

# EXECUTIVE AUTHORITY REPRESENTATION VS DELIBERATIVE AUTHORITY REPRESENTATION WITHIN A TERRITORIAL-ADMINISTRATIVE UNIT IN THE COURTS

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## Abstract

Correlative interpretation of Laws no. 215/2001, no. 393/2004, no. 161/2003 and O.G. no. 35/2002 shows that the legislature has delimited powers and duties of the deliberative authority those of the executive authority and incompatibilities between the two authorities, so that resources and assets of territorial-administrative unit and also public affairs at local level, cannot be administered by a single authority discretionary.

Keywords: *court, representation, authority, council, mayor, judicial, administrative.*

## **1. Permanent device regulation of the City Council and its legal representation.**

The permanent local council is governed by Chapter VI, art. 791 - art. 794 of Regulation Framework organization and operation for local councils approved by OG no. 35/2002 - amended by Law no. 673/2002.

In analyzing permanent unit regulation of the City Council, its representativeness in justice and ease of interpretation of the applicable legal provision, we report at a case study, namely the General Council of Bucharest -CGMB- considering the provisions of art. 79<sup>1</sup> and 79<sup>4</sup> of Regulation Framework organization and operation for local councils (CGMB assimilated local council - according to art. 82 of Law no. 215/2001), showing that:

– General Council may create two posts with permanent activity, which will be framed by a decision, for persons with higher legal / administrative education [art. 79<sup>1</sup> para. (1)];

– jobs that will be assigned two persons are established by the General Council decision; selection is based on competition / examination organized under the law; competition commission is set by the General Council [Art. 791 para. (2)];

– the two jobs are not included in the maximum number of positions resulting from the application GO no. 80/2001, approved with amendments by Law no. 247/2002 [art. 794 para. (1)];

– peoples employed in permanent CGMB system does not apply the provisions of Law no. 188/1999 on the status of civil servants, and will operate on the basis of employment contract [Art. 794 para. (2)];

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So, according to law, persons engaged in permanent unit of the General Council have civil servant status and are not part of the Mayor's specialized apparatus.

## 2. Representation in court for the City Council

City council does not have civil legal capacity whereas it has not heritage, it has not subject to tax, it has no tax ID and accounts to the treasury / banking.

In his own name, the City Council has limited legal capacity, being able to stand in court only as a defendant in cases of administrative law, it is called upon to answer for the legality of the decisions.

In the case study analysis, representation of CGMB before court ensure strict and limited conditions laid down in art. 79<sup>3</sup> of Framework Regulation approved with O.G. no. 35/2002, in conjunction with Art. I of OUG no. 26/2012 approved by Law No. 16/2013.

According to para. (1) defense of CGMB in court can be made, if appropriate, by:

- persons employed in permanent unit of the General Council - who have civil servant status and are not part of the Mayor's specialized apparatus;
- a defender (law firms), the fees being paid from the local budget - the imperative conditions provided for in Art. I of OUG no. 26/2012;

When CGMB listed as a defendant in a case of administrative law, it is necessary that the deliberative body to exercise procedural rights in the same manner in which they operate – viz. conditions covered by Chapter II, Section 3 of Law no. 215/2001.

This means that for each dispute, it is appropriate that the meeting convened and held in accordance with art. 39-44 of Law no. 215/2001, the General Council to discuss and vote on a decision to establish the person empowered to represent CGMB in that dispute (employed person or a defender).

The conclusion is as if the work of the General Council are reflected in judgments (which made public), and the exercise of procedural rights in disputes over decisions CGMB should materialize by decisions, so that voters may know the legality of work performed general councilors elected to represent them.

Under the judgment of the General Council, the Chairman of the General Council, signed power of representation [art. 793. (2)].

The need for the General Council to decide on representation in court - for each issue is confirmed by Art. I of OUG no. 26/2012 approved by Law No. 16/2013, text by law, interpreted in any case - in correlation with art. 79<sup>3</sup>, states that:

→ CGMB cannot acquire legal advisory services, assistance and / or representation [para. (1)].

→ Only in duly justified cases, if the activities of legal advice, assistance and / or representation may not be provided by specialized personnel engaged in machine Permanent General Council, can be procured these services, under the law, only by the decision General Council adopted for each case [par. (2)].

To implement the provisions of art. 79<sup>1</sup>-79<sup>4</sup> of Framework Regulation of organization and functioning of local councils, the General Council adopted four resolutions (general):

Decision no. 58 / 06.03.2003 - establishing permanent unit of the General Council, which approved:

- Creation of two posts of Legal Adviser to the Permanent CGMB device (article 1);
- The composition of the Competition Commission to fill the two posts of permanent legal adviser of the General Council of the appliance (article 2);

Decision no. 183 / 13.09.2007 - Insurance consultancy services, legal assistance and legal representation of the interests of the General Council, which approved:

- Permanent General Council reorganize established by HCGMB no.58 / 2003 (article 1) structure to be formed from two positions Legal Adviser (Article 2);
- The composition of competitions for posts in the General Council permanent device, according to the annex to the judgment (Article 3);
- The acquisition by "Purchasing Director, Concession Contract," legal advisory services, legal assistance and representation in court CGMB interests, according to GEO Annex 2B no. 34/2006;

Decision no. 61 / 15.03.2011 - amending art. 5 of HCGMB no. 183/2007.

By Decision no. 61/2011, the General Council approved the amendment of art. 5 of HCGMB no. 183/2007, approving the purchase of legal services (consulting, legal assistance and representation in court CGMB) from the law firms of Annex judgment.

Decision no. 171 / 05.31.2013 - approving the purchase by the General Council of Legal Services of advice, assistance and / or legal representation.

HCGMB no. 171/2013 violates the provisions of art. I of OUG no. 26/2012 Approved by Law No. 16/2013. In fact, for this reason, that judgment was not effectively implemented so far.

### **3. Regulation of Mayor's specialized apparatus.**

Specialized structure as governed by the provisions of Article 61 of Law no. 215/2001, is led by The Mayor and reports directly to him, which is divided into functional compartments - staffed by civil servants and contract staff.

Hall is a functional structure, governed by art. 77 of Law no. 215/2001.

Currently, the case study is applicable Decision no. 305 / 18.12.2013 approved by the General Council, among others, the positions of the Mayor's specialized structure and Rules of organization and functioning of the Bucharest City Hall.

Appendix 1 to HCGMB nr.305 / 2013 established the positions of Mayor's specialized structure.

Legal Department has the structure specified in paragraph 12, with a total of 85 stations - all public functions (three managerial + 82) - and from position 722 to 806 inclusive.

Annex 2 to HCGMB nr. 305 / 2013 sets the Rules of organization and functioning of the Bucharest City Hall. In this case, interest provisions of art. 11, art. 13, art. 21, art. 113 and art. 116.

At Chapter I - General Provisions of the Rules of organization and functioning of PMB approved by Annex 2 to HCGMB no. 305/2013 stipulates that:

→ Mayor's specialized structure is set into functional compartments, consisting of civil servants and contract staff (art. 11).

→ People who perform secretarial, administrative, protocol, service, housekeeping and maintenance-repairs, are employed with individual labor contract, not a public servant and apply labor law (art. 13).

Correlative interpretation of art. 11 and 13 shows that those in the specialist structure of Mayor occupying functions other than those referred to in art 13, have the status of civil servants.

#### **4. Persons working in the Legal Department have civil servant status.**

To the Chapter III, art. 21 of the Rules of organization and functioning of PMB provided the organizational structure of the Mayor's specialized structure, comprising 19 departments, including the Legal Department - referred to position 12.

In relation to art. 11 in conjunction with art. 13, management and legal advisers working in the Legal Department have, without exception, the status of civil servants.

Legal Department and Civil Service and Administrative Contentious Courts of the PMB have no powers and duties to represent the legal aspect of CGMB in court, justified by the provisions of Cap. IV, art. 113 of the Rules of organization and functioning of PMB provided the activity of the Legal Department.

Under the provisions of item 1, the Legal Department "represents the interests of the Mayor of Bucharest and the courts and judicial."

Legal Department has no powers and responsibilities to represent the General Council before the courts. Civil and Administrative Courts Service is part of the Legal Department, with duties stipulated in art. 116 of the Rules of organization and functioning of PMB, including municipal representation (item. 1 and 2), certainly not CGMB legal representation.

Moreover, in point 13 it stipulates that the Civil Service and Administrative Courts "shall, communicate through the Chairman, representatives CGMB information on the existence of disputes in court where General Council party and General Council advisers if they are called names own before the courts. "

The Mayor has no "duties in connection with defending the interests of the General Council" - as erroneously and unlawful stated in the Preamble of art. 1 of provision no. 1808/2008.

According to art. 62 para. (1) of Law no. 215/2001, "The Mayor represent the administrative-territorial unit in relations with other public authorities, individuals or Romanian or foreign legal and judicial."

With no powers of representation and / or defend the interests of the General Council, the Mayor cannot empower people in his specialist structure to act as the law gave them no executive authority.

In terms of legal representation by the General Council Executive Director in the Legal Department, provision nr.1808 / 2008 clearly violates the provisions of art. 79<sup>1</sup>-79<sup>4</sup> of Framework Regulation of organization and functioning of local councils and the provisions of Annex. 1 and Annex. 2 HCGMB no. 305/2013 - regulations

shows that Executive Director of Legal cannot be part of the permanent unit of the General Council and General Council cannot legally be sued. The mandate given by order no. 1808/2008 refers to "processes in which the municipality is a party" and "representing and supporting the interests of the municipality in court" [Article 1 c) and e)], not in the interests of the General Council. Order no. 1808/2008 is obsolete being undermined by provisions of Appendices. 1 and 2 HCGMB no. 305 / 12.18.2013 - regulatory legal act with superior power which, inter alia, approved the positions of Mayor's specialized structure and Rules of organization and functioning of PMB.

Or, Rules of organization and functioning of PMB provides strict and limiting the Legal Department "represents the interests of the Mayor of Bucharest and the courts and judicial" have no powers and duties to represent the General Council before the courts.

### **In conclusion,**

Analysis of procedural aspects evident in conjunction with the legal provisions regarding the representation of executive authority and deliberative authority within a Administrative unit area may prevent invoking the exception of the lack of representative of the Local Council / CGMB whose direct consequence would void the acts drawn and signed in the name and on behalf of Local Council (defendant) in administrative case before court.

Legislator message who delimited the powers and duties of the deliberative authority those of executive authority and incompatibilities between the two authorities and public affairs at local level is that they cannot be given discretion by a single authority, in that it includes institution of representation in cases before the courts.

### **References**

1. Law no. 188/1999 on the status of civil servants;
2. Law no. 215/2001 of the local public administration law;
3. Law no. 393/2004 on the status of local elected officials;
4. Law no. 161/2003 on certain measures for ensuring transparency in exercising public dignities, public functions and in the business environment, preventing and sanctioning corruption;
5. Law no. 673/2002 approving Government Ordinance no. 35/2002 approving the Regulation for organizing and functioning of local councils;
6. O.G. no. 35 / 2002-2002 approving the Framework Regulation for organizing and functioning of local councils.