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THE ADMINISTRATIVE CONTENTIOUS

R.A. PURȚAN

Ramona Anamaria Purțan
Faculty of History, International Relations, Political Sciences and Communication Sciences, University of Oradea, Universității Street, No. 1, Oradea, Romania
E-mail purtan_ramona@yahoo.com

ABSTRACT:
Administrative contentious, as an essential and indispensable element of the rule of law, is, in fact, a concretization of the principle of separation of powers and their mutual control, being thus a way to exercise judicial control over the activity carried out by the authorities of another state power. of the executive branch.

KEYWORDS: *administrative, contentious, doctrine, disputes, appeal.*

INTRODUCTION

Judicial control over the activity of organizing the execution of the law and its concrete execution differs from administrative or parliamentary control, which covers all aspects of the activity of public administration bodies, in that during the judicial control exercised by the judiciary compliance with the law is verified. the activity of public administration bodies. In a broad sense, all disputes between the public administration and those administered, regardless of the legal nature of the disputes, constitute administrative litigation. In a narrow sense, the notion of administrative litigation refers only to those litigations in which the public administration authorities and other organizations use the administrative legal regime, based on the competence conferred by law.

1. The notion of administrative contentious

The word contentious comes from the Latin adjective contenciosus which means "contested", litigious and which in turn comes from the Latin verb cotendre which means "to fight". Thus, the term contentious expresses the conflict of interests, the contradiction of interests. By administrative litigation we mean all legal disputes in which the public administration is with those administered, regardless of their legal nature of common law or public law.

In administrative law, the term contentious has begun to be used to delimit judicial remedies against administrative acts and operations from ordinary administrative appeals.[1].

An appeal, therefore, acquired a jurisdictional character (contentious) whenever the authority that solved it had the quality of judge. In this way, both in doctrine and in legislation, especially in the interwar period, the terms were used in a common way: administrative contentious; administrative litigation actions; the administrative contentious court; the law of administrative contentious; administrative contentious decisions[2].

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[1] A. Iorgovan, Tratat de drept administrativ, vol. II, ed. a 4-a, Ed. All Beck, București, 2005, p. 486.
[2] *Ibidem.*

The "discretionary" power of public administration authorities is not unlimited. First of all, the attributions of an administrative authority are provided in a normative act (law, government decision, etc.), the latter in turn having to be in accordance with the Romanian Constitution or with other acts of superior legal force.

The content and scope of administrative litigation, as a legal phenomenon, varied from one country to another, in the same country from one period to another and even in the administrative doctrine from one author to another[3].

In the French doctrine of the last century, administrative litigation was defined in an organic sense, by reference to the competent authorities to resolve disputes between administration and administrators[4].

For a long time, the French administrative litigation was classified into:

a) litigation of full jurisdiction;

b) cancellation disputes;

c) interpretation disputes;

d) litigation of repression[5].

The notion of administrative litigation was also given a material meaning, which took into account either the subjects between the dispute or the legal rules invoked in the case and applied in resolving it, reaching, since the French Revolution, by the establishment of administrative tribunals, in the system of the State Council, at the coincidence between the organic (formal) and the material sense.

The institution of administrative litigation was permanently in the attention of the Romanian legislator, of the administrative doctrine, of the judicial practice, as the life of the community was in constant motion, and the interests of the community clashed with those of individuals, looking for ways to harmonize them. Thus, in the interwar period, the notion of administrative litigation received two meanings: in a broad sense, when all disputes in the sphere of public administration were evoked, regardless of the authority that resolved them; and in a narrow sense, when only disputes that fell within the jurisdiction of the courts were evoked.

During the same period, the term administrative contentious was used both formally, taking into account the nature of the body exercising it, and materially, taking into account certain specific elements inherent in the disputes of which it is composed, considered in themselves. independent of the nature of the jurisdiction to which they are subject.

Currently, the notion of "administrative litigation" has, in summary, two main meanings:

a) stricto sensu, according to which this notion represents the totality of disputes between public authorities and persons harmed in their rights or legitimate interests by illegal, typical or assimilated administrative acts, disputes that are within the jurisdiction of administrative contentious courts and are resolved according to the framework law in the matter, respectively Law no. 554/2004, based on a public power regime;

b) lato sensu, according to which the administrative contentious represents the totality of the litigations between the public authorities and those harmed by their illegal administrative acts, regardless of the competent court or the procedure of their settlement[6].

Until the adoption of the current Law on administrative litigation no. 554/2004, a definition of administrative litigation was provided only by the administrative doctrine. After

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[3] A. Iorgovan, op. cit., p. 486.

[4] D. Apostol Tofan, *Instituții Administrative Europene*., Ed. CH Beck, 2006, p. 220.

[5] A. Iorgovan, I. Vida, Constituţionalizarea contenciosului administrativ român, în Dreptul nr. 5-6/1994, p. 3.

[6] A. Iorgovan, op. cit., 2005, pp. 488-490; D. Apostol Tofan, Drept administrativ, vol. II, Ed. All Beck, București, 2004, p. 283; V. Vedinaş, op. cit., 2009, pp. 160-161; Al.S. Ciobanu, Fl. Coman-Kund, Drept administrativ. Sinteze teoretice şi exerciţii practice pentru activitatea de seminar. Partea a II-a, ed. a 3-a, revăzută, actualizată și adăugită, Ed. Universul Juridic, București, 2008, pp. 202-203.

this moment, Law no. 554/2004, with the amendments and completions brought by Law no. 262/2007, grants a definition to this institution in art. 2 para. (1) lit. f).

Thus, administrative litigation is defined as "the activity of settlement by the competent administrative litigation courts according to the organic law of disputes in which at least one of the parties is a public authority, and the conflict arose either from issuing or concluding, as appropriate, a administrative act, within the meaning of this law, either from the failure to resolve within the legal term or from the unjustified refusal to resolve a request regarding a right or a legitimate interest ”.

2. Administrative contetious in the Romanian law

The current administrative doctrine distinguishes between the subjective contentious and the objective contentious, having as a criterion of separation the character of the right or interest which is capitalized by the request that forms the object of notifying the administrative contentious court.

Subjective administrative litigation is when the plaintiff, by the action brought, asks the court to resolve a matter relating to a subjective right or legitimate personal interest, in order to investigate whether a typical or similar administrative act has affected a subjective legal situation[7].

Objective administrative litigation has the meaning that, by the action by which it has invested the judge, the applicant seeks to defend an objective right or a legitimate public interest, in order to verify whether rights have been infringed which represent the content of a legal situation with general and impersonal nature and whether a state of general legality has been infringed[8].

From a terminological point of view, the notions of annulment and contentious jurisdiction are also used. These categories have as a criterion of separation the decision by which the dispute is resolved and by which certain measures are ordered that derive from the finding made. More precisely, this distinction is given by the powers of the judge, by the extent of the rights he has. The administrative contentious in annulment is characterized by the fact that the administrative contentious court can decide only the annulment, the modification of the illegal administrative act or the obligation to resolve a request regarding a right recognized by law, not being able to rule on the compensations. a separate dispute, within the jurisdiction of the common law court.

The contentious jurisdiction is one in which the administrative court can order the total or partial annulment of the act, the recognition of the claimed right or the legitimate interest, the obligation of the defendant authority to issue the act requested by the plaintiff, if the law gives him this right, reparation under the form of material and moral damages.

The current Law on administrative litigation no. 554/2004 establishes a litigation of full jurisdiction.

The doctrine also uses notions such as common law administrative litigation and special litigation, depending on the scope and legal basis of the lawsuit. The notion of common law administrative litigation is based on the Law on Administrative Litigation, and the special administrative litigation is based on regulations derogating from this law.

Law no. 554/2004 recognizes two categories of procedural norms applicable to administrative litigation, namely: specific procedural norms enshrined in this law and general

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[7] V. Vedinaş, op. cit., 2007, pp. 141-142; Al.S. Ciobanu, Fl. Coman-Kund, op. cit., 2008, p. 203. Subjective administrative litigation is based only on subjective law, arguing that subjective law and legitimate interest overlap and, from this perspective, the establishment of a litigation based on legitimate interest has not been successful, and objective administrative litigation is based on either the special legitimacy of subjects of public law, or in the public interest, which allows popular action.

[8] V. Vedinaş, op. cit., 2009, p. 160.

procedural norms, common to ordinary civil procedure, whose source is in the Code of Civil Procedure. The latter complete the former only insofar as they are not incompatible with the specifics of the relations of the administrative litigation institution, according to the regulation established in art. 28 of the special law on the subject. Considering both the provisions of the revised Constitution and of Law no. 554/2004, with subsequent amendments and completions, the following features that characterize the contentious administrative procedure are identified: from the point of view of the applicable norms, the special procedural norms specific to the administrative contentious are taken into account, which are norms of public law, more precisely administrative law, which is completed with the norms of the ordinary civil procedure, but not yours quale, but only to the extent of compatibility, according to the provisions of art. 28; it is a procedure that requires two phases, namely a preliminary administrative procedure, followed by a judicial procedure before the administrative contentious court, which is, as a rule, subject to the double degree of jurisdiction (merits and appeal); the urgent character is distinguished, especially, as well as the public character of the judgment of the requests, regulation included in art. 17 of the law.

CONCLUSIONS

Regarding the accessibility of the procedure, we argue that, at a first analysis, it can be stated that administrative justice is less expensive than civil justice. However, in the content of the paper we will submit to the analysis certain exceptional situations in which the admissibility of certain requests to the administrative contentious court is subject
provided that bail is paid, which may have repercussions on the accessibility of the procedure. These issues, but especially the procedure of administrative litigation as a whole, will be the subject of the scientific approach to be presented in this paper, both in terms of general procedural rules on judging actions in administrative litigation, and in terms of the actual trial in this matter.

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