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Joint stock companies having the local government as the sole shareholder – some practical remarks in the case of Romania

1. Introduction

1.1. The particularly complex scientific issues raised by the minimalist regulation in Romania of sole shareholder joint stock companies (*societate pe acțiuni, S.A.*)[1] has not yet been the subject of extensive research in the Romanian company law. Practically, a sole shareholder joint stock company – where all the shares belong to one person – is of an exceptional nature.

However, the recent Romanian jurisprudence settled several specific questions, at first instance in an inconsistent manner, but later, through appeals, the solutions provided by the courts were uniform.

Based on a such legal case, I will address some of the answers to the important questions raised before the courts, involving both company law and administrative law. The most important feature of the joint stock company with a sole shareholder is the fact that these corporations are in most of the cases public service providers, the sole shareholder

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[1] *Aktiengesellschaft* in Germany, *société anonyme* in France, *società per azioni* in Italy, *spółka akcyjna* in Poland. In the common law terminology, there is no perfect match for these types of companies.

being in all cases the state or the local government. Natural persons or private law legal entities are not permitted to operate sole shareholder joint stock companies under the provisions of Romanian law. Because of their role as public service providers, any legal dispute regarding the functioning of sole shareholder joint stock companies has very serious implications.

This article examines an important court case. In the article, I will consider all legal questions and the specific problems raised and finally settled by the courts.

1.2. First, as a principle, only limited liability companies (*societate cu răspundere limitată, S.R.L.*)[2] can operate with a sole associate. According to Art. 10, Para. (3) of Law no. 31/1990 on companies (the Companies Act),[3] the number of shareholders in a joint stock company may not be less than two. If the company divergently has fewer than two shareholders for a period longer than nine months, interested persons may request the court to dissolve the company. The company will not be dissolved if, before the court judgement will become definitive, the minimum number of two shareholders required by the law is achieved.

1.3. However, under Art. 283, Para. (4) of the Companies Act, those companies in which the state has complete or majority ownership can operate with any number of associates or shareholders. Thus, according to this legal text, only the state, or more specifically the state or an administrative-territorial unit (county, municipality, town, commune) may establish and operate a joint stock company as a sole shareholder.

Art. 283, Para. (4) of the Companies Act raises constitutional issues. The constitutionality of these legislative provisions is questionable, since it institutes a discriminatory status between different categories of shareholders: on the one hand, the state and territorial-administrative units, which can establish a sole shareholder joint stock company, without being obliged to associate, and – on the other hand – other categories of (natural or legal) persons which are required to associate in order to legally establish a joint stock company. We must emphasize that the state or the territorial-administrative unit as a shareholder engages indirectly in economic activities through a company and acts like a private legal person, without the exercise of public power. Nonetheless, I do not think that this system violates the provisions of

[2] *Gesellschaft mit beschränkter Haftung* in Germany, *société à responsabilité limitée* in France, *società a responsabilità limitata* in Italy, *spółka z ograniczoną odpowiedzialnością* in Poland.

[3] Republished in the Official Gazette of Romania no. 1066/17 November 2004, as subsequently amended and supplemented.

the Constitution, where the specificity of these joint stock companies (e.g., providing a public service) justifies this specific status.[4] Surely, a more accurate regulation would be welcome.

Regarding the appropriateness of this rule, I believe that joint stock companies are legal persons subject to private law, but not subjects to a public law regime. Public service being carried out by a certain company "does not produce, in any case, the effect of altering its nature as a legal entity of private law, which remains intact."[5] The regulation and adequate corporate governance of modern state owned companies, not intended to be privatized but maintained under the public control of the state or of the territorial administrative units (local governments), is an imperative requirement. In this context, we need to rethink the legal rules on joint stock companies with a single shareholder because it is highly objectionable that the current legal provisions do not require specific conditions to establish such companies.

1.4. Joint stock companies with a sole shareholder are non-contractual entities, as they are established by the act of a single public law authority, by the means of an unilateral voluntary act of the state or of a territorial-administrative unit (local government). Still, these companies, as we have emphasized, are legal persons of private law, subject to the provisions of the Companies Act, even if the document of incorporation is an act of administrative authority.

2. The anatomy of jurisprudence: legal status of single shareholder joint stock companies

2.1. Facts

2.1.1. The court case which constitutes the basis of the present legal analysis was raised in the context of the operation of a certain company, G. S.A., where the sole shareholder is an administrative-territorial unit, specifically a municipality.

2.1.2 The rules with respect to the exercise of the rights of the sole shareholder are governed by Law no. 215/2001 on local public administration.[6] Article 37 states that "The persons empowered to represent the interests of the administrative-territorial unit in companies, autonomous bodies of local interest, community development associations and other

[4] For the general regulation on state-owned enterprises in Romania, see Veress, 2017, p. 62-78.

[5] Căpățână, 1996, p. 70-71.

[6] Republished in *The Official Gazette of Romania* no. 123/20 February 2007, as subsequently amended and supplemented.

bodies of cooperation or partnership are designated by decision of the Local Council, under the provisions of the law, respecting the political configuration resulted from the latest local elections."

In company law, the general assembly of shareholders is the depository of social will and consequently constitutes the supreme decision making body of the company.[7]

If representing the political configuration of the Local Council is required by law, the Council must nominate some local councilors as mandatary (i.e., the person receiving a mandate) of the municipality. The sole shareholder is consequently represented by more than one person in all circumstances. In our case, the general assembly of G. S.A. was made up of all 17 members of the Local Council, pursuant to the decision of this entity.[8]

The decision of the local council in relation to Art. 37 of the Law on local public administration is legal. The political configuration of the local council has been respected in its entirety, because, in terms of composition, the two structures (local council and the general assembly of the company) overlap. Practically, a political body acts as an organ of the company, which has significant consequences, as we will see. In the general assembly of the company there are sitting no specific shareholders, but 17 representatives of the single shareholder. The opportunity or economic efficiency of such a decision can raise questions, but each local council may exercise their competence according to the principle of local autonomy. The decision of such a body cannot be censored on grounds of appropriateness.

Beside the general assembly, we have to consider also the management organs in every joint stock company. G. S.A. was administered under a unitary system[9] by a management board composed of three members, one of whom was both chairman of the board and general director (chief executive officer, CEO) of the company.

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[7] Georgescu, 2002, p. 292.

[8] The general assembly is the organized collectivity of associates or shareholders, in which the associates or shareholders express through voting their rights of collective nature, raised from their participation in the share capital (Piperea, 2012, p. 206). It was shown in the legal literature that no special proxy is required for the legal representatives of a shareholder which is a legal person (Şandru, 2012, p. 183). I think that this approach applies in the present case as well: the local council representatives should not have to receive a proxy for each general meeting. This regime differs from the general rules of representation of shareholders given by Art. 125(1) of the Companies Act, stating that shareholders may participate and vote in the general meeting by a mandatary, which needs a proxy (an express empowerment) granted to a certain general assembly.

[9] Which alternative is a dualist system, with a supervisory board and a directorate, also available under the Romanian company law beside the unitary system.

2.1.3. Disputes emerged when the general meeting of G. S.A. adopted a decision removing the Chairman of the Board, a person who, as noted, is also the Director of the company. Five local councilors brought an action for annulment against this decision. The court was presented – due to the specificity of the sole shareholder joint stock company – with several legal issues regarding this particular decision.

2.2. Lack of *locus standi*

2.2.1. The first and most interesting issue is the plea for a lack of *locus standi*. As mentioned, G. S.A. has only one shareholder: the municipality as administrative-territorial unit. This shareholder is represented in the general assembly by 17 people, being the local councilors (all the members of the local council, the decision-making body of the local government). Hence, one principal (the sole shareholder) is represented by a plurality of agents or mandataries (the local councilors).

Is only one representative (mandatary) or part of representatives (mandataries) of the sole shareholder in possession of the right to challenge before the court the decision of the general meeting of G. S.A., since the law expressly grants such a right just to the shareholder?

According to the rules contained in Art. 132 (2) of the Companies Act, "General Assembly decisions contrary to law or to the Company Statute may be challenged in court within 15 days of its publication in *The Official Gazette of Romania*, Part IV, by any of the shareholders who did not take part in the General Assembly or voted against and requested that this should be noted in the minutes of the meeting." The Law further states in para. (3) that "when reasons of absolute nullity are invoked, the right to challenge shall be imprescriptible, and the request may also be formulated by any interested person."

Absolute nullity is the applicable sanction if the decision violates a rule of public order, compared to relative nullity, sanctioning the decision which violates a rule intended for the protection of private parties. The regime of the two kinds of nullities is different: absolute nullity can be invoked by any person, even by the court on its own initiative; in the case of relative nullity, only those persons for whose interest the ground for nullity was established; for absolute nullities, there is no prescription; to actions regarding relative nullity, a prescriptive period is applicable, etc. In company law, if there is an infringement of the imperative rules of the Companies Act, the sanction is absolute nullity (because these rules form a company law public order). If the

articles of association (company statutes) are infringed by the general assembly decision, that is a ground for relative nullity.

In summary, if absolute nullity reasons are invoked, according to Art. 132 (3) of the Companies Act, any interested person can have *locus standi*.[10] In case relative nullity reasons are raised, the standing is restricted to shareholders who did not take part in the general meeting or voted against and asked to insert their negative vote in the minutes of the meeting.

In this particular case, it was shown that the applicants did not have *locus standi*, because they were not shareholders.

Under the law, indeed, to meet the requirements of *locus standi* if a decision is challenged on grounds of relative nullity, two conditions must be fulfilled: a) the applicant must be a shareholder; and b_1) the vote expressed by this shareholder must be cast against the decision, and actually recorded in the minutes of the meeting, or b_2), the shareholder have been absent from the general assembly meeting.

2.2.2. In my view, the lack of *locus standi* exception is not well founded.

With regards to the first condition (being a shareholder): in our case the sole shareholder was represented by local councilors in the form of a general assembly. The members of this assembly exercise shareholder rights according to the Companies Act. The authority of being (sole) shareholder belongs unmistakably only to the municipality, but each applicant local councilor possesses the rights of representative (mandatary) of the sole shareholder legal person (the municipality).

According to their mandate, applicants must exercise the rights of the sole shareholder, including the power to initiate judicial review of the legality of decisions taken at general assembly which may be contrary to the law or to the Company Statute. The representation of the sole shareholder's interests includes the permanent duty of ensuring the legal and statutory functioning of the company. If the law or the Company Statute are infringed, each mandatary is obliged to use the available legal means to restore its legality – in this case to initiate proceedings for annulment of the general assembly decisions.

The legal will of this company is formed through the vote expressed by each mandatary of the sole shareholder at the general assembly.[11] If

[10] In this situation, as well, there has to exist a direct and personal interest of the claimant. Absolute nullity as a civil law sanction protects a general interest (public order). However, from a procedural point of view, the person relying on such nullity must justify that he/she seeks, through the process, a personal effect or practical use. This obligation exists regardless of the form of nullity invoked.

[11] For details see Căpățână, 1996, p. 300-304.

each representative has a unique right to vote, which belongs by definition to the shareholder(s), the right of the applicants (as representative of the sole shareholder) to apply to the court to check the infringement of the Company Statute and to seek the annulment of a non-statutory decision cannot be denied. Of course, a complex problem arises: how can the sole shareholder, a single entity, that is the municipality, a territorial--administrative unit with legal personality, be represented by multiple mandataries and have more deliberate intentions at the same time in the general assembly? Given the nature of the representation, through several mandataries in line with the political configuration of the local council,[12] the law does not and should not prohibit that each mandatary (agent) to have its own personal conception with regards to the performance of the mandate. It is the personal responsibility of each mandatary to implement its mandate. Practically, each representative received from the sole shareholder a discretionary mandate – the right to vote in accordance with their own convictions and opinions.

The right to vote and the right to seek judicial review of the decisions adopted by vote are clearly related. Any other interpretation leads to a situation in which decisions adopted by the general assemblies of companies with the sole shareholder are subtracted under the judicial review done by courts. This is inconceivable in a rule-of-law state. The law and in our case the local council has delegated the powers to represent the sole shareholder to the local councilors not only to cast a vote in the general assembly, but also, if necessary, to be able to address the court in order to restore legality.

The local council itself could initiate a judicial control over a decision of the general assembly, by adopting its own decision. This is the only way this administrative body may express its will, without mediation of representatives. Adopting such a decision would be left to a political majority, which may behave abusively, eliminating the possibility of submission to judicial control of the general assembly decision, thus encouraging illegal operation of the company. Moreover, the working procedure of the local council can determine to miss the limited time period in which an action for annulment on grounds of relative nullity can be brought to the courts (15 days, which we will analyze later). For joint stock companies, any shareholder, however small, is its shareholding, has the right to seek judicial review challenging the decision of the general assembly. This right provides even for minority shareholders the

[12] If the representatives must be nominated according to the law in a way to reflect the political configuration of the local council (majority and opposition), disagreements are likely in the composition of the general assembly.

ability to initiate a judicial challenge concerning the general meeting decisions. This right must be recognized in the particular case subject to our analysis.

The representatives of the sole shareholder have every right to represent this shareholder, including the formulation of the action for annulment. They have therefore *locus standi* before the court.

This solution is also clear if we rely on the provisions of Art. 2022 from the Civil Code, which in Par. (2), with regards to the contract of mandate, states: "When more persons have accepted the same mandate, their acts oblige the principal even if they were concluded by just one of them, unless stipulated that they will work together." Here every local councilor receives a distinct mandate to represent the sole shareholder in the general assembly meetings. There is no requirement of consensus and practically no local councilor can be required to vote in a uniform manner. Thus, every vote expressed – for or against a certain decision – is valid. The will of the sole shareholder is formed by a majority vote, but before the formation of this will each local councilor may vote either in favor or against the decision, in the representation of the sole shareholder.

A secondary, but important issue is whether such an action shall be brought before the court by the mandatary in his/her own name or on behalf of the sole shareholder he represents. I believe that the action must be brought on behalf of the sole shareholder, through the representative (mandatary), under the mandate given by local council.

The second condition was also met in the case. In the time of voting, as results clearly reveal from the minutes of the assembly meeting, the applicants were not in the room (they left the general assembly meeting, protesting against the change of the items on the agenda, aspect analyzed below). This is confirmed by the number of votes which were cast according to the minutes of the meeting (the applicants did not vote). The condition regarding absence is met. The legal text requires the condition "not to attend the general assembly" is also fulfilled if the person in question (any applicant) did not take part in the adoption of the contested decision. This issue may appear in other joint stock companies as well, without the specificity of the sole shareholder. For example, if a shareholder participates only at one part of the general assembly meeting. If we interpret the text literally, the shareholder in question would lose the right to seek a judicial review of a decision adopted by the general assembly after his departure on grounds of relative nullity, because previously attended the general assembly, which would be an absurd result and contrary to what the legislator intended.

Therefore the lack of *locus standi* cannot be accepted as a ground to refuse judicial control of the decision.

2.3. The lack of interest exception

In the present case there arose the lack of interest exception regarding the interest of applicants. I also consider this argument unfounded. Still, this issue must be analyzed, regardless of the reason for nullity (relative or absolute), because the applicants must prove their own interest to fill an admissible request to the court.

As shown, G. S.A. is a joint stock company providing community public services, having a municipality as the sole shareholder. To have an accurate picture on the issue of the interest of the applicants, we have to consider the fact that the applicants following the decision of the local council had a mandate to represent the interests of the sole shareholder at the company's general assembly meetings.

In the context of this mandate, each mandatary has a personal responsibility: the mandatary is obliged to execute the mandate being both responsible and liable for damages that may arise due to the failure of his/her culpable activity (Art. 1539 of the ancient Civil Code). Furthermore, the mandatary is responsible not only for fraud, but also for simple guilt (Art. 1540 of the ancient Civil Code.). The New Civil Code from 2009 and in force from 1 October 2011 is using similar terms (Art. 2018): the mandatary is required to execute the mandate with the diligence of an abstract "good owner" (if the mandate is either with consideration) or not so strictly, with the diligence manifested in his own business (if the mandate is free of charge).[13] If the law or the Company Statute are infringed through a general assembly decision and in consequence the decision is null and void or annullable, the mandatary has an obligation to use the legal means to restore the legality, to bring proceedings for annulment of the general assembly decision.

Art. 128 of Law no. 215/2001 on local public administration establishes the personal responsibility of each councilor: "local councilors are responsible for all acts which result in contraventions, damages and crimes while exercising their duties under the law." And the exercise of the mandate to represent the municipality in the general assembly is an essential part of the powers of local councilors. It forms a content of the duties belonging to a local councilor. If the company is not acting

[13] For details, see art. 2019-2021 in the Civil Code in force.

according to legal and statutory rules, the councilors may be held liable personally.

According to Art. 51(1) of Law no. 215/2001 on local public administration, "within their mandate, local councilors are serving the local community." This provision also justifies the interest of the applicants. Local councilors and mandataries of the sole shareholder must ensure the proper functioning of public services and ensure the legality of the activities of public service providers such as G. S.A.

In conclusion, the direct and personal interest of each mandatary to formulate such an action for annulment of the general assembly decision is the result of the mandate given to each representative (mandatary) by the sole shareholder. Also of the personal liability of local councilors in the case of wrongful acts stems from the overall interest of the local community in the lawful operation of local public services.

Therefore the lack of interest is not well founded.

2.4. The exception of prematurity of legal action

The case it raised the question – moreover general, which occurs in the case of any joint stock company – of prematurity of legal action. The action in the case were filled before the general assembly decision was published in *The Official Gazette of Romania*, Part IV, which is a mandatory publication for joint stock companies decisions according to the Companies Act.

Under the law, general assembly decisions contrary to the law or the Company Statute can be challenged for relative nullity reasons in court within 15 days of the publication of the decision in *The Official Gazette of Romania*, Part IV. The publication of the decision is meant to mark the beginning of the 15-day prescribed period. The publication date is as an objective notice for absent shareholders on the existence and the content of the decision. This publication requirement protects the shareholders which have not participated in the general assembly meeting. However, nothing prevents an action for annulment to be filled by a shareholder immediately after the decision is adopted, i.e., before its publication. Anyway, the 15 days' period does not suspend the right to action, so the shareholders who were present at the general assembly meeting or learned in any way the adopted decision can act immediately after the approval of an illegal decision.

Also, according to the relevant case law, the legal provision sets a deadline in which action for annulment can be formulated, but nothing prevents the interested shareholder to bring such an action to court

before the publication of the decision in *The Official Gazette* (as stated the former Supreme Court of Justice – in the present, since 2003, the High Court of Justice and Cassation – in its decision no. 4086/2002). The legal literature has also shown that nothing precludes the possibility to formulate such action if the shareholder is aware of the general assembly decision.[14] This 15 days' deadline to file an action applies only in cases where the decision is challenged on grounds of relative nullity and in this case does not prevent the court from examining the merits of the case.

2.5. Merits of the case

2.5.1. The merits of the case include the specific reasons for absolute and relative nullity, with respect to the violations of the Companies Act or of the Company Statute trough the dismissal decision.

2.5.2. The first substantive issue examined concerns the changing of the items on the agenda. The general assembly was convened for four matters on the agenda, namely the presentation of the company's situation (1), discussing the state of affairs created after signing a contract with a certain limited liability company (2), discussing certain benefits (3), and miscellaneous (4). The summoning document of a general assembly must contain accurately all matters that will be subject to debate.[15]

At the assembly, however, a new item was added to the agenda, being the dismissal of the president of the management board.

When the question of the validity of the change to the agenda was raised, it also affected the validity of the decision adopted regarding the matter added to the agenda only at the general assembly meeting.

It was argued that the decision should be valid, because in this case the provisions on the operation of local councils are applicable, which allow the changing of the agenda even at the local council meeting if necessary. If the majority of local councilors present vote so, supplementing the agenda of the local council is possible in urgent matters that cannot be postponed until the next meeting.[16] In this case, the majority to amend the agenda was met, if we take into consideration the rules and procedures of the local council.

In the given situation, the provisions of Law no. 215/2001 on local public administration, regarding the functioning of the local councils

[14] Piperea, 2012, p. 208.

[15] Cărpenaru, 2012, p. 328.

[16] Art. 43 (1) from the Law no. 215/2001 on local public administration.

cannot be applied, because the general assembly is not an administrative authority issuing administrative acts under public law, but an organ of a company. This applies even if in the given case the composition (and only the composition) of the local council (again, a structural unit of the municipality, which is a legal entity of public law) overlaps with the configuration of the general assembly (a decision-making body of a company composed of the shareholders). Decisions adopted by the general assembly represent acts adopted under private law and not local council decisions issued under the rules of public law. These decisions are differentiated by their effects and also procedures of their enactment.

By changing the items on the agenda of the general assembly the provisions of Art. 117, Ind. 1 of the Companies Act were violated. This legal text states that "(1) The right to request the introduction of new items on the agenda belongs to one or more shareholders representing, individually or together, at least 5% of share capital. (2) Such requests shall be submitted to the management board or to the directorate, within 15 days of the publication of the convocation, in order to publish it and information of the other shareholders ..." Regarding the case in concern, I think that a request to supplement the agenda could have been made by any local councilor in his/her position as representative of the single shareholder. This supplement should be circulated to all members prior to the general assembly meeting as stated in the Companies Act.

According to the Company Statute of G. S.A., the general assembly "shall be convened not later than 30 days before the date fixed, based on the convening notice, which indicates the place and date of the General Assembly meeting, as well as the agenda, expressly mentioning all matters that will be subject to debate" (Art. 16.3.). The deadline for convening the general assembly was met, but supplementing the initial agenda was possible only within 15 days following the issuance of the convening notice not at the general assembly meeting.

Mandatory ("imperative") provisions of the Companies Act established the so-called corporate public order (company law public order). Any violation of these legal provisions nullifies the assembly decision. Violation of the rules regarding the convening procedure of the general assembly meeting, which also include how the agenda is established, also is sanctioned with absolute nullity of the decision adopted disregarding the legal rules on how to supplement the agenda. We are in the presence of virtual nullity[17] when decisions are debated and adopted by the

[17] Violation of mandatory norms not accompanied by the express sanction of nullity; the opposite of textual nullity.

general assembly on issues which were not legally included on the agenda. Otherwise the right to information of the shareholders is infringed.[18] Prior communication of agenda items is a prerequisite for preparation of the decisions of the general assembly. This legal rule protects the right of access to information, in order to grant to each shareholder the chance to properly prepare himself/herself for the general meeting and to vote accordingly. It has been shown that early publication of the agenda allows "the shareholder to be able to prepare, to document, to have an enlightened contribution in the creation of company will".[19]

The unlawful amendment of the agenda under the given circumstances constitutes a basis to absolutely void the general assembly decision on any item added to the agenda disregarding the specific rules.[20]

2.5.3. Another reason for nullity, which was also raised by the applicants concerned the question of quorum, based on the Company Statute. In general, the quorum means a sufficient number of participants or votes for a meeting to be validly constituted and able to adopt a valid decision.

At the convocation, 14 local councilors were present. However, according to Art. 14.2. of the Company Statute and applying Art. 112 of the Companies Act, the "duties and responsibilities provided by Law no. 31/1990, republished, and other normative acts and this Statute, the tasks of the General Shareholders Assembly shall be fulfilled by the City Council, where at least 15 councilors are present." Similarly, in this case the rules on the functioning of the local council do not apply, as alleged, to general meetings of a company. Stating that local council meetings are conducted in the presence of legal majority of local councilors[21] are rules which are not governing the general assembly meetings of a company. There are express provisions in the Company Statute, which sets out specific rules governing quorums.

The issue becomes complicated by an ambiguity in the Company Statute. Art. 18.4. from the Company Statute stated that five councilors would represent the quorum, contrary to the aforementioned Art. 14.2. from the very same Statute.

However, the Company Statute turns out to be a combination of initial texts and not sufficiently correlated later revisions. Initially, the Local Council Decision no. 150/2005 established that five city councilors

[18] Regarding the right to be informed, see Duțescu, 2010, p. 100.

[19] Georgescu, 2002, p. 317.

[20] For other cases of absolute nullity see Piperea, 2012, p. 210-211; Georgescu, 2002, p. 360-363.

[21] Art. 40 (1) of the Law no. 215/2001 on local public administration.

represent the interests of the sole shareholder (the municipality) in the general assembly. The text of Art. 18.4. from the Company Statute required the presence of all the 5 councilors (100% of representatives at that time) for a valid general assembly.

Local Council Decision no. 106/2008 changed this representation rule, providing that all 17 members of the local council will represent the sole shareholder in the general meeting. Accordingly into the Company Statute was introduced the present text of Art. 14.2., to provide that there is a quorum in the presence of 15 councilors. The text of Art. 18.4. has been thus repealed implicitly.

Since this is a special quorum established by the Company Statute and not by law, violation of this rule from Art. 14.2. has, as consequence, the relative nullity of the decisions taken in such circumstances.

2.5.4. Another problem – ground of invalidity – refers to the subject of the vote. The resolution to recall the person from the position of management board membership and from the function of president of the management board was not actually voted by the general meeting. According to the minutes of the general meeting of shareholders, the vote was for "the removal from the office of director".

There are two distinct functions to be performed, as indicated in Art. 143 of the Companies Act which state the following: "(1) The management board may delegate the management of the company to one or more directors by appointing one of them as general director. (2) The Directors may be appointed from among the management board members or from outside the Board. (3) If the Company Statute states so or by a decision of the General Assembly of shareholders it is stated in this way, the president of the management board of the company may be appointed also as general director."

The removal was voted according to the minutes (i.e., the removal from the office of director) and the object of the general assembly resolution drafted after the vote, which also includes the removal from the function of President of the board and from management board membership, did not overlap. This means that issues which were never voted on have been included in the text of the resolution. Therefore, these matters not being adopted by vote, cannot be considered as a valid manifestation of the will of the company. The resolution does not reflect the will of the general assembly, which constitutes a reason for absolute nullity.

2.5.5. If we refer to the previously discussed questions, the legal provisions relating to the powers of the board and of the general assembly were also infringed. Revocation of a person as a director is a prerogative of the managing board. In this respect, Art. 143, Ind. 1,

Para. (4) of the Companies Act states that "Directors may be revoked at any time by the managing board. If the revocation occurs without just cause, the director concerned is entitled to payment of damages."

The general assembly could not discuss such an issue, because it is a prerogative that belongs to another corporate body, being the management board. Also, according to Art. 142, Para. (2), letter c) of the Companies Act, among the management boards' core competencies there is one regarding "the appointment and removal of directors and determination of their remuneration." These rules are also found in the Company Statute (Art. 20) and also Art. 21 from the Statute states that "The Board delegates management of the company to a director, through a contract of mandate."

Removing a director, under the principle of symmetry, can only be done by the management board. Of course, there is the legal possibility of direct appointment and removal of the General Director by the general assembly. In the absence of such provisions in the Company Statute to this effect, only the legal rules shown above are applicable.

3. Conclusions

Finally, the company's decision was rendered null and void. The most challenging legal question raised in this case was finally decided accurately and correctly by the courts. If one shareholder is represented by more than one mandataries, i.e., the local government as sole shareholder is represented by several local councilors, there must be admitted that any of those agents or mandataries has the separate right to challenge before the court the decision of the general meeting on the ground of relative nullity, even if those agents are not shareholders and even if in the case of voting as a collective body, the majority of the mandataries would vote against such a legal action.

This and all the other above discussed problems illustrate that the regulation is not precise enough. It must be improved, redesigned, correlated and unified. In company law context clarifications are needed on the theoretical foundations on the role played by the state and local governments as shareholders, and even more generally, on the functions of the state in a market economy at the very end of the post-totalitarian transition period.

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JOINT STOCK COMPANIES HAVING THE LOCAL GOVERNMENT AS THE SOLE SHAREHOLDER – SOME PRACTICAL REMARKS IN THE CASE OF ROMANIA

Abstract: As a general rule, a joint stock company is based on a contract, therefore at least two shareholders are necessary to establish such a business entity. A sole shareholder joint stock company has an exceptional character, because it can be founded only by the state or by the local government. In the Romanian jurisprudence recently several important problems were raised regarding the operation of sole shareholder joint stock companies, therefore a detailed analysis of the court cases dealing with the representation of the interests of the sole shareholder and with judiciary control over the activity of such companies seems pertinent.

Keywords: JOINT STOCK COMPANY, STATE AS SOLE SHAREHOLDER, LOCAL GOVERNMENT AS SOLE SHAREHOLDER