



THE 11TH EDITION OF THE INTERNATIONAL CONFERENCE
**EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES**

Special Administrative Jurisdictions

Vasilica Negruț¹

Abstract: The Constitution of Romania revised in 2003 establishes the free and voluntary nature of the special administrative jurisdictions, a fact which allows the party concerned to address either the administrative-judicial body or directly the court. If they opted for the administrative-judicial way, it must be followed to the end, then, under the terms established by the law, the party may address the court, under the right of access to justice provided by article 21 of the constitution. The administrative jurisdiction is an activity of solving an administrative litigation by specific procedural rules of judicial procedure, based on the principle of the independence, of insuring the right to defense and the administrative-jurisdictional independence activity, which results in a jurisdictional administrative act. In order to achieve the objectives of the paper, namely to highlight the essential elements of the resolution of litigation according to special administrative jurisdictions, we have achieved an analysis of the legislative acts referring to this activity, of the doctrine and jurisprudence. After examination and empirical research, the paper summarizes and specifies the general conclusions on the role and importance of special administrative courts.

Keywords: special administrative jurisdictions; jurisdictional administrative act; competence; public authority

1. Introduction

The 1991 Constitution, in its original form did not contain special provisions on special administrative jurisdictions. In this context, the question was of whether we may speak of administrative jurisdictions in the specialized literature, being formulated different opinions on the matter (Iorgovan, 2005, pp. 500-501).

Thus, some authors have considered that the Fundamental Law of Romania no longer recognizes the administrative jurisdictions, the only jurisdiction activity recognized by the Constitution being carried out by High Court of Cassation and Justice and by other courts, according to art. 125 (Popescu, 2004, pp. 77-98)². On the contrary, other authors have argued the opposite, exemplifying with typical example of the Court of Auditors mentioned in the 1991 Constitution (art. 139, par. 1) and Title V dedicating a special and specialized constitutional jurisdiction or constitutional contentious – an activity achieved by the Constitutional Court (Iorgovan, 2005, p. 501; Rîciu, 2009, p. 194).

Therefore, in interpreting all the provisions of the Romanian Constitution of 1991 it results that it establishes: *a constitutional jurisdiction*, achieved by the Constitutional Court according to article 144; *a judicial jurisdiction* exercised by the High Court of Cassation and Justice and by other courts

¹Professor, PhD, Faculty of Law, “Danubius” University of Galati, Romania. Address: 3 Galati Blvd, 800654 Galati, Romania. Tel.: +40.372.361.102, fax: 40.372.361.290, Corresponding author: vasilicanegrut@univ-danubius.ro.

² Art. 125 of the unrevised Constitution established: “(1) Justice shall be achieved by the Supreme Court of Justice and other courts established by law. (2) It is forbidden to establish extraordinary courts. (3) The competence and procedure of courts shall be regulated by the law”.

provided by law, according to article 125; *an administrative jurisdiction* accomplished by certain jurisdictional organs, such as the Court of Auditors, according to article 139 of the Constitution, or the Superior Council of Magistracy, which had the role of disciplinary council of judges (art. 133, par. (2) of the unrevised Constitution) (Rîciu, 2009, p. 194). Complementing this view, which we share, we also mention the Plenum Decision no. 1 of 8 February 1994 the Constitutional Court on the free access to justice for persons to defend their rights, freedoms and interests¹. Under this decision, the Constitutional Court recognizes that “*The establishment of a judicial administrative proceeding is not contrary to the principle laid down in art. 21 of the Constitution on the freedom of access to justice, while the decision of the administrative jurisdiction body may be challenged / in front of a court.*” Therefore, the Constitutional Court acknowledged the existence of administrative jurisdictions, even if they were not expressly provided by the Constitution of 1991. Also, by Decision No. 35/1993, the Constitutional Court stated that the existence of jurisdiction proceedings, besides the justice itself, it is not contrary to constitutional provisions, but rather by instituting such proceedings by organic law it is permitted the settlement of litigations within the structures of activity of those involved or interested.²

Through the revision of the Constitution, the term “administrative jurisdictions” acquires an express recognition by art. 21, par. (4) which states that the *special administrative jurisdictions are optional and free*.

2. Special Administrative Jurisdictions

The Law amending the Constitution represents a milestone in terms of administrative contentious, achieving a true “revolution” of the regulation, a change of philosophy regarding the role and place of administrative courts, as noted the reputed professor Antonie Iorgovan in its last great reference work (Iorgovan, 2005, pp. 502-503).

Following the introduction of art. 21, par. (4) of the Law for amending the Constitution there were set changes in other texts. We note in this respect the provisions established by the Court of Auditors, whose judicial attributions have been eliminated, art. 140, par. (1) IInd thesis stating that “*under the organic law, the litigations resulting from the activity of the Court of Auditors shall be settled by the specialized courts*” and according to art. 155, par. (6) “*until the establishment of specialized courts, the litigations resulted from the Court of Audit’s activity shall be solved by the ordinary courts*”.

By this text (art. 21, par. (4) of the Constitution), it is noted in the specialized literature, it was aimed at removing the anachronisms of institutionalization of preliminary and mandatory procedures of administrative jurisdiction, whereas in most such jurisdictions it can be achieved the “confusion of the judge with the party” (Deleanu, 2003, p. 13).

Since the optional and free nature of *special administrative courts* established by art. 21, par. (4) of the revised Constitution and the text of art. 6, par. (1) of the Law of administrative contentious no. 554/2004, in its editorial form the *special administrative jurisdictions* have generated controversy in doctrine, imposing the clarification of the notion of *prior administrative proceedings* and *judicial administrative procedure* (Puie, 2009, p. 318). According to art. 2, par. (1), letter j) of Law no. 554 *prior procedure (complaint)* represents the “application requesting to the issuing public authority or to

¹ Published in the Official Monitor no. 69 of 16 March 1994.

² Published in Official Monitor No. 218 of 6 September 1993. According to the Decision no. 35/1993, “*The fact that there is a jurisdictional-administrative way is not similar to free access to justice. In this respect, art. 21 should be in conjunction with article 123 of the Constitution which defines the meaning of “justice” stating that it is administered by a distinct category of public authorities, namely the courts*”.

the superior authority, as applicable, the reexamination of an administrative act with individual or normative feature, in the meaning of its revocation or amendment.” The role of the preliminary procedure is to provide the issuing public authority or superior authority the ability to verify the legality and appropriateness of the administrative act, which will, as a result of the control to decide whether to revoke, amend or maintain the administrative act.

According to art. 2, par. (1), letter e) *the special administrative jurisdiction* constitutes “the activity achieved by an administrative authority which has, according to the special organic law in the matter, the jurisdiction for solving a conflict on an administrative act, following a procedure based on the adversarial principals, of ensuring the right to defense and independence administrative-judicial activity”.

As it can be seen from the text of the mentioned article, the administrative authorities which exercise the special administrative jurisdiction are established only by organic law.

According to the current doctrine, the administrative jurisdiction represents “a special type of jurisdiction”, which represents the settlement activity of an administrative litigation, according to legal procedural rules specific to judicial proceedings, which results in an administrative act with judicial feature (Vedinaş, 2015, p. 154).

By modifying the Administrative Litigation Law by Law no. 262/2007, it has been reformed the control institution of jurisdictional administrative acts (Rîciu, 2009, p. 200), ending in this way the confusion of administrative jurisdiction, the parallel appeal and the prior procedure.

By art. 6 of Law no. 554/2004, as amended, it regulates the procedural aspects related to exercising appeals against the judicial administrative acts, either before the special administrative jurisdiction, if they chose to do so, either before the courts of administrative contentious.

To qualify a procedure as being administrative-judicial, it was highlighted in the specialized literature, there should be a document issued by an administrative authority, that is an organ of the central government or local administration invested with attributions of adjudication of conflict on a typical administrative act, with individual character, born between two or more physical or legal entities or between private persons and public authorities (Rîciu, 2009, p. 200). These issues are deducted according to the definitions given by Law no. 554/2004 of the administrative jurisdictional act¹ and the special administrative jurisdiction.

Also, conflict resolution is achieved by summoning the parties respecting the adversarial principle, being recognized to the parties the right of defense, being able to be represented or assisted by a lawyer.

It does not fall under the term “special administrative jurisdictions” the prior or hierarchical appeals set by some legislative acts as conditions for the introduction of some actions in justice (The Law of Administrative Contentious, for example), remedies that do not involve the contradictory, as they are settled based on rules of non-adversarial administrative proceedings (Apostol Tofan, 2015, p. 116).

However, the administrative-judicial procedure requires a body independent of the parties in the litigations, set up in this regard, which are not in the hierarchical relationships compared to the issuing authority of the act.

¹ According to art. 2, par. (1), letter d) of Law no. 554/2004, the administrative-judicial act is *the act issued by an administrative authority vested, by organic law, with special responsibilities for administrative jurisdiction*.

As shown in art. 6, par. (1) of Law no. 554/2004, the *special administrative jurisdictions* are optional and free. Therefore, if by the law it is regulated a certain legal administrative procedure to challenge an administrative act, it may be followed by the petitioner for free or it can refer the matter directly to the administrative court, the latter procedure is not compulsory.

By art. 6, par. (2) of the Law of Administrative Contentious also states that the “susceptible administrative acts, according to the organic law, subject to special administrative jurisdictions it may be appealed to the administrative contentious court, in compliance with art. 7, par. (1) if the procedure does not intend to exercise the administrative jurisdiction procedure”.

So, under this provision, the injured party through a typical administrative act of an administrative authority, deemed illegal, has the following options: a) to carry out the preliminary procedure provided for by art. 7, par. (1) of the Act and then to address the administrative contentious court in accordance with art. 11, par. (1) and (2)¹ if the party does not intend to exercise judicial administrative proceedings; b) follow the administrative jurisdictional procedure established by the special law, in which case the administrative review will settle the dispute by issuing an administrative review, thus becoming applicable the provisions of art. 6, par. (3) and (4) of Law no. 554/2004.

According to par. (3) the “*administrative-jurisdictional act for which, according to the special organic law, it is expected to appeal before a different special administrative jurisdiction it may be appealed directly to the administrative contentious court, within 15 days from notification, if the means to depart from the administrative and judicial remedies*”, which means that the administrative jurisdictional act may be appealed directly to the administrative court from the date of notification on the document, even if there are special administrative jurisdictions that contain one or more routes appeal.

Article 6, par. (4) of Law no. 554/2004 governs two situations of the victim: a) opting for the special administrative jurisdiction, but it does not want its continuation; b) exercising the appeal to an administrative jurisdictional body, but it wants to renounce at it during its settlement. In both cases, the renunciation decision must be notified to the administrative judicial body in question and thereafter, within 15 days from notification, the party may notify the administrative contentious court without further going through the prior procedure established by art. 7, par. (1).

The Legislation in Romania establishes a series of jurisdictional bodies in various fields: the committees for settling the issues provided by Law no. 33/1994 on expropriation for cause of public use (art. 15); disciplinary committees within public authorities and institutions established by Law no. 188/1999 (art. 79)²; Government Emergency Ordinance no. 34/2006 on the granting public procurement contracts, public works and services lease contracts. By this legislative act it was established the National Council for Solving Complaints which, according to art. 257, par. (1) is an independent body with administrative-jurisdictional activity, and according to paragraph (4), regarding its decisions, the Board is independent and it is not subject to any authority or public institution. The Council has jurisdiction to hear appeals concerning the granting procedure, through specialized completes, constituted according to the Rule of organization and functioning of the Council, approved

¹ Regarding art. 6, par. (2) of Law no. 554/2004, the Constitutional Court Decision no. 475/2008 states that “the establishment of an administrative procedure for handling requests, prior referral to court is not liable to restrict the access to justice and that no constitutional provision does prohibit by law to establish a prior administrative procedure, without its jurisdictional feature. This is because the text of art. 21, par. (4) of the Constitution confers an optional feature of the administrative judicial procedures, leaving open the possibility that, by law, to impose the conducting of a procedure without jurisdictional feature”.

² Given that these committees are made up of civil servants of the issuing authority of the contested measure, it is questionable the independence of the disciplinary commissions as administrative disciplinary jurisdictions for civil servants.

according to art. 291 of Government Emergency Ordinance no. 34/2006; County committees for the implementation of the Land Law no. 18/1991 (art. 52) etc.

3. Conclusion

Establish the voluntary and free feature of the special administrative courts is one of the guarantees of free access to justice. The current understanding of the administrative jurisdictions highlights, as the well-known professor Antonie Iorgovan noticed in its latest reference work since 2005, that it is not just a simple evolution of a regulation, but a true “revolution” to regulation, a change in philosophy regarding the role and place of the administrative jurisdiction and implicitly of the administrative acts by which it is achieved, i.e. the administrative jurisdictional acts.

4. References

- Apostol Tofan, Dana (2015). *Drept administrativ/Administrative law*. Vol. II, 3rd Ed. Bucharest: C.H. Beck.
- Deleanu, Ion (2003). Revizuirea constituției/Revision of the constitution. *Dreptul/The Law* no. 12, p. 13.
- Iorgovan, Antonie (2005). *Tratat de drept administrativ/Treaty of Administrative Law*, Vol. II. 4th Ed. Bucharest: All Beck.
- Popescu, Corneliu-Liviu (2004). Jurisdicțiile administrative potrivit dispozițiilor constituționale/Administrative Jurisdictions according to the constitutional provisions. *Dreptul/The Law* no. 5, pp. 77-98.
- Puie, Oliviu (2009). *Contenciosul administrative/Administrative contentious*, Vol. I. Tome 7. Bucharest: Universul Juridic.
- Rîciu, Iuliana (2009). *Procedura contenciosului administrativ/The procedure of administrative contentious*. Bucharest: Hamangiu.
- Vedinaș, Verginia (2015). *Drept administrative/Administrative law*. 9th edition revised and updated. Bucharest: Universul Juridic.