ASPECTS CONCERNING THE INSTITUTION OF ADMINISTRATIVE COURTS - FUNDAMENTAL COMPONENT OF THE RULE OF LAW

Roxana Dobritoiu
Lecturer Phd. , "Constantin Brâncuşi" University of Târgu-Jiu

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. In a state based on law order on judicial control over public administration represents the most important form of control, being the legal instrument through which governments can defend the abuses of the administration, and also can be viewed as the main guarantee of and the achievement of a right to good administration.

Keyword: *administrative law, the fundamental rights and freedoms, judicial control, damaging a right.*

By the Constitution, Romania is proclaimed rule of law, democratic and social, which is organized on the principle of separation and balance of powers: legislative, Executive and judicial powers within the framework of constitutional democracy. For the operation of the three powers, it appears that the need for the existence of steady relations between them, which involve a permanent collaboration and mutual checks conducted under conditions strictly determined. This control should not be spring tension or pressure, but should have a significance barometer indicating the manner in which they are called upon to apply the Act at the decision, and the degree to which the decision corresponds to the purpose for which it was issued. [1]

Professor Paul Negulescu "indicate that this separation of powers is credited as being the most practice and guarantee the most reliable for maintaining freedoms being recognised the necessity of the existence of constant ratios between these powers and the kind of mutual control between them. It is absolutely necessary that the laws should correspond to actual needs and should be consistent with the entire system of legislation". [2]

Administrative contentious represents 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 citizens, or may be regarded as the legal form of defence agents-natural or legal persons-Government against abuse. Contentious term [3] represents, on the one hand, an activity for the settlement of a conflict of interest (as defined in the functional-material), of a legal conflict, and, on the other hand, the organ entrusted by law with the settlement of such conflicts (in terms of formal-organic). [4]

The State Council, created in 1864 was the first administrative organ, powers to settle the conflict between the Administration and individuals. After Cuza's abdication, the law of 9 July 1866 held that administrative affairs were to be resolved by the rules of ordinary production. That provision, although it has been amended several times, remained in force until 1923. [5] Yet these tribunals had a limited jurisdiction with regard to acts of authority, they may appreciate the legality of those acts about indirect and to award damages, but not to annul the Act.

As amplification and administrative activities such as diversification and awareness of those manage their rights and obligations correlative of the administrative authorities to repair them [6], have appeared increasingly frequent requests for the purposes of the establishment of a broad and complete system of administrative courts, to ensure a more effective protection of citizens. [7]

Public authorities apply the rules of law in many cases, individual situations where it may affect the rights of citizens, while the injured in his right or a legitimate interest must be able to address some specialised bodies provided by law and under the law, in order to repair the damage suffered and to restore the legal order violated. The need for the establishment of administrative bodies is justified and that, often, the issuing body or the hierarchically superior does not remove inland administrative appeal or hierarchical administrative rules issued in violation of the law, whereby the rights of the citizens are their physical injury or in legitimate interests. On the other hand, if it is true that hierarchical administrative appeal and are more advantageous for those physical injury in their rights or legitimate interests in the State, by means of an administrative act, for boosting legal, sometimes these remedies are inadequate for effective protection of the rights and interests of citizens. Therefore, the rule of law with the necessity to take measures, aimed at establishing a judicial control of the legality of the work of the executive. [8]

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:

■ 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);

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

■ the Anglo-Saxon system of common courts of law and competent in matters of administrative courts. [9]

The Charter of fundamental rights of the European Union (CDFUE) enshrines in article 47, after the model of the European Convention of human rights and fundamental freedoms, the right to effective action and to access to an impartial tribunal. [10]

Thus, according to the first paragraph of the article, "everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a court, in accordance with the conditions laid down in this article." He is, obviously, of article 13 of the European Convention of 1950, which provide that "any person whose rights and freedoms recognized in the present Convention have been violated, has the right to address effectively a national court, even where the breach would be due to people who have acted in the exercise of their official duties".

The second paragraph of art. 47 CDFUE States that: "everyone has the right to a fair trial, public and within a reasonable time before an independent and impartial court established by law in advance. Everyone has the opportunity to be advised, defended and represented ". [11]

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.

According to art. 52 public authorities liability occurs when:

A. issue an administrative act by which a person's liberty;
B. not dealt with in a legal request by a person;
C. through miscarriages of Justice perpetrated in processes occur.

In the second case you can capture two practical issues. The first may be due for processing the request, outside the legal time limits, so overrun with them. If the action is already received to be resolved by taking into account the justifications of the authority. However, if the action was not set in motion the receipt and resolution to be rated according to whether it has produced personal injury or not. The second aspect concerns the public authority with silence when he received an application. A constitutional regulation presents the advantage that it does not enable the public authorities to ignore a request by a citizen. [12]

In article 126 paragraph 2 of the Constitution, republished, the administrative jurisdiction is expressly provided for. According to the constitutional text, the judicial control of administrative acts of the public authorities, administrative courts, is warranted, with the exception of those concerning relations with the Parliament and the headquarters of a military nature. The administrative courts are competent to hear claims of persons injured through ordinances or, where appropriate, through the provision of decrees declared unconstitutional.

The traditional classification of the main administrative forms, considering in particular the findings of the judge makes them after legal nature of the conflict.

Thus, from the point of view of the Court will act by the Administrative Court, which materialized in the judgment shall be handled through the dispute, administrative contentious are classified in: cancellation and contentious legal Department of full jurisdiction.

Legal Department for cancellation is that the Court has jurisdiction to annul or amend an administrative act adopted or issued by the authority with non-compliance with the law or to compel the administrative civil service to resolve a claim relating to a right recognized by law. In such a case, the Court is not competent to resolve the problem and repair the damage. This problem is resolved in the context of a separate dispute, the courts of common law.

Full of contentious jurisdiction is characterized by the right of the courts to annul the administrative act contested to compel the administrative authority to issue an administrative act or another enrolled, as well as to oblige to compensation.

A second classification takes into account the nature of the issue on which it is based, i.e. action taken subjectively, contentious goal respectively.

Subjective contentious exist when the request addressed to the applicant by the competent court action considering the violation of its legitimate interest in the subjective times. By its decision, the judge is not limited to the cancellation of illegal ruling, but may order other measures such as recognition of subjective rights, refunds, damages and possibly reforming the act.

Contentious goal is where the action is requested to note that the State of legality is injured by an act of the Administration, as it stands, the judge, by the discovery that makes it into his act, resolves the question of violation of the right lens, regardless of the legal position of the plaintiff, pronouncing the annulment of the Act where it finds the disparity with the legality of that Act. [13]

The law governing the institution is the law on administrative courts no. 554/2004 amended and supplemented. [14]

Organic law on the matter, under article. 2 para. (1) lit. f) provides a definition of this institution of the administrative courts, according to which the text through administrative means of settlement activity by the competent administrative courts according to the organic law, disputes in which at least one of the parties is a public authority, and the conflict was born on either issue or, where appropriate, the conclusion of an administrative act or by his/her legal or unjustified refusal to resolve a claim relating to a right or a legitimate interest.

The object of the administrative dispute may be administrative or regulatory framework with unilateral and bilateral or plurilateral administrative acts. In this respect, the courts can be appealed in respect of administrative, as well as with regard to administrative, such as administrative contracts, unjustified refusal or passivity of the Administration, as shown in the art. 2 para. (2) of the law on administrative courts. [15]

Also the subject of the action you may be unduly and making a certain administrative operations required for the exercise or protection of rights or legitimate interests as provided for in art. 8 para. (1) of the same law. With regard to the quality of the parties in the administrative litigation requires a distinction between the plaintiff (active procedural quality) and the defendant (procedural passive quality).

Thus, the quality of the plaintiff can have a natural or legal person injured through an illegal administrative act of a public authority, as provided for in art. 1 para. (1) of the law on administrative courts.

If they give a causal relationship between the Act of administrative individual character, addresses another subject of law, and damage to the rights or legitimate interests of a third party, then the person concerned may apply to the Court as a complainant, as article 1 para. (2). of the same law. [16] Article 1 para. (3) to (8) of the Act confers on the procedural framework and quality the following categories of subjects of law, special topics considered instituting proceedings: the Ombudsman, the Public Ministry, the issuing authority of the administrative act, the National Agency of Civil Servants, the prefect and any other matter of public law.

The quality of the defendant public authorities exercising powers or structures of State authority, according to the law. [17]

Legislative reform in recent years in Romania, through the introduction of a new Code of civil procedure has been defaced in the field of administrative courts. The framework law on the matter, including material provisions are found and rules of procedure, but the Act does not cover all aspects of procedure, which, in the current context, it maintained the rule of law to supplement gaps with special provisions of the code of civil procedure, i.e. is preserved the thesis completion of proceedings on administrative courts with common law and procedural law. [18]

Administrative contentious, in its current form, is a fundamental institution of public law, which carries out the judicial control over the activity of public administration authorities, aiming to restore the rule of law when it finds violations of the rights and legitimate interests.

References:

[1] Constantin Grigoraș, *Administrative disputed claims Office according to the new code of civil procedure*, Hamangiu Publishing House, Bucharest, 2014, p. 6-7
[2] Iuliana Râciu, *Administrative courts procedure*, Hamangiu Publishing House, Bucharest, 2009, p. 3
[3] The term "contentious" derives from the latin word contendo, contendere, which evokes, the idea of a confrontation through battle, where a dispute between two parties with contrary interests, Rodica Narcisa Petrescu, *Administrative law*, Hamangiu Publishing House, Bucharest, 2009, p. 413; see Antonie Iorgovan, *Treatise on administrative law*, All Beck Publishing House, Bucharest, 2005, p. 486; see Iuliana Râciu, *Administrative courts Procedure*, Hamangiu Publishing House, Bucharest, 2009, p. 5
[4] Constantin Grigoraș, *op.cit.*, p. 8
[5] Dumitru Firoiu , *The history of State and law*, the Foundation's "call" Publishing House, Iaşi, 1993, p. 224
[6] Olivia Roxana POPESCU, *Quality management and organizational change*, Annals of the Constantin Brancusi University of Targu Jiu-Letters & Social Sciences Series, supliment 1/2016
[7] Rodica Narcisa Petrescu, *Administrative law*, Accent Publishing House, Cluj-Napoca, 2004, 370.
[8] Rodica Narcisa Petrescu, op.cit, p. 413
[9] Iuliana Râciu, *op.cit.*, p. 8; a se vedea Constantin Grigoraș, *Administrative disputed claims Office according to the new code of civil procedure*, Hamangiu Publishing House, Bucharest, 2014, p. 13
[10] Ina Raluca Tomescu, *The European Union strategy for the effective implementation of the Charter of fundamental rights*, the Annals of the "Constantin Brâncuşi" University of Târgu-Jiu, The series of Letters and Social Sciences, no. 2/2012, pp. 80-92.
[11] Mircea Duțu, Andrei Duțu, *The law of the European courts*, Universul Juridic Publishing House, 2010, p. 307-308
[12] Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu, *The revised Constitution-comments and explanations,* All Beck Publishing House, București, 2004, p. 106
[13] Rodica Narcisa Petrescu, *Administrative law*, Hamangiu Publishing House, Bucharest, 2009, p. 416-417
[14] 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

[15] "shall be treated as administrative and unjustified unilateral refusal to deal with a request relating to a right recognized by law or have a vested interest in times, where appropriate, failure to reply to the applicant within the time limit". See Constantin Grigoraș, *Administrative disputed claims Office according to the new code of civil procedure*, Hamangiu Publishing House, Bucharest, 2014, p. 10

[16] "may apply to the Administrative Court and the injured party in his own right or a legitimate interest through an administrative act with individual character, addressed another topic of law." See Antonie Iorgovan, Liliana Vișan, Alexandru Sorin Ciobanu, Camella, , Diana Iuliana Pasăre, *The law on administrative courts-with amendments and additions. Comment and jurisprudence,* Universul Juridic Publishing House, Bucharest, 2008, p. 28-29

[17] Constantin Grigoraș, op.cit., p. 9-10

[18] See Constantin Grigoraș, op.cit., p. 25-27