

ASPECTS OF FINANCIAL ADMINISTRATIVE JURISDICTION IN ROMANIA, FRANCE AND GERMANY

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***ABSTRACT:** THE FINANCIAL ADMINISTRATIVE JURISDICTION IS THE SETTLEMENT OF A DISPUTE CONCERNING AN ADMINISTRATIVE ACT BY FINANCIAL ADMINISTRATIVE BODIES HAVE JURISDICTIONAL POWERS, AND ARE INDEPENDENT OF THE PARTIES TO THE CONFLICT.*

***KEYWORDS:** FINANCIAL ADMINISTRATIVE JURISDICTION, THE COURT OF ACCOUNTS, JURISDICTIONAL ADMINISTRATIVE ACT, THE ADMINISTRATIVE ORGAN FINANCIAL.*

The financial administrative jurisdiction is a special administrative jurisdiction. The Law no. 554/2004 [1], with subsequent amendments, defines special administrative jurisdiction as the work done by an administrative authority, in accordance with the special law, jurisdiction to hear a dispute concerning an administrative act by a procedure based on the principle of the ensure the right to defense and administrative independence of the courts. Which has jurisdictional authority is independent of the parties to the dispute. Resolving jurisdictional administrative appeal is made by an administrative-jurisdictional act.

Regarding the financial administrative jurisdiction, it can be defined as the settlement of a dispute concerning an administrative act by the administrative and financial tasks that have jurisdictional powers conferred by law, and are independent of the parties to the conflict.

In Romania, after 1990, an example of a special administrative jurisdiction is the jurisdiction exercised by the financial administrative jurisdiction of the Court of Accounts system that existed until 2003, under Law no. 94/1992 on the organization and functioning of the Court of Accounts, republished [2], with subsequent amendments [3] .

Under the provisions of art. 139, paragraph 1 of the Constitution of 1991, unrevised, the Court of Accounts exercise and jurisdictional, and the provisions of Law no. 94/1992 on the organization and functioning of the Court of Auditors stipulated the procedure for resolving legal conflicts of competence of special jurisdiction administrative bodies operating in the Court of Accounts (such bodies of jurisdiction were: College jurisdictional of chambers of accounts county and the Bucharest, College Jurisdictional of Court of Accounts and jurisdictional Section of the Court of Accounts).

Since 2003, the revision of the Constitution [4], in accordance with article 21, paragraph 4 “special administrative jurisdictions are voluntary and unpaid”. It was

modified and art. 139 established the Court of Accounts, became article 140, paragraph 1 states that: “It shall exercise control over the formation, management and use of financial resources of the state and the public sector. The organic law, disputes arising from the Court of Accounts shall be settled by specialized courts”. This provision has led to the amendment of Law no. 94/1992 on the organization and functioning of the Court of Accounts.

In literature, it was shown that the revision of the Constitution, followed by the adoption of Government Ordinance no. 117/2003 [5], on the taking over of judicial and court staff Court of Accounts by the courts, the judicial function of the Court of Accounts has stopped, which “may have a different meaning and consequence than that throughout the organization and proper regulation of this positions lost value and legal effectiveness, even if the legislature failed to expressly repeal the provisions inserted in Chapter IV of Law. 94/1992” [6].

Equally pronounced and the High Court of Cassation and Justice in a decision in 2006 stating that after the entry into force of Government Ordinance no. 117/2003 and the revision of the Constitution, the structures of system Court of Accounts have no jurisdiction, disputes arising from the Court of Accounts is for the administrative and tax courts [7].

By Government Ordinance no. 43/2006, Law no. 94/1992 is repealed, but this emergency ordinance was declared unconstitutional by the Constitutional Court Decision no. 544/2006 [8]. Consequently, the legal regulation of Court clears Law. 94/1992 which was amended by Law no. 217/2008 [9], legislation that succeeded in many respects, agree to its provisions constitutional texts reviewed and European legislation [10]. Law no. 94/1992 on the organization and functioning of the Court of Accounts was republished in 2009.

Under the provisions of article 155, paragraph 6 of the Constitution “Until the establishment of specialized courts, disputes arising from the Court of Accounts will be settled by the ordinary courts”.

As a consequence of the constitutional provision relating to special administrative courts, the new Law on Administrative nr. 554/2004 provides that “special administrative jurisdictions are voluntary and unpaid” [11].

In opinion to professor Antonie Iorgovan “Law amending the Constitution marks a milestone in history regulating administrative disputes virtually separation of administrative courts, that judicial administrator conception” [12].

In conclusion, after reviewing the Constitution, the Court of Accounts has no judicial powers but financial control, so we can not speak of a financial administrative jurisdiction.

In opinion to some authors, and in taxation have administrative jurisdiction, but as even specify the Fiscal Procedure Code, the tax is an administrative appeal procedure.

Regarding fiscal appeal, the Constitutional Court found that “the provisions of article 178 (now article 209) of the Fiscal Procedure Code establishes in matters of taxes and contributions and customs debts prior administrative procedures to challenge acts issued by the tax authorities or customs - graceful appeals from administrative bodies issuing or hierarchical appeals higher bodies issuing authorities of those acts, but their solutions having the character of administrative-jurisdictional” [13].

The Constitutional Court also held that “such proceedings in which complaints and appeals brought by individuals concerned is assigned himself the originator of the contested act or its superior body, do not meet the defining elements of activity-

characterized jurisdiction resolution by an independent and impartial dispute regarding the existence, extent or exercise of subjective rights - they are specific administrative function” [14] and acts of solving disputes or complaints issued by these bodies are subject to censorship administrative court [15]. [16]

On the same line of ideas , the supreme court has ruled in Decision no. 106 of 17 January 2006[17] and Decision No . 4260 of 29 November 2006 [18], the procedure for resolving complaints made against fiscal administrative provisions governed by article 175-187 (currently regulated by article 205-218) of the Fiscal Procedure Code is a preliminary procedure and not an administrative special jurisdiction under Article 21, paragraph 4 of the Constitution. Procedure governed by article 175-187 (article205-218) of the Fiscal Procedure Code is an administrative procedure prior administrative appeal and administrative review covering this way a condition of admissibility of administrative action. However, the practice of the High Court of Cassation and Justice has been inconsistent. By a decision of 22 February 2006 [19] the High Court ruled that the fiscal claim is special administrative jurisdiction.

Fiscal appeal is purely administrative appeal no special judicial administrative procedure. As a preliminary procedure of referral to the administrative court is binding, in accordance with article 7 of Law no. 554/2004 on administrative, as amended and supplemented.

The Directorate General for Solving Complaints (as well as services for resolving disputes within the general directorates of public finances fiscal authorities to resolve fiscal disputes) is not an administrative body having jurisdiction. Solving Complaints Directorate General for jurisdictional organ this specification must be expressly provided by law, namely the Fiscal Procedure Code. Thus, article 209 of the Fiscal Procedure Code the governing body responsible for resolving complaints do not mention that the fiscal administrative organ has jurisdictional.

Later, in the sense used by the Constitutional Court issues the High Court of Cassation and Justice, the Section of Administrative and Fiscal adopted solution principle that the appeal brought against the fiscal administrative acts advance is an administrative procedure and not a special jurisdiction for the purposes of administrative article 21, paragraph 4 of the Constitution, republished, and article 6 of the Law on Administrative [20].

In our opinion, the fiscal appeal is an a purely fiscal administrative and not administrative jurisdiction.

The financial administrative jurisdiction in France

In France there are several administrative bodies specialized jurisdiction whose jurisdiction acts are subject to appeal in cassation to the State Council [21].

Financial administrative jurisdiction is exercised by the Court of Accounts and the Court of budgetary and financial discipline.

The Court of Accounts [22] is an administrative body responsible for financial control and jurisdictional and is divided into seven rooms, each room is composed of a President, advisors, counselors referendum, auditors, rapporteurs and experts. Court is led by first president. Prosecutor of the Court of Accounts is composed of an Attorney General, who is assisted by lawyers. All members have the status of magistrates court and are recruited from the National School of Administration, but also among those with experience in administration.

Judicial activity of the Court of Accounts shall be governed by the French Code of jurisdiction financial [23]. A major reform of the judicial procedures implemented by the Court and the regional chambers of accounts was adopted in 2008: Law no. 2008-1091 of 28 October 2008 and Decree no. 2008-1397 and 2008-1398 of 19 December 2008.

As is clear from the provisions of Article L 111-1 of the Code of jurisdiction financial, Part laws, as amended by Law no. 2008-1091 of 28 October 2008, the Court of Accounts has jurisdiction to hear disputes concern the financial accounts of public accounting. Thus, in the first instance are competent regional chambers of accounts and appeals against decisions by Boards of accounts are territorial jurisdiction of the Court of Accounts.

The Court of budgetary and financial discipline [24] was created by Law no. 48-1484 of 25 September 1948, and currently operates under the provisions of art. L 311-1 - L 316-1 of the Code of financial jurisdictions. This court is composed of the first president of the Court of Accounts who is vice president, five councilors Court and five state councilors appointed by decree of the Council of Ministers. Prosecutor General of the Court of Accounts shall powers of the public prosecutor and is assisted by lawyers and government commissioners.

Court of budgetary and financial discipline shall have jurisdiction to resolve deviations from budget and financial discipline committed by those screened Court of Accounts.

The financial administrative jurisdiction in Germany

In Germany, the fiscal jurisdiction and the social jurisdiction are considered specialized administrative jurisdiction of administrative tribunals exercised as private, independent and distinct administrative authorities [25].

The fiscal jurisdiction extends to fiscal disputes between the state and taxpayers. This jurisdiction includes two levels of jurisdiction: background and appeal review. Courts are courts exercising tax jurisdiction Finance (Finance Court) and the Federal Finance Court (Federal Finance Court).

The finance courts are in number 19 and states in the first instance. Typically, courts Finance judges panel of three judges. As an exception, the rooms may decide by a single judge and two counselors if the dispute submitted to the Court concerns a case which raises issues of principle or poses unique challenges.

The Federal Finance Court is the highest court in fiscal matters and is based in München. This court judged by a panel of five judges, and has jurisdiction to hear the way great review. The review can be exercised only on the basis of prior authorization given by the courts of Finance.

Authorizations provided for in German law are likely to limit the possibilities of appeal. “In summary analysis system is objectionable, however, deepening the problematic conclusion that emerges approvals and procedural system known Anglo-Saxon common law, are likely to eliminate the possibilities of abuse, totally unfounded reviewed. It was argued that, if we refer to the system of tax jurisdiction as to note that the decision given by the court, meaning not authorizing the exercise of an appeal may be contested” [26]. On the other hand, the law determines the cases in which the authorization can not be refused, and those where it is not necessary (illegal composition of the panel, non-respect of public debates and failure to state reasons contested decision).

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