

BRIEF CONCERNING THE INSTITUTION OF THE OMBUDSMAN AND THE LAW ON ADMINISTRATIVE CONTENTIOUS. CERTAIN ASPECTS CONCERNING THE ORIGIN OF THE CONCEPT

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ABSTRACT. In this study surprised certain aspects concerning the theoretical of the ombudsman institution in general and certain aspects of the origin of the concept, referring me to in particular to its quality of the administrative proceedings.

KEY WORDS: the ombudsman, administrative court, individual rights, reparation of damage.

Introduction

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. 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 [1].

Under article 52 paragraph (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 article 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 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 rights of administration [2]. 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. Under the formal aspect over the ages have developed three main administrative systems [3]:

- System Administrator-judge, characterized by conflict resolution with the administration by the administrative authorities with judicial powers;
- a System of administrative justice French, characterized by conflict resolution with the administration of the courts specializing in this type of conflict;
- Anglo-Saxon system of ordinary courts, characterized by conflict resolution with the administration by the ordinary courts, common law.

The notion of a contentious have two forms:

- dress in a general sense, by the Administrative Court, means the totality of legal disputes in which it is administered with the Administration;
- narrow, administrative contentious legal dispute means all those in which public authorities use administrative law judicial regime.

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 [4].

The law governing the institution is the law on administrative contentious is 554/2004 as amended and supplemented [5].

General aspects concerning the Institution of Ombudsman and administrative disputes. Certain aspects concerning the origin of the concept.

Judicial review on the failure of public administration, due to the fact that the judge is powerless in the face of legislative gaps or faulty legal drafting of texts, but can also be caused and the lack of immediacy and accessibility to the courts gradually drove in the Western States to establish authorities responsible for auditing the administration by other means. Among these, the Ombudsman or the mediator plays an important role. This supervisory body achieve its mission in an administrative manner, the control it exercises taking place over the public administration authorities and the results of its intervention is similar to those of a judge, as it resolves a complaint, a complaint that is to be followed by what is considered to be injured by the action of such authorities. It is for this reason that this institution is difficult to strictly scientific, wrapped in one or the other.

And in the Romanian Ombudsman post, doctrine was widely regarded as a democratic, independent institution, whose implementation requires time, a democratic framework, culture, especially the political-legal, and authorities prepared to cooperate and to remove from their business mistakes or abuses to address human rights and freedoms [6].

The Ombudsman is the constitutional name under which it was organized and works in classical institution of Romania ombudsman. This legal institution "Ombudsman" appeared in Sweden now two centuries and has established itself in the constitutional systems as a system of protection of fundamental rights and freedoms of the individual in its relations with the

Executive. It is a democratic institution that demonstrates effectiveness in societies with high degree of civilization; This was because the "patron" of rights and freedoms-whether it's called ombudsman, Commissar or Ombudsman-has its own power, its method of action being cooperation, intervention, good offices he lodges on the executive authorities to make them enter into legality when they violated rights and freedoms [7].

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 [8].

Its headquarters is the matter articles 58 to 60 of the Constitution and the Law no. 35/1997 concerning the organization and functioning of the Ombudsman institution with the subsequent amendments and additions [9]. Pursuant to constitutional and legal provisions, the Ombudsman can ex in issues relating to its competence, which do surveys, make recommendations. Under article 59 of the Constitution of Romania revised the Ombudsman exercises his powers ex officio or at the request of persons harmed in their rights and freedoms, within the limits established by law.

The right of the injured person by a public authority is a fundamental right, the traditional rights in the vast category, alongside the right of petition, which is in close correlation. Article 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, after revising the Constitution in 2003, made the case for linking with art. 21 [10] and their legitimate interests [11].

By the Constitution, Romania is proclaimed state of law, democracy and social, which is organized according to the principle and balance of powers: legislative, Executive, and judicial, and naturally, for the operation of the three powers, it appears the necessity of constant relations between them, which involve a permanent collaboration and control each other, and with regard to the judicial control over the activity of public administration , it can be "translated" by the concept of administrative law. Thus, administrative, contentious as essential and indispensable element of the rule of law, represents the democratic form of reparation of violations committed by law enforcement and administrative authorities, limiting the arbitrary power of the latter, by ensuring individual rights administration, or synthetic, legal form of defenses agents-natural or legal persons-of public administration against abuses [12].

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 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.

Introduction of the institution of the Ombudsman among subjects who active procedural legitimating in special administrative courts comes after a debaters begun still in the period of applicability of the law no. 29/1990, as Dacian Dragoș specifies in his "*Law of the administrative courts. Comments and explanations*" (2005). Both in the phase of the project, as well as in the form of law. 554/2004, this aspect of the special quality of the Ombudsman process, has been the subject of disputes in the theoretical pros and cons of the topic quality award instituted the proceedings of the administrative jurisdiction of the Ombudsman. Professor Antonie Iorgovan proposed, since 1996, as the Ombudsman be accorded procedural legitimating in administrative disputes, which could not be materialized in the provisions of law No. 35/1997.

During the process of adopting the law on the Ombudsman, but also the Government, in their views, have criticized the initiative, considering that the institution concerned cannot substitute for citizens in exercising their rights, the process cannot retrieve the interests of citizens, as this would be against the spirit of the institution, whose origins lie in the Ombudsman-s Nordic and European addressing in a humane litigious/out-of-court settlement of petitions, using for this purpose the procedure of mediation without trigger a lawsuit [13].

From Dacian Dragoș 's opinion allegedly evidenced by excessive as Ombudsman to introduce himself in the administrative action, when the petitioner may direct for the purpose of proceedings brought an action, the Ombudsman cannot the complainant assist throughout the process because it would turn into a barrister, this not being in the Mission of the institution of the Ombudsman. One suggestion concerning the draft law on administrative courts came from Ploiești Court of Appeal, under the signature of the President, proposing Pantelimon Popa as natural person in whose name the action is introduced to the administrative court to acquire the status of an applicant only if he endorses the action made by the Ombudsman [14].

Law No. 554/2004, provision was made for the possibility of having the Ombudsman process in quality administrative disputes. In the initial version of the law nr. 554/2004, article 1 paragraph (1), (3) show that "*the Ombudsman as a result of control carried out, according to its*

organic law, on the basis of a complaint of an individual, if it considers that the illegality of the Act or the excess of power of administrative authority cannot be removed except by Justice, the competent court may refer the matter of the administrative jurisdiction of the domicile of the claimant. Petitioner acquires the status of law, plaintiff, to be cited as such ". Actions brought by the Ombudsman could not be withdrawn under the provisions of art. 28 para. (2) of the law on administrative courts [15].

The Ombudsman referred the matter to the Constitutional Court, before the promulgation of this law of the administrative courts, citing the unconstitutionality of the articles of the draft law that relate to active therewith the process, arguing that they would violate article 21 paragraph (1) and article 52 paragraph (1) of the Constitution.

Thus, the Ombudsman pointed out that, in accordance with article 21 para. (1) of the Constitution, which enshrines the principle of free access to justice, any person may apply to the judiciary for the protection of rights, freedoms and legitimate interests, and contrary to those provisions, art. 1 para. (3) of the Law on administrative courts shall enter the Ombudsman between subjects influencing about exercising administrative action and its ability to invested administrative court with an action in the name of a natural person. By the exercise of such powers, the Ombudsman would substitute the individual in exercising its procedural natural person pursuing higher automatically process quality, contrary to the letter and the spirit of the principle of free access to justice, in the sense to which the individual has an opportunity, not an obligation of the judiciary for the protection of rights, freedoms and legitimate interests, in an administrative causes.

Within the meaning of article 21 of constitutional, the individual is the one who decides whether or not justice is addressed, to defend his rights and freedoms, contrary to the interpretation leads to the conclusion that an individual may be required to capitalize on legal rights and acquire automatically the active procedural quality in an administrative conflict. It was also pointed out that art. 28 of the Act, which States that, once triggered, administrative action can no longer be withdrawn, is tantamount to violation of art. 21 of the Constitution, the purposes of which the person has the right to address the justice implicit right to opt out of the action by which referred the matter to the Court.

As regards the violation of law texts are subject to referral to the art. 52 para. (1) of the Constitution, according to which only the injured party can appreciate whether a particular administrative action it had injured a right or a legitimate interest and it alone is entitled to obtain acknowledgement of those rights or legitimate interest in the annulment of the Act and reparation of damage, initiating a administrative action by the Ombudsman on behalf of petitioner, would be tantamount to taking over the interests of the citizens of this constitutional authority [16].

The Constitutional Court, by decision No. 507/2004 on the referral of unconstitutionality of the provisions of article 1 paragraph, (3) article 7 paragraph (5), article 11 paragraph (3), article 13 paragraph (2) and of article 28 paragraph (2) of the Law on administrative contentious, published in M. Of. No. 1154 of 7 December 2004, in the sense that the provisions relating to the Ombudsman of the law on administrative contentious are constitutional [17].

The institution of the Ombudsman is and remains a guarantor of the exercise of fundamental rights of the citizens, his role by the support of the person injured in his right or a legitimate interest, for its protection mission, towards public authorities, by the administrative courts.

Although the institution of the Ombudsman is an institution fundamental to the rule of law, having to defend citizens' rights and freedoms, its activity regarding the appeal to the Court of administrative law against public administration bodies that have the effect of causing harm to fundamental rights or legitimate interests of some individuals is still slightly visible as shown by the information on the official website of the institution.

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