Natural Gas, *Official Gazette of Romania*, pt. I, no. 485 (July 16, 2012).

¹¹ The provision concerned the administration of the public and private domain of administrative-territorial units and other similar matters.

¹² Romania, Law no. 92/2007 on Public Passenger Transport Services in Administrative-Territorial Units, *Official Gazette of Romania*, pt. I, no. 262 (April 19, 2007).

- a) they have an economic-social character;
- b) they respond to certain requirements and needs of public interest and utility;
- c) they have a technical-urban character;
- d) they have a permanent character and a continuous operating regime;
- e) the operating regime may have monopoly characteristics;
- f) they assume the existence of an adequate technical-urban infrastructure;
- g) the coverage area has local dimensions: communal, city, municipal or county;
- h) they are under the responsibility of local public administration authorities;
- i) they are organized on economic and efficiency principles in conditions that allow them to fulfill their specific public service missions and obligations;
- j) the management method is established by decisions of the deliberative authorities of the local public administration;
- k) are provided/rendered on the basis of the "beneficiary pays" principle; l) the recovery of operating and investment costs is done through prices and tariffs or taxes and, where appropriate, from budgetary allocations.

Public utility services are the responsibility of local public administration authorities or, as the case may be, of inter-community development associations with the purpose of providing public utility services.¹³, according to the mandates granted to them by decisions of the deliberative authorities of the member administrative-territorial units.

Thus, the decisions adopted by the deliberative authorities of the administrative-territorial units on the basis of which public utility services are organized and managed, also take into account the following aspects:

- the degree of urbanization,
- the economic and social importance of the localities,
- the size, the degree of development of the localities,
- the existing technical and municipal infrastructure, given that public utility systems are a component part of the technical and municipal infrastructure of the administrative-territorial units.

Since the public interest takes precedence, the law states that in the organization, operation and development of public utility services, the general interest of local communities is a priority, meaning that the most complete satisfaction of the requirements of users, the protection of their interests, the strengthening of economic and social cohesion at the level of local communities, as well as the sustainable development of the administrative-territorial units are taken into account.

Regarding the provision/performance of public utility services, we note that this aspect is carried out through the following legal entities:

1. operators, the law defining the public utility service operator as a legal entity

¹³ At the relevant time, an intercommunity development association for public utility services was defined under Law no. 215/2001 on Local Public Administration (since repealed) as an association whose object included the joint establishment, organization, regulation, financing, operation, monitoring, and management of public utility services and related investment projects. See now Government Emergency Ordinance no. 57/2019 on the Administrative Code, art. 5(qq), as amended by Law no. 246/2022, which defines a metropolitan area as an intercommunity development association based on a partnership between Bucharest, a county-seat municipality, or another municipality and the administrative-territorial units within its metropolitan territory.

under public law or private law with public, private or mixed capital, registered in Romania, in a member state of the European Union or in another state, which directly ensures the provision/performance, under the regulations in force, of a public utility service or of one or more activities in the field of public utility services (art. 2 letter g));

2. regional operators, the law establishing that the regional operator is the operator company regulated by Companies Law no. 31/1990, republished, with subsequent amendments and completions, with full share capital of some or all administrative-territorial units members of an inter-community development association having as its purpose public utility services which:

- ensures the provision/performance of the public utility service/activity within the jurisdiction of the associated administrative-territorial units, the operation of the public utility systems related to them, as well as the implementation of public investment programs of zonal or regional interest intended for the establishment, modernization and/or, as the case may be, the development of the technical-urban infrastructure related to these services/activities, carried out jointly within the association,

- is established based on the decisions adopted by the deliberative authorities of the administrative-territorial units that are members of an intercommunity development association with the purpose of public utility services, either by establishing a new company or by participating in the share capital of one of the existing operators owned by an administrative-territorial unit that is a member of the intercommunity development association in accordance with the provisions of Law no. 31/1990, republished, with subsequent amendments and supplements,

- is assimilated to the bodies providing public services provided for by Government Emergency Ordinance no. 64/2009 on the financial management of structural instruments and their use for the convergence objective, approved with amendments by Law no. 362/2009, with subsequent amendments and completions (art. 2 letter h)).¹⁴

Under such conditions, local public administration authorities are free to decide on the management method of public utility services under their responsibility, meaning that they have the possibility:

1. to directly manage public utility services based on a decision to give them management or

2. to entrust their management, namely all or only part of their own powers and responsibilities regarding the provision/performance of a public utility service or one or more activities within the scope of that public utility service, based on a management delegation contract.

Entrusting the management of a public utility service or one or more activities within the scope of that public utility service to the operator implies entrusting the actual provision/supply of the service/activity, as well as making available the goods that make up the public utility system related to the service/activity.

In French legal literature it was stated that: "Administration is no longer just in administration: administrative action has finally gone beyond the public persons themselves and beyond even the most decentralized public establishments, it now integrates private persons. Administrative activity is today carried out, in large part, by public or

¹⁴ Romania, Government Emergency Ordinance no. 64/2009 on the Financial Management of Structural Instruments and Their Use for the Convergence Objective, *Official Gazette of Romania*, pt. I, no. 413 (June 17, 2009), approved with amendments by Law no. 362/2009.

private persons, who administer industrial or commercial public services under the terms of common law. It should also be noted that these services can be operated either in a management capacity (municipal water management companies), or through public establishments of an industrial or commercial nature, or through private concession companies (urban transport or motorway concessions). The difference is considerable with private management in public services, since these are no longer isolated acts or activities that cease to cover an exorbitant nature, but global activities.”¹⁵

In corollary, the modalities by which the management of public utility services is organized and carried out are established by decisions of the deliberative authorities of the administrative-territorial units, based on an opportunity study, depending on the nature and condition of the service, the need to ensure the best price/quality ratio, the current and prospective interests of the administrative-territorial units, as well as the size and complexity of the public utility systems, these modalities being represented by

1. direct management and
2. delegated management.

2. Delegation of management of the public water supply service

As regards delegated management, in accordance with art. 2 letter e) of Law no. 51/2006, this represents the management method in which the deliberative authorities of the administrative-territorial units or, as the case may be, the inter-community development associations with the purpose of public utility services, in the name and on behalf of the member administrative-territorial units, assign to one or more operators all or only part of their own powers and responsibilities regarding the provision/performance of public utility services, on the basis of a contract, hereinafter referred to as the management delegation contract. Delegated management of public utility services involves making available to operators the public utility systems related to the delegated services, as well as their right and obligation to administer and exploit these systems.

The doctrine has shown that delegated management entrusted to private operators is a genuine publicly controlled private management, namely a mechanism through which the public authority entrusts the task of ensuring the provision of public services, on its own account, by concluding a contract, as a result of the fact that the administrative-territorial units exercise direct control and a predominant influence over the operator's decisions and strategy..¹⁶

The regulation of the contract for the delegation of the management of public utilities services can be found in art. 29 paragraph 7 of Law no. 51/2006 which provides that this is a contract concluded in written form, by which the administrative-territorial units, individually or in association, as the case may be, as the delegate, assign, through one of the methods provided by law, for a determined period, to an oper-

¹⁵ Jean Rivero and Jean Waline, *Droit administratif*, 16th ed. (Paris: Dalloz, 1996), 103–5. See also Marc Richevaux, “Un exemple de contrat de partenariat université publique–entreprises privées: Le contrat de professionnalisation,” *Revista de Drept Public*, no. 4 (2006): 22–32; and Jeanne-Marie Wailly, “Le partenariat du droit privé et du droit public français pour la protection de la santé au travail contre les atteintes à l’environnement,” *Revista de Drept Public*, no. 4 (2006): 32–39.

¹⁶ Ana Vasile, *Prestarea serviciilor publice prin agenți privați* [Provision of Public Services through Private Agents] (Bucharest: All Beck, 2003), 100.

ator, as the delegate, who acts at his own risk and responsibility, the right and obligation to provide/perform a public utilities service in full or, as the case may be, only some activities specific to it, including the right and obligation to administer and exploit the technical-utility infrastructure related to the service/activity provided/ performed, in exchange for a fee, as the case may be.

Specifically, in order to conclude management delegation contracts, local public administration authorities or, as the case may be, inter-community development associations with the purpose of public utility services will ensure the development and approval, within 6 months of taking the decision on the delegation of service management or of receiving a proposal from an interested investor, of an opportunity study to substantiate and establish the optimal solutions for the delegation of service management, as well as the documentation for the award of the management delegation contract.

Regarding the legal nature of the contract, the law¹⁷ provides *expressis verbis* that this contract for delegation of management is assimilated to administrative acts and falls under the provisions of Law no. 554/2004, with subsequent amendments and completions.

Furthermore, it is stipulated that the type of contract for delegation of management of public utilities services can be:

1. service concession contract or
2. public procurement contract for services.

Regarding this definition of the contract for delegation of management of public utilities services, in the specialized literature¹⁸ it was considered that this legal provision does not contain the possibility for public administration authorities to delegate the preparation, financing and implementation of public investment projects for the establishment, rehabilitation, modernization and development of the public utility service, analyzing by analogy the provisions of art. 23 paragraph 3 of the Law on Water Supply and Sewerage Service no. 241/2006 which provide that the deliberative authorities of the administrative-territorial units or, as the case may be, inter-community development associations with the object of activity of the water supply and sewerage service, in the name and on behalf of the member administrative-territorial units and based on the mandate entrusted by the member administrative-territorial units, may delegate:

- both the actual management of the water supply and sewage service, respectively the provision/performance of the water supply and sewage service and the administration and exploitation of the related technical and urban infrastructure, and
- the preparation, financing and implementation of public investment projects for the establishment, rehabilitation, modernization and/or development, as the case may be, of the public water supply and sewage systems related to the service.

Regarding the public water supply and sewage service, the provisions of art. 43 of the Law on Water Supply and Sewerage Service no. 241/2006 establish that those concession contracts for the water supply and sewage service, validly concluded by the local public administration authorities until the date of entry into force of this law, pro-

¹⁷ Romania, Law no. 51/2006 on Community Public Utility Services, art. 29(7).

¹⁸ Oliviu Puie, "Gestiunea delegată a serviciilor de utilități publice" [Delegated Management of Public Utility Services], *Dreptul*, no. 9 (2012): 142–67.

duce their effects according to the contractual provisions.

3. Public water supply service and contravention liability

The special regulation of community public water supply utilities is represented by the Law on Water Supply and Sewerage Service No. 241/2006 which establishes the unitary legal framework regarding the establishment, organization, management, financing, operation, monitoring and control of the regulated provision/ performance of the public water supply and sewerage service of localities. The provisions of the law apply to the public water supply and sewerage service organized at the level of communes, cities, municipalities, counties or, as the case may be, of intercommunity development associations with the object of activity of the water supply and sewerage service.

The public water supply and sewerage service includes all regulated activities regarding water supply, sewerage and wastewater treatment, as well as regarding the collection, sewerage and evacuation of rainwater, which ensures the satisfaction of the utility needs and general public interest of local communities.

In accordance with art. 7 of the aforementioned normative act, the water supply and sewage service is established, organized and operates on the basis of the following principles:

- a) security of service;
- b) fair pricing;
- c) profitability, quality and efficiency of service;
- d) solidarity of users reflected in the tariff strategy;
- e) transparency and public accountability, including consultation with employers, trade unions, users and their representative associations;
- f) continuity in terms of quantity and quality;
- g) adaptability to user requirements;
- h) equal accessibility of users to the public service, on a contractual basis;
- i) compliance with specific regulations in the field of water management, environmental protection and public health.¹⁹

In exercising their duties, local public administration authorities adopt decisions or issue provisions, as appropriate, regarding the administration or delegation of service management, as well as the entrustment of the exploitation of public or private property of the administrative-territorial units related to water supply and sewage systems.²⁰

Regarding contraventional liability, one of the forms of liability incurred as a result of the violation of Law no. 51/2006, along with the disciplinary, civil or criminal liability, as the case may be, of the guilty persons, we specify that the seat of the matter is represented by art. 47 of the normative act, which groups the acts that constitute contraventions depending on the degree of social danger and the amount of the fine, re-

¹⁹ For fresh-water scarcity and efficient water recycling, see David A. Sinclair and Matthew D. LaPlante, *Lifespan: Why We Age—and Why We Don't Have To* (New York: Atria Books, 2019); and Emanuele Fantini, "An Introduction to the Human Right to Water: Law, Politics, and Beyond," *WIREs Water* 7, no. 2 (2020): e1405, <https://doi.org/10.1002/wat2.1405>.

²⁰ Romania, Law no. 241/2006 on Water Supply and Sewerage Services, art. 12(1)(e).

spectively:

GROUP 1 FINE from 500 lei to 1,000 lei	GROUP 2 FINE from 10,000 lei to 20,000 lei	GROUP 3 FINE from 20,000 lei to 50,000 lei	GROUP 4 FINE from 30,000 lei to 50,000 lei
Acts committed by USERS	Acts committed by OPERATORS in relation to users	Acts committed by OPERATORS in relation to the competent regulatory authorities, as well as by administrative-territorial units	Acts committed by OPERATORS in relation to control authorities
(1) The following acts constitute a contravention in the field of public utility services and are punishable by a fine of 500 lei to 1,000 lei: a) refusal of users to allow the operator access to the measurement-recording devices, for the purpose of carrying out control, recording consumption or for performing maintenance and repair works; b) failure by users to comply with the deadlines for concluding the individual metering action at apartment level; c) connection to public utility systems without a supply/ takeover agreement, respectively a connection/ connection notice issued by the operator; d) use without a	Further, the following article provides: (2) The following acts constitute a contravention in the field of public utility services and are punishable by a fine of 10,000 to 20,000 lei: a) the operator's refusal to allow users access to consumption measurement and recording devices, when these are installed in the installation under its administration; b) the operators' unjustified delay in connecting/connecting new users, as well as the imposition of connection/connection solutions that are inadequate from a technical and economic point of view and do not comply with the normative acts in force and the regulations estab-	(3) The following acts constitute a contravention in the field of public utility services and are punishable by a fine of 20,000 to 50,000 lei: a) violation by operators of the provisions of technical and/or commercial regulations, including the framework regulations of public utility services established by the competent regulatory authorities, as well as failure to comply with the conditions associated with licenses; b) refusal by operators to make the requested data and/or information available to the competent regulatory authorities or the incorrect and incomplete provision of data and/or information necessary for the performance of their activity; c) provision/ performance of public utility services outside the technical and/or qualitative parameters adopted by the	(4) The following acts constitute a contravention in the field of public utility services and are punishable by a fine of 30,000 to 50,000 lei: a) refusal of operators to submit to control and to allow verifications and inspections provided for by regulations or ordered by the competent regulatory authority, as well as obstruction of the latter in the performance of its duties; b) failure to apply the measures established during control activities; c) provision/ performance of public utility services by operators without a license issued in accordance with the provisions of this law; c1) failure by operators to request the granting of a license, within 90 days from the date of approval of the decision to place in administration or, as the case may be, from the date of signing the contract for delegation of management; d) provision/ performance of public utility services without a decision to place in administration; d1) provision/ performance of public utility services without a management delegation contract;

supply/provision contract of public utility services; e) unauthorized modification by users of installations, machinery, equipment and facilities related to public utility systems. We note that the first group of offenses refers to acts committed by users and attract a fine of a modest amount, between 500 and 1,000 lei.	lished by the competent national regulatory authorities; c) the unjustified termination of the service or the refusal to re-supply users after the timely payment of outstanding debts. d) failure to comply with the provisions art. 44 alin. (2 ind.¹²¹). Analyzing this group of offenses, we find that they refer to acts committed by operators in relation to the contractual relationship with users, and attract a fine of a much higher amount, between 10,000 lei and 20,000 lei.	supply/performance contract or those established by the technical and/or commercial norms adopted by the competent regulatory authority; d) failure by operators to comply with the deadlines established for the conclusion of the metering action at the users' connections; e) failure by administrative-territorial units or by inter-community development associations aiming at public utility services to comply with the provisions of this law and other regulations specific to public utility services or failure to comply or improper compliance with the measures ordered by the competent regulatory authorities. f) failure by local public administration authorities to comply with the obligations provided for in art. 5 para (3) and (7)²².	e) charging prices and/or tariffs that are not approved or higher than those approved by local public administration authorities, inter-community development associations aiming at public utility services or by the competent regulatory authority, as the case may be, based on the methodologies established by the competent regulatory authorities; f) concluding by contracting authorities of contracts for the delegation of management of public utility services without complying with the provisions of this law and/or the legislation specific to each service; g) approving public investment objectives related to the technical and urban infrastructure of public utility services without complying with the urban planning, territorial development and environmental protection documentation adopted according to the law; h) failure by operators to comply with the rules regarding the protection of public hygiene and health of the population, the living environment of the population and the environment.
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²¹ Romania, Law no. 51/2006 on Community Public Utility Services, art. 44(2¹). The provision requires an administrative-territorial unit or competent intercommunity development association to submit, within thirty days of signature, a management-delegation contract or amendment involving the creation, modernization, rehabilitation, or development of a public utility system to the Ministry of Public Finance, where at least one condition established by ministerial order is met. The purpose is to assess the project's effect on public-finance legislation, the deficit, and public debt under Regulation (EU) no. 549/2013 of the European Parliament and of the Council of May 21, 2013 on the European system of national and regional accounts, *Official Journal of the European Union* L 174 (June 26, 2013): 1.

²² Romania, Law no. 51/2006 on Community Public Utility Services, art. 5(3), (7), referring to Government Ordinance no. 4/2010 on the establishment of the National Infrastructure for Spatial Information, annex 3, theme III.6. The provisions required local authorities to create the relevant public-utility spatial data set by December 31, 2020, and to provide the National Agency for Cadastre and Land Registration with free access to the database and later updates for publication on Romania's national spatial-information ge-

On the other hand, the special legislation, more precisely Law no. 241/2006, provides in art. 39 a series of acts distinct from those provided for in Law no. 51/2006, these being also classified according to the amount of the fine, but in descending order, there being only 2 groups of contraventions that refer to acts committed not only by operators, but also by local public administration authorities.

GROUP 1 FINE from 30,000 lei to 50,000 lei	GROUP 2 FINE from 5,000 lei to 10,000 lei
Acts committed by OPERATORS and administrative territorial units	Acts committed by MAYORS, OPERATORS and USERS
(3) The following acts constitute contraventions, other than those republished, as subsequently amended, and are punishable by a fine of 30,000 lei to 50,000 lei: a) providing/rendering water supply and sewerage services without the approval of the local public administration authorities by decision to place them in administration or decision to award the contract for the delegation of management, as the case may be; - this act is also found in art. 47 para. 4 let. d) and d') of the framework law, which provides for the same fine, but could also be included in art. 47 para. 3 let. e) of the framework law; b) the award by the local public administration authorities or, as the case may be, by the intercommunity development associations with the object of activity of the water supply and sewerage service of the contract for the delegation of the management of the water supply and sewerage service, without complying with the legal award procedures provided for in art. 30 of Law no. 51/2006, republished, with subsequent additions; - this act is not found in the framework law, being an act committed by the local public administration authorities or by the intercommunity development associations with regard to the method of awarding the delegation contract; c) the local public administration authorities giving under administration the water supply and sewage service and the related technical-urban infrastructure to an unlicensed supplier/provider, respectively the award and conclusion of the contract for the delegation of the management of the service with an unlicensed supplier/provider, with the exception of contracts awarded according to art. 22, which regulates direct award; - we note that this act is not found in the framework law either, the local public administration authority being also sanctioned for	Another clarification that needs to be highlighted is that according to the following paragraph, namely paragraph 4 of Article 39 of the special law: (4) The following acts constitute contraventions, other than those provided for in Law no. 51/2006, republished, with subsequent additions, and are sanctioned with a fine of 5,000 to 10,000 lei: a) failure by the mayor to follow up on the preparation of the service's own regulations and specifications within 90 days of the approval of the service's framework regulations and specifications; b) refusal of the operator to allow users access to consumption measurement-recording devices, when these are installed in the installation under his administration; c) refusal of users to allow the operator access to the measuring-recording devices, for the purpose of carrying out control, recording consumption or for the execution of maintenance and repair works; d) any unauthorized intervention by the user on the components of the public water supply and sewage system; e) obstruction by the user, in any way, of the operator's access to the connection chambers, for the purpose of taking samples for monitoring wastewater; f) obstruction by the user, in any way, of the operator's access to the pre-treatment installations, for the purpose of carrying out control; g) refusal of the operator to conclude, under the conditions of this law, contracts

failure to comply with the regulations in the field and giving under administration, respectively the award and conclusion of the contract for the delegation of the management with an unlicensed supplier/provider.	for the supply/performance of the service with individual users in condominium buildings.
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In a specific case, through the Report of Finding and Sanctioning of a Contravention concluded by an investigating agent empowered by the National Regulatory Authority for Community Services of Public Utilities – A.N.R.S.C. concluded that UAT C. committed the following acts:

- allowed the provision of the Water Supply Service within the UAT C. area by SC A. V. SRL without having a contract for the delegation of the management of this service;

- allowed the provision of the Water Supply Service within the UAT C. area by SC A. V. SRL, without having a water supply price approved by a decision of the local council;

- allowed the provision of the Water Supply Service within the UAT C. area by SC A. V. SRL, without holding the ANRSC license with the right to provide services within the UAT C. area.

In order to observe the illegality of the Minutes of sanctioning and ascertaining the contravention, it was deemed appropriate to reiterate some definitions of some terms indicated in Law no. 51/2006, namely: Art. 2: e) *delegation of management of a public utility service - the action by which an administrative-territorial unit assigns to one or more operators, under the terms of this law, the provision/performance of a service or an activity in the field of public utility services for which it is responsible. Delegation of management of a public utility service/activity involves the actual operation of the service/activity, the provision of the public utility system related to the delegated service/activity, as well as the right and obligation of the operator to administer and exploit the respective public utility system. Delegation of management may also be carried out by inter-community development associations with the purpose of public utility services, in the name and on behalf of the member administrative-territorial units, based on a special mandate granted by them;* f) *license - act issued by the competent regulatory authority, in the exercise of shared powers with the local public administration authorities, which recognizes the right and capacity to provide/perform a public utility service/activity under the terms of the legislation applicable to the regulated field;* g) *public utility service operator, also called operator - legal person of public law or private law with public, private or mixed capital, registered in Romania, in a Member State of the European Union or in another state, which directly ensures the provision/performance, under the terms of the regulations in force, of a public utility service or of one or more activities in the field of public utility services;* o) *setting prices and tariffs - the operation of establishing the structure and levels of initial prices and tariffs, as the case may be, for public utility services, based on the methodology for calculating prices and tariffs, developed and approved by the competent regulatory authority.*

Thus, in relation to the sanctioning of UAT C. for allowing the provision of the Water Supply Service within the UAT C. area by SC A. V. SRL without having a contract for the delegation of the management of this service, the court was informed that

the Protocols concluded between UAT C. and *SC A. V. SRL*, starting with 2012, represent genuine administrative contracts, since pursuant to art. 2 (1) c¹ of Law no. 554/2004, contracts concluded by public authorities whose object is the enhancement of public property, the execution of works of public interest, the provision of public services, public procurements are assimilated to administrative acts, within the meaning of this law; special laws may also provide for other categories of administrative contracts, and until their annulment by the administrative courts, pursuant to art.18 paragraph 4 letter a) of the same law, these bilateral acts of will are valid and produce legal effects. Furthermore, with regard to the contracts between connected users and *Societatea A. V. SRL*, the opinion was issued that these represent framework contracts for the supply/provision of the water supply service.

Regarding the sanctioning of UAT C. for allowing the provision of the Water Supply Service within the UAT C. area by *SC A. V. SRL*, without holding an ANRSC license, the court was informed that, in accordance with art. 47 para. (4) letter c), the act of providing/rendering public utility services without a license constitutes a contravention with regard to operators and in the present case, the operator is *SC A. V. SRL*, not UAT C.

In the corollary, it was mentioned that all the steps regarding the connection and distribution of water in the localities assigned to Commune C were decided more than 8 years ago, according to the protocols attached by former mayors/councilors of the ATU, and the current management did nothing but continue and complete the steps begun. However, at the time of the control, the illegalities found by the control bodies had been corrected, taking into account the collaboration with the regional operator of the water supply and sewage service, the *Societatea*, designated by the Intracommunity Development Association of the county. In such a situation, in carrying out these steps, the administrative-territorial unit only aimed to ensure citizens a normal standard of living in a modern society of the 21st century, namely the general interest of local communities, the most complete satisfaction of users' requirements, the protection of their interests, the strengthening of economic and social cohesion at the level of local communities, as well as the sustainable development of the administrative-territorial unit.

The first instance court rejects the contravention complaint as unfounded, proceeding to the exposition of legal provisions from Law no. 51/2006, and distinctly examining aspects relating to the presumption of validity of the contravention sanctioning report. Specifically, the court considers that the petitioner did not establish the concrete management method through a decision of the deliberative authority and subsequently by concluding a contract by it.

The appeal memorandum filed in the case stated that the contravention sanctioning report is not concluded for the lack of a HCL, but for the lack of a contract, although it was established that the respective protocols produced the legal effects of bilateral administrative contracts. In the same sense, the contravention sanctioning report is not drawn up for the lack of a feasibility study or for the non-existence of the specifications, but for the lack of a delegation contract between the parties.

Although the minutes also indicate the failure to fulfill the obligation to hold the ANRSC license, the court stands as the defendant's defender and mentions that the petitioner was not effectively sanctioned for not holding the license in question, alt-

though it later retained this aspect, indicating that the petitioner was sanctioned for not fulfilling its obligation to monitor, control and supervise the way in which public utility services are provided.

Moreover, the court erroneously holds that it is required to analyze whether the delegation of management was made in compliance with all the relevant rules, since the trial court is entitled to rule on the legality of the report of sanctioning a minor offence, namely whether the respondent correctly held that the petitioner did not have a contract for the delegation of management of the public water supply service. Those protocols concluded between the parties existed and produced legal effects, an aspect that cannot be contested, since the citizens benefited from the public water supply service. It could not be denied that the respective protocols represented bilateral legal acts that produced visible legal effects, which led to the concrete existence of the provision of a public service for a community.

Last but not least, the pecuniary sanction also affects the community, given that the contravention fine will be paid from the budget of the territorial administrative unit, and not from the personal budget of the local councilors who did not adopt a decision on the delegation of the public water supply service. In the same register, it was mentioned that the current situation of some public authorities and institutions that do not have a legal advisor employed, or that, although they have a legal advisor, in relation to the complexity of the norms in the field of public community services require more rigorous specialized guidance, must also be taken into account.

The Court's decision was to admit the appeal, drawing the attention of the appellant to fully comply in the future with the legal provisions in the field of public water supply services.

4. The right to a healthy environment

Regarding the right to a healthy environment, we note that Law No. 241/2006 reveals the principle of sustainable development, as it mentions the state's support through legislative, administrative and economic measures for the sustainable development of the water supply and sewage service, as well as the related water supply and sewage systems.

Furthermore, the legislator indicates that the measures adopted at the level of the competent central public administration authorities must lead to the achievement of the following strategic objectives:

- a) the development and expansion of the water supply and sewage service throughout the country, in order to improve the living conditions of local communities;
- b) the creation of a modern technical and urban infrastructure and service, capable of supporting the economic and social development of localities, attracting private investment and stimulating the sustainable development of local communities;
- c) the preservation and protection of the environment and public health.

Under the same umbrella of sustainable development, the strategies of local public administration authorities will prioritize the achievement of specific objectives, namely:

- a) user-oriented service;
- b) ensuring non-discriminatory access of all community members to water

supply and sewage services;

- c) ensuring service quality at a level corresponding to European Union norms;
- d) improving environmental quality, through rational use of natural water resources and appropriate wastewater treatment, in accordance with the provisions of environmental legislation and European Union directives;
- e) reducing water losses and energy consumption in water supply and sewage systems;
- f) reducing specific drinking water consumption per user, including by metering connections and individual consumption;
- g) promoting investment programs, with the aim of developing and modernizing water supply and sewage systems;
- h) adopting technical and technological solutions, with minimal costs and in accordance with the forecasts of urban-urban and demographic development of the community;
- i) promoting mechanisms specific to the market economy, creating a competitive environment, stimulating the participation of private capital and promoting forms of delegated management;
- j) promoting modern management methods;
- k) promoting professionalism, professional ethics and continuous professional training of personnel working in the field.

As regarding European law, through the European Parliament Resolution of 5 October 2022 on access to water as a human right²³ reaffirms the right to safe drinking water and sanitation as a human right, these rights being complementary, the European Parliament stressing that access to clean drinking water is indispensable for a healthy and dignified life and is essential for the development of human dignity. In the same sense, it is underlined that the right to water is a fundamental necessary condition for the exercise of other rights and, as such, must be based on a logic that has as its objective the public interest and the public and global common good.²⁴

5. Conclusions

De lege lata, according to the Romanian Constitution²⁵, the state recognizes the right of every person to a healthy and ecologically balanced environment, this recognition being also set out in Emergency Ordinance no. 195/2005 on environmental protection²⁶, and according to art. 29 of the Law on Water Supply and Sewerage Service no. 241/2006, the right to non-discriminatory access and use of the service is guaranteed to all users, under contractual conditions and in compliance with the provisions of the

²³ European Parliament, "Resolution of 5 October 2022 on Access to Water as a Human Right—the External Dimension," 2021/2187(INI), P9_TA(2022)0346, October 5, 2022, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0346_EN.html (accessed November 7, 2025).

²⁴ Claudiu-Gabriel Galu, "Reflecții asupra Planului Național de Redresare și Reziliență la un an de la adoptare," editorial, *Curierul Judiciar*, no. 8 (2022).

²⁵ Constitution of Romania, art. 35(1), republished in *Official Gazette of Romania*, pt. I, no. 767 (October 31, 2003).

²⁶ Romania, Government Emergency Ordinance no. 195/2005 on Environmental Protection, art. 5, *Official Gazette of Romania*, pt. I, no. 1,196 (December 30, 2005), approved with amendments by Law no. 265/2006.

service regulations and the programs for the rehabilitation, expansion and modernization of water supply and sewerage systems.

However, in Romanian environmental legislation there is no definition of the right to drinking water, which is different from the right to access and use of the existing service or the right to access extension programs in the event that they are carried out, in relation to the fact that the entire community should be recognized as having the right to drinking water, which would generate a much greater involvement of public authorities.

De lege ferenda, in relation to the new and recent European paradigms, since the right to life, health and water are interdependent, since greater social and environmental justice is required, we propose the *expressis verbis* insertion of the right to water in special legislation.

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