MINISTERY OF NATIONAL EDUCATION AND SCIENTIFIC RESEARCH
„LUCIAN BLAGA" UNIVERSITY OF SIBIU
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DOCTORAL DISSERTATION

THE PROCEDURE OF SETTLING ADMINISTRATIVE DISPUTES

-summary-

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Key words: Administrative Court, jurisdiction, administrative justice, administrative disputes, the procedure of settlement, the special law, common law, jurisprudence.

1. The motivation for the chosen theme

The reason for the choice of the theme of this scientific work consisted in the fundamental role that the phenomenon of the administrative court, being in continuous dynamics, has in the existence and the consolidation of the constitutional law, both in Romania as well as in the European and international legal domain.

The doctoral dissertation with the theme ,,**The procedure of settling administrative disputes"**, presents a complex analysis and a thorough research of the legislation in force, of the doctrine, of the jurisprudence of the Constitutional Court, of the High Court of Cassation and Justice and not last of the administrative courts, in the context of the amendments made to the Administrative court Law No. 554/2004 by Law no. 76/2012 for the implementation of the Law no. 134/2010 on the Code of civil procedure and of the Law no. 138/2014 on for the modification and completion of the Law no. 134/2010 on the Code of civil procedure, as well as for the modification and completion of related normative documents.

More specifically, this paper shows both the legislative amendments and completions which have occurred up until the present time, as well as the most important decisions of the Constitutional Court, appeals in the interest of the law and prior decision (decisions of the High Court of Cassation and Justice - the Court to solve law issues, in the matter of the administrative and tax law) with respect thereto.

One of the main objectives of our scientific initiative has been the identification, analysis and the capitalization of some aspects with innovatory character, able to contribute to the improvement of the legislation in the field of the administrative court, governing the legal relations of conflict between individuals and public authorities.

2. Methods of scientific research

One of the research methods we have used *is the comparative* ***method***, by addressing certain aspects of compared law in order to identify the similarities and differences which envisage the procedure of settling disputes in the administrative court, in our country and in other Member States of the European Union. Comparing the law systems of States, of the features of their branches, institutions and norms has proved to be extremely fruitful in the methodological process of the study of the legal phenomenon.

We have also appealed to the comparative method in order to outline the particularities of the procedure of settling administrative disputes regulated by the Law of the administrative court no. 554/2004 in relation to the common law procedure regulated by the Code of civil procedure.

By means of the ***logical research method*** we have pursued the shaping and the issue of value reasoning with respect to the legal regime applicable to the matter which is the study object of our research.

3. The structure and content of the thesis

The thesis is rigorously structured on seven chapters, each of the chapters containing sections and subsections which are correlated, under the aspect of the marginal name, with the articles of the Law of the administrative court no. 554/2004.

The first chapter of the thesis, entitled ***General considerations on jurisdiction***, contains a theoretical approach of the notion of jurisdiction, respectively the administrative jurisdiction. Within this chapter we have approached the issue relating to the role and the practical utility of the special administrative jurisdictions established at the constitutional level in Article 21 paragraph (4) and legally by the provisions referred to in Article 2 paragraph (1), letter (e) of the Law of the administrative court.

In the content of the first chapter we have presented some aspects of compared law aimed at the main administrative justice systems that operate in the Member States of the Union, for the purpose of identifying best practices models that could be undertaken and adapted to the system of the administrative court in Romania.

The Second Chapter, named ***The Parties and the object of the administrative court*** envisages the highlighting of the distinctive features presented by the parties and object of the administrative court stated by the special law in relation with the New Code of civil procedure, the common law in the field. Specifically, we have debated on aspects relating to the active and passive procedural capacity and quality of the parties, with the determination of the subjects of law which may have the quality of plaintiff or of defendant in the administrative court.

In the content of the section 2, we submitted to analysis the institution of the administrative supervision and the holders of the legality control on the acts of the local public administration authorities: the prefect and the National Agency of Civil Servants.

De lege ferenda, we appreciated that it is required an intervention of the legislator in the sense of the express provision in paragraph 2 of Article 3 of the Law no. 554/2004, of the

exemption of the National Agency of Civil Servants from payment of judicial stamp fees in the case of actions in the contentious objectively promoted by this authority.

By this measure it would be ensured the equality of legal treatment necessary to the two public authorities: Prefect, respectively the National Agency of Civil Servants, taking into account the fact that in the exercise of the administrative supervision control a common goal shall be carried out: Restoring the infringed rule of law.

With respect to the object of the action in the administrative court, we have made an analysis of the types of requests made by the plaintiff in the subjective court as well as in the objective court, having regard to the text of Article 8 of the Law of the administrative court.

De lege ferenda, we joined the doctrinal opinions on the modification of the text of Article 123 paragraph (5) of the Constitution, in the sense of the inclusion in the scope of the acts issued by the president of the County Council and, correlatively, the adaptation of the organic legislation namely of Article 115 paragraph(7) of the Law 215/2001 on the public administration, republished.

By this measure it will be ensured the constitutional and legal base for the control of legality exercised by the prefect on the administrative acts issued by the President of the County Council.

There was a special focus on the pleas for inadmissibility or the administrative documents excepted from the exercise of legality control from the administrative court perspective.

The third chapter, entitled ***The actions settlement competence in the administrative court*** includes the treatment of the criteria for establishing the material competence (*rationae materiae*) and the territorial competence (*rationae loci)* of administrative courts, under Article 10 of Law no 554/2004.

In this chapter we have also made a jurisprudential examination on the problems encountered in practice regarding the establishment of the competent court from the material and/or territorial point of view.

To avoid additional costs and the creation of a legal disadvantageous situation for the injured individual or legal person, we proposed, *of lege ferenda,* the establishment of the alternative territorial competence of the administrative courts and in the matter of disputes having as object granting of punitive damages for the repair of the damage caused in the framework of the procedure for the awarding, execution, cancellation, nullity, resolution, the unilateral dissolution or denunciation of the public procurement contracts, of the sectorial contracts and of the work concession contracts and services concession contracts.

The fourth chapter, with the marginal name **Procedure for settlement of actions in the administrative court,** comprises the essence of this scientific work, more precisely an interdisciplinary approach from the legislative, doctrinal and jurisprudential point of view of the procedure of settling administrative disputes.

In the second section, *The prior procedure,* we analysed the preliminary administrative appeal, a specific institution for the procedure of settling administrative disputes, with an emphasis on the preliminary administrative procedure in the case of the action having as its object the administrative contracts where we found some inaccuracies and legislative mismatches.

Taking into account the jurisprudential solutions on the matter and the special procedural provisions regulated in the Law no. 101/2016, we propose, *de lege ferenda,* that the **compulsory procedure of the prior notification** should be extended to the other categories of administrative contracts as well, as a condition of the admissibility of the action in the administrative court.

Specifically, the preliminary complaint in the case of actions which have as their object administrative contracts, it is necessary to have the significance of the previous notification, as provided in the case of disputes in the sphere of public procurements.

In the conditions in which the special organic law governing the procedure of settling the administrative disputes does not contain provisions concerning the procedural documents, this shall be supplemented with the provisions of the common law on the matter, under the conditions laid down by Article 28 of Law no 554/2004.

Thus, in the process of administrative court, the writ of summons, statement of defence and the counterclaim must fulfil the content and form conditions provided by the Code of civil procedure.

All the other provisions of the current Code of civil procedure shall apply accordingly which targets the registration, postage, checking and regularization or amending of the writ of summons, respectively the applicable procedural penalties in the event of failure to comply with the conditions laid down by law.

In the third section, we made a presentation of the procedure in the administrative court. Characterized by urgency, publicity and accessibility in respect of the amount of the fees, the regulation of the procedure of judgment emphasizes the importance of the institution of the administrative court for the guarantee of the fundamental rights of man.

In this part we mainly focussed on the specific institutions for the procedure of settling administrative disputes and-namely: the suspension of the enforcement of the administrative

act and the exception of illegality, making an analysis of them from the perspective of jurisprudence.

In the content of the same section, intended for the procedure before the Court, we presented arguments in favour of the thesis relating to the applicability of the institution of the presiding judge's order, specific to the civil lawsuit, in the matter of administrative disputes.

Chapter V is dedicated to the ***judgment of the court in the administrative conflict***. In the contents of this chapter we presented the structure and content of the court orders given by the administrative courts and of their effects, pointing at the fact that there is no difference between them and the court orders given by the common law courts. Then we analysed the solutions that can be provided by the administrative court, pursuant to Article 18 in conjunction with Article 8 of the Law of the administrative court no. 554/2004.

Having regard to the doctrinal opinions relating to the judicial transaction in the administrative conflict, We have acceded to the statement according to which it would be possible only in respect of the Civil component of these disputes, respectively the granting of material or moral damages and only consequential to the success of the action of public law settled by the administrative court by which the administrative act causing damages has been cancelled.

Unlike the civil law suit, where the court order produces, in all cases, binding effects *inter partes*, between the parties and their successors (Article 435 NCCP), and in the administrative conflict the court order is mandatory and enforceable *erga omnes*, in the cases in which it was disposed the cancellation in whole or in part of an administrative act with legislative character (Article 23 of Law No 554/2004).

In the situation regulated in Article 23 of the Law of the administrative court it is provided for expressly the obligation of publication, after the motivation, upon the request of the courts, of the final decisions through which it was cancelled in whole or in part an administrative act with legislative character in the Official Gazette of Romania, Part I, or, as the case may be, in the Official gazettes of the counties or of the Bucharest municipality, being exempt from stamp duty.

Chapter VI is dedicated to the ***ways of attack in the matter of the administrative court.*** In the first section of this chapter we have highlighted the special features of the appeal to the matter of the administrative court. In this respect, we focused on the features of the appeal exercised against decisions of the court of first instance, emphasizing the derogatory aspects from the common law. The deadline for the appeal to the administrative court is of 15 days of the communication unlike the deadline for the exercise of the appeal in the civil law

suit which is of 30 days of the communication.

The appeal filed against a court order given by the administrative court is in all cases with suspension of enforceability, in a derogatory manner from the common law.

Taking into account that in the administrative court, the appeal is the only remedy at law at the disposal of the parties, *de lege ferenda*, the legislator should intervene in this special matter and return to the rule of the possibility to criticize the court order of the first instance including under the aspect of its reliability, through the examination of the elements *de facto* of the case, returning to its natural character, fully devolutive.

When the trial of the appeal falls into the responsibility of the High Court of Cassation and Justice, the provisions of the special law of the administrative court shall be supplemented with the provisions of Article 493 NCCP governing the procedure of filtering of the appeal.

Appeals in front of the courts of appeal will be settled directly in public session, as well as in the old regulation.

Against the final court orders given by the administrative courts there will be able to be exercised the extraordinary remedies at law, the review and the appeal for annulment, under the conditions and within the time limits provided for in the New Code of civil procedure.

Chapter VII, entitled ***Enforcement of court orders given by the administrative court*** contains an in-depth analysis of the procedure for the enforcement of final court order, in the light of the amendments made by the Law no. 138/2014.

Taking into account that the *enforcement phase* is a particularly important phase of the civil law suit in general and of the administrative court in particular, the legislator understood to lay down special rules, derogating from the common law, which correspond to the compelling need of insurance of the enforcement with expediency of the court order.

Article 24 of Law no. 554/2004, as amended by Law no. 138/2014, regulates a special procedure for enforcement in the administrative court, stating in paragraph 1) that, in the situation in which, as a result of the admission of the action, the public authority is compelled to conclude, to replace or amend the administrative act, to issue another document or to carry out certain administrative operations, the enforcement of the final court order shall be made willingly within the time limit referred to in its contents, and in the absence of such a deadline, within no more than 30 days from the date when the court order remains final.

At the same time, the decisions of the administrative court which include other obligations than those referred to in Article 24 paragraph (1), such as the payment of compensations, the granting of the court expenses, follow the procedure of the enforcement governed by the procedural rules of the common law from the Code of civil procedure,

republished.

De lege ferenda we considered that it was necessary to correlate the provisions of the G.E.O 22 /2002 on the execution of the payment obligations of the public institutions, established through writs of execution, with subsequent amendments and supplements, with the provisions of Article 24(1) of Law No 554/2004, in respect of the deadlines for the execution, with a view to the completion of the efficient and effective application of the rights laid down by final court orders within a reasonable time, in accordance with the provisions of Article 6 paragraph 1 of the Convention and with the practice of the ECHR in this field.

At the end of the thesis we presented **our own conclusions** with regard to the themes approached and we have carried out a synthesis of personal contributions materialized in proposals *of de lege ferenda,* in order to clarify certain legislative defective aspects, equivocal or contradictory, controversial in the doctrine and which generate in practice difficulties in the application and interpretation of the law by the administrative courts.

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