Termination of the mandate of mayor, deputy mayor and the local councilor

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Abstract
The termination of the mandate as mayor is established by an order issued by the Prefect, local elected officials in state law, and in case if he does not exercise, unduly warrant for 45 consecutive days.
The order issued bz the Prefect is an individual administrative document, the issuer of the document must motivate not only in right, but in fact too, detailing the reasons is required when issuing institution has a wide discretion, because it gives the document transparency, private persons can check if the document is properly grounded and at the same time, allows the court to exercise judicial review.
The absence of the individual administrative document constitutes a violation of the rule of law, the right to good administration and a breach of the constitutional obligation of administrative authorities to provide correct information to citizens on their personal issues.
Keywords: *local elected officials mandate, individual administrative document, public institution, discretion, constitutional obligation*
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By order no. 233 / 17.05.2013 issued by the prefect was found termination of the mandate of deputy mayor, Mr MP, due to incompatibility, taking into account city Secretary C. addresses no. 3554 / 03.27.2013 and no. 3554 / 04.09.2013, registered at the Prefecture - no. 2240 / 03.27.2013 and no. 2651 / 11.04.2013, requesting views on the situation of incompatibility of deputy mayor, accompanied by referral filed by a group of local councilors in the C. City Council; proposal no. 2240, 2651 / 24.04.2013, prepared by C. city secretary recording the incompatibility of deputy mayor of the city; resolution no. 2 / 26.06.2012, adopted by the Council, regarding the validation of the mandates of the concilors declared elected in the elections of 26.02.2012; resolution no. 2/26.06.2012, adopted by the Council of C. city, regarding the election of Mr. M.P. the position of deputy mayor of the town C.; art. 203, paragraph 2 of Law nr. 31/1990, regarding commercial companies, republished, with subsequent amendments; art. 87, paragrapg 1, letter d(and art. 91 of law no. 161/2003, on measures to ensure transparency in exercising public dignities, public functions and in the business environment, preventing and sanctioning corruption, with subsequent modifications and completions[1]; art. 63 paragraph 2 of Law n. 144/2007, on the establishment,

organization and functioning of the National Integrity Agency, republished, with subsequent modifications and completions[2].

Considering that have been violated legal provisions regarding incompatibility in public office, thus prejudice public image, as on date 22.06.2004 has resigned as manager of SC LPI Star Impex SRL just to comply with the provisions of Law no. 161/2003, the applicant brought judicial approach in formulating administrative action for cancellation order issued by the prefect, considered to be unlawfully issued.

On the issue of law under debate, it must be stated that according to art. 26 paragraph 1 of Law 340/2004, republished, the prefect and prefect institution for the fulfillment of its attributions, the prefect issues orders with individual or normative nature under the law.

According to art. 87 paragraph 1 d) of Law no. 161/2003 on some measures for ensuring transparency in exercising public dignities, public functions and in the business environment, preventing and sanctioning corruption[3], mayor and deputy mayor and deputy mayor of Bucharest, president and vice president of the county council is incompatible with the position of president, vice president, general manager, director, manager, administrator, board member or auditor or any other administration function or execution management companies, including banks or other credit institutions, insurance companies and the financial , the autonomous administrations of national or local, to national companies and enterprises, and public institutions.

On this line of ideas, according to the procedure established by legislators through art. 91 of the same law mentioned above the incompatibility occurs only after validation of the mandate, and in the case stipulated in art. 88 paragraph 2, after validation of the second term, ie after the appointment or employment of local elected subsequently validate the mandate, a position incompatible with the locally elected; in the case stipulated in art. 89 locally elected incompatibility to intervene after the local representative, spouse or first degree relative thereof become shareholders; local representative can give up position held before being appointed or elected to attract the incompatibility or within 15 days of the appointment or election to the post. A local representative which is incompatible with the implementation of this section is forced to resign from one of the incompatible functions in no more than 60 days after the entry

into force of this law; in case the local representative being in a state of incompatibility does not give up one of the two incompatible functions within the period stipulated in paragraph 3, the prefect shall issue an order that finds the mandate of local elected as the date when the time limit of 15 days or after case, 60 days proposal from the secretary administrative-territorial unit. Any person may notify the secretary of the administrative territorial unit; order issued by the prefect under paragraph 4 may be appealed administrative court jurisdiction; the mayors prefect Government will propose the date for election of a new mayor, and in the case of local and county councilors, proceed to validate the mandate of a deputy, according to Law no. 70/1991 *) on local elections, republished, with subsequent modifications and completions.

In the context outlined above, it has also shown that under Art. 63 paragraph 2 of Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, the provisions on incompatibilities provided in Art. 80-110 of Chapter III, Title IV, Book I, and those mentioned in art. 115-117 of Chapter VII, Title IV, Book I of the Law no. 161/2003, as further amended and supplemented, they are and remain in force at the effective date of this law .[4]

Reported to the legal incident, the prefect issued an order that finds the termination of the mandate of elected local adrept in case the person in a state of incompatibility does not give in period stipulated by art. 91 paragraph 3 of Law no. 161/2003, one of the functions that determine the incompatibility and therefore interferes with their mandate under the law, and the prefect, by order only finds a fact, determined by compliance with a mandatory legal provision.

In our opinion we appreciate, it is not unimportant to recall and circumstance that judicial interpretation of legal provisions should not be invoked only made grammatical meaning of the words used by legislators and by the way they are arranged and connected in the phrase, but teleological , searching to discover the legislators intended purpose of adopting legal rules, in order to discern, in relation to this purpose, the meaning to be attributed to the texts and to be as close to the presumed intention of the legislature, and systematic method which takes into account the legal norm place to be interpreted in the context of the law or related intregiilegislatii context, and not the least logical, in that context must be taken into account and the specific rules of interpretation

expressed in the doctrine, through formulations like that the exceptions are to be interpreted strictly – „exceptio est strictissimae interpretationis" or where the law does not distinguish, we do not need to distinguish – „ ubi lex non distinguere debemos".

Jurisprudential examination reveals that the provisions of Article 89 paragraph 2 of Law no. 161/2003, received different interpretations, opinion according to which the contested order is unlawful and likely to affect his public image as long as the date of issue does not fulfill any other functions that may be incompatible with the deputy mayor, in any case not violated Article 87 of Law no. 161/2003, ceased following the incompatibility of demand and liquidation note of the status of employee and manager of the company.

Therefore, and despite the contention of the plaintiff until the General Meeting of Shareholders of SC LPIS.I SRL has adopted Decision no. 1, the applicant acted as administrator, holding a function in this way incompatible with the position of Vice, so the claim that incompatibility has ceased its request and the note can not be intercepted and liquidation for the reason that according to art. 1371 of Law no. 31/1990, republished, administrators are appointed and dismissed by the general meeting of shareholders.

Finally the incompatibility generated as manager at ... by exceeding the deadline of 15 days stipulated in Article 91 paragraph 3 of Law no. 161/2003, in which he had to quit posivilitatea position held within the company, termination entails finding the right quality local choice in the Order issued by the Prefect, in that it has done nothing to declare a state of which is sanctioned by the power law given that the date of election as Mayor and until it was removed from the position of administrator at SC LPI Star Impex SRL, it has held two incompatible functions within the meaning of Law no. 161/2003.

Regarding the application of art. 26 paragraph 1 of Law no. Termination of law 340/2004 concerning the establishment of the status of local elected under the Order issued by the Prefect, in that he did not do anything else but to declare a state of affairs which is punishable by law given that power from her election date The Deputy Mayor and until it was revoked as manager at SC LPI Star Impex SRL, it has held two incompatible functions within the meaning of Law no. 161/2003 prefect and prefect

institution, case covered in art. 69 b paragraph 2 of Law no. 215/2001 republished of the local public administration in accordance with the mandate of the mayor shall cease as elected officials in state law, and in case if he does not exercise, unduly warrant for 45 consecutive days, all Prefect will issue an order to cease legal notice local elected representative's mandate.[5]

Regarding the need for motivation in fact and in law, to an extent and the nature sufficient to allow the unhampered then exercise judicial control of the court, the supreme court ruled[6], showing it is in the power of an authority can not disrectionara be seen in a state of law as the absolute and unlimited power, for exercise of discretion in violation of citizens' fundamental rights and freedoms provided by the Constitution or by law, constitutes abuse of power, in the context of the Romanian Constitution Article 31 paragraph 2 prevedein obligation for public authorities to provide correct information to citizens about public affairs, and matters of personal interest. It was therefore withheld by the High Court that any decision likely to cause effects on the Rights of fundamental rights and freedoms must be motivated not just in terms of competence to issue the act, but also from the perspective of the individual and society possibility to assess the legality measure, namely the observance boundaries of discretionary power and arbitrariness, because the authority does not accept the argument that must motivate the decisions equates frustrating the essence of democracy and the rule of law based on the principle of legality.

In other words, given that public authorities are obliged to provide correct information to citizens on their personal issues and given that their decisions are subject to judicial authorities in the administrative courts can not support that allowed absence explicit motivation appealed administrative act.

In the absence of explicit motivation of administrative act, the possibility to challenge in court the act in question is illusory, since the judge can not speculate on the reasons leading the administrative authority to take a certain measure and the absence of that motivation favorizeazaemiterea abusive administrative acts, since lacking motivation absence of any effective judicial control of administrative acts.

Therefore motivation is a general obligation, applicable to any administrative act, it is a condition of external legality of the act subject to an assessment in concreto, by its

nature and context of its adoption and its goal is to present in a clear and unequivocally the reasoning of the institution issuing the document. In court judgment, reasoning follows a dual purpose; meets, primarily a function of transparency in profit beneficiaries of the act, which can thus verify whether or not the act is founded;It allows also to achieve control or jurisdictional court, so eventually reconstitution of its author reasoning carried to intervene and interests which addressees may have in receiving such explanations and thus reach adoption thereof.

Of course it must be set out in the act and be done by its author.

So motivate clearly involves making known the facts and law that allow understanding and appreciation of its legality and the importance of this demanding depends greatly on the nature of the act, the legal context in which it should enable the court to exercise control on matters of fact and law that served as the basis for the exercise of discretion, so be performed in a sufficiently detailed manner, by indicating in the present case the reasons for the issuing authority concluded the necessity of finding cessation of as a primary mandate, in other words, to be effective motivation or complete, precise and circumstantial.

Moreover, jurisprudence and community to remember that motivation must be adecvataactului issued and must present a clear and unequivocal algorithm followed by the institution which adopted the contested measure so that the persons concerned be allowed to establish measures and motivation, also enable the competent Community courts to revise the act (Case C-367/1995).

As the European Court of Justice decided, scale and detail of motivation depend on the nature of the measure adopted and the requirements that must be fulfilled motivation depend on the circumstances of each case, insufficient, or wrong, is considered to be equivalent to a lack of act's motivation. Moreover, insufficient motivation or failure to state reasons shall entail the nullity or invalidity of Community acts (Case C-41/1969). A breakdown of the reasons is required when issuing institution has a wide discretion, for the motivation of the act gives transparency, individuals can check if the document is properly grounded and at the same time permit the exercise of judicial review by the Court (Case C -509 / 1993).

Or, in question, given that the contested order was founded in law on Article 69 paragraph 2 letter b) of Law no. 215/2001, republished, local government, which was already made in paragraph of this speech injunction restraining the state in fact, is the author of the administrative act attacked indenyl namely owed to motivate him and in fact, impeios context in which the Court emphasized the reasoning of an administrative act has two essential sides, indicating that the applicable legal texts given situation and, secondly, an indication of the factual circumstances upon which to remember the applicability of those legal texts.

From this perspective, is fully justified assertion of the applicant in its action under to be admitted as a general rule not only, but especially individual administrative acts that are detrimental to a person must be motivated, given that the motivation constitute a guarantee against arbitrary public administration and only this makes possible the effective exercise of rights of defense, in accordance with the jurisprudence of the Supreme same court sentence to be recalled in the front:

It thus held that the obligation namely the decision of issuing authority to motivate administrative act constitutes a guarantee against arbitrariness of public administration and is needed especially in the case of acts that suppress individual rights or legal situations, such as in this case where do order challenged referring to alleged irregularities, stated generic situation contrary to Article 31 paragraph 2 of the Constitution in that it does not provide correct information on the issue analyzed pesonal interest (High Court of Cassation and Justice, Decision no. 2732/2008); from the perspective of the court, motivation is crucial to make distinction between administrative act adopted in the discretion conferred by the law adopted by the public authority and the abuse of power, as that term is defined in Article 2 1 n) of Law no. 554/2004 (High Court of Cassation and Justice, Decision no. 1153/2008); motivating administrative act is intended to avoid acquisition by an administrative authority discretionary powers and to ensure the exercise by the legal entity to whom it addresses a defense and the right to a fair trial, regulated by Article 6 of the European Convention Human Rights, whose disregard attract condition anulabilitatea act[7].(High Court of Cassation and Justice, Decision no. 1384/2008).

In continuation of already shown with regard to ensuring the right to a fair trial of the administrative act to whom it is addressed, it is not unimportant to remind the court that the Court EDO never ceases to emphasize the fundamental principle of the rule of law since the decision stated "Sunday Times" of April 26, 1979, in a context where it is known as a recipient of guarantees on which sets forth in Article 6 of the Convention, recalled in the previous paragraph is "any person "(EDO Commission decision of 17 December 1968, the complaint no. 3798/68).

In conclusion, we believe that the absence of motivation challenged administrative act constitutes a violation of the rule of law, the right to good administration and a breach of the constitutional obligation of administrative authorities to provide correct information to citizens on their personal issues.

In particular, the objections raised by the applicant can not be considered as justified as long as the determination is missing consecutive 45-day period referred to in Article 69 paragraph 2 letter b) of Law no. 215/2001 and the applicant is claiming that the mayor and has served unduly and are not indicated in any case the factual circumstances upon which to remember the applicability of the aforementioned legal text.

It is superfluous in this regard, the support of the preamble to the order prefect Arad attacked as they were taken into account "common nationality statements" against the high degree of generality of this expression and the absence inidicarii content of these statements, and their authors , as evidenced identity in terms of reason and "common complaints from local councilors .....", as long as they do not reveal what specific elements that can be circumscribed objective criteria in respect of which it may determine the exercise or non-exercise ultimately function and which can substantiate the termination order finding the mayor mandate.

In the context outlined above, it is obvious that subsequent motivations Arad County Prefecture issuing authority, brought directly before the court, as in the present case, as has been already stated in paragraphs 3 and 4 of the sentencing considerations front, so as those highlighted by the defendant stamps instead welcome and submitted written observations to the case when this time has prevailed for reasons of fact and law which are not in the disputed order, in any case can not be accepted by

the court administrative in the sense envisaged by the defendant maintaining that the administrative act; therefore they are not likely to drain the existing irregularities whatsoever in terms of the order in question and which can be removed only by depriving the legal effects of the act issued regarding the applicant.

Not least and according to Article 1 paragraph 1 of Law no. 554/2004, any person who considers himself injured in a right or a legitimate interest by a public authority through an administrative act or failure of an application within the time period may address contentious court administrative competent for the recognition of the claimed right or legitimate interest and repaying the damage was caused, fully applicable legal text in which it concerns the applicant and thus, the court will itself criticisms that the applicant has filed against the objections raised concerning its failure to state reasons, in which case it is absolutely necessary that the plaintiff was injured cocluzia in its legitimate rights and interests by issuing the authority to order the defendant in question within the meaning of Article 2 paragraph 1 a) Law no. 554/2004 on administrative procedure.

A contrary conclusion would be liable to defeat and Article 41 of the Charter of Fundamental Rights that enshrine the "right to good administration" (under paragraphs 1 and 2 of this article: "Everyone has the right to benefit, in terms his or her affairs, by impartially, fairly within a reasonable time by the institutions, bodies, offices and agencies of the Union and this right includes: (a) the right of every person to be heard before any individual measure which would may be prejudiced; (b) the right of every person to have access to the file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions ") which obviously it may not be accepted.

Moreover, it would disregard the principle of "equality of arms" which requires that "each party to such a process to enjoy a reasonable opportunity to present his case to the court under conditions that do not significantly disadvantage vis-a à-vis the opposing party "(EDO Court, Dombo Beheer BV v. the Netherlands, judgment of 27 October 1993, Series a no. 274, p.19; EDO Commission decision of 6 July 1968, the complaint no. 2804/44 of Annuaire the Convention, Vol. XI, p.381; EDO Court,

Georgiadis v. Greece, judgment of 29 May 1997), and of the presumption of innocence because the obligation to observe the presumption of innocence lies not only judge but to all state authorities (EDO Court, Allenet of Ribemont, judgment of 10 February 1995, Series a no. 308, p.16; EDO Court, Daktaras v. Lithuania, judgment of 10 October 2000).

Finally, our opinion concerning the nullity / invalidity of the administrative act unreasonably be found in the jurisprudence of the Court of Appeal Timisoara, the Department of administrative and tax[8].

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