

# SHORT CONSIDERATIONS ON THE TACIT APPROVAL PROCEDURE

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## Abstract

*The publication in the Official Gazette of Law no.157/12 July 2010 amending and supplementing the Government Emergency Ordinance no. 27/2003 on the tacit approval procedure, gave us the occasion to start this demarche by which we tried to present the main changes of substance caused to the public administration activity and their impact on the improvement of the business environment. In this paper we will specify what the regulatory scope of this law is, we will define the notion of authorization and will analyze whether the administration can be sanctioned for passiveness in its relationship with the citizen. Last but not least, we will conclude by presenting procedural details in solving disputes regarding the issue of authorizations that fall within the scope of the tacit approval procedure.*

**Keywords:** *public service, tacit approval, authorization, obligation to publish information, obligation to communicate information*

## Introduction

In the following, we aim at presenting the tacit approval procedure, as seen from the perspective of the Romanian law, considering the existing institutional framework.

A scientifically rigorous approach determines us, before proceeding to the analysis of the subject itself, to make a short presentation of the public service and of the principles of operation of public services.

In other words, the preface of this theme aims at describing the institutional framework of the good administration concept, analyzed simultaneously with the code of conduct for public servants (I)

The central axis of this paper consists in the analysis of the content of the Government Emergency Ordinance no. 27/2003<sup>2</sup> on the tacit approval procedure, as seen from the perspective of the new changes caused to it by Law no. 157/12 July 2010<sup>3</sup> (II).

The usefulness of this paper is due to its intent of highlighting the novelties brought in the matter as concerns the following: procedural details in issuing the authorizations falling under the scope of tacit approval procedure, the impact of these changes on the business environment and on the public administration activity in general.

Finally, we aim at making a synthesis of the conclusions deriving from our analysis (III).

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<sup>2</sup> Government Emergency Ordinance no. 27/2003 on the tacit approval procedure, published in the Official Gazette no. 291/25 April 2003

<sup>3</sup> Law no. 157/12 July 2010 amending and supplementing the Government Emergency Ordinance no. 27/2003 on the tacit approval procedure, published in the Official Gazette no. 496/19.07.2010

## (I) Public service, principles of operation of public services, right to good administration, code of conduct of public servants

In the doctrine of specialty, the notion of **public service** has been the subject of many research efforts of some famous authors in the legal and other fields. Etymologically speaking, the word “service” comes from the Latin word “servitum” that means “slave”, hence the interpretation of being in somebody’s service, or put at service, which evokes the idea of public utility or public service<sup>4</sup>. The term of public service is used both with organizational meaning, as social organization, and with functional meaning, as activity carried out by such an organization.<sup>5</sup>

In P. Negulescu’s understanding, “public service” meant an administrative organization created by the State, the county or the commune, with well determined competence and powers, with financial means obtained from the general patrimony of the creating administration, placed at the public’s disposal in order to regularly and continuously satisfy a general need, whose private initiative could only provide incomplete and intermittent satisfaction<sup>6</sup>.

Professor Ioan Alexandru<sup>7</sup> defined the public service as the organization of the State or of the local collective created by the competent authorities in order to guarantee the satisfaction of certain requirements of society members in the law enforcement process, in terms of administrative or civil law.

Another reputed author, Verginia Vedinaș<sup>8</sup>, asserts that, in the specialty literature, we are in the presence of a public service if several conditions are met:

- the requirements of the society members are satisfied,
- its creation is made through government acts,
- the activity of the service must be carried out while exercising public authority, and its personnel must, usually, consist of public servants etc.

As we all know, legality is the essence of the State’s activity, of the administration’s activity as a whole.<sup>9</sup> The public administration, regardless of the level it is at, must adopt one decision or the other, depending on the applicable laws, in accordance with the public interest.

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<sup>4</sup> For a wider view, see Iordan Nicola, *Managementul serviciilor publice locale (Management of local public services)*, (Allbeck Publishing House, Bucharest, 2003), p.63, quoted by Verginia Vedinaș in *Drept Administrativ (Administrative Law)*, 4<sup>th</sup> Edition revised and updated, (Universul Juridic Publishing House, Bucharest, 2009) p. 243

<sup>5</sup> Ioan Alexandru, Ivan Vasile Ivanoff, Claudia Gilia, *Sisteme politico administrative europene (European Political-Administrative Systems)*, (Bibliotheca Publishing House, Târgoviște, 2007), p.86; Anton Trăilescu, *Drept Administrativ (Administrative Law)*, 4<sup>th</sup> Edition, (C.H. Beck Publishing House, Bucharest 2010), p. 102 defined the public service from the material and formal points of view.

<sup>6</sup> P. Negulescu, *Tratat de drept administrative (Treatise on Administrative Law)*, 1<sup>st</sup> volume, 4<sup>th</sup> Edition (Marvan Publishing House, Bucharest, 1934), p. 126, quoted by Cătălin-Liviu Săraru, *Contractele administrative, Reglementare, Doctrină, Jurisprudență (Administrative Contracts, Regulatory framework, Doctrine, Case-Law)* (C.H. Beck Publishing House, Bucharest, 2009) p. 203-204

<sup>7</sup> Ioan Alexandru, Ivan Vasile Ivanoff, Claudia Gilia, *op.cit.*, p.87

<sup>8</sup> Verginia Vedinaș, *Drept Administrativ (Administrative Law)*, *op.cit.*, p. 245. For other opinions, see also: Dana Apostol Tofan, *Drept Administrativ (Administrative Law)*, 1<sup>st</sup> volume, 2<sup>nd</sup> Edition (CH Beck Publishing House, Bucharest 2008), p.8; Rodica Narcisa Petrescu, *Drept Administrativ (Administrative Law)*, (Accent Publishing House, Cluj Napoca, 2004), p.24 etc.

<sup>9</sup> Ioan Alexandru - *Drept administrativ comparat (Comparative Administrative Law)*, (Lumina Lex Publishing House, Bucharest, 2000) p.133, quoted by Verginia Vedinaș in *Statutul funcționarilor publici. Legea nr.188/1999, cu modificările și completările ulterioare, republicată (Statute of Public Servants. Law no. 188/1999, as subsequently amended and supplemented, republished)*, (Universul Juridic Publishing House, Bucharest, 2009), p.18

The public interest, as defined in the code of conduct for public servants, is the interest that public institutions and authorities guarantee and observe the legitimate rights, freedoms and interests of citizens, recognized by the Constitution, by the domestic legislation and by the international treaties Romania is part in.

At the level of the European Union, there is the Charter of Fundamental Rights<sup>10</sup> which provides the **right to good administration**, as a fundamental right of the citizens of the Union.

Moreover, on September 6<sup>th</sup>, 2001, the European Parliament adopted the European Code of good administrative behaviour<sup>11</sup> that the institutions and organizations in the European Union, the administration and its servants must abide by in its relationship with the public.

The European Ombudsman had an important contribution to the enactment of the European Code of good administrative behaviour, by which it defined the concept of good administration, as it made suggestions for its wording, and which is currently a guide and source<sup>12</sup> of information for the personnel of all the institutions and organizations of the Community.

The right to good administration<sup>13</sup>, according to the European Code of good administrative behaviour, has four components:

1.) Every person has the right to have the institutions and organizations of the Union fairly and impartially analyze their case within a reasonable period of time;

2.) This right mainly includes: the right of every person of being heard before taking any individual measures that might negatively influence their situation; every person's right to have access to the file of their own case, provided that they observe the authorized confidentiality interests and the professional and business secrecy; the administration has the obligation to justify its decisions;

3.) Every person has the right, in accordance with the common general principles in the legislation of the Member States, to have the Community repair the damage caused by the institutions or by their employees in exercising their functions;

4.) Every person may address the Unions' institutions in writing, in one of the languages of the treaty and receive an answer in the same language.

In accordance with the provisions of article 4 titled "Legitimacy", "the servant must carry out its activity in accordance with the law and apply the rules and procedures established in the Community legislation. The servant pays attention particularly to whether the decisions affecting the rights or interests of citizens have the required legal substantiation and a legal content".

Like other states, Romania has harmonized its legislation with the European standards, thus adopting, among other relevant pieces of legislation, the **Code<sup>14</sup> of conduct for public servants** establishing the rules of professional conduct of public servants; therefore, there is a conceptual compatibility.

As for the principles governing the professional conduct of public servants, here are some examples: supremacy of the Constitution, priority of the public interest, equal treatment of citizens before the public authorities and institutions, professionalism, impartiality, fairness and correctness, openness and transparency, etc.

<sup>10</sup> JO 2007 C 303. It was proclaimed first in December 2000 at Nice and was signed and proclaimed again on 12 September 2007, before the signing of the Lisbon Treaty on 13 December 2007. See the entire text at: <http://eur-lex.europa.eu/ro/treaties/dat/32007X1214/htm/C2007303RO.01000101.htm>

<sup>11</sup> See the entire text: *Le Code Européen de Bonne Conduite Administrative*, Office des publications officielles des Communautés Européennes, L- 2985 Luxembourg 2002, ISBN 92-95010-42-6

<sup>12</sup> For full details, see <http://www.ombudsman.europa.eu/activities/home.faces>

<sup>13</sup> For other details, the wording of the Code can be consulted at the web address: [www.euroombudsman.eu.int](http://www.euroombudsman.eu.int).

<sup>14</sup> Law no. 7 / 18 February 2004 on the Code of conduct for public servants, published in the Official Gazette of Romania no. 157/23 February 2004, amended by Law no. 50/13 March 2007

The reason why I made a short analysis of the concepts of public service, right to good administration, code of conduct for public servants was to ensure an easier transition to the object of analysis of this paper, namely the tacit approval procedure.

## (II) The main provisions of Law no. 157/12 July 2010 amending and supplementing the Government Emergency Ordinance no. 27/2003 on the tacit approval procedure

2.1. In treating this subject, we will start by defining the **notion of “tacit approval”** and then we will make a comparative presentation of the new elements brought by Law no. 157 / 12 July 2010 simultaneously with the provisions of the Government Emergency Ordinance no. 27/2003 that suffered no changes.

The tacit approval procedure<sup>15</sup>, as it is defined by the Government Emergency Ordinance no. 27/2003, is “the procedure by which the authorization is considered as granted if the public administration authority fails to give an answer to the applicant within the legal deadline set for the issue of such authorization”.

In the civil law there is a very well known theory of the legal value of silence. It’s the Latin adage “*qui tacit consentire videtur*”, i.e. “*he who is silent is taken to agree*”.

As a rule, in the civil law<sup>16</sup>, silence is not seen as externalized consent. As an exception, silence is seen as consent: 1) when the law expressly provides it; 2) when, due to the express will of the parties, a certain legal significance is ascribed to silence; 3) when silence is seen as consent according to the customs.

If we extrapolate the civilian theory to the public law, we can assert that, through the tacit approval procedure, the lawmaker intended to ascribe a certain legal significance to silence, under certain conditions strictly determined by this legal text.

The reason for adopting this legislative text is that accountability<sup>17</sup> was intended for the public administration authorities in view of complying with the legal deadlines set for the issue of authorizations and permits, but we will revert to this aspect towards the end of our demarche.

According to the Government Emergency Ordinance no.27/2003 on the tacit approval procedure, its main objectives are, among others: removal of the administrative barriers in the business environment, fight against corruption by reducing arbitrariness in the administrative decision-making process, as well as promotion of the quality of public services by simplifying the administrative procedures.

In the first part of our paper we identified the principles that public servants must take into account in their activity and, on that occasion, we spoke of their professionalism and of their abidance to the law.

We believe that the professional training of public servants is reflected first of all in the quality of the public services they provide, and the quality of services is tightly connected to law-abidance.

In the following, we will present the provisions of Law no.157/12 July 2010 amending and supplementing the Government Emergency Ordinance no. 27/2003 on the tacit approval procedure.

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<sup>15</sup> Article 3 point b) of the Government Emergency Ordinance no. 27/2003

<sup>16</sup> Gheorghe Beleiu, *Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil (Romanian Civil Law. Introduction to Civil Law. Themes of Civil Law)* (Casa de Editură și Presă „Șansa” SRL, Bucharest, 1992), p.130-131

<sup>17</sup> Article 1 point b) of the Government Emergency Ordinance no. 27/2003

**2.2. The regulatory framework of the tacit approval procedure has remained the same,** meaning that it applies to all the authorizations issued by the public administration authorities, except for those issued in the field of nuclear activities, those regarding the regime of firearms, ammunition and explosives, the regime of drugs and precursors, as well as authorizations in the national safety field.

Also, the provisions of the Government Emergency Ordinance no. 27/2003 apply to the authorization issue procedures, to the authorization renewal procedures and to the reauthorization procedures, as a result of the expiry of the authorization suspension period or of the accomplishment of the measures established by the competent control bodies, according to article 1 par. 2.

**2.3. The notions used have not changed their meaning, namely:**

“**Authorization**” means the administrative document, issued by the public administration authorities, by which the applicant is allowed to conduct a certain activity, to provide a certain service or to exercise a certain profession. The notion of “authorization” also includes the permits, licenses, approvals, or other such administrative documents.

- The “**negative answer**” of the competent public administration authority, given within the legal authorization issue deadline, is not the same thing as tacit approval.

**2.4. About the obligations of authorities concerning the display of information regarding the issue of authorizations.**

Among the important changes caused to the aforementioned piece of legislation regarding to the obligation to display information, we remind some of them:

- the public administration authorities that are competent to issue authorizations must display in their premises *and, as the case may be*, on their web page the information concerning the issue of authorizations;

- also, the authorities must display the list of authorizations (within the scope of activity of such authorities) for which the tacit approval procedure is applicable, as well as the following information for each separate type of authorization:

a.) – the application form that must be filled in by the applicant, as well as the instructions for filling it up;

b.) – the list of all the documents needed for the issue of the authorization and the manner in which they must be submitted to the public administration authority;

c.) – all the information regarding the preparation of documents and, if necessary, the list of public administration authorities that are competent to issue administrative documents included in the documentation that must be lodged, such as: address, telephone or fax number, office hours for the public.

The amendment of the wording consists in the introduction of the copulative conjunction “*and*” and of the expression “*as the case may be*”, as opposed to the former regulation where these obligations were alternative, using the disjunctive conjunction “*or*”.

The information that must be displayed will be presented in a clear manner, giving, if possible, concrete examples.

The public administration authorities will elaborate guides regarding the authorization procedure and the preparation of the documentation that the issue of an authorization is based on. Any interested person may obtain a copy containing the information specified above, according to the provisions of article 4. Most European states guarantee the citizens’ right to have access to the

documents of the administration, and in 1906, in the United States, a general right of consultation of the documents in possession of the federal authorities was instituted.<sup>18</sup>

### **2.5. About the obligation of authorities to<sup>19</sup> communicate information upon the applicant's filing of the application**

The public authorities will have the obligation to communicate, in writing, upon the filing of the application:

- its registration number;
- registration date;
- express information regarding the legal settlement deadline;
- whether the application is subject or not to tacit approval.

This information is also communicated if the electronic filing of applications is possible.

The aforementioned obligation of communication is applicable both to applications for the issue of authorizations and to applications for the renewal of authorizations.

Also, Law no. 157/12 July 2010 amending and supplementing the Government Emergency Ordinance no. 27/2003 on the tacit approval procedure deliberately includes in its wording that **the explicit or tacit refusal of the appointed employee of an authority to apply the provisions regarding the publicity of the aforementioned information is sanctioned<sup>20</sup>**, and this deed is construed as default and will engage the disciplinary liability of the defaulting employee.

The guilty infringement by public servants of the duties relevant to their public function and of the rules of professional and civic conduct established by the law is construed as disciplinary default and will engage their disciplinary liability<sup>21</sup>.

It has been said in the specialty literature<sup>22</sup> that disciplinary defaults negatively influence the quality of public services and law enforcement, thus determining the decrease of the citizens' trust in the public authorities.

### **2.6. Another new element brought by Law no. 157/2010 refers to the document<sup>23</sup> considered equal to an authorization for all purposes.**

The applicant lodges with the competent public authority an application accompanied by the full documentation, prepared in accordance the legal provisions regulating the authorization procedure in question and with the aforementioned information.

Virtually, the authorization is construed as granted or, as the case may be, renewed if the public administration authority fails to give an answer to the applicant within the legal deadline set by the law for the issue or renewal of the relevant authorization.

According to the wording of the ordinance, unless the law sets forth a deadline for the settlement of the authorization application, the public administration authorities must settle the authorization application within 30 days as of its submittal.

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<sup>18</sup> Bertil Cottier, *La publicité des documents administratifs, Étude de droit suédois et suisse. Thèse de doctorat*, Imprimeries Réunies SA Lausanne, 1982, p. 179, quoted by Verginia Vedinaş in *Statutul funcționarilor publici. Legea nr. 188/1999, cu modificările și completările ulterioare, republicată (Statute of Public Servants. Law no. 188/1999, as subsequently amended and supplemented, republished)*, (Universul Juridic Publishing House, Bucharest, 2009), p. 22.

<sup>19</sup> Article 6 of the Government Emergency Ordinance no. 27/2003

<sup>20</sup> It's the information that must be displayed in the premises of authorities and, as the case may be, on their web page.

<sup>21</sup> Dana Apostol Tofan, *op cit*, p.361

<sup>22</sup> Anton Trăilescu, *op cit*, p. 167

<sup>23</sup> Article 8 of the Government Emergency Ordinance no. 27/2003



When<sup>24</sup> the applicant approaches the relevant public administration authority and his authorization has not been issued within the legal deadline, therefore after the expiry of the response time, the applicant informs it about the existence of the approval case regarding any document that is subject to tacit approval, according to the law, and demands that the registry office of that authority issue an official document confirming that no answer has been given within the legal deadline with regard to his request. In such situation, the public administration authority must issue, within 5 days as of such demand, a document allowing the applicant to conduct an activity, provide a service or exercise a profession.

*This document allows the applicant to conduct and activity, to provide a service or to exercise a profession and is considered equal to an authorization for all purposes, including before the control bodies, except for the authorization that is valid only in its standard form, expressly regulated by the law.*

In the old regulatory framework there was no provision regarding the document replacing the authorization for all purposes, issued by the public administration authority when such authority, being in default for not answering to the applicant within the legal deadline, was indirectly forced to grant the authorization by means of this document.

The law goes further and protects the applicant's interests, indirectly sanctioning the passive attitude of the public administration authority by giving the applicant the possibility to bring an action in court. Thus, if the relevant public administration authority fails or refuses to issue the document allowing the conduct of an activity, the provision of a service or the exercising of a profession, as well as if the authorization is valid only in its standard form, expressly regulated by the law, the applicant may approach the court of law, according to the procedure established by this ordinance.

The court will settle the application within 30 days as of its lodging, by summoning the parties.

### **2.7. Another new element brought by Law no. 157/2010 is connected to the prosecutor's participation in the trial.**

The compulsoriness of the prosecutor's participation in dispute settlement has been eliminated as regards the issue of authorizations that fall within the scope of the tacit approval procedure, as opposed to the former regulation where this was not compulsory, according to article 9 par. 3.

**2.8. As regards the irregularity of the documentation that accompanies the authorization application,** the tacit approval procedure has not been modified by Law no. 157/2010, and remains the same.

Thus, if an irregularity in the lodged documents is acknowledged at the application filing time, the public administration authority will notify this to the applicant at least 10 days before the expiry of the legal deadline for the issue of such authorization, if such deadline exceeds 15 days, or at least 5 days before the expiry of the legal deadline for the issue of the authorization, if such deadline is less than 15 days. At the same time, the public administration authority will specify the method to remedy the acknowledged irregularity.

In the aforementioned situations, the issue deadline or, as the case may be, the renewal deadline is extended accordingly by 10 days or 5 days, as the case may be.

Please note that the public administration authority that fails to approve the authorization application within the legal deadline by the applicant's fault, as detailed above, is not sanctioned.

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<sup>24</sup> Article 8 par. 1 of Law no. 157/2010

**2.9. Another provision** refers to what happens when, after the issue of the document allowing to conduct an activity, to provide a service or to exercise a profession, the public administration authority acknowledges the failure to meet some conditions that are important for the issue of the authorization.

In such situation, the public administration authority will not be able to cancel the document, but will immediately notify its holder, by registered letter with acknowledgement of receipt, about the irregularities found, specifying how to remedy all the identified minuses, as well as the deadline within which the holder must fulfil this obligation. Such deadline cannot be less than 30 days and will start running as of receiving the notice.

**2.10. Also, procedural details are set forth in case the applicant approaches the court.**

The applicant must prepare a file containing the following: the petition accompanied by the copy of the authorization application having the number and date of registration with the respondent public administration authority, accompanied by the entire documentation filed with this authority, as well as by the mentions specified<sup>25</sup> under article 6 par. (3<sup>^</sup>1).

In the following, we will present the *solutions of the court* vested with a legal action based on the ordinance on the tacit approval procedure.

Considering the legal text, the court has two options:

- *to allow the petition*, if it acknowledges that the conditions set forth by the emergency ordinance on the tacit approval are met, and issue a decision forcing the public administration authority to issue the official document allowing the applicant to conduct a certain activity, provide a service or exercise a certain profession;

- *to reject the petition*, if it acknowledges that there is an answer of the state body or a notice regarding the irregularity of the filed documentation, having the posting date stamped at the dispatch location or the date when the applicant became acquainted with the answer, anterior to the expiry of the legal deadline for the issue of the authorization.

Court decisions are drafted within 10 days as of pronouncement and are irrevocable.

**2.11. The provisions regarding the sanction of the public administration authorities have not been modified**, therefore there may be several situations:

- if the petition is allowed and the public administration authority fails to fulfil its obligation and issue the official document allowing the applicant to conduct a certain activity, to provide a service or to exercise a profession within the deadline mentioned in the court decision, upon the applicant's demand, the court may force the manager of the public administration authority in whose charge the obligation was established to pay a judicial fine representing 20% of the national minimum net wage for each day of delay, as well as to pay indemnities for damages caused by such delay.

- the deed of the public servant or of the contractual personnel by whose fault the public administration authority has failed to give an answer within the legal deadline, thus applying the tacit approval procedure for granting or renewing an authorization, is punished according to Law no. 188/1999 on the Statute of public servants or, as the case may be, according to the labour legislation, being construed as disciplinary default, unless it was committed in such circumstances that, according to the criminal law, it may be construed as felony. In such case, the public servant's civil, patrimonial or criminal liability, as the case may be, could be engaged as well.

- the deed of the public servant who, being aware of the authorization application and its relevant documentation, knowingly refuses to settle the application within the legal deadline and

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<sup>25</sup> They refer to the legal deadline to settle the dispute, specifying if the relevant application is subject to the tacit approval procedure or not.



determines the intervention of the presumption of tacit approval is a felony and is punished with imprisonment.

**2.12. Also, the provisions regarding the sections for the guilty conduct of petitioner have been maintained:**

- the deed of a person invoking before a public authority or institution the existence of an authorization as a result of the tacit approval procedure by knowingly omitting to produce the answer or the notice received as part of the authorization process, according to article 6 par. 4, is a felony (misrepresentation) and is punished according to the Criminal Code.

- conducting the activities referred to under article 2 par. 1 without having an express authorization from the competent public authority is a felony and is punished with imprisonment.

### (III) Conclusions

The analysis of the tacit approval procedure pointed out an important aspect that must be taken into account in the activity of the public administration, namely the deadline to conclude the administrative procedures. For this ordinance to be sustainable, the public administration authorities must, first of all, have the qualified, responsible personnel, well acquainted with the law.

In the future, a greater importance should be attached to the way ingoing/outgoing documents are drafted at the level of registry offices within institutions because the registration date and number on the applicant's deposit slip are key elements in this procedure.

In practice, many cases are pending before the courts of law to figure out the following judiciary matter: is the tacit approval procedure applicable also to building authorizations? However, we will expand on this subject in some other paper.

Although we do not deny the merits of Law no. 157/2010 on the tacit approval procedure, we cannot go without specifying the weak points of this special procedure, namely:

- the notion of public administration authority is not defined;
- the deadline to approach the court of law is not expressly specified.

To find out what "public authority" means, we can make an interpretation based on a juridical reasoning, by corroborating several notions used in the public law. Starting from the idea that the tacit approval procedure is a good practice in the relationship between the public administration in general and the business environment in particular, our opinion is that its meaning can be determined by relating to the Constitution and to the general definition given to the public administration by the administrative disputes law.

Thus, Law no. 554/2004<sup>26</sup>, article 2 par.1 point b defines "public authority" as any state body<sup>27</sup> or other body of the administrative-territorial units acting, with public power, to satisfy a public legitimate interest; within the meaning of this law, the category of public authorities consists of private law legal entities which, according to the law, have obtained a public utility statute or are authorized to provide a public service, with public power.

As regards the court competent to approve or reject the petition based on the ordinance on the tacit approval procedure, we believe that it is the court specialized in administrative disputes.

<sup>26</sup> Law no. 554/ 2 December 2004 on administrative disputes, published in the Official Gazette no. 1154/7 December 2004, updated.

<sup>27</sup> Antonie Iorgovan, Liliana Vișan, Alexandru Sorin Ciobanu, Diana Iuliana Pașăre, *Legea contenciosului administrativ (Legea nr.554/ 2004) -cu modificările și completările la zi- comentariu și Jurisprudență (Law on administrative disputes (Law no. 554/2004) –as amended and supplemented to date- Comments and Case-Law)*, (Universul Juridic Publishing House, Bucharest, 2008), p.66 et seq.

By expressly setting forth sanctions that can be applied to public servants by whose fault the tacit approval procedure intervened, such as: disciplinary, patrimonial, civil or criminal sanctions, but also the disciplinary liability for failing to fulfil the information publicity obligation, Law no. 157/2010 refers to the positive answer to this question: can the public administration be sanctioned for passivity in its relationship with the citizen?

Moreover, for the same purpose mentioned above, we believe that the aims of this ordinance are realistic, namely to remove administrative barriers from the business environment and fight against corruption by reducing arbitrariness in the administrative decision-making process.

We believe that the target of “boosting economic development by providing the most favourable conditions to enterprisers, by involving authorization costs as low as possible” is merely theoretical and unrealistic as long as the law itself leaves the possibility to prolong the waiting time in obtaining the authorization and to add costs. By that we mean that, regardless of the adopted procedure, the facultative one or the judicious one, if the public administration authority fails to issue the document according to the filed application (provided that it meets all the legal requirements) within the legal deadline or fails to enforce the court decision by issuing the document, there is an unjustified loss of time and money for the applicant.

In the end of our demarche, we express our confidence that, in the future, as the Romanian Code of conduct for public servants provides, the quality of the public service will increase since public servants have the obligation of ensuring a high-quality public service to the benefit of citizens.

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