THE LEGAL NATURE OF THE ACTS ISSUED BY THE COUNTY ASSOCIATIONS OF HUNTERS AND SPORT FISHERMEN

Ximena MOLDOVAN[*]

ABSTRACT: *The categories of issuers of administrative acts include private entities that may issue administrative acts by delegation. However, this does not automatically entail the administrative legal nature of the acts issued by them, lhe legal acts issued by these entities shall be immune to be analyzed by the first specific features of the administrative act, as described in article 2 letter c of Law no. 554/2004.*

KEYWORDS*: private entities; public authority; administrative act by delegation.*
JEL Code: *K23*

In carrying out the executive function of the state, the significant majority of the doctrine appreciated in the sense that the specific instruments for carrying out this function by the institutions involved are legal acts, general and impersonal or individual, legal material facts and technical material operations, devoid of legal effects (T.Drăganu, 1970).

From these specific instruments, legal acts are drawn up, in terms of the frequency of their use in relation to other instruments, and not least because of the complexity of the legal aspects that raise them.

At the same time, from the legal acts used by the public authorities involved in the executive activity, the administrative acts are issued.

It should also be pointed out that in an attempt to determine the content and limits of the term "public authorities", three large categories of authorities that can issue administrative acts are detached (L.Chiriac, 2011).

The first category includes the administrative authorities included in the public, local, central and specialized administration.

The second category is that of the authorities that are part of the wider sphere of public authorities, often those authorities belonging to the other powers of the state.

[*] Lecturer, PhD. University of Medicine, Pharmacy, Sciences and Technologies George Emil Palade, Tg. Mures, Lawyer, Mureș Bar, ROMANIA.

The third category includes atypical issuers of administrative acts, namely the situation of entities issuing administrative acts by delegation.

In the situation of these issuers, we are dealing with situations expressly provided in normative acts, whereby some attributions belonging to the executive power are entrusted to private, lucrative or non-profit legal entities, which are not part of the narrower or wider scope of the notion of "public authority".

In this context of delegation, these private entities acquire the power to issue unilateral acts, which are mandatory for both public authorities and private individuals.

The private nature of these legal entities issuing administrative acts by delegation makes the case law regarding the documents issued by them non-unitary, and the manner of application of the provisions of article 2 letter.c of the Law no.554/2004 of the administrative contentious, exclusive jurisdiction of the courts, to become inconsistent.

Such an example of non-unitary jurisprudence regarding the interpretation of the legal nature of such acts is that of the County Associations of Hunting and Sport Fishermen.

As regards the legal nature of these associations, in principle, in Article 1 (1) of their Statute, it is noted that they are legal entities governed by private law, apolitical, non-profit, with their own, distinct and indivisible property.

As such, the provisions of the Government Ordinance no. 26/2000, which provide in Article 1 paragraph 2, apply to them without a single possibility, that "associations and foundations constituted according to this Ordinance are legal entities of private law without patrimonial purpose".

What should be pointed out, is the fact that these associations, even if they are private law entities, are delegated to them a part of the public authority necessary for the management of the public domain of the Statute, namely the hunting fund, and the fisheries fund.

Thus, the main objectives of the County Associations of Sport Hunters and Sport Fishermen are primarily the conservation of biodiversity and the protection of fauna of hunting and fish funds, as well as of the natural environments of its development, through hunting and/or recreational-sport fishing, practiced in a sustainable manner.

They shall also manage the contracted hunting and sport fishing funds fairly and coherently.

Moreover, they manage and issue, under the law and the statute, hunting permits, recreational-sport fishing permits, membership cards and hunting authorizations.

From this perspective, the Law no. 407/2006 on hunting and protection of hunting grounds[1] defines in Article 1 (1) (11k) *the right to hunt – as the right of the state to manage hunting fauna*, in article 1 (1) (3c), defines *attribution in management - as the action by which the administrator (the state n.n.) gives the right and obligation to manage the fauna of hunting interest*, under the law, and in article 1 (1) (17q), defines the *established manager* – as the manager who meets cumulatively the following conditions: has been a manager in the management contract prior to the organization of the direct award for that hunting fund, the management contract has not ceased on its own fault, expresses its

[1] Published in the Official Gazette of Romania no.944 of 22.11.2006.

intention to continue to manage the hunting fauna of that hunting fund and does not register any debts on the payment of the management tariff at the time of the request, and accepts the management tariff.

Thus, the County Associations of Sport Hunters and Sport Fishermen were introduced by Law no. 407/2006 in the category of "established managers", considering the fact that they existed and managed the hunting and fishing fund since the communist period, at that time, they were operating under the Law no.26/1976 on the economy of hunting and hunting[2].

Pursuant to Article 10 of 1 Law no.26/1976 *"The General Association of Hunters and Sport Fishermen of the Socialist Republic of Romania, a public organization with legal personality and its own status, carries out its activity of hunting and sport fishing under the direct direction, guidance and control of the Ministry of Forestry economy and construction materials"* and according to section 3 of the same article*, "for the purpose of practicing recreational-sport hunting,* ***the county forestry inspectorates give into use for periods of at least ten years, to the units of the General Association of Hunters and Sport Fishermen, hunting funds, through contracts****, which will specify the quantitative and value tasks - by stages - regarding the development of the hunting economy on these funds."*

Returning to the provisions of Law no.407/2006, on the basis of the "classification" of the County Associations of Hunters and Sport Fishermen as "established managers", in conjunction with the provisions of Article 8 of the same law, article that provides in the sense that *"the attribution of the right to manage the hunting fauna is carried out by the administrator on hunting funds, through the following modalities and in the following order:*

a) directly, in the case of established administrators;

b) directly, in the case of administrators proposed by associations of land owners;

c) by public auction, for funds not allocated under the conditions stipulated in letter a);",

the County Associations of Hunting and Sport Fishermen are "regulated" as the main direct beneficiaries of the contracts for the administration of the hunting fund of Romania.

Let us not forget that according to Article 2 of the Law no.407/2006 on hunting and protection of hunting fund, *fauna of hunting interest, is a renewable natural resource,* ***a*** *public good of national and international interest,* and *the fisheries fund,* according to GEO no. 23/2008 on fisheries and aquaculture, *belongs to the public domain, of national or local interest.*

At the same time, pursuant to Article 1 (2) (b) and (4), Article 4 (1) and (3) of GEO no. 23/2008 on fisheries and aquaculture, pursuant to Article 2(1)(c) of GD 545/2010 on the organization and functioning of the national Agency for Fisheries and aquaculture, respectively, pursuant to Article 1, second sentence, Article 11 and Article 13 of the order of the Ministry of Agriculture and Rural Development no. 60/2017 on access to living aquatic resources in the public domain of the State for the purpose of practicing

[2] Published in the Official Gazette of Romania no. 99 of 12.11.1976.

recreational fishing in natural fish habitats, with the exception of the Biosphere Reserve "Danube Delta", between the National Agency for Fisheries and Aquaculture and the County Associations of Hunters and Sport Fishermen can conclude contracts for the management of fish funds.

Therefore, under the above legal provisions, the right of administration of the State over the hunting and fishing fund, both of which are part of the public domain of national or local interest, is transmitted to the County Associations of Hunting and Sport Fishermen.

Even if they are legal entities governed by private law, taking over part of the public prerogatives of the State, the County Associations of Hunters and Sport Fishermen have the legal possibility to issue, within the limits of their competence, professional decisions issued under the regime of public power, thus acquiring the character of administrative acts, within the meaning of Article 2 letter c of the Law no.554/2004 of the administrative contentious.

Even in the light of the legal provisions invoked, the case-law of the courts oscillates between assessing the same type of legal act issued by the County Associations of Hunting and Sport Fishermen, either as having the legal nature of a civil legal act, subject to a specific regime, or as having the legal nature of an administrative act, with the legal consequences deriving from that qualification.

Thus, by the civil judgment no.1671 rendered on April 11, 2012, the Bucharest Court, the second section of civil, administrative and fiscal contentious, in a case having as object the annulment of a decision of the Council of the County Association of Hunters and Sport Fishermen, excluding a Member of this association, has considered that, as is apparent from the defendant's statute, submitted to the case file, but also from the legal literature in the field, The County Association of hunters and fishermen is a legal entity of private law, but of public utility, having the possibility to issue, within the limits of competence, professional decisions adopted in the exercise of the prerogatives of public power, thus acquiring the character of administrative acts, Within the meaning of Article 2(c) of Law No.554/2004.

However, the act that was the subject of the trial consisted of a decision of the Association Council, which applied the sanction of exclusion of the applicant, as a Member of the association.

This act, according to the Bucharest Court, does not have the legal character of an administrative act because *it is not issued under the regime of public power,* respectively, in the exercise of the powers of public power conferred on the association.

As a result, the Court concluded, the jurisdiction of the administrative court cannot be drawn, but that of common law, which is why the court accepted the exception of the lack of material jurisdiction of the Tribunal – the administrative litigation section and declined the competence to settle the case, in favor of the Bucharest first instance common law Court.

On the other hand, by decision no. 19 of 17 January 2022, the Alba Court of Appeal, in the settlement of the appeal brought by the applicant against the judgment of the Sibiu Tribunal, having as its object the administrative act annulment decision, in contradiction with the defendant the County Association of Hunters and Sport Fishermen, it accepted

the appeal, having ceded the judgment of the Tribunal Court and sent for retrial to the same court, failing to give a ruling on the substance of the issue, while taking the view that it is no longer necessary to examine the substantive issues raised by the appellant as to the illegality of the administrative acts under appeal.

In other words, the same legal act issued by the County Associations of Hunters and Sport Fishermen is qualified by the courts differently, either having the legal nature of a unilateral civil act or having the legal nature of an administrative act, depending on whether the use is assessed or not, by this private entity of the public power prerogative.

The discussion of the controversial legal nature of such entities to which a part of the public power has been "delegated" is not a new one, in the doctrine it refers to this "offesitive" of administrative law to the detriment of the unilateral civil act.

The discussion of the controversial legal nature of such entities to which a part of the public power has been "delegated" is not a new one, in the doctrine it refers to this "offensive" of the administrative act to the detriment of the unilateral civil act (O.Podaru, 2013).

In the context of the analysis of case-law, which automatically attributed a legal nature of administrative law to acts issued by an association which had acquired, under the law, a public utility character, it was considered that the assimilated public nature of such a private entity does not automatically attract, the administrative nature of its acts.

It has been pointed out (O.Podaru, 2013), in the context of that analysis, that an exclusion decision issued on the basis of a statute of an association, an act of private legal nature, does not concern the organization or enforcement of the law, as the reasons for the existence of the administrative act require, either normative or individual, and in no way does such a decision serve the public interest.

We also appreciate, that not all acts issued by the private entity to which part of the public power is delegated, will be administrative acts, as also the public authorities do not use only administrative acts in their activity, but also other levers, having in their turn discerning legal characteristics (Petrescu, 2009).

Specifically, to be administrative acts, they must be legal acts, assume a unilateral manifestation of the will, be issued by an authority of the public administration, the manifestation of the will to take place on the basis of the public power, respectively to have as purpose the execution or organization in concrete form of the laws.

As a conclusion, in the absence of any of the above features, the legal nature of the act is no longer an administrative one, and does not result in a legal regime of administrative law.

REFERENCES

L.Chiriac, 2011. *Drept administrativ. Activitatea autorităților administrației publice.* s.l.:Hamangiu Publishing House.

O.Podaru, 2013. Actul civil unilateral vs. actul administrativ – Reflecții asupra delegării către particulari a exercițiului puterii publice. *Studia Universitatis Review, Iurisprudentia series,* Issue 4.

Petrescu, R. N., 2009. *Drept administrativ.* București: Hamangiu Publishing House.

T.Drăganu, 1970. *Actele administrative și faptele asimilate lor supuse controlului judecătoresc, potrivit Legii nr.1/1967.* Cluj-Napoca: Dacia Publishing House.