THE MODIFICATIONS BROUGHT TO THE LAW OF THE CONTENTIOUS ADMINISTRATIVE: CRITICAL PERSPECTIVE

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Abstract

In 2018, the lawmaker decided to amend the Law of the contentious administrative, and some of these changes can be deemed essential. However, the changes of 2018 do not reflect a knowledge of the realities of the contentious administrative. This is why, this study comes in order to criticize most of these changes. The amendments which were brought do not simplify certain situations, but make them more difficult, and we are sure that such thing will be reflected in the practice of the contentious administrative courts.

Keywords: *law of the contentious administrative, legislative changes, jurisdiction of the court, prior procedure*

1. Introduction

"The term of contentious administrative represents a traditional meaning of the administrative law, considered inappropriate for "the realities specific to socialist traditions" and, therefore, used in the respective period rather for the purpose of historical evocation (A. Iorgovan, op. cit., 2002, p. 451).

Etymologically speaking, the word contentious originates from the Latin contendere meaning to fight.

This is a metaphorical fight, a fight of opposing interests between two parties, one of which will be victorious (V. Vedinas, op. cit. 2002, p. 156).

Therefore, the term contentious expresses the conflict of interests, the contradictory nature of the interests (Al. Negoita, op. cit., 1996, p. 216)

In the administrative law, the term contentious started to be used in order to delimit jurisdictional remedies from ordinary administrative second appeals."[1]

"The contentious administrative represents the totality of the litigations between public authorities, on the one hand, and the individuals whose rights and legitimate interests were damaged, on the other hand, deduced from typical or assimilated administrative acts considered illegal, which fall under the jurisdiction of the contentious administrative divisions of the courts of law, governed by a predominantly public-law regime."[2]

The emergence of Law no. 554[3] in 2004, the so-called *new law of the contentious administrative*, was a long-awaited moment for all law theorists and practitioners, especially for those of the administrative law.

Law no. 554/2004 repealed Law no. 29/1990, a pre-constitutional law that had to be often interpreted rather than applied in the strict meaning of the terms used. The contentious administrative (the contentious where the private sector fought against the "state"), fundamentally rethought after the Revolution of December 1989, when it had been urgently transposed into a law. Subsequently, the enforcement of the Constitution in 1991, made the law of 1990 already subject to the interpretations in the light of the fundamental constitutional notions.

Here is how 2004 represented the time when the contentious administrative was based on new and modern bases, exceptional lawyers led by the late professor Antonie Iorgovan, thus creating the premises of a performant legislation that was to respond to such great challenges caused by such a field.

Judges, lawyers, the entire legal spectrum were pleased with the idea of implementing a modern jurisdiction centered on two levels: the genuine contentious administrative, which entailed the attack against typical or assimilated administrative acts, issued by public authorities and fiscal contentious, which entailed the attack against fiscal administrative acts.

The implementation of the new law took three years, in which there were already noted deficiencies that generated contradictory situations in practice. In 2007, Law no. 554 is substantially amended by Law no. 262[4], this time a new adjustment made with the objective realities of the contentious administrative being targeted.

Until 2018, Law no. 554/2004 has undergone changes, but the substance has never been modified.

2018 is the year when certain regulations of the contentious administrative are rethought by the

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[1] See in this respect Dana Apostol Tofan, *Drept administrativ, Volume II*, All Beck Publishing House, Bucharest 2004, page 281

[2] See in this respect, Verginia Vedinas, *Drept administrativ, Edition IX revised and updated*, Universul Juridic Publishing House, Bucharest, 2015, page 172

[3] Law no. 554/2004 of the contentious administrative published in the Official Journal, Part I, no. 1154 of December 7th, 2004

[4] Law no. 262/2007 for the amendment and supplementation of Law no. 554/2004 of the contentious administrative, published in the Official Journal Part I no. 510 of July 30th, 2007

lawmaker and apparently, are placed into a new perspective, meant to improve the judiciary system. If this is true or not, if the amendments made are able to create an improvement of the system that governs the contentious administrative, here are just a few questions that the present study aims to clarify, obviously from the perspective of the author, theoretician and practitioner of the administrative law.

On a brief analysis of the old form of the Contentious administrative, as it had settled down after all the amendments, especially after the essential one of 2007, such a great need for amending the law was not revealed. Basis were laid, a construction was substantiated.

It is truth that the enforcement of the new Code of Civil Procedure entailed the adjustment of certain regulations in the field of the contentious administrative. We could no longer speak of "irrevocable decision", the second appeal should be seen as an extraordinary remedy, yet ordinary in matters of contentious administrative, could we impose the procedure for filtering second appeals before the High Court of Cassation and Justice in matters of contentious administrative? All these referring to the special nature of Law no. 554/2004, in relation to the Code of civil procedure.

All of these amendments and adjustments were indeed necessary, but in addition to these, the law also underwent other amendments, at least critical to a more sensitive analysis.

2. Amendments to Law no. 554/2004, analysis of the implications

In order to understand why the lawmaker justified that the amendment of Law no. 554/2004 was required in 2018, it is obvious that we have to start from the memorandum of reasons accompanying draft Law no. 212/2018[5], which is the amending law.

The first reason was the long term required for trial settlement. This aspect is reflected in the contentious administrative in two directions: the regularization procedure, on the one hand, and the procedure for filtering second appeals before the High Court of Cassation and Justice, on the other hand (we point out that in contentious administrative, the remedy against the court of first instance decision is represented by second appeal, corroborated with the regulation according to which the Court of Appeal is the court of first instance in many contentious administrative litigations, therefore second appeals were filtered before the High Court of Cassation and Justice).

The memorandum of reasons leads to the reasoning according to which the activity of the courts is dominated by the field of the contentious administrative which represents about 30% of the activity of the tribunals of the courts of appeal and almost 40% of the activity of the High Court of Cassation and Justice.

Furthermore, the memorandum of reasons revealed concrete data showing the trend of increasing the number of the cases in this field[6].

Furthermore, another reason was generated by the fact that, especially within the High Court of Cassation and Justice, an average term of 2 years has passed between the writ of summons and the date of the first hearing, this being an interference with the right of the litigant to solve the case within a reasonable time.

Furthermore, within the High Court of Cassation and Justice, an activity disproportion was created, the division of contentious administrative had to settle a double number of cases compared to the other non-criminal divisions.

The same discrepancy was noted within inferior courts (tribunal and courts of appeal).

Therefore, the lawmaker concluded that the legislative amendment having the effects below was required:

- To reduce the term of case settlement;
- To balance the activity volume between the divisions of the courts and between the courts under the fulfillment of their professional competencies;
- To create the legal premises of the fulfillment of the right of the citizens to access the court and to settle the cases in due time.

In legislative terms, the amendments were made by taking into account the following axis, thus considering that their impact would be positive:

- The modification of the jurisdiction for certain types of cases that can be settled by other sections or specialized court panels. In this respect, litigations coming from the execution and termination of administrative contracts were taken into account;
- Keeping the distribution of the cases in the field of the contentious administrative at national level, as established according to the jurisdiction to settle the cases by removing derogation procedures;
- The modification of the jurisdiction on levels of court in the field of the contentious administrative;
- The removal of procedural mechanisms which generate large delays without a procedural benefit justifying them (filtering procedure and regularization procedure in cases the scope of which is represented by urgent cases the stay of execution of the administrative act, petitions for the enforcement of administrative acts and replacement of the common law procedure for the submission of the statement of defense and of the answer to statement of defense in common law cases) by a faster procedure.

[5] Law no. 212/2018 for the amendment and supplementation of Law no. 554/2004 of the contentious administrative and of other normative acts, published in the Official Journal, Part I no. 658 of July 30th, 2018

[6] According to the report on the status of justice for 2016: In the field of the contentious administrative and fiscal, in 2016 the number of new cases was 139,407 cases, with 23713 cases more than in 2015, which represents an increase of 20.5%.

Last but not least, it was noted that the accordance of law no. 554/2004 with the decisions of the Constitutional Court was required.

Starting from these arguments, the lawmaker proceeded with the actual modification of the law, in the end, some changes were beneficial, but others were at least questionable in terms of practical impact in the settlement procedure.

A first significant amendment concerns the "*Prior administrative procedure. Therefore, the prior procedure was regulated in order to grant stakeholders the possibility to settle their complaints in a shorter term and operative manner, the notified administrative body being able to reconsider the previously issued act and to issue another one accepted by the plaintiff.*

Some authors analyze the prior administrative procedure as a first stage of the contentious administrative procedure, prior to the actual stage, before the contentious administrative court (...).

The new law of the contentious administrative maintains the mandatory nature of the prior procedure, although there were proposals in the opposite direction in the doctrine and even the draft law entailed the idea of enshrining its facultative nature. [D. Apostol Tofan, Modificarile esentiale aduse institutiei contenciosului admnistrativ prin noua lege cadru in materie (I), in C. Jud. nr. 3/2005, pp. 90-103]."[7]

"By means of the exercise of the administrative second appeal, the applicant of the prior complaint aims the dismissal or amendment of the act deemed illegal by the issuer, and by means of the hierarchical administrative second appeal, the initiator aims to cancel the act by means of the public authority superior to its issuer or to determine the issuer of the act to dismiss or amend it, in order to avoid an action in contentious administrative."[8]

"By means of law no. 202/2010[9] *regarding some measures for accelerating resolution process (Law of the small reform in justice), art. 109 of the Code of civil procedure was supplemented by a new paragraph, (3), which shall read as follows: "The failure to fulfill prior procedure can only be claimed by the defendant by statement of defense, under penalty of preclusion."*

This provision is found with identical content in the new code of civil procedure in force as of February 15th, 2013, in art. 193 para. (2).

We are wondering whether this rule of procedural law also applies in contentious administrative, regulated by special organic law, which requires the administrative procedure as a prerequisite for the exercise of the right of action.

Art. 7 of law no. 554/2004 regulates the rule of the mandatory nature of the administrative prior complaint; the terms and conditions under which the prior procedure is exercised; cases where the prior procedure, by way of exception to the rule, is not mandatory.

The aforementioned law does not entail provisions on the following: the nature of the motion to dismiss on grounds of the non-fulfillment of the prior procedure; the conditions under which it can be claimed (hearing, subjects); the legal sanction entailed by the failure to fulfill the prior administrative procedure.

The legal nature of the prior procedure, that of exercising the right to action, enshrined in the doctrine and case law, was deducted from the provisions of art. 109 para. (2) of the Code of Civil Procedure 1865, current art. 193 para. (1) of the New Code of Civil Procedure, the general regulation the hypothesis of which aims precisely the situations in which, by special law, it is stipulated that the notification of the court is performed only after the fulfillment of the special procedure.

Therefore, the fact that the Law of the contentious administrative establishes the obligation of the prior procedure does not exclude the incidence of these texts of the codes of civil procedure; on the contrary, places the action in contentious administrative, in its regulation field.

According to the rules applicable in case of the competition between general regulation and special regulation, where special regulation <<falls silent>>, general regulation applies, with the tone introduced by art. 28 para. (1) of Law no. 554/2004, in order to determine the compatibility of the rules of civil procedure with the specifics of the contentious administrative reports."[10]

The amendments made to the law of the contentious administrative in the field of prior procedure can be structured on the following directions:

- The obligation of the injured third party to file prior complaint *within 30 days as of the date it took knowledge, by any means, of the content of the act* (art. 7 para. 3 of Law no. 554/2004).
- Rethinking the reasons which can be detailed in the prior complaint, meaning that the grounds claimed in the petition for the annulment of the act are not limited to those claimed by means of the prior procedure (art. 8 para. 1 final thesis of Law no. 554/2004).

We will detail each and every amendment and we will point out positive and negative aspects detached from the analysis of the text.

In what concerns the obligation of the third party to file prior complaint within 30 days as of the date it

[7] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ*,*Comentata si adnotata*, Universul Juridic Publishing House, Bucharest 2018, page 237

[8] See in this respect Anton Trailescu, *Drept administrativ,* edition 4, C.H. Beck Publishing House, Bucharest 2010, page 346

[9] Law no. 202/2010 regarding some measures for accelerating resolution process, published in Official Journal Part I no. 714 of October 26th, 2010

[10] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ Comentata si adnotata, op. cit,* pp 239-240

took knowledge of the content of the act, the impact of the change is in two directions.

First of all, the modification occurs on the background of the Decision of the Constitutional Court no. 797/2007 published in Official Journal no. 707/2007[11], whereby art. 7 para. 7 of Law no. 554/2004 in old wording was declared unconstitutional, in the sense that the 6-month term as of the issuance of the act shall not apply to the prior complaint filed by the person injured in his / her right or in a legitimate interest, by an administrative act of individual nature, addressed to another law subject than the recipient of the act.

The effect of the Decision of the Constitutional Court has not been transposed into law within the deadline of 45 days, so that a non-unitary interpretation of the law was noticed in practice, certain courts going so far that they have ruled that the injured third party could file prior complaint within 6 months, the 30-day term not being opposable to him/her.

The amendment of 2018 and which basically establishes the 30-day deadline for both the beneficiary and the injured party is beneficial, due to the fact there is practically no reasoning that justifies a term for the recipient and another for the third party.

The second amendment undergone by art. 7 para. 3 in its new wording entails certain discussions. Therefore, the third party shall file the prior complaint within 30 days since he/she took knowledge of the content of the act.

In practice, it was noted that an individual administrative act, such as the land owner certificate is communicated only to the beneficiary and the legal effects in connection with the mandatory nature and executory nature ex officio are produced as of the moment of the communication to the beneficiary.

The time when third parties took knowledge of the existence of an injurious administrative act is related to extrinsic elements, to acts or deeds occurred subsequently, to which the judge gives the appropriate significance in relation to circumstances of the case, by keeping a just balance between the interests of the parties to litigation."[12]

In connection to this amendment, we are wondering if wording "*took knowledge of the existence of the act*" was not enough. It will be very difficult for the third party to effectively take knowledge of the content of the act. Therefore, will the issuance authority issue a counterpart of the act, provided that he/she is not the beneficiary? Which are the real means whereby the third party can effectively take knowledge of the content of the act?

We believe that it was sufficient for the third party to claim the existence of the act and the alleged injuries brought to him and subsequently, if the act was not revoked by the issuing authority, the court would judge the damage and eventually, cancel it.

Therefore, the phrase "content of the act" seems to be too burdensome for the third party, especially correlated with the rest of the provisions of the law, which do not seem to lead and to be interpreted in the same sense.

In conclusion, according to the new express provisions of the law, both for the recipient of the unilateral individual administrative act, and for third parties, the rule is that of exercising prior complaint within the 30-day deadline, which starts as of the communication date, for the recipient, and as of the date of the acknowledgment of the act, for third parties.

"The 6-month deadline, which starts as of the issuance of the act, for the recipient, and as of the date of the acknowledgment of the act, for the third party, is an exceptional one, conditioned by the existence of certain substantiated grounds, consisting in circumstances likely to make impossible the administrative proceedings within the 30-day deadline."[13]

"The rewording of the texts by means of Law no. 212/2018 brought a high quality by means of the express regulation of the running of the deadline for third parties as being the date of the actual acknowledgment of the content of the act, and not the date they took knowledge of the issuance of the act, as provided in previous form."

Notwithstanding, we remain with the opinion that it was sufficient to speak about the "existence of the act" and not about the content of the act.

We also refer here to the amendment undergone by art. 8 para. 1 final thesis, which allows the plaintiff to file prior complaint, in order to check the completion of the procedure, and subsequently, in court action, to state the reasons for annulment, as he/she wishes.

"Starting from the premise that the general regulation of the administrative prior procedure, referred to in art. 7, does not establish binding content elements, foreseeing only that the injured person must request the dismissal, in full or in part, of the administrative act, art. 8 para. (1) was supplemented by Law no. 212/2018, namely that "the grounds claimed in the petition for the annulment of the act are not limited to those claimed by means of the prior complaint".[14]

In case of this modification, the analysis must start from the terms specific to administrative law, respectively the dismissal which can be ordered by the issuance authority and the annulment, which can be ordered by the court of law.

Provided that certain grounds can be claimed in prior procedure, grounds which can be subsequently

[11] See in this respect Decision of the Constitutional Court no. 797/2007 published in the Official Journal no. 707/2007. The material can be accessed by using site: https://lege5.ro/App/Document/geydsmbzhe/rectificarea-privind-decizia-curtii-constitutionale-nr-797-2007-din-06112007

[12] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ Comentata si adnotata, op. cit*, page 246

[13] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ Comentata si adnotata, op. cit*, pag 260

[14] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ Comentata si adnotata, op. cit*, page 282

supplemented or can even become new grounds in the action for annulment, we are naturally asking what is the role of the prior procedure?

As we showed above, the prior procedure, mandatory as a rule, it is the remedy left to the authority in order to revoke the act, when it is notified on illegalities involved.

Provided that the prior complaint becomes only a formality, the dismissal regulation lacks of substance.

Provided that new/other grounds can be claimed on the illegality of the act, which would be the point of preserving the prior procedure?

In this light, the amendment suffered by law no. 554/2004 appears to be of the essence. Although, apparently, we can say that this is a benefit granted to the litigant, who can go to the action in annulment with all grounds deemed substantiated so as to impose the annulment of the act, grounds that he/she may not have been able to discover until the filing of the action, there remains the natural question: what is the importance of the prior procedure? From this perspective, the prior procedure remains only a formality.

A major impact amendment is also the new wording of art. 8 para. 2 of the Law which establishes that "*in case of administrative contracts, the court can be vested with litigations which concern the stage preceding the conclusion of an administrative agreement, as well as any litigations in connection with the conclusion of the administrative contract, including litigations the scope of which is the annulment of an administrative contract.*

The litigations arising from the execution of the administrative contracts fall under the jurisdiction of the common law civil courts."[15]

There can be noted a division of the material jurisdiction of the courts in case of the administrative contracts:

- The litigations preceding the conclusion of the administrative contract, litigations in connection with the conclusion of the administrative contract and litigations the scope of which is the annulment of an administrative contract shall fall under the jurisdiction of the contentious administrative courts of law;
- Litigations arising from the execution of the administrative contracts shall fall under the jurisdiction of the common law courts of law.

From this division of the litigations the scope of which is the administrative contract, the following question occurs: to the extent that the administrative contract is defined as a species of the administrative act, is it normal for the courts of common law to rule on it, in certain situations?

We believe it would be natural that the courts of contentious administrative remain competent on all sectors and issues raised by the administrative contracts.

It is often difficult to distinguish between matters of annulment and, for example, matters of execution, and the aspects to be intertwined.

We believe that cases where courts or parties claim lack of material jurisdiction will be frequent, and the matters of jurisdiction will train the litigation more than other matters which were taken into account by the lawmaker, when he/she modified the jurisdiction, in an attempt to relieve the divisions of contentious administrative.

We consider that this change is not beneficial and all litigations having as object the administrative contracts should remain in the jurisdiction of the divisions of contentious administrative, by taking into account the specific of this field.

Another significant amendment is represented by the new wording of the text" para. (3) of art. 10, which currently includes a standard of protection in favor of private law subjects involved in disputes of contentious administrative and fiscal, thus establishing the exclusive territorial jurisdiction of the court over their domicile or registered office, when they have the capacity of plaintiff, and the jurisdiction of the court over the domicile or registered office of the defendant, when the plaintiff is public authority, public institution or assimilated to them.

The special regulations of exclusive territorial jurisdiction introduced in Law no. 554/2004 by Law no. 212/2018 exclude the incidence, in litigations of contentious administrative and fiscal, of alternative jurisdiction established by art. 111 of the New Code of Civil Procedure (petitions filed against public law individuals), according to which the petitions filed against the state, central or local authorities institutions, as well as other public law individuals can be filed before the court with jurisdiction over the domicile or registered office of the plaintiff or before the court with jurisdiction over the defendant.

According to the new par. (4), introduced in art. 10 by means of Law no. 212/2018, "the territorial jurisdiction to solve the case shall be fulfilled when the action is brought on behalf of the plaintiff by any public or private law person, regardless of the capacity in the trial."

Equally, the situations referred to in art.1 para. (3) and (4) of Law no. 554/2004, which shall read according to below, shall fall under the typical hypothesis of this regulation:

"The Ombudsman, following the control performed by him/her, according to his/her organic law, if he/she considers that the illegality of the act or the refusal of the administrative authority to carry out the legal duties can only be removed by way of justice, he/she may bring the matter to the competent contentious administrative court with jurisdiction over the petitioner's domicile. The petitioner acquires de jure the capacity of plaintiff, and he shall be summoned in this capacity. If the petitioner does not assume the

[15] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ Comentata si adnotata*, *op. cit*, page 284

action filed by the Ombudsman at the first hearing, the contentious administrative shall cancel the petition.

If the Public Ministry, following the exercise of the duties provided by its organic law, considers that violations of the rights, freedoms and legitimate interests of individuals are due to the existence of individual unilateral administrative acts of public authorities issued by means of abuse of power, under their prior approval, notifies the court of contentious administrative with jurisdiction over the domicile of the natural person or of the injured legal person. The petitioner acquires de jure the capacity of plaintiff, and he shall be summoned in this capacity."

In what concerns the territorial jurisdiction regulated by Law no. 554/2004 there are exceptions provided by special laws, such as: Competition Law no. 21/1996[16]*, which in art. 19 para. (7) stipulates the special jurisdiction of the Court of Appeal Bucharest in what concerns the legality control of the decisions of the Competition Council; G.E.O. no. 194/2002*[17] *on the regime of foreigners in Romania, approved by Law no. 357/2003*[18]*, which provides the exclusive jurisdiction of the Court of Appeal Bucharest in responding to the refusal to grant the right of long-term residence in Romania [art. 74 para. (3)]"*[19]. All these derogations remain in force.

In what concerns the amendments undergone by "*article 13 of the Law of the contentious administrative, we note that this regulates a series of measures on the summoning of the parties and the preparation of judgment, by derogatory regulations or, as the case may be, by supplementing those referred to in the Code of civil procedure (art. 153, art. 201, art. 202, art. 203)*."[20]

In the absence of an express derogatory provision, art. 13 of Law no. 554/2004 must be interpreted and applied in connection with the provisions of art. 200 of the New Code of Civil Procedure, therefore, upon the receipt of the petition, the panel to which the case was assigned follows the procedure for verifying and adjusting the petition.

As soon as the judge notes the observance of the terms provided by the law for the sue petition, the judge orders, by resolution, its communication to the defendant, by notifying the defendant that he will be bound to file statement of defense, under the terms provided by art. 201 para. (1) of the New Code of Civil Procedure, as well as the obligations arising from the provisions of art. 13 of Law no. 554/2004.

At the same time, the correlation of art. 13 with art. 17 para. (1) of Law no. 554/2004, in its new wording, *leads to the conclusion that the filing of the answer to the statement of defense is not mandatory in contentious administrative, the first hearing being set in such a way that at least 15 days have passed since the date of the communication of the statement of defense.*

Modifications were also brought to art. 14, in terms of the court proceedings, in order to ensure the urgency of judging the suspension petition. Art. 14 has also suffered significant amendment in 2007. "*By means of the amendments brought by Law no. 262/2007, the wording of art. 14 in connection with the suspension of the execution of the act was clearer. Therefore, according to para. (1), in justified cases and for the prevention of imminent damage, after notifying (not at the same time with the notification, as provided prior to the amendment) under the terms of art. 7 of the public authority which issued the act or of the hierarchically superior authority, the injured person can request the competent court of law to order the suspension of the execution of the unilateral administrative act until the decision of the court of first instance. Furthermore, the supplementation brought by Law no. 262/2007 is also pertinent, namely, if the injured person fails to file action in annulment within 60 days, the suspension ceases de jure and without any formality*.[21] Therefore, "*the petition is urgently judged and especially, by summoning the parties, and, in order to ensure the urgent nature of the procedure, art. 14 para. (2), as amended by Law no. 212/2018, provided expressly the exception from the provisions of art. 200 and art. 201 of the New Code of Civil Procedure, the prior stages of verifying and adjusting the petition not being applicable in this field.*

The content of the special regulation provides that as soon as the judge was assigned the suspension of execution, the judge must set the first hearing and, at the same time, to order the communication of the petition to the defendant, by making him aware of the obligation to file statement of defense, at least 3 days before the hearing.

The plaintiff shall acknowledge the content of the statement of defense filed with the case, but, according to the complexity of the case, in order to ensure the fulfillment of the right to a fair trial, the court can grant a new hearing in case the plaintiff requests the postponement in order to take note of the content of the statement of defense."[22]

Art. 16 of Law no. 554/2004 has often raised discussions about the availability principle. Therefore, in case of a trial in contentious administrative, the following circumstance must be taken into account "*the administrative law is a branch of public law, therefore,*

[16] Competition Law no. 21/1996 republished in the Official Journal, Part I no. 153 of February 29th, 2016

[17] Emergency Ordinance no. 194/2002 on the regime of foreigners in Romania, republished in the Official Journal Part I no. 421 of June 5th, 2008

[18] Law no. 357/2003 for the approval of Government Emergency Ordinance no. 194/2002 on the regime of foreigners in Romania, published in the Official Journal, Part I no. 537 of July 25th, 2003

[19] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ Comentata si adnotata*,*op. cit*, pp 353-354

[20] See in this respect, Gabriela Bogasiu – *Legea Contenciosului Administrativ Comentata si adnotata*, *op. cit*, page 391

[21] See in this respect Rodica Narcisa Petrescu, *Drept administrativ*, Hamangiu Publishing House, 2009, pp. 495-496

[22] See in this respect, Gabriela Bogasiu – Legea Contenciosului Administrativ Comentata si adnotata, op. cit, pp. 417-418

on the one hand, in case of a substantial administrative law report, the right, legitimate interests and obligations of private entities are always balanced with public interest, and, on the other hand, the parties are in a position of legal inequality. This inequality should not be reflected in the procedural plan, by ignoring the "equality of arms" principle, because the essence of the contentious administrative is precisely the protection of private entities against the abuses of the administration."[23]

"The new content of art. 16, as amended by Law no. 212/2018, takes almost literally the corresponding provision of the Civil Procedure Code, thus having the capacity to end disputes in addressing the question of compatibility and correlation of the special rule with the general procedural and civil regulation."[24]

In what concerns the remedy, "*in contentious administrative the court of first instance decisions cannot be appealed by means of appeal, the only possible remedy being the second appeal*.

The special regulation referred to in Law no. 554/2004 remained applicable even after the enforcement of the Code of civil procedure, situation expressly regulated by art. 7 para. (3) of Law no. 76/2012[25]*, according to which in the field of the contentious administrative and fiscal, including in the field of asylum, the provisions of para. (1) and (2) of the same article, quoted in section Legislation are not applicable.*

It was decided in the unitary case law of the Division of contentious administrative and fiscal within the High Court of Cassation and Justice that in cases where the Code of civil procedure provides the appeal of judgments with appeal (e.g. presidential ordinance), in contentious administrative, the remedy that can be exercised is the second appeal, by applying art. 28 of Law no. 554/2004, which enables the specialized court to check the compatibility of the general procedural and civil regulations with the specifics of the administrative law reports."[26]

The second appeal grounds, the other terms for the exercise of the remedy and court procedure are those regulated by the Code of civil procedure, except the solutions pronounced by the court of contentious administrative, in respect of which the law derogates partially from the rules provided by art. 497 and art. 498 of the New Code of Civil Procedure.

We have to outline that the second appeal in contentious administrative does not have the same meaning as in civil proceedings, and the court will behave completely differently.

Conclusions:

This study aimed to reveal that the amendments undergone in 2018 by Law no. 554/2004 can be analyzed from various perspectives. There are some changes that definitely have a beneficial impact (i.e. raising the ceiling in terms of shared jurisdiction between tribunal/court of appeal for fiscal litigations to RON 3,000,000) but there are also amendments with negative impact. Certainly, the impact of these amendments cannot be yet quantified, either in what concerns the litigant, or in what concerns the courts of law. We believe, however that any amendment should be made in conjunction with the meaning of the regulations (i.e. it makes no sense to divide the jurisdiction of the courts of law in the field of the administrative contracts).

The regulation of the contentious administrative is ultimately a specialized one and, therefore, the whole issue arising from this regulation should have been left to the competence of the specialized courts.

Notwithstanding, we will see in the future how the new vision brought by the lawmaker will be reflected in the judicial practice and we will continue the analysis started by means of this study.

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[23] See in this respect, Gabriela Bogasiu – Legea Contenciosului Administrativ Comentata si adnotata, op. cit, page 451

[24] See in this respect, Gabriela Bogasiu – Legea Contenciosului Administrativ Comentata si adnotata, op. cit, page 453

[25] Law no. 76/2012 for the application of Law no. 134/2010 on the Code of civil procedure published in the Official Journal, Part I no. 365 of May 30th, 2012

[26] See in this respect, Gabriela Bogasiu – Legea Contenciosului Administrativ Comentata si adnotata, op. cit, pp 549-550

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