THE MAIN TOPICS THAT CAN NOTIFY THE ADMINISTRATIVE COURT

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Abstract: *ADMINISTRATIVE CONTENTIOUS REPRESENTS A LEGAL PHENOMENON THAT AIMS TO PROTECT THE RIGHTS OF CITIZENS AGAINST POSSIBLE ABUSES OF THE ORGANS OF PUBLIC ADMINISTRATION AND OF PUBLIC SERVANTS THAT WORK WITHIN THOSE BODIES.*
ARTICLE 1 OF LAW NO. 554/2004 ESTABLISHES THE MAIN TOPICS THAT CAN NOTIFY THE ADMINISTRATIVE COURT

Keywords: *ADMINISTRATIVE CONTENTIOUS, ANY PERSON AGGRIEVED IN HIS OWN RIGH, PUBLIC ADMINISTRATION, FUNDAMENTAL RIGHT*.

INTRODUCTION

I. General considerations concerning the institution of administrative contentious

In a State of law based on the legal order, public administrative courts represent a democratic form of reparation of violations committed by law enforcement and administrative authorities, limiting the arbitrary power of the latter, by ensuring individual citizens ' rights.[2]

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[2]Cosmin Dragoş, Dacian *Administrative courts procedure*, Ed. All Beck, Bucharest, 2002, p. 1

Etymologically the word "contentious" comes from the Latin word "contendere", meaning "to fight". It is a battle in the metaphorical sense, a battle of opposites, the interests of the two sides, one of which will come out winning. Contentious term expresses the conflict of interests.[3]

Under art. 52 para. 1 of the Romanian Constitution republished in 2003 entitled "the right of the injured person by a public authority" "in any of the times in a vested interest, a public authority through an administrative ruling or by his/her legal term to an application, is entitled to obtain acknowledgement of those rights or legitimate interest in the annulment of the Act and reparation of damage."

According to this constitutional text, the right of the person injured by a public authority is a fundamental right, and art. 52 of the Constitution is the constitutional basis of the liability of public authorities for injuries produced in violation of or disregard of citizens ' rights, freedoms and legitimate interests.

In terms of literature, most authors consider that the concept of jurisdiction has two meanings: one material and one organic or formal. In the material sense the notion of administrative jurisdiction is focused on topics including litigation takes place and on the applicable legal regulations, and the formal meaning refers to courts competent to resolve these disputes.

But not always disputes between the Administration and citizens were given the responsibility to the courts. From a formal point of view, over time, we distinguish three main administrative systems[4] :

5 system administrator-judge characterized the resolution of conflicts with the administration by the administrative authorities with judicial powers (this system existed in France until the revolution of 1789, in which bodies within the Administration were entrusted with the settlement of these disputes);

6 French system of a separate administrative judiciary, characterized by conflict resolution with the administration of the courts specialising in this type of conflict;

7 the Anglo-Saxon system of common courts of law and competent in matters of administrative courts.

In the present administrative doctrine, administrative contentious has been defined as representing the totality of the disputes within the competence of the courts, of an organ of public administration, that is, a public official or an authorized to push a public service, on the one hand, and another subject of law, on the other hand, a public authority appears as a carrier of the prerogatives of public power[5].

The law which regulates the institution of administrative courts in Romania is Law no. 554/2004.

[3]Dana Apostol Tofan, *Administrative law*, vol.II, Ed. All Beck, Bucharest, 2004, p. 281 \
[4]Ibidem, p. 282
[5]Antonie Iorgovan, *Treatise on administrative law*, vol.II, edition a III-a, Ed. All Beck, Academic course collection, Bucharest, 2002, p. 283

II. Brief overview of the topics that can notify the Administrative Court.

In accordance with Art. 1 of Law 554/2004, were active procedural quality the following categories of subjects of law:

-Any person who considers himself aggrieved in his own right or a legitimate interest through an administrative act illegal;
-Any person aggrieved in his own right or a legitimate interest through an administrative act with individual character, addresses another subject of law;
-Ombudsman;
-The Public Ministry;
-Public authority -the Prefect
-National Agency of Public Servants.

Shown in the analysis of art. 1 that the law on administrative courts preferred the notion of person in place of the general expression "injured". The law on administrative courts from 1925 used the generic term "anyone", avoiding the use of the concept of a person: "Anyone claiming to be injured in his rights by means of an administrative act or by administrative authorities and hateful to solve the demand regarding a law, may apply for recognition of his right to competent courts"[6]. In the first paragraph of art. 1 of law No. 554/2004 has shown that the administrative action can be any person who considers himself aggrieved in his right recognized by law or legitimate interest. It is observed in such a review of this text, that may have gained quality, in equal measure, both physical and legal person.

Through the concept of the "injured person" shall mean not only any natural or legal person, but also any group of individuals, holders of subjective rights or legitimate interests harmed by administrative acts, as well as social bodies alleging injury to the public interest through an administrative act being attacked.

For example, a group of people wishes to set up as a legal entity, in need of an administrative act, whose issuance is refused. According to the old law, he could not have recourse to administrative court because they do not have the quality of an active process because it was not a legal entity. And could not become a legal person, because there is no administrative act refused to be issued[7].

Another innovation brought by the law 554/2004 is the recognition of the right to have recourse to Administrative Court and the person who, without the recipient or beneficiary of an individual administrative act, is injured in his rights or legitimate interests by that act.

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[6] No. 554/2004 with the amendments and additions made by: Law No. 262/2007 modifying and completing law No. 554/2004 (m. Of. No. 510 of 30 July 2007), Constitutional Court decision No. 660/2007, Law No. 269/2007, Law No. Act No. 97/2008. law No 100/2008, law No. 202/2010, Constitutional Court decision No. 1609/2010, Constitutional Court decision No. 302/2011, law No. 149/2011, law No. 76/2012, law No. 187/2012, Constitutional Court decision No. 1039/2012, law No. 2/2013, the decision of the Constitutional Court No. 459/2014, law No. 138/2014, law No. 207/2015, Constitutional Court decision No. 898/2015.

[7] Antonie Iorgovan, *The new law of the administrative courts. Genesis, explanations and case law*, Ediţia a II-a, Ed. Kullusys, Bucharest, 2006, p. 114

[8] Verginia Vedinaş, *Some theoretical considerations and practical implications regarding the new law on administrative courts no. 554/2004,* "Dreptul" magazine, Year XVI, Series III, no. 5/2005, Union of Jurists from Romania, p. 11

Another innovation brought by the law 554/2004 is the recognition of the right to have recourse to Administrative Court and the person who, without the recipient or beneficiary of an individual administrative act, is injured in his rights or legitimate interests by that act. This problem was especially linked to the effects of construction permits, permits the various professions at home etc.

For example, a building permit issued in violation of the law could damage the rights of one or some of the owners of immovable property in the vicinity of the construction to be built on the basis of that building; residents of a building from which it operates, based on authorization, a local audience, which, through its activity, affect their

tranquility, health, living environment.

Under this law, may make an administrative action by those who live in the vicinity of construction that are building their property or where the work premises. The attack in such a situation it is an individual act, and the action will go against both the author and the administrative act against deleterious to the recipient or the beneficiary of the Act.

According to the Law no. 554/2004 Ombudsman may have gained quality in administrative disputes.8[1]

The institution of the Ombudsman has not existed in the Romanian constitutional tradition, it being enshrined by the Constitution for the first time since 1991, receipted the experience of States with advanced democracy in the defense of fundamental rights and freedoms of citizens. Constituent English has opted for the name Ombudsman, considering that it's the name that most clearly expresses the role, significance of this institution, the Ombudsman therefore self-employed being trying to unblock the citizen-

public administration, conflicts, conflicts in particular bureaucracy.

Under article 1 paragraph (1) of law No. 35/1997 reissued the Ombudsman aims to protect the rights and freedoms of citizens in their relations with public authorities. The Ombudsman receives and distributes the requests made by those harmed by the violation of the rights or freedoms by the public administration authorities and decides on such applications; seeks legal resolution of requests received and request the public administration authorities or officials concerned infringements of rights and freedoms, the re-introduction of the petitioner and damages (article 13 b and c of law No. 35/1997).

Under article 22 paragraph (1) of law No. 35/1997 the Ombudsman has the right to make its own inquiries, request the public administration authorities any information or documents necessary for the inquiry to hear and take statements from leaders of public administration authorities and of any official who can give you the information needed to settle the claim. Where, as a result of requests made, the Ombudsman finds that the complaint to the person harmed is well founded, it shall request in writing the authority of public administration which has violated its rights to reform or to revoke the administrative act and to repair the damage and to restore the injured person in the previous situation. Public authorities concerned shall take the necessary measures to eradicate irregularities observed, damages and removal of the causes which have led to violation of rights or favored the person harmed and they will inform you about it on the Ombudsman.

Where public administration authority or public servant do not, within 30 days from the date of referral, the crimes committed, the Ombudsman shall be addressed to the hierarchically superior public authorities which are obliged to notify, within a maximum period of 45 days, the measures taken. This is the monitoring procedure on the institution of the Ombudsman in accordance with the legal rules in force, and where, as a result of carrying out this procedure, it considers that the illegality of an administrative act or the refusal of the administrative authority to carry out the tasks laid down by law may not be removed except

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[7]Verginia Vedinaş, *Ibidem* p.11

8[1] Law No. 554/2004 with the amendments and additions made by: Law No. 262/2007 modifying and completing law No. 554/2004 (m. Of. No. 510 of 30 July 2007), Constitutional Court decision No. 660/2007, Law No. 269/2007, Law No. Act No. 97/2008. law No 100/2008, law No. 202/2010, Constitutional Court decision No. 1609/2010, Constitutional Court decision No. 302/2011, law No. 149/2011, law No. 76/2012, law No. 187/2012, Constitutional Court decision No. 1039/2012, law No. 2/2013, the decision of the Constitutional Court No. 459/2014, law No. 138/2014, law No. 207/2015, Constitutional Court decision No. 898/2015.

by referral shall be justice, administrative court. The introduction of the Ombudsman as a subject of contentious Court referral constitutes a guarantee of the protection of the public interest and ensuring that, in accordance with the legal provisions.

The Ombudsman is and will remain a guarantor of the exercise of fundamental rights by citizens, but not a defender of citizens to justice, which would lead to confusion between the institution of the Ombudsman and the lawyers, including lawyers and bar associations grouped in the National Union of Bars in Romania.

Public Ministry competence is recognized to have recourse to the administrative court when, in the wake of his duties laid down in the organic law, considers that the violation of rights, freedoms and legitimate interests of persons is due to the existence of individual administrative acts of the public authorities issued with excess of power. The Public Ministry is intended to represent, in judicial activity, the general interests of society, and to defend the legal order and the rights and freedoms of citizens.

In the case of individual laws, the Public Ministry shall be apprised in advance of a natural or legal person. The appeal must have as its objective aspects aimed at committing criminal offences or, where appropriate, for administrative misconduct as provided for in the organic law. The indictment was drawn up and was referred to the Criminal Court, it is understood that only the administrative court may order, in accordance with the rule of the code of civil procedure, the suspension of the case, until it resolves criminal cause. The Public Ministry shall refer the administrative court at the domicile of natural person or legal entity at Headquarters, and the person concerned acquires the status of law, plaintiff, but nothing can stop this person to give up the action, according to the principle of availability. The principle enshrined in article 2 of 28 para. 2 of the law No. 554/2004, under which the actions introduced by the Public Ministry cannot be withdrawn, targeting only the institution, and not the natural or legal person in whose benefit the action. Also in proceedings of Public Ministry indicate the issuing authority shall publish, cite as the defendant.

On the basis of the law on administrative courts the Public Ministry can bring three types of actions: the action in administrative court proceedings in subjectively administrative objective and of the Public Ministry, pursuant to art. 1 para. 8, for defending their own rights, respectively for the protection of public interest, in his capacity as a person governed by public law.[11]

In terms of administrative action subjectively, this is done in the name of and on behalf of the natural or legal person, being an action similar to that made available to the Ombudsman, except that the latter may act only on behalf of the individual.

8 For details see Roxana Dobrițoiu, „*Brief concerning the institution of the ombudsman and the law on administrative contentious. certain aspects concerning the origin of the concept*.", Analele U.C.B., Seria Litere şi Ştiinţe Sociale, nr.2/2015; Roxana Dobrițoiu, "*Theoretical aspects concerning special legitimacy of an ombudsman in disputes the administrative court",* Analele U.C.B., Seria Litere şi Ştiinţe Sociale, Supliment nr. 2, 2015.

10 Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu, *Revised Constitution - comments and explanations*, All Beck, Bucharest, 2004, p. 116

11Cosmin Dragoş, Dacian, *op.cit*., p. 35

The application object is an administrative act with excess of power by a public authority, and not unreasonably refusing to resolve an application or administrative silence. In this respect, the Act is illegal from the point of view of subjective, because the right of discretion of the public authority, conferred by a particular law or which result from the silence of the law was exercised in breach of fundamental rights and freedoms of citizens, as provided for by the Constitution or by law, with excess of power.[12]

The Act challenged may be issued not only by administrative authorities but also by any public authority[13], as well as legal persons governed by private law, which have acquired the status of a public benefit or are authorized to provide a public service, persons treated as such, for the purposes of the law, the public authorities.

Administrative action goal of Public Ministry-under the existence of a public interest, the Attorney general of the High Court of Cassation and justice shall have the opportunity to take administrative action. It envisages only administrative normative and not those of the individual, and, being a contentious goal, seeks only annulment.

The participation of the representative of the Public Prosecutor at the Court is mandatory, a Prosecutor's Office belonging to the court having jurisdiction to hear and determine cause (Court of first instance or the Court of appeal). The Public Ministry can ask the Court, acting on request or ex officio, pursuant to art. 14 para. 3, normative administrative act to be suspended, but only in the presence of certain conditions, namely that the public interest claimed to be defended to be one major, such as to seriously disrupt the operation of a public service of national importance. The Court will resolve the request for urgency and summoning the parties.

According to the law on administrative courts can be introduced and social bodies with legal personality. The term "social bodies concerned" is defined in art. 2 lit. r in law: non-governmental structures, unions, associations, foundations and the like, which have as their object the protection of the rights of various categories of citizens or, as the case may be, the proper functioning of public services. Of these, only the ones that have legal personality may intervene in a process of administrative proceedings by the Public Ministry.

Another subject of law which it recognized the quality of the active process is the issuing authority of an administrative act unlawful, the Act can no longer be revoked, since he joined in the civil sphere and produced legal effects.

Administrative acts are subject to the principle concerning the revocation in the sense that they may be terminated by the issuer on its own initiative or at the request of the hierarchically superior body, on grounds of illegality, which may be concurrent or previous issue, subsequent Act.

this principle are however exceptions concerning individual administrative acts because administrative normative are always revocable. Among these exceptions are found, administrative-judicial laws, regulations which have incurred contractual relations, civil or labor. However, they become revocable if they were obtained through fraud by the beneficiaries, made material, documents, an agreement sanctioning the statute.

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12 Under art. 2 para. 1 of law No. 554/2004 excess of authority means "*exercising of discretion of public authorities in violation of the limits of its competence as provided by law or in violation of the rights and freedoms of citizens*"

13 Public authority for the purposes of the law on administrative courts: "*any State organ or administrative-territorial units acting under State authority, to satisfy a legitimate interest; are treated as public authorities within the meaning of this law, legal persons governed by private law, which have acquired the status of a public benefit or are authorized to provide a public service, the public power* .

Law no. 554/2004 established the right of the Authority emanating from the Act of attacking him, in the event that the instrument can no longer be revoked because he entered the civil circuit and produced legal effects, the Court will rule on the legality of civil laws, concluded on the basis of wrongful administrative act, as well as on the effects of civil products.

Also, the law on administrative courts in article 1 para. 7 provides that the injured party in his rights or legitimate interests in through ordinances or provisions of the Ordinances of Government unconstitutional, may apply to the administrative court.

It could be two classes of shares:

6 relating to Ordinances that the topic of law it deems unconstitutional, when it is necessary to pronounce the first Constitutional Court, and the request addressed to the Court will be accompanied with the exception of unconstitutionality. Administrative dispute shall be suspended, and if the exception is allowed, then the dispute shall mark on that role and continue. If the exception is rejected, and the action is rejected then as inadmissible.

7 relating to Ordinances that have been declared unconstitutional, in another process, which is why any person aggrieved directly to request introduction administrative court, accompanied this time by decision of the Constitutional Court, which declared, in whole or in part, unconstitutional order that liberty and the person concerned.

The Prefect[14] , according to the law on administrative courts, may appeal to the courts of administrative acts which it considers unlawful issued or adopted by the City Council or Mayor, what attracts the right suspension of the effects.

Under art. 3 para. 2 of Law 554/2004 National Agency of Public Servants[15] may appeal to the Court of administrative acts of local and central public authorities by which violate the legislation on public office, established in the wake of their control activity, as well as public authorities ' refusal to apply the legal provisions, under the present law and the law No. 188/1999 on the status of civil servants , republished. The Act challenged in these conditions is suspended by operation of law.

A final category of topics that can notify the Administrative Court is represented by any aggrieved person governed by public law in his rights or legitimate interest. Regarding the designation of "person", it can be physical and legal entities, public and private.
These people may refer to the administrative court acting under both the framework law of administrative courts and under special laws that enshrine the right, and in accordance with law No. 554/2004 as at common law in matters.[16]

Legal persons governed by public law are the Romanian State, represented by the Ministry of public finance, Government, ministries, County, city, as well as other entities declared as such by laws or Government decisions.

Not to be confused by public law legal persons with public authorities, since some of the latter it does not have its own budget, others have their own heritage, but only administers the patrimony of the State. Legal personality of public institutions is acquired only expressly by law or by the Government.

14 For details see Roxana Dobrițoiu, "*Theoretical aspects concerning action to the prefect as representative of the government on territory local to the administrative court"*, Analele U.C.B., Seria Litere şi Ştiinţe Sociale, Supliment nr. 3, 2015

15 'For details see Roxana Dobrițoiu, "*Theoretical aspects concerning procedural active legitimation at National Agency of Public Servants"*, Analele U.C.B., Seria Litere şi Ştiinţe Sociale, nr. 4/2016, Pag. 98-

16 Verginia Vedinaş,*op.cit*., p. 18

In conclusion, the law on administrative courts no. 554/2004 tried to revolutionize the foundations of our administrative system, this institution has developed extensive case law through the courts to become one of the most important coordinates to the process of building the rule of law in Romania.

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