THE PUBLIC AUTHORITY AND THE PUBLIC INSTITUTION

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Abstract: *According to art. 2, paragraph 1, letter b) of the Law no.554 / 2004, public authority - any state body or administrative-territorial units acting in a public power regime for the fulfillment of a public legitimate interest; are considered to be public authorities within the meaning of the present law private legal entities which, according to the law, have acquired public utility status or are authorized to provide a public service under a public power regime. According to Article 2, paragraph 30 of the Law no.500 / 2002, public institutions - a generic name that includes the Parliament, the Presidential Administration, the ministries, the other specialized bodies of the public administration, other public authorities, the autonomous public institutions, as well as the subordinated institutions / their coordination, financed from the budgets stipulated in art. 1 par. (2). The notion of "public authority", as defined by art. 2 par. (1) lit. b) of the Law of administrative contentious no. 554/2004, is not similar to the "public institution", as provided by art. 2 par. (1) point 39 of the Law no. 273/2006 on local finances.*
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Public power organized on the territory of the state is exercised by it in three forms: legislative, executive and judicial. The state exercises these powers, or "functions" as some theoreticians call them, through certain organizational structures created, called "public authorities" or "organs", which exercise these functions from the state's empowerment.

The legislative (legislative drafting) function is exercised by the Parliament, the executive (executing and executing law) functions are exercised by the public administration authorities, organized at central and local level, the judicial or judicial function, as defined reputed Professor Tudor Drăganu (Drăganu, 1998) (Conflict Resolution) is exercised through the courts, organized both at central and local level. All these organizational structures represent, internally and externally, the state, as an organized public power of the whole society, being themselves endowed with state power, which each exercises within the limits of the competences with which they have been invested by the state.

What distinguishes, however, the state as a form of organization of society, from the other organizational structures that exercise one or other of the "functions" of the state, is the scope of their attributions. This sphere, in the case of organizational structures created by the state, is limited to the function (power) it exercises, while the sphere of state attributions is wider, including practically the competences of all the organizational structures created by the state. Both the state and its public authorities have several functions:

- those concerning the organization and leadership of society, its governance;
- others, to ensure the necessary living, working and living conditions for the members of society.

Transposed in legal terms, the first category of attributions is defined by the literature as "public law attributions" or "public power" and gives the state and the organizational structures created by it the right to adopt acts of authority, and the other category attributions are "private law duties" and give these structures the right and duty to administer national wealth in the interests of those who have entrusted their power.

Through the structures that the state creates at central and local level, it exercises all three of its functions.

From this point of view, a particular feature concerns the exercise of the legislative function. The Romanian state, for example, reserved the exercise of this function only for the public authorities representing it at central level, the Parliament. The development of laws, ie primary legal rules (regulating for the first time a problem or a field) is not within the competence of any public authority at county or local level. The state did not create legislative authorities at these levels.

Instead, for the exercise of the other two functions (powers), the state has created a network of public authorities, specific to each, executive power authorities (more precisely the public administration) and authorities of the judiciary - the courts.

If we only refer to the authorities of the public administration, which are also the special object of our scientific research, we can deduce the following traits that characterize them, regarding the notion of "public authority" (Vrabie, pp.52-63) and individualize them with the other state authorities:

- they are established by law or on the basis of the law and endowed with state power, which gives them the right to use the public power of the state for the accomplishment of their own tasks;
- so that their activity does not exceed the limits of the powers with which they were invested;
- the legal acts which they issue are subject to the legality control exercised through the public authorities created by the state in the sphere of another power;
- the courts;
- they are organized both at the central and local level and endowed with specialized human resources (civil servants), material and financial, which they administer in the name of the legal entity they represent;
- state, county, commune, city;
- and to which I give him an account of how he handled them;
- the activity of these public authorities exclusively concerns a general interest, which is the state or, as the case may be, the collectivity in the administrative-territorial unit in which they are organized and operating (Apostol-Tofan, 1999, pp.37-42).

The essentials of any scientific research require that the notions with which they value have a precise delimitation, excluding the use of different notions but with the same content. The same requirement is for the legislator, and we have emphasized, especially for him, whose "order" must be clearly and precisely formulated for those who are obliged to execute them.

Keeping us in the field of exercising the executive function of the state, our attempt is to outline the main landmarks that lead us to a better understanding and delimitation of the notions of "state organ" and "public authority" or, in the sphere of preoccupations our "organs of public administration" and "authorities of public administration" respectively, all the more so since both the specialized literature and the legislation, even at the constitutional level, use when the notion of "organ state", when the "public authority", although it refers to the same organizational structure of the state (Iorgovan, 1996, p.351; Vrabie, 1999).

In order to clarify this issue, it is necessary to consider the constitutional provisions that use both notions. Thus, the Romanian Parliament is "the supreme representative body of the Romanian people" and the "sole legislator of the country", according to Article 58 (1); The Legislative Council "is Parliament's specialized consultative body" under Rule 79 (1).

The Government and ministries may also establish specialized bodies under their authority, which is recognized by Article 116 (1).

Provisions that use both the notions of "authorities" and "organs" also meet in organic, ordinary laws, as well as government decisions or ordinances.

The use of the two notions is not accidental but with enough scientific rigor as follows:

- both concepts are used with regard to organizational structures within the three powers;

- the notion of "public authority" has a wider sphere than the "organ".

Thus, in Title III of the Constitution is called "public authorities", which includes provisions regarding both state organizational structures Parliament, Government, President, ministries, courts and non-state organizational structures (local councils, mayors, county councils) representing local communities who have chosen and achieved their interests; - the notion of "organ" is also used in connection with some of the "public authorities" such as the Parliament, the government and the ministries are public authorities being included in Title III of the Constitution.

Although they are not expressly defined as organs, we appreciate that they are organs because they have the competence to organize subordinate organs of competence, or such a competence can not have if they do not themselves have the quality of organ. In the field of public administration, other structures are also organized, which the Constitution no longer qualifies as "organs" but as "authorities". Such structures are set up by their choice, as is the case with local councils, county councils and mayors, or through the authority of the law, according to Article 116 (3) of the Constitution. What characterizes these authorities, which do not have the quality of organs, is that they are organized mainly on the principle of autonomy, and therefore of hierarchical unsubordination.

A similar situation is also in the sphere of the judiciary, where the courts do not subordinate to the hierarchy, which is why the Constitution defines them as "judicial authority" not as "judicial body". Concluding, we can say that the notion of "organ of public administration" is specific to the organizational structures established in the system based on hierarchical subordination, not on autonomy.

Thus, any "organ" of public administration is also an "authority" of the public administration, but not any "authority" of the public administration is also an "organ" of public administration (Iorgovan, 1996, pp.351-353). That is why we find it improper to use the notion of "public administration body" when referring to local councils, county and primary councils, or to autonomous administrative organizational structures, such as the Court of Accounts, the Supreme Council of Country Defense, the Romanian Intelligence Service and other such authorities. It is correctly used when referring to public administration authorities organized in the system and hierarchically subordinate, such as: Government, ministries and other specialized bodies organized under the subordination of the Government and the ministries. We can make the following points: - in the sphere of legislative power, although the Parliament of Romania is not organized in a system without distinct organizational structures, subordinated to central or local level, it still has the quality of an organ as it is expressly provided for in the Constitution[1];

- in the sphere of executive power, the President of Romania, which by its nature is a unipersonal institution, not organized in a system on the principle of hierarchical subordination, has the quality only of public authority, not of organ; - the other organizational structures in the sphere of executive power (Government, ministries,

[1] Article 58 (1) qualifies the Parliament using both concepts, respectively as the supreme representative body of the Romanian people and as the sole legislative authority of the country.

decentralized services, prefects) being organized in a hierarchical subordination system have both the quality of public authorities and the authority, the Government and ministries having the right to set up other organs in their subordination;

- the organizational structures in the sphere of this power as provided by art. 116 (3) of the Constitution can be established by organic law, being autonomous, therefore unorganized in the system on the principle of hierarchical subordination, have only the quality of public authorities, not organs . The same is true of the chosen structures - local councils, county councils, mayors - who have only the quality of public administration authorities.

Therefore, as in organizational terms, not every public authority has the quality of organ, so also on the level of the activities carried out by them, not all administrative activities are also executive activities.

Moreover, some of the administrative activities are being carried out, as we have shown, by the organizational structures that have neither the quality of authority nor the authority of public authority. The notion of public authority "defined by the Law on administrative contentious is not similar to that of a public institution" provided by art.2 paragraph 1 point 39 of the Local Finance Act. The Complaints Board, the High Court of Cassation and Justice, pursuant to art. 519 of the Code of Civil Procedure, with a view to rendering a preliminary ruling, which would resolve in principle the following issues of law:

- in the interpretation of art. 2 par. (1) lit. b) of the Law of administrative contentious no. 554/2004, it can be considered that the provider of the public water and sewerage service, as defined by the Water Supply and Sewerage Service Act no. 241/2006, and the Law on Community Utilities Services no. 51/2006 is a public authority? - the notion of "public authority", as defined by art. 2 par. (1) lit. b) of Law no. 554/2004, is similar to that of "public institution", as provided by Art. 2 par. (1) point 30 of the Law no. 500/2002 on public finances, and art. 2 par. (1) point 39 of the Law no. 273/2006 on local finances? ".

According to art. 2 letter a) of the Law no.544 / 2001 regarding the free access to information of public interest, by public authority or institution is meant any public authority or institution which uses or manages public financial resources, any autonomous administration, Company Law no. 31/1990, under the authority or, as the case may be, in the coordination or subordination of a central or local public authority and to which the Romanian state or, as the case may be, a territorial-administrative unit is a sole or majority shareholder, as well as any operator or operator regional, as defined in the Community Public Utilities Act no. 51/2006.

The political parties, sports federations and non-governmental public utility organizations that benefit from public money are also subject to the provisions of the present law. b) public authority - any state body or administrative-territorial units acting in a public power regime in order to satisfy a public legitimate interest; are considered to be public authorities within the meaning of the present law private legal entities which, according to the law, have acquired public utility status or are authorized to provide a public service under a public power regime[1] (Romanian Academy, 1998, p.75).

According to art. 2, paragraph 1, point 39 of the Law no. 273/2006, local public institutions - the generic name, including the communes, the cities, the municipalities, the Bucharest municipalities, the counties, the Bucharest municipality, the public institutions

[1] Authority, authorities, s.f. - body of the state authority competent to take action and issue binding provisions; representative of such a body of state power.

and services subordinated to them legal personality, irrespective of how their activity is financed[1] (Romanian Academy, 1998, p.868).

A. The first question:

"In interpreting art. 2 par. (1) lit. b) of Law no. 554/2004 it can be considered that the supplier of the public water and sewerage service, as defined by Law no. 241/2006 and Law no. 51/2006 is a public authority? " The definition of "public authority" in art. 2 par. (1) lit. b) of Law no. 554/2004 is important and necessary for the purpose of qualifying an entity as the issuer of the contested administrative act or the unjustified refusal to deal with an application. In order to have passive legal status in disputes based on the provisions of Law no. 554/2004, the defendant/defendant must be the issuer/issuer of the act, according to art. 13 - "Citation of the parties, relations", of the aforementioned law. The subject-matter of the main action is the refusal of the central tax authority to comply with the applicant's request, a joint stock company and the owner of the contract for the delegation of the Public Water Supply and Sewerage Services Management in T. County, requesting the payment in stag the debts it has to the budget, without the provision of guarantees, under art. 9 par. (12) lit. a) of the Government Emergency Ordinance no. 29/2011. These legal provisions provide for an exception to the rule of providing a guarantee, showing that public institutions, as defined by Law no. 500/2002, as well as by Law no. 273/2006, as the case may be, are not guarantees.

The litigation between the commercial company and the tax authority is based on the provisions of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code. In the substantive litigation, no consideration has been given to the request of the taxpayer commercial company from the point of view of its classification in the notion of assimilated public authority and the acts issued or concluded by a public service water and sewerage service provider because it can act both as a civil legal person, and as a person of administrative law. From this perspective, it is clear that the acts concluded by the water and sewerage service provider constituted in a joint stock company are not always administrative acts, although it can be said that it is a public authority assimilated according to art. 2 par. (1) lit. b) of Law no. 554/2004.

The fact that a company may be assimilated to a public authority is devoid of any practical consequences in the dispute which the referring court has to deal with because it does not clarify the question of the taxpayer's classification in the exception provided for in Art. 9 par. (12) lit. a) of the Government Emergency Ordinance no. 29/2011. From that perspective, it follows that the first question is inadmissible, since the notification on that point is to be dismissed as such, for failing to fulfill the condition relating to the existence of a relationship of dependence between the substance of the pending case and the clarification of the alleged question of law.

B. The second question:

"The notion of" public authority ", as defined by art. 2 par. (1) lit. b) of Law no. 554/2004, is similar to that of "public institution", as provided by Art. 2 par. (1) point 30 of the Law no. 500/2002 and art. 2 par. (1) point 39 of the Law no. 273/2006? " The provisions of art. 2 par. (1) lit. b) of Law no. 554/2004 defines "public authority" as any state body or administrative-territorial units acting under a public power regime for the satisfaction of a public interest and assimilates the notion, including those of private law who have been authorized to provide a public service. On the other hand, art. 9 par. (12) lit.

[1] Public, adj. - which belongs to a human collectivity or comes from such a collectivity; which looks at everyone, with everyone involved; - state, state; which concerns the whole people; laid the saddle for everyone.

a) of the Government Emergency Ordinance no. 29/2011 exempts the provision of a guarantee from public institutions, as defined by Law no. 500/2002 and Law no. 273/2006.

The provisions of Law no. 500/2002 are not related to the case brought to the court, defining the central public institutions, namely the Parliament, the Presidential Administration, the ministries, the other specialized bodies of the public administration, other public authorities, the autonomous public institutions, regardless of their financing. which reference to this normative act is to be removed from the content of the question. Analyzing the provisions of art. 2 par. (1) point 39 of the Law no. 273/2006, incidents of the case, it is established that they state that they are local public institutions: "the communes, the towns, the municipalities, the sectors of the Bucharest municipality, the counties, the city of Bucharest, the institutions and the public services subordinated to them, with legal personality, financing their activity".

If from the perspective of the provisions of art. 2 par. (1) lit. b) of Law no. 554/2004, the public authorities, irrespective of their rank, including the assimilated ones, are to act under a regime of public power, in order to satisfy a public interest, Law no. 273/2006 includes in the generic category of "public institutions" only certain entities, ie the administrative-territorial units, the institutions and the public services subordinated to them.

For the category of public services, Law no. 273/2006 introduced a special condition, namely, the subordination to the administrative-territorial units: communes, towns, municipalities, the Bucharest sector, the counties, the municipality of Bucharest. From the content of these legal provisions it follows that the notion of "public authority" in the Law no. 554/2004 is not similar to the "public institution" in Law no. 273/2006.

Law no. 273/2006 introduced an autonomous notion, having the support of the public services it speaks about and Law no. 554/2004, but not under any conditions, but only if they are subordinated to the administrative-territorial units. The answer to the second question by the complainant is, therefore, naturally, negatively, the notions being similar. In relation to the above, the issue that can lead to the dismissal of the case is whether the supplier of the public water and sewerage service, constituted in a joint stock company, is a public institution within the meaning of Art. 2 par. (1) point 39 of the Law no. 273/2006, in conjunction with Art. 9 par. (12) lit. a) of the Government Emergency Ordinance no. 29/2011, and if they are subordinated to the administrative-territorial units that have set up the company.

However, the analysis of the existence / non-existence of subordination can only be done by the panel which resolves the appeal on the basis of the evidence administered and is not a matter of law requiring a preliminary ruling. By Decision no. 28/2017, the HCCJ (Complete DCD / CAF) admitted, in part, the appeal filed by the High Court of Cassation and Justice - the Administrative and Tax Appeal Section, by the end of November 3, 2016, in File no. 391/36/2014, on the issue of a prior decision, and consequently states that: The notion of "public authority", as defined by art. 2 par. (1) lit. b) of the Law of administrative contentious no. 554/2004, is not similar to the "public institution", as provided by art. 2 par. (1) point 39 of the Law no. 273/2006 on local finances (The Official Gazette of Romania, 2017).

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