

The Legal Regulation of the Substitution of the Budgetary Credit Release Authority in Exceptional Conditions

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Abstract

The purpose of our endeavour is to bring into the light of debates the situation that might exceptionally occur at the level of administrative territorial authority (ATU – villages, cities, municipalities and counties) when it is affected the budgetary activity because the mayor/chairman of CC (County Council) is unable to exert its mandate, the LC (Local County)/CC is dissolved and the secretary position of the ATU is vacant. The discussion is focused on the legislative solution adopted by the Government through the Emergency Order, establishing the possibility according to which the prefect can name a person – by detachment – as secretary of the LC/CC. At the same time, it was also identified the solution for preventing a budgetary obstruction caused by the existence of the deliberative authority dissolution state which consists in the enactment of application in the current financial year of the ultimate budget, updated with the allocated amounts in the current year coming from the state budget or other budgets, respecting the monthly expenditures limit of 1/12 of this total budget.

Keywords: impossibility of mandate exercise, deliberative authority dissolution, budgetary release, secretary detachment LC/CC.

1. Introduction

The system of public institutions, which includes all entities belonging to the central and local Governmental administration, is designed to provide public goods in order to satisfy collective needs. Such entities/institutions have social welfare as objective and not recording of profits. They are mostly funded from the public budget and established on a legal basis in this respect. Their management is provided by a credit release authority, a physical person, respectively, that has managerial tasks and exerts its attributions concerning the budgetary procedure.

The existing body of literature in this field is focused mainly on analysing the problem of credit release authority (primary, secondary and tertiary – OP, OS, OT) and also on budgetary management. There are multiple papers specialised in terms of financial law that might be considered as enlightening in this respect. Other papers address issues of interference with financial economic topics, but all have a common denominator, the challenge of efficiency/effectiveness which must be manifested. Typically, the main credit release authorities, the managers of the public institutions with legal personality to whom are allocated these funds from financial public resources may delegate such position to their legal substitutes or other authorised persons in this respect.

Using the delegation procedure, the main credit authorities will provide the limits and terms of the delegation process. Even so, our purpose in the present paper is to bring into light some particular atypical cases, when the main budgetary credit release authority (an official) from the local level can be replaced in order to prevent budgetary management problems but also administrative obstructions that are able to affect the major interests of the local community in the case of quitting the mandate prematurely and that of deliberative local authority dissolution.

2. The legal solution for providing the minimal functioning of the local authority in the absence of the elected / appointed representatives

Within the local budgetary system and the one related to the finance of the administrative territorial units (ATU – villages, towns, municipalities and counties), the credit release authority has the central role in terms of collecting and spending all funds of which he is entitled. His responsibilities established by the Law of public finances no. 273/2006 (LPLF) include many aspects, from the elaboration of its own budget draft, the manner of obtaining revenues or the path of expenditures, ensuring the integrity of goods, to bookkeeping or making public procurements, etc.

When the situation of the local budgets is addressed, their main release authorities are elected officials – mayors and chairs of County Councils (CC). Without their consent (or better highlighted, without a delegation act provided by them), their attributions cannot be diminished. In this respect, things are as strict as possible if we also take into consideration the specifications of the Law of the Local Public Administration no. 215/2001 (LLPA) that brings under regulations the regime of local autonomy but also the organization and functioning of those authorities.

Analyzing LLPA provisions, we can detach the role of authorizing officers of the local budgets (OP, OS, OT), which consists mainly of the following:

- OP distributes budget credits through local budgets for its own budget and budgets of subordinated public institutions whose managers are secondary or tertiary of loan, as appropriate, and shall approve the expenditures from their own budgets lawfully;

- OS distributes the approved loan budget (...), for its own budget and the budgets of public institutions whose managers are tertiary credit, and shall approve the expenditures from their own budgets lawfully;

- OT uses the budgetary credits they were allocated only for the duties of the drive units, according to the approved budgets and under the conditions set by the law.

The same people have a special role in the referral of the situation of financial crisis of the administrative-territorial units, which is made by the OP, head of the financial-accounting within the own specialty of ATU, the OS and OT in the public services subordinated to local council etc., and territorial structures of the Court of Auditors. The intimation is made at the general direction of public finances county or Bucharest and OP-ATU which is in a situation of financial crisis.

The situation is radically changing for the particular case of prematurely quitting of the warrants in case of the OP from the scheme of local budgetary structures. Some major complications may occur when the secretary position of the ATU is vacant for any reasons. In such circumstances, the current functioning of the public authorities from the local level is becoming impossible. Administrative obstructions are likely to majorly affect the interests of the local community. Let's just think of jeopardizing the course of some projects already implemented or of staff salary payments and its subordinate institutions, such as: education, health, public administration, order/public security (managed by secondary/tertiary release authorities), etc. What it may function well at the local level in the absence of the attribution exertion of the mayor, Local Council (LC) or of the secretary? The administrative practice has already faced with the situation of suspending the mayor's mandate as a consequence of the prefect's order, in the context in which LC was dissolved by a decree pronounced by a court and the secretary public position was temporary occupied by detachment.

The cessation of that detachment was not able to generate nothing more, but the general obstruction. Inclusively the local budget on the current year could not be approved by the deliberative authorities, fact that says everything. Until recently the legal framework, was completely helpless when addressing the issue of deliberative authority dissolution and the impossibility of simultaneously exertion of attributions of the executive authority when the secretary position from the ATU is vacant. However, in order to ensure the functioning at a minimal level of the local authority in the absence of the elected officials and the appointed ones, respectively the solution for continuing the management

activity of the current specific issues was illustrated by the completion of LLPA and the amendment of the Art. 39, par. (72) from LPLF. Thus, through the Government Emergency Order (GEO) no. 14/2015 is established the possibility according to which, in exceptional circumstances, when the mayor/chair of CC is unable to exert his mandate, LC/CC is dissolved and the secretary position from the ATU is vacant, the prefect can nominate a person – by detachment – as secretary of LC/CC, on the proposal of the National Agency of Civil Servants (NACS). Obviously, the period of such substitution until the full occupation of the secretary position is in accordance with the existing regulations on public service and civil servants. Under the same legislation, the detached person should meet the requirements of speciality studies and experience in this particular field.

The prefect has also the assignment to require promptly to the NACS to organize the competition for occupying the secretary position. Given the purpose of issuing the aforementioned EO, it was implicitly established the regulation of the fact that, by derogation from the 21 par. (2) of the LPLF, the detached secretary of the ATU should also carry out the function of main credit release authority for current activities. Our observations cannot end at this point without also highlighting a major change applied to the norm, designed to operate when release authorities, even though they have followed the law (they were not suspended, their mandate was not prematurely interrupted, etc.), they don't have an approved legal local budget. This is the reason why, in these circumstances, the mention that in the current financial year can be applied "the ultimate budget, updated with the allocated amounts in the current year coming from the state budget or other budgets, respecting the monthly expenditures limit of 1/12 of this total budget" appears as liberator. Consequently, we have identified a way of settling the problem even for a budgetary obstruction caused by the state of deliberative authority dissolution – by a mayor or chair of de CC – situation which our administrative practice has already faced with.

3. Conclusions

Our highlights from the present paper have taken into consideration only a few adjustments related to the recent change (during 2015) of the legal norms focused on ensuring the minimal functioning of the local authority in the absence of the elected officials and the appointed ones, respectively, without which the statute of main credit release authority could not have been assigned to any person from the local level. It is true that the situation of deliberative authority dissolution and the impossibility of simultaneously exertion of attributions of the executive authority when the secretary position from the ATU is vacant rarely occur. But, given the necessity to unlock the funds oriented towards very important activities for the community – health institutions, schools, aid payments/social allocations, activities that cannot be delayed, we consider that the legislative adopted solution, that we have also briefly pointed out is extremely significant in terms of generated advantages.

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