THE METHOD OF NORMING THE TRANSLATION CONDITIONS TO COMPETITIVE ELECTRICITY SUPPLY MARKET

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Abstract

In objectifying a desirable economic and social reality, the undistorted and efficiency regulatory mode of the conditions for the supply of electricity on a free commercial market by the national authority, a minimum legal requirement for the functioning of the electricity sector and market should be respected, in terms of efficiency, competition, transparency and consumer protection.

However, on the electricity market in Romania, marked by a successive translation of the conditions of electricity supply by suppliers and the establishment of the electricity tariff, between the method regulated by state institutions, having legal competences in the field, and the competitive market, the role of the National Energy Regulatory Authority, hereinafter referred to as ANRE, is even more important in avoiding competitive slippage and abuses against final consumers.

Contrary to its role of administrative guardianship in the field of electricity supply, ANRE stood out, by issuing administrative orders regulating the conditions for the transition of captive consumers from the regulated to the competitive market, through an administrative-normative approach not only defective, but also harmful to consumers as well as through a lack of transparency and the adoption of at least questionable administrative orders. Therefore, from this point of view, it is strictly imposed the necessity of the systematic and teleological analysis of the ANRE Order no. 188/2020(subsequently amended by Order no. 6/2021), of the ANRE Order no. 241/2020 and of the ANRE Order no. 242/2020, from the perspective of the excess of power in the issuance / adoption of the administrative act institution, regulated by disp. art.2 paragraph 1 letter n) of Law no.554 / 2004.

It is necessary to analyze the legal character of these orders issued by ANRE, including the possibility of censoring their stipulations by the court on the basis of excessive power adoption, as an indispensable requirement of compliance with the principle of legality of the administrative act, with the use of the jurisprudence of the European Court of Human Rights (ECHR) and the jurisprudence of the Court of Justice of the European Union (CJEU) relevant in the matter.

Keywords: *order, administrative guardianship, excess of power, regulation.*

1. Introduction

The specificity of the organization of modern society, characterized by globalization, but largely by placing certain types of activity under the prerogative of a few professionals, who exercise a real monopoly in those fields, involves identifying, preparing and implementing a timely, transparent legislative framework. efficient, applied, balanced, non-discriminatory, proportionate and adapted to the specifics of that activity or public service.

These regulatory needs imply the involvement of state institutions in shaping and elaborating the ways of organizing these activities of general interest or providing public services, regardless of whether they are carried out by public institutions, by legal entities with whole or majority state capital or by legal entities of private law who, according to the law, have obtained the status of public utility or are authorized to provide a public service, in public power regime, according to the stipulations of art.2 paragraph 1 (b) thesis II of Law no. 554/2004.

The public services activities, being characterized by a synoptic and complex structuring and by a regime of often monopoly, fact that puts the citizen, as recipient of the public interest, in a situation of severe inferiority to the suppliers of these services, involve state institutions control, focused on regulating the supply conditions, the rules of commercial behavior of suppliers on the economic market, the general regulatory framework for respecting the competitive environment and also the structuring, deployment and control of compliance with the rules of participation in the free market of public services.

One of the primary areas of public service provision in any state, and the Romanian society does not make a discordant note, is that of electricity supply, which is characterized as a strategic area of national interest, being thus subject to a complex and specialized regulation, aimed to maintaining a fair balance, on the one hand, between suppliers, by stimulating and preserving a competitive environment, and, on the other hand, between the actors in the electricity supply market and consumers, as final recipients in a clear position of inferiority and vulnerability on the market, determined by the poor level of information, market involvement and influencing the conditions for providing this service, including through the way of negotiating the price of electricity.

Therefore, the role of Romanian state institutions is a strong and decisive one in this fundamental field, of electricity supply, aiming to ensure balance on the free market, through the combined game of creating a proper environment for the development of this

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economic field, by stimulating investments correlated with well-structured legislative levers, designed to protect vulnerable customers.

In this regard, the concern of public institutions in regulating the electricity market and in establishing a strategy for its development is very well set out in the stipulations of Article 4 paragraph 1 of Law no. 123/2012[1], according to which: *"National Energy Strategy defines the objectives of the medium and long-term electricity field and the most efficient ways to achieve them, in the conditions of ensuring a sustainable development of the national economy and meeting the energy needs and a civilized standard of living, in quality conditions, both now and in the medium and long term, at an affordable price. The energy strategy is developed by the relevant ministry in consultation with representatives of the energy industry, non-governmental organizations, social partners and representatives of the business environment, is promoted by a draft law by the Government and approved by the Parliament. The energy strategy is periodically reviewed at the initiative of the relevant ministry, without prejudice to the stability and specific predictability of such a document, the revised form to be approved in accordance with the law. "*

This legal text has the merit of concentrating the object of a complex national strategy in the field of electricity, focusing on the legal values of state law, characterized by the need to respect a reasonable ratio of proportionality between the means of implementing the strategy and the goal and the development of this field, in order to ensure a civilized standard of living for the Romanian consumers, at a reasonable price.

The criterion of the quality of the legal norm is transposed in the national legislation, as it transpires from the jurisprudence of the European Court of Human Rights, respectively the requirement that the structure of the normative construction regulating the electricity field should be accessible and predictable, not only in order to create a climate conducive to the development of the activity of authorized suppliers, but also in order to achieve the goal of protecting final customers, who have a disadvantageous position on the energy market, being dependent on certain suppliers, often having a monopoly contribution on the electricity supply market, at least in a certain region of the country.

1.1. ANRE, Protection duties in the energy field

From this point of view, the role of the Energy Regulatory Authority (hereinafter ANRE) is a strong one and a benchmark in the field of electricity market regulation, stipulations of art.71 para. 1 of Law no. 123/2012 stating that *"ANRE monitors the implementation of the rules on the roles and responsibilities of transmission and system operators, distribution operators, suppliers, customers and other market participants in accordance with Regulation (EC) no. 714/2009. "*

This role is well structured by art.1 paragraph 1 of GEO no. 33/2007[2]*, according to which „The National Energy Regulatory Authority, hereinafter referred to as ANRE, is an independent administrative authority, with legal personality, under parliamentary control , financed entirely from own revenues, decisively independent, also organizationally and functionally, having as object of activity the elaboration, approval and monitoring of the application of the set of obligatory regulations at national level necessary for the functioning of the electricity, thermal and natural gas field and market, competition, transparency and consumer protection. "*

The legal activity carried out by ANRE aims at issuing orders, decisions and notices, whose legal regime is outlined by the stipulations of art. 5 of GEO no. 33/2007, according to which:

„(1) The orders, decisions or opinions of ANRE regarding the regulatory activity refer to:

a) granting / modifying / suspending / refusing or withdrawing licenses or authorizations;

b) approval of regulated prices and tariffs and / or their calculation methodologies;

c) approval of technical and commercial regulations for the safe and efficient operation of the electricity, heat and natural gas sector;

d) the approval / endorsement of the documents elaborated by the economic operators covered according to the legal provisions in force;

e) granting / modifying / suspending / refusing or withdrawing certificates / authorizations to economic operators and individuals carrying out specific activities in the electricity and natural gas sector;

f) approval of other regulations, norms, studies, documentation provided by the legislation for the field of electricity and heat and natural gas.

(2) The orders and decisions provided in par. (1) lt. a) -d), accompanied by the motivation instruments, drawn up in compliance with the legal provisions in force, shall be debated in the Regulatory Committee and shall be adopted by a majority vote of its members; the quorum for meetings of the Regulatory Committee shall be deemed to have been met if at least 4 members of the Committee are present.

(3) The orders and decisions provided in par. (1) are binding on the parties until a final and irrevocable court decision has been issued to the contrary, unless they have been revoked by the issuer ... "

Therefore, one of the concrete forms of exhibiting the attributions of ANRE, as a tutelary body in the field of electricity, is represented by the activity of issuing orders having as object the elaboration of technical-

[1] Of electricity and natural gas, published in the Official Gazette no. 485 of July 16, 2012

[2] Regarding the organization and functioning of the National Regulatory Authority in the Energy Field, published in the Official Gazette no. 337/2007.

legal norms aiming at the functioning of the electricity supply sector.

2. Excess of power - The issue of excess power in the exercise of duties

For a pertinent analysis of the way in which ANRE fulfills the role of administrative guardianship in the field of electricity, with particular observations on the limits of the right of appreciation in the exercise by this institution of legal attributions, it is necessary to observe a particular case of regulation by ANRE , as much as publicized, as controversial from a legal point of view.

Thus, one of the unilateral administrative acts with normative character (within the meaning of stip. Art.2 paragraph 1 letter c) of Law no.554 / 2004) issued by ANRE is the ANRE Order no. 171/2020[3], legal act aiming at determining the general legal framework for the supply of electricity by economic agents, called suppliers of last resort.

The determination of this notion has a legal origin, within the meaning of art.3 point 27 of Law no.123 / 2012, by *"provider of last resort (meaning - sn) the provider designated by the competent authority to provide the universal supply service in specific regulated conditions "*.

In the analysis of the controversial norms referred to in the above lines, the provisions of art. 4 of ANRE Order no. 171/2020 are relevant, according to which *"Starting with January 1, 2021, household customers in the portfolio of suppliers of last resort may continue to benefit from the universal service, by maintaining the contractual relationship with the provider of last resort in whose portfolio it is located or by concluding a contract with another provider of last resort, at the price of its universal service offer, or they may choose an electricity supplier with which to conclude a contract for the supply of electricity in a competitive manner ".*

Also, art. 5 of the same order states that *"Starting with January 1, 2021, as a result of the elimination of regulated tariffs, electricity consumption of household customers who have not chosen a competitive offer and have not concluded a contract on the market shall be invoiced by the suppliers of last resort with whom they had concluded a supply contract in force on 31 December 2020, at the offer price for the universal service, established in accordance with the provisions of the annex to this order ".*

In order to fully understand the significance of these two legal texts on how to set the price of electricity for consumers who have not concluded an agreement with the supplier, in a competitive market, so which are dependent on the service provided on the regulated market, the relevant provisions are of art. 3, Thesis II of the Annex to ANRE Order no. 171/2020, according to which *"... if the providers of last resort reserve the right to adjust the price of the offer for the universal service communicated to the household customer, they have the obligation to indicate in a complete and transparent manner the reasons which may lead to a variation in the supply price and explicitly describe the method by which that price varies."*

At a first analysis of these legal norms, it is noted that the situation of customers benefiting from the electricity supply service on the universal market is particularly disadvantageous compared to those on the competitive market, the supply price being left by the ANRE order mentioned , corroborated with ANRE Order no.188 / 2020, subsequently amended by Order no.6 / 2021, with ANRE Order no.241 / 2020, as well as with ANRE Order no.242 / 2020, at the simple discretion of the supplier of last resort, no reasonable criterion for determining this price has been established, obviously respecting the contractual freedom of the supplier, the principles of free competition and the free market, as they are conceived in the legislation of the European Union and in the jurisprudence of the Court of Justice of the European Union.

However, in order to establish whether these orders, as controversial as they are important, are disproportionate and whether they object to the abusive exercise, exceeding the reasonable limits of appreciation, of ANRE's attributions, it is necessary to proceed to a detailed analysis of the legal institution of the excess of power in the issuance / adoption of the administrative act, regulated by stip. art.2 paragraph 1 letter n) of Law no.554 / 2004.

Thus, for the beginning, as noted in the doctrine[4], *"We define the competence through all the attributions conferred by law to administrative persons and, sometimes, to their structures, to act for the organization of the execution and the concrete execution of the law. Using the competence, the authorities, the public institutions can act in the regime of administrative law, they can make administrative acts, administrative operations, technical-material facts. "*

From the point of view of administrative competence, it is unequivocal that the orders mentioned above are issued by an administrative institution, empowered by the provisions of art. 5 of GEO no. 33/2007 to issue normative administrative acts, through which to structure a general, abstract and conceptual framework for regulating the legal relations of an administrative nature born in the activity of providing electricity to household customers.

Therefore, ANRE issued these orders based on legal enabling norms, based on which it exercises the

[3] For the approval of the conditions of electricity supply by the suppliers of last resort, published in the OFFICIAL GAZETTE no. 876 of September 25, 2020.

[4] Emil Bălan, Administrative procedure, University Publishing House, Bucharest, 2005, p.59.

tutelary role in the field of determining the legal regime of electricity supply.

However, this simple legal authorization is not enough to reach the easy conclusion of ANRE's observance of the reasonable limits of appreciation in issuing these orders, but it is necessary to determine the legal modalities, the legal regime and especially the concrete effects that these orders produce regarding the manner of determining the price of electricity in the case of household consumers remaining on the regulated market, therefore of customers who have not concluded agreements with suppliers, on the competitive market.

From this point of view, we notice that ANRE had a certain margin of appreciation in determining the legal framework for establishing these prices, by issuing the orders in question, but this power of evaluation is not unlimited in terms of structure and especially within its limits, but, on the contrary, it is a finite one.

The answer to this matter is an important one, considering the fact that, if the court, to which the consumer, the People's Advocate or the prosecutor can address for the annulment of the mentioned orders, based on stip. art.2 paragraph 1, paragraph 3 and paragraph 5 related to those of art.8 paragraph 1 and art.11 paragraph 4 thesis II of Law no.554 / 2004, finds that by the orders issued by to ANRE the general legal framework was created, based on which the suppliers set the price of electricity and that it is disproportionate, harming household consumers, the latter can claim compensation, including ANRE, for repairing the damage suffered.

For example, regarding the issue of ANRE's margin of appreciation, the jurisprudence of the European Court of Human Rights held that *"it must take into account the state's margin of appreciation, which varies significantly depending on the circumstances, the nature of the protected right and the nature of the interference [Paradiso and Campanelli v. Italy (MC) no. 179-182; The Swiss Raelian movement against Switzerland (MC) no. 59-61]. 296.*

The same principle applies not only to the above-mentioned articles, but also to most of the other provisions of the Convention - including cases relating to implicit limitations, which are not mentioned in that article. For example, the right of access to a court, guaranteed by art. 6 § 1 of the Convention is not absolute, but may be subject to limitations; these are implicitly allowed because the right of access, by its very nature, requires regulation at the state level. In that regard, the Contracting States have a certain margin of discretion, although the final decision on compliance with the requirements of the Convention is a matter for the Court. It must be convinced that the restrictions applied do not restrict or reduce the access allowed to the person in a way or to an extent that the right, in essence, is violated. In addition, such a limitation of the right of access to a court will not be in accordance with art. 6 § 1 if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim pursued [Cudak v. Lithuania (MC), § 55; Al-Dulimi and Montana Management Inc. v. Switzerland (MC), § 129]. 297.

If, following the preliminary examination of the application, the Court is satisfied that all the above conditions have been met and that, in view of all the relevant circumstances of the case, there is no obvious disproportion between the aims pursued by State interference and the means employed, that claim is inadmissible as manifestly unfounded. [Mentzen v. Latvia (dec.)]"[5].

Nor has the Court of Justice of the European Union omitted such an important subject, having a fruitful jurisprudence on the right of assessment of the state, from which we note the following considerations[6], particularly relevant in the field: *"Finally, another general source of inspiration would be the case law of the European Court of Human Rights, which interprets Articles 6 and 13 of the ECHR. In accordance with the case law of the European Court of Human Rights on Article 6 of the ECHR, the adequacy of the judicial review available to the applicant is assessed in relation to the powers of the judicial body concerned and factors such as: "(a) the subject matter of the contested decision , in particular whether or not an issue requiring specialist knowledge or professional experience is concerned and whether it has involved the exercise of discretion by the administrative authorities and, if so, to what extent; (b) the manner in which that decision was reached, in particular the procedural guarantees in the proceedings before the competent body; and (c) the content of the dispute, including specific grounds of appeal and those at the level of intent* [7]....

As noted in the Decision in the Rahman case, Article 3 (2) gives the Member States a wide margin of discretion. However, the margin of appreciation is not unlimited. The Commission rightly emphasized that such a power of assessment concerns the choice of factors and conditions adopted by the Member States in accordance with their obligation to adopt national provisions in order to provide a regime to facilitate the entry and residence of extended family members. This margin of appreciation also extends to the actual assessment of the relevant facts in order to determine whether those conditions are met.

109. However, the margin of appreciation does not mean 'black box'. According to the jurisprudence of the Court, even if the competent authorities have a margin of discretion, the judicial review must verify

[5] Practical guide on admissibility conditions, https://www.echr.coe.int/documents/admissibility_guide_ron.pdf, f.70.

[6] In Case C 89/17 Secretary of State for the Home Department v Rozanne Banger.

[7] Decision of the European Court of Human Rights of 21 July 2011, Sigma Rado Television Ltd v Cyprus (EC: ECHR: 2011: 0721JUD003218104, paragraph 154 and the case law cited).

that the decision is based on a sufficiently sound factual basis and that it complies with procedural guarantees[8]. *In order to determine whether the limits on the discretion laid down by the Directive 2004/38 have been complied with, the national courts must be able to assess all the procedural aspects and the material elements of the decision, including the facts on which they are based*[9].

110. Again, the Rahman case decision has already provided strong indications in this regard: a person making an application under Article 3 (2) „has the right to have a court verify whether the national law and the manner in which it has been applied are not have exceeded the limits of the margin of appreciation laid down by that Directive "[10]. *Although the directive leaves a considerable margin of discretion, it must be possible for national courts to verify the compatibility of a national decision with the obligations laid down in Article 3 (2) of the directive „.*

As the legal wording has rightly stated[11], *„the term subsidiarity is also used by the doctrine in a second sense, in connection with the fact that in the case law of the Court a margin of quasi-discretion has been granted to the need for interference or, after some even discretionary. This discretion is a competence to classify situations which impose restrictions and / or derogations from the exercise of the rights protected by the Convention, which the Court recognizes for States. Interference is thus authorized by the Convention within the limits of the Court's discretion. This competence recognized to the States is based on reasons similar to those which led to the introduction of a principle of subsidiarity in the Maastricht Treaty"*.

But what is meant by the expression "excess of power"? The answer is given to us by art.2 paragraph 1 letter n) of Law no.554 / 2004, which states that by *"excess of power (we designate -sn) the exercise of the right of appreciation of public authorities by violating the limits of competence provided by law or by violating the rights and freedoms of citizens "*.

Therefore, we can state that the excess of power means the abusive exercise of the right of disposition of the public authority or of the public institutions subordinated to them, among which is ANRE, by the unequivocal and unjustified exceeding of the margin of appreciation of which, naturally , they dispose, or by non-compliance with the competence, material or territorial, of the issuing body or by exercising in such a manner the legal powers that, by evading the law, the rights and freedoms of the citizens are harmed.

In the analyzed case, the excess of power imply an exceeding of the external limits of ANRE's attributions, as they are established by law, transgressing, as a consequence, these assingning competence norms. Therefore, the excess involves the commission of an abuse of rights by this public institution, by issuing the orders in question with disregard for the right of household consumers to clarity and accessibility of the normative administrative act and to establish in a transparent, proportionate and balanced price of electricity supply.

A particularly relevant point of view was expressed in this regard by a renowned professor[12], who pointed out that "*The principle of avoiding abuse of power in administrative behavior implies the absence of abuse of power, in the sense that the Community official will have to - exercises its prerogatives only for the purpose for which they were conferred, and will avoid, in particular, their use without a solid legal basis or for the achievement of purposes that are not justified by a public interest. Therefore, if in the case of breach of the principle of proportionality it is a question of an excess of power in the exercise of the right of assessment by the Community official, in the case of abuse of power it is a diversion of the prerogatives conferred to them its administrative action being free of any legal basis and foreign to the realization of a public interest.* "

Also, the valences of this institution were detected by the national jurisprudence, which stated that "*it is known that the permissive norm, in administrative law, expresses the discretionary power given to the authority to act or not, the freedom to assess to act in a sense or otherwise, which does not equate to the fact that this power can be misused without legal justification of its choice. To accept the opposite means to accept the excess of power without any control of the administration activity, which is not allowed in a State law, which (...) is organized not only according to the principle of separation of powers (...), but also of that of their balance within the constitutional democracy* [13]".

Therefore, the abuse of power is the reverse of ANRE's natural right to analyze and assess the opportunity to issue the above-mentioned orders, in excess of reasonable limits of option, in relation to the circumstances and adverse effects produced by

[8] See in this regard the judgment of 4 April 2017, Fahimian (C 544/15, EU: C: 2017: 255, p. 45 and 46).

[9] See in this regard, Opinion of Advocate General Szpunar in Fahimian (C 544/15, EU: C: 2016: 908, p. 78).

[10] Case C-127/02 Waddenvereniging and Vogelbeschermingsvereniging [2004] ECR I-0000, paragraph 66, Case C-32/09-C-167/09 Stichting Natuur en Milieu and Others , EU: C: 2011: 348, paragraphs 100-103), and Case C-83/11 Rahman and Others [2012] ECR I-0000, paragraph 25, with reference to the judgment of 24 October 1996, Kraaijeveld and Others (C 72/95, EU: C: 1996: 404, paragraph 56).

[11] Valentin Constantin, On the subsidiary control of the protection of the rights guaranteed by the ECHR, https://www.juridice.ro/254226/despre-controlul-subsidiar-al-protectiei-drepturilor-garantate-de-cedo.html.

[12] Emanuel Albu, European Charter of Fundamental Rights - The right to good administration, in the Journal of Commercial Law no. 9/2007, pp. 75-90; See also Ioan Alexandru, Public administration, theories, realities, perspectives, 4th edition, Lumina Lex Publishing House, Bucharest, 2007, p.121.

[13] HCCJ, S. Cont. Adm. and Fisc., dec. no. 3359 / 30.05.2005, unpublished, cited by Gabriela Bogasiu, Law on administrative litigation. Commented and annotated., Universul Juridic publishing house, 2015, p.110.

administrative acts issued in relation to household consumers.

It was also noted in practice that "*In the analysis of excess power can not be ignored the idea that in administrative law relations the public interest prevails, which aims at the rule of law and constitutional democracy, guaranteeing the fundamental rights, freedoms and duties of citizens, meeting needs as well as achieving the competencies of public authorities*[14] ".

In another decision, the court stated that "*In exercising their powers, administrative entities have a margin of appreciation, so that, in the event that no grounds for formal illegality or elements can be identified as a result of which the issuer of the administrative act had an arbitrary conduct, deviated from the purpose of the law or violated the principle of proportionality between public and private interest, an assessment of the substance of the measures ordered, made by the administrative court itself, would constitute an unauthorized interference in public administration.*

The reasons invoked by the appellant-plaintiff do not indicate punctual violations of the law, do not concern irregularities of the administrative procedure, being disputed the score given by the experts involved in the evaluation and selection stages, score to which the party opposes its own arguments and evaluation made in the specialized technical expertise test.

But, as it was expressly and clearly mentioned in the cassation decision no. 4680 of December 5, 2014, the administrative contentious court cannot replace the public authority with attributions in establishing the total score resulting from the evaluation, and the expertise performed according to art. 201 para. (1) C. C. Proc., it includes only a specialized opinion on the issue subject to analysis, an opinion that the court must analyze in relation to all the evidentiary elements and the circumstances of the case [15] *".*

Applying all these doctrinal and jurisprudential considerations in the analysis of the stipulations of art. 4 and art. 5 of the ANRE Order no. 171/2020, we observe, as a preliminary, the fact that on the one hand, they were not properly informed by ANRE about the deadline they would benefit from in order to conclude the electricity supply contracts, according to the rules of the competitive market, and on the other hand, it established an extreme restrictive term. on the conclusion of new contracts, only a few days.

It can also be unequivocally noted that the method of pricing, determined by this order and subsequent ones, is one that creates an inadmissible discrepancy between the interest of household consumers in calculating an equidistant and predictable price, based on the principles of free supply and demand, specific to a liberalized commercial market and the right of suppliers to set, at their discretion and without any reasonable legal limitation, the supply price.

Basically, the provision according to which *the price charged to consumers will be that of the offer made by suppliers for universal service* allowed suppliers to arbitrarily set the price of electricity, taking advantage of their obvious superiority, logistics, information, functional structure, lobby, etc., to impose disproportionately high prices on customers compared to those charged by the same suppliers in the competitive market.

So, from the corroborated game of the lack of option of the domestic clients in choosing a tariff from the supplier's offer, with the very short time of concluding a contract on the competitive market and with the possibility conferred by ANRE to the suppliers to establish its own price for universal service, it is concluded that ANRE has exercised its right of option abusively, exceeding the natural limits of its right of appreciation in the field of regulation of the electricity market.

Through this behavior, ANRE destructured the contractual balance between suppliers and customers, creating the legal premises for harming the right of the latter to provide a quality service and with reasonable costs.

Moreover, ANRE determined the creation of a discriminatory situation, in the negative sense of the notion (application, without a solid justification, of differentiated treatments in objectively identical situations), between consumers who managed to conclude the contract on the competitive market and those who did not achieved this, without retaining any concrete fault on the part of the latter, since the term of choice was very short, combined with the very large number of contracts to be exchanged.

In this way, the rights of the latter are obviously affected, being put in a position to pay a price and 25% higher than customers in a position absolutely identical to them, but who have entered the competitive market, in regarding the contract for the supply of electricity.

ANRE, instead of ordering through the mentioned orders that the perceived price will be the most favorable to the customers from the universal service, among those practiced by the provider of last resort, decided that this price is the one arbitrarily established by each provider, which creates huge damage to a large number of customers.

3. Conclusions

From the analysis of the documents issued by ANRE, individualized above, it results that this public institution, having a fundamental role in the complex and flexible process of regulating the electricity market, failed miserably in creating a predictable, reasonable,

[14] HCCJ, S. Cont. Adm. and Fisc., dec. no. 3800 / 02.11.2006, unpublished, cited by Gabriela Bogasiu, Law on administrative litigation. Commented and annotated., Universul Juridic publishing house, 2015, p.111.

[15] HCCJ, S. Cont. Adm. and Fisc., dec. no. 56 / 22.01.2016.

transparent legislative framework. and in proportion to the interests of the actors engaged in the energy market, whether they are suppliers or domestic customers.

The orders issued by ANRE regarding the transition from the regulated market to the competitive one for electricity supply, being affected by a serious defect of abuse in the assessment of opportunity and lack of equidistance, are the object of a real abuse of power by the issuing institution.

This legal reality opens the premises of the appeal before the administrative contentious court, based on disp. art.1, corroborated with art 7 and art.8 of Law no.554 / 2004, of these ANRE orders, with the possibility of the court to cancel them, and the subsequent effect is that of the cancellation and of the electricity supply contracts concluded in based on those orders, based on the *accesorium sequitur principale* principle and which harms household consumers.

The latter may also obtain, based on the provisions of art. 18 paragraph 3 of Law no. 554/2004, compensations for the damages suffered, consisting in the difference in additional price paid for one kw, in relation to the price charged by each supplier for household customers in the competitive market.

This is a relevant example, in which the non-observance of the principle of proportionality between the administrative measure taken and the object in view, in this case, the liberalization of the electricity market, with the non-observance of the balance of interests of the actors engaged in this process, it is likely to produce possible harmful legal consequences for clients and costly for ANRE, on the other hand, unnecessarily burdening the courts.

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- Valentin Constantin, On the subsidiary control of the protection of the rights guaranteed by the ECHR, https://www.juridice.ro/254226/despre-controlul-subsidiar-al-protectiei-drepturilor-garantate-de-cedo.html.