

# THEORETICAL ASPECTS CONCERNING PROCEDURAL ACTIVE LEGITIMATION AT NATIONAL AGENCY OF PUBLIC SERVANTS

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**Abstract:**

*National agency of civil servants has become, according to art. 3 paragraph 2 of law no. 554/2004, active legitimation process, she could then appeal to the administrative contentious, central and local public authorities, whereby legislation is in breach of the public function, under the law on administrative courts and the law on the status of civil servants, republished. In our system of administrative law, administrative guardianship authority is prefect and national agency of civil servants, and the right to control of the agents of the public authorities which apply to legislation in the field of civil service and public servant is qualified as administrative guardianship.*

*Key words: public servant, administrative guardianship, the public function, administrative contentious, active legitimation quality, the administrative act.*

Public authorities apply the rules of law in many cases, the individual, in which case it may adversely affect the rights of citizens. In a State based on law order, administrative courts are the main form of ensuring that private rights, breaches of the law by public administration authorities, limiting the arbitrary power. [1]

One of the fundamental principles, the right to a fair trial within optimal and predictable is successful for the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, by law No. 304/2004 on the organisation of the judiciary, established itself to be in line with art. 17, but also with other provisions of the law on administrative jurisdiction which reveals the urgency and, in particular, of settling disputes which have been entrusted with the units of the administrative and tax courts within. [2]

Inspired by the regulation of the European Convention on Human Rights [3], entitled the right to a fair trial, the principle governed by the new code of civil procedure reflect the importance conferred by the legislature's internal rules arising from the Convention and the case-law of the European Court of Human Rights. [4]

The reports of administrative law, related authorities and the authorities or private individuals, subject to the special procedure in cases of conflict, the dispute will be settled after special procedure-law nr. 554/2004, to be completed with the regulated by the new Code of civil procedure. [5] Moreover, law No. 554/2004 send the code of civil procedure, in addition, where

the law does not hold, so that the new code of civil procedure and all its provisions are compatible with the specifics of the relationship between the authority and the injured persons, apply to these ratios become conflicting. [6]

Under national law, under art. 1 para. (1) of law No. 554/2004 on administrative courts, as amended and supplemented, "any person who considers himself aggrieved in his own right or in a vested interest by a public authority through an administrative ruling or by his/her legal reply to an application, may apply to the competent administrative court, for the cancellation of the recognition of those rights or legitimate interest and reparation for the damage that has been caused. Legitimate interest can be both private and public. "

Law No. 554/2004 recognizes expressly in art. 1 para. (3) to (9) that they can have an active procedural quality: the Ombudsman, the Public Ministry, public authority issuing a unilateral administrative act unlawful, the Act can no longer be revoked since it entered the civil circuit and produced legal effects, The Prefect, The National Agency of Civil Servants and any subject of public law, the injured party in his rights or legitimate interests in through ordinances or provisions of the Ordinances of the Government unconstitutional.

The administrative tutelage, institution of public law, not found in the Constitution's explicit consecration in 1991, following its revision in 2003, as well as any other regulations with the incidence in the administrative courts adopted pending the entry into force of law No. 554/2004 on administrative courts.

In our system of administrative law, administrative guardianship authority is prefect and The National Agency of Civil Servants, and the right to control of the prefect and local public administration authorities and the right to control the National Agency of Civil Servants on the acts of the public authorities which apply to legislation in the field of civil service and public officer shall be qualified "administrative guardianship." [7]

National Agency of Public Servants (A.N.F.P.) was established by law No. 188/1999 on the status of civil servants, in order to ensure the management of public functions and civil servants. A.N.F.P. 's main powers are found in law No. 188/1999 on the status of civil servants as amended and supplemented, and the activity is governed by the Decision adopted by the Government no. 1000/2006 republished, with subsequent amendments and additions. [8]

Considering the fact that administrative guardianship constitutes an exception to the principle of local autonomy is exercised only by the authorities provided by law, only in cases stipulated by law, the Law on administrative courts, taking into account the provisions of art. 22 para. (3) to (5) [9] of law No. 188/1999 on the Status of civil servants, republished, and that this control is similar to administrative guardianship exercised by the prefect, administrative guardianship institution devotes exercised by The National Agency of Civil Servants, as a way of contentious goal established by this law. [10]

As regards the actions brought by The National Agency of Civil Servants, should be considered, cumulative, requirements of the "*common law*" of the administrative courts and the conditions of the "*special right*" given by the law on the status of civil servants, republished.

Under art. 1 para. (8) of the Law on administrative courts "Prefect, The National Agency of Civil Servants and any subject of public law may introduce administrative actions under this law and special laws and art. 3 para. (2) "National Agency of Public Servants may appeal to the Court of administrative acts of local and central public administration authorities through which

violate the legislation on public function, under the present law and the Law on the status of civil servants, republished".

Under art. 3 para. (3) of the Law on administrative courts "to settle the case, the Act under attack is suspended by operation of law".

These legal provisions reiterates in a different formulation in article. 22 paragraph (3) of the Statute of civil servants, according to which The National Agency of Civil Servants has active procedural legitimation and refer the matter to the administrative court which has jurisdiction in respect of acts by which the public authorities or institutions violate the law relating to civil servants and public function, documents found as a result of their control activities, but also with regard to the refusal of the authorities and public institutions to apply the legal provisions in the field of civil service and civil servants. [11] In the literature this situation was deemed similar to the procedural capacity of the active recognition of the prefect, and may be regarded as an administrative control. [12]

In paragraph 5 of art. (22) of the Statute provides for the possibility of referral to the prefect by the Chairman of The National Agency of Civil Servants in relation to unlawful acts issued by local authorities or public institutions. The role of this complaints is that the prefect to be able to promote an action in administrative court against unlawful acts issued in the matter of the civil service of the autonomous local authorities. [13]

The term "*acts of central and local public authorities*" shall mean both administrative illegal infringing legislation on public function and unjustified refusal or administrative silence. [14] The doctrine was that the national agency of civil servants shall investigate all complaints concerning violations of the law by legislative or administrative acts in the field of civil service, whereas it cannot be limited to observations made during the inspection activities carried out on a voluntary basis.

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The doctrine in terms of reference emphasized the fact that, in relation to the text of the draft of the law on administrative courts, the current rule, adopted in article 3 para. (2) expanding the scope of persons entrusted with signing and enter in the name of administrative Agency actions. Thus, the President of the Agency may empower a Vice President with the power to sign on behalf of the agency administrative actions. [15]

According to the provisions of art. 7 para. (5) of Law No. 554/2004, as amended, or in the case of actions brought by the national agency of civil servants is not required prior complaint. In this context, it was pointed out that the solution is suffers, since no provision of Law no.188/1999 does not specify expressly such a referral to the preliminary procedure, that it has no possibility of mediation and to try to end the dispute in the administrative phase, less expensive than the judicial process. [16]

Even though the necessity of prior proceedings was supported in the scientific literature [17], other authors have remained at the prior procedure that would represent a formalism without regard to its merit, at least in the statement of administrative action of dismissal from Office, which being administrative penalties, are not, in fact, withdrawn. [18]

In formulating the action, The National Agency of Civil Servants must comply with the deadlines laid down in article 11 para. (1) of the law on administrative courts in the case of administrative individual character, and in the case of normative administrative acts must be respected article 11 para. (4) of the same law.

Thus, the Act is suspended as attacked, and deadlines for appeals are different, depending on the type of Act challenged:

A. in the case of individual acts, the term is 6 months (art. 11 para. 1) at the time of the effective Act removed illegally, but not more than one year [19]; because The National Agency of Civil Servants is a public authority directly concerned by regulations issued by the local authorities in the field of the civil service, they should be communicated to the Agency by the Secretary of the administrative territorial unit within the legal obligation arising from the provisions of law No. 215/2001.

B. administrative normative can be attacked at any time, under art. 11 para. (4) of law No. 554/2004. This is the case, for example, the Government adopted in breach of the legal provisions in the field of civil service or ministerial orders that have as their object the legal position of civil servants in a given field of activity, which are illegal. [20]

If the action carried out by The National Agency of Civil Servants, the legality of an administrative act attacked will be analysed by the competent court in an objective, not subjective, in the sense that, while it has taken its subjective in caring for the rights of individuals' subjective, giving them legal means to defend their rights in the face of abuses of the Administration, need to observe objective evokes the contentious in public administration, impersonal rules of law. [21]

The Act of attacking this institution is suspended by operation of law under art. 3 paragraph (3) of law No. 554/2004, thus maintained the suspension of rule of law of administrative provisions attacked by that authority, what is provided and in article 22 paragraph (4) of Law 188/1999, republished. The suspension will last until the final and irrevocable settlement of the dispute, which arises from the provisions of art. 3 paragraph (3) of law No. 554/2004. [22]

Court jurisdiction is determined in accordance with article 10 of law No. 554/2004 and belong to either the Court of first instance, whether the Court of appeal, namely the administrative sections, depending on the rank of the authority of the Act.

With regard to territorial jurisdiction, even if the legal provision makes reference to the plaintiff's domicile, the concept of "domicile" can be interpreted in a broad sense to encompass and address of the legal person, public authority with special active legitimating process, as is The National Agency of Civil Servants. [23] Thus, the Agency can choose between the Court of the defendants and the authority of its premises.

As regards the civil service is taken at European Union level, according to art. 270 TFUE, "Court of Justice of the European Union shall have jurisdiction to rule on any dispute between the Union and its servants within the limits and under the conditions laid down in the staff regulations of officials and conditions of employment of other servants of the Union". Have the status of officials and persons appointed in a permanent function of one of the Union's institutions or bodies. They are subject to the special arrangements set up by the EU regulations. Such action should be directed against the institution, body, Office or agency which operates service the staff member concerned, and more specifically, the act issued by the authority vested with the power of appointment.

In the absence of such an act, the agent must ask for it by applying to the authority. Cannot be attacked than a legislative character individually and against one of a general nature may be raised exception of illegality with the help of an action directed against a decision of individual scope. [24]

In conclusion, *The National Agency of Civil Servants* is the administrative authority of the trustee for all public authorities, local and Central, but only in a strictly determined field, that of public relations, having regard, in this respect, an important role in resolving disputes in this area of activity, administrative courts, taking into account its legal standing, according to legal regulations.

## References

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- [3] Ina Raluca Tomescu, *Citizens' rights and liberties vs. antiterrorist legislation*, Annals of the "Constantin Brâncuși" University of Târgu-Jiu, The series of Letters and Social Sciences, no. 3/2013, p. 48
- [4] Ina Raluca Tomescu, *The European Union -area of freedom, security and justice*, in vol. "Security and Defence", Ed. National Defence University "Carol I", Bucharest, 2010, p. 818.
- [5] Andreea Tabacu, *The principle of the right to a fair trial within optimal and predictable, according to the new code of civil procedure and administrative courts*, Administrative Sciences Magazine, Romania 2(31)/2012, p. 142
- [6] Andreea Tabacu, op.cit., p. 143
- [7] Oliviu Puie, *Administrative appeal and judicial review in administrative contentious after the amendment of law No. 554/2004 on administrative courts by law. 262/2007*, Universul Juridic Publishing House, Bucharest, 2007, p.284-285
- [8] [http://www.anfp.gov.ro/continut/Prezentare\\_ANFP](http://www.anfp.gov.ro/continut/Prezentare_ANFP)
- [9] Art. 22: para. (3): *The National Agency of Civil Servants has gained legitimacy and refer the matter to the administrative court which has jurisdiction in respect of acts by which the authorities or public institutions violate the law relating to civil servants and public function, established as a result of their control; the refusal of the authorities and public institutions to apply the legal provisions in the field of civil service and civil servants.*
- (4) *the Act attacked is suspended by operation of law.*
- (5) *the President of the National Agency of civil servants may seize and prefect in connection with unlawful acts issued by local authorities or public institutions.*
- [10] Oliviu Puie, op.cit., p. 310
- [11] Popescu Olivia, *Decision making process during organizational change in Romanian companies*, Globalization and intercultural dialogue : multidisciplinary perspectives / ed.: Iulian Boldea - Tîrgu-Mureș : Arhipelag XXI, 2014, vol. I/2014, pag. 338-343, ISBN 978 – 606 – 93691 - 3 - 5

- [12] Iuliana Rîciu, *Administrative courts procedure*, Hamangiu Publishing House, Bucharest, 2009, p. 143-144; see Rodica Narcisa Petrescu, *Administrative law*, Hamangiu Publishing House, Bucharest, 2009, p. 436
- [13] Antonie Iorgovan, Liliana Vișan, Alexandru Sorin Ciobanu, Diana Iuliana Pasăre, *The law on administrative courts-with amendments and additions. Comment and case-law*, Universul Juridic Publishing House, Bucharest, 2008, p. 117
- [14] Thus, for example, the Agency will be able to challenge administrative acts appointing issued in violation of the law, but the Government's refusal to meet its obligations arising out of civil service legislation, how to organize a competition for a vacant or to provide annual evaluation of civil servants. Dacian Cosmin Dragoș, *The law on administrative courts. Comments and explanations*, All Beck Publishing House, Bucharest, 2005, p. 143
- [15] Iuliana Rîciu, *op.cit.*, p.145
- [16] Antonie Iorgovan, Liliana Vișan, Alexandru Sorin Ciobanu, Diana Iuliana Pasăre, *op.cit.*, p. 118
- [17] Rodica Narcisa Petrescu, Olivia Petrescu, *Timeliness of appeal in administrative law. Some considerations about a recent French law regulation*, Administrative Sciences Magazine, Romania 2(31)/2012: "procedure prior to be made in the case of the National Agency of Civil Servants, proposing, de lege ferenda, filling in this sense of the art. 22 of law. 188/1999 on the status of civil servants, republished. Specifically, we consider the cases in which the national agency of civil servants of Administrative Court requesting annulment of illegal acts issued by the public authorities or institutions that violate legislation concerning the public function and civil servants, the finding of its own activity. The rationale for this view point out the existence of many similarities between the administrative control exercised by the trustee and the prefect made by the National Agency of Civil Servants, which explains the support obligation of prior proceedings in this case. On the other hand, conflicts would solve much easier path graceful appeal, public authorities and institutions being motivated to re-enter the legality and prove that their work in the field of public service and the public functionary is based on the law and order enforcement of the legal provisions. Last but not least, acceptance and materialization of legislative developments of this proposal would have the effect of supporting the administrative courts." p. 86-87; see Dacian Cosmin Dragoș, *The law on administrative courts. Comments and explanations*, All Beck Publishing House, Bucharest, 2005, p. 144; Cătălin Silviu Săraru, *The law on administrative courts. Critical examination of the Decisions of the Constitutional Court 2004-2014*, C.H. Beck Publishing House, Bucharest, 2015, p. 147
- [18] Antonie Iorgovan, Liliana Vișan, Alexandru Sorin Ciobanu, Diana Iuliana Pasăre, *op.cit.*, p. 118
- [19] Art. 11 para. (2) of Law No. 554/2004: "For serious reasons, in the case of individual administrative act, the application may be made and the time limit laid down in paragraph 1, but not later than one year from the date of service of a document, the date of the decision, the date of application or the date of the conclusion of the conciliation report, as appropriate".
- [20] Dacian Cosmin Dragoș, *op.cit.*, p. 144-145
- [21] Dacian Cosmin Dragoș, *op.cit.*, p. 145
- [22] Art. 3 para. (3) of Law No. 554/2004: "Until the settlement of the case, the attacked pursuant to para. (1) and (2) is suspended by operation of law".
- [23] Dacian Cosmin Dragoș, *op.cit.*, p. 145-146

[24] Mircea Duțu, Andrei Duțu, *The law of the european courts*, Universul Juridic Publishing House, Bucharest, 2010, p.298-300