THE SUSPENSION OF THE ADMINISTRATIVE ACTIONS –A SYNTHESIS OF THE RECENT JURISPRUDENCE

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Abstract
The suspension of the administrative acionts is an exceptional measure which can be decided by the administrative courts and whose purpose is the temporary interruption of the effects produced by these actions. That is why the issue debated in this study has a great importance and we tried to point out the courts' trends in the interpretation of the legal texts, texts that regulate the suspension of the administrative actions' issue. But this study took also into account a theoretical approach from which the administrative courts should start when the matters that are subjected to their analysis cases assume the temporary interruption of the effects of some acts which, normally, have an ex officio execution and whose effects can be suspended only exceptionally.

Keywords*: administrative actions, suspension of execution, administrative court law, High Court of Cassation and Justice.*

1. Introduction

Administrative actions, as power actions, enjoy the ex officio execution rule, which rule has its origin in the assumptions underlying the edifice which creates the legal force of such documents: presumption of legality, which in its turn is based on other two assumptions: reliability and authenticity.

That is why the effects of administrative actions can not be permanently or temporarily interrupted, unless in exceptional cases.

If the final interruption is usually the work of issuing authority, the hierarchically superior authority or the court, the temporary interruption of the effects of administrative actions is an exceptional operation.

2. Suspension of administrative actions

Suspension is not - or should not be considered - a way of ending the enforcement of an administrative action. And this is simply because the idea of "*ending the enforcement*" contains in itself, the *final extinctive process*. Or, the suspension by definition is only a transient state, an incident in the normal application of an administrative action; a sort of *purgatory* that settle out the uncertain situation of an administrative action classified as "suspicious" in terms of its legality.

As defined in the dictionary of public law, the suspension is "a legal transaction, part of the legal regime of the administrative action, which consists in interruption of producing legal effects of an action over which are hanging over certain doubts on its legality. It is a guarantee of legitimacy and an exception to the legal regime of administrative actions. Temporary cessation of legal effects lasts up to the clarification of the situation that caused it."[1]

3. Cases of suspension of an administrative act

If an administrative action is legal and appropriate, it should apply. On the contrary, if such an action is clearly illegal or clearly inappropriate, its place in the legal system is not justified.

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[1] Verginia Vedinas, Teodor Narcis Godeanu, Emanuel Constantinescu, *Dictionary of public law,* (C.H.Beck, Publishing House, Bucharest, 2010), p. 127.

Therefore, it must be "disconnected from the apparatus", either by the administration, through revocation or, if it does not consider it necessary, by the court on notification, through its cancellation.

But the actual situation is not always so clear: as *between white and black there are infinite shades of gray.* For instance, the action *seems* legal but is not sure that this is so: or, on the contrary, the action *might* be affected by any illegality flaw, but this is not *indisputable*. So one thing is certain: that a doubt is surrounding the legality of administrative action in question. And in such a case, any extreme measure is at least risky: to keep it enforceable may create subsequently irreparable or hardly reparable damage, the *cancellation* it may be also costly for the government, because, if subsequently the legality of the action is approved, a similar action is required to be adopted, with the corresponding waste of human resources, time and money. We must therefore appeal to a compromise: a measure to preserve a certain *status quo* and hence to reduce any possible losses, as much as possible. Suspension of the action in question is such a compromise. The idea is surprised even by our legislator: pursuant to Article 14, 1st paragraph of Law no. 554/2004, the administrative court may order the suspension of the contested action "*in well justified cases*" i.e., according to the content of art. 2, 1st paragraph, letter t), in those circumstances *relating to the "state of things that are likely to create* ***a serious doubt on the legality of an administrative action***."[2]

4. Judicial suspension

Suspension of an administrative action may be also ordered by the administrative court in terms of art. 14-15 of Law no.554/2004. In order to suspend an administrative action by the administrative court, a **procedure condition** must be complied with: the petitioner must have already filed the prior complaint under Art. 7 of law (in case of suspension based on the provisions of Article 14), respectively to have registered the action of repealing the action to the court (in case of that based on the provisions of Article 15), as well as a **double substantive condition**: to be a well-justified case (existence of a serious doubt upon the legality of contested action - appearance of illegality), as well as to be an imminent damage. If the first condition does not create particular problems, the second would involve discussions on the nature of the damage that may occur. Thus, starting from the reason of the text that tends to avoid an *imminent* damage, but has not yet occurred, the following observations can be made:

a). ***nature of damage*** - material or moral - *has no relevance at all*, as long as it is *imminent;*

b). ***suspension is not required for actions that have already created a permanent damage by their own issuing***. For example, if by an administrative action is created a moral damage - injuring their right to the image - as it is already produced and not an immediate one, practical importance and interest will present only the *annulment* of the action and granting moral damages, but not its suspension;

c). ***suspension of normative administrative actions is questionable***. Thus, although the legal text does not distinguish, it is quite difficult to suspend such an action, because on principle it is not likely to **directly** cause damages, but only through some individual administrative actions. However, reported to the new conception of the legislator regarding the legitimate interest possible to be protected through an administrative action, we believe that the legislative act could also be suspended by the court provided that, for example, introducing some obligations considered illegal in charge of individuals, whose breach would attract sanctions, the imminence of damage is therefore obvious. Moreover, from the economy of analyzed legal text, it is clear that the individual does not need to

[2] O. Podaru, *Administrative law, Academic course, Vol.I. Administrative Action (I) Reference points for a different theory*, (Hamangiu şi Sfera Juridică Publishing House, 2010), p.338-339.

wait for an individual act to cause him a direct damage and can request the suspension of the legislative act if he can prove the imminence of the damage by its future sanction.

d). negative administrative actions can not be suspended (refusal decisions). Just a simple vocation (even legitimate) to obtain in the future a subjective right; therefore, as the **suspension of negative action does not mean implicit recognition by the court, of the existence of positive action**, it would do nothing but bring the claiming individual at the status before issuing the negative act, a status that did not allow him to exercise any subjective right. Therefore, in this case, if by its refusal to issue a positive act, the individual proves that it has suffered any damage, it can only get a subsequent repair.

e). as regards the administrative actions which, by their application, deprives the individual of a certain amount of money (for example, a taxation or a fine payment notice, late payment penalties, etc.) it is not enough only to be invoked the damage consisting just in the payment of such amount of money and negative consequences of this payment must be justified: imminence of bankruptcy for legal entities or lack of subsistence means for individuals, etc. in this respect the jurisprudence has constantly given its verdict[3].

5. Considerations drawn from legal practice on conditions to be met because the court can order the suspension of administrative actions.

As mentioned before and drawn from the text of art. 14 of Law no. 554/2004, in order that the court should dispose the suspension of an administrative action, it must "touch" the test case and to observe the cumulative fulfillment of two conditions: well justified case and imminent damage.

That is why the analysis of jurisprudence on these issues is very useful. In this study we focused on the practice of the High Court of Cassation and Justice, Administrative and Fiscal Department, practice that we find to be relevant for the assessed areas. Besides the two conditions and their specific way of fulfilling, the High Court of Cassation and Justice has also reported other issues on the suspension of administrative actions, issues that will be further analyzed.

From the jurisprudence related to 2006, we indicate by way of example Decision no. 843 of 14th March 2006[4], decision stating that the suspension of executing an administrative action can not be directly requested to the court, such a request being inadmissible. Thus, the High Court shows that according to art. 14 paragraph 1 of the Administrative Court Law in force, in duly justified cases and for prevention of imminent damage, along with the appeal, in terms of art. 7, of the public authority which issued the act, the aggrieved party may request the competent court to order the suspension of the administrative action until the pronunciation of first instance court. To the extent that the plaintiff does not make the proof of filing the request subject to preliminary procedure, its request for suspension of administrative action will be rejected as inadmissible. It follows therefore that prior to the filing of suspension request, the plaintiff will need to notify the issuing authority on the preliminary stage of the procedure, otherwise its action could not be received by the court.

In another decision rendered in the same year 2006, the same court ordered the suspension of an administrative action on the grounds that applying a sanction consisting of a civil penalty with a superior value to the net profit of a company in its 11 years of activity is likely to produce a significant disruption in the company business, also reported to the nature of its activity (distribution), in this case the suspension request being fully justified.[5]

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[3] To see, for example, I.C.C.J.,*s. adiminstrative and tax accounts*, dec. no. 4748 of 16th December 2008, in J.S.C.A.F. semester II/2008, (Hamangiu Publishing House, Bucharest, 2010), p. 103.

[4] To see, I.C.C.J.,*s. adiminstrative and tax accounts*, dec. no. 843 of 4th March 2006, in J.S.C.A.F. semester I/2006, (Hamangiu Publishing House, Bucharest, 2006), p. 131.

[5] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 1723 of 16th May 2006, in J.S.C.A.F. semester I/2006, (Hamangiu Publishing House, Bucharest, 2006), p. 147.

Showing circumstances on the state of things, the nature of the plaintiff's activity and the possible effects of the execution of act upon it is absolutely necessary in order to argue that it is well-justified case, in the meaning of the legal text ,being unable to note that the relevant issues in the application or retained by the court initiates the case substance and is equivalent to an ante-pronunciation on it.

Regarding the same issue of well-justified case, the High Court of Cassation and Justice held that the revocation of a tax repository authorization, measure that basically requires the cessation of trading activity, make proof of the existence of well-justified case.[6]

Analysis of the two necessary conditions to be cumulatively met in order to suspend administrative actions is carefully detailed by the Supreme Court in the Decision no. 1390 pronounced on 20th April 2006.[7] Regarding the first condition - the well justified case - the law does not include regulations, but it is clear that the existence of a well-justified case, to defeat the principle according to which the administrative action is enforceable ex officio, requires a strong doubt on the presumption of legality of an administrative action issued pursuant to law and for its enforcement. Regarding the second condition - the imminent damage - the law has defined it as a future and foreseeable material prejudice or the serious disruption of operation of a public authority or a public service. Also, this decision contains the role of motivation in the court order by the court. Thus, the High Court shows that both the well justified case and the damage whose imminent occurrence would be eliminated by the suspension of enforcing administrative action must be concretely indicated, not just asserted by taking over legal texts, in the contents of court decisions ordering the measure of suspension under the provisions of Law no. 554/2004.

What the Supreme Court wants to emphasize by this decision is the following issue: the court must that, during the trial of an action subject to the suspension of an administrative action, to consider the rules of evidence that the parties understand to administer in order to actually see whether the two conditions are met. A brief analysis is not sufficient, but fulfilling of both conditions must be deeply investigated. Only in case the court conclude that both conditions are met, may order the suspension measure. The court investigation must be careful just because we face with an exceptional measure, considering the binding and enforceable character of administrative action.

From the practice of the supreme court, we also have examples in which some situations have not been considered to be likely leading to such a measure. Thus, contracting some loans for the development of business and any delay in payment of installments are not elements to prove, by their mere existence, of the well-justified case and the imminence of producing any damage in the sense of art. 14 of the Administrative Court Law, in order to justify the suspension of enforcing the administrative action.[8]

The distraint, as a precautionary measure, upon movable property of the appellant, even if they are its production equipment, does not involve paralysis of the productive activity of the company and can not be appreciated as a well-justified case, because the company can continue to use those assets according to their purpose, even if they can not form the subject of disposal acts of the company.[9] There is no ground according to which the distraint upon property would have been turned into an enforcement distraint, with the consequence of selling those goods, as there was no proof in this regard.

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[6] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 1207 of 6th April 2006, in J.S.C.A.F. semester I/2006, (Hamangiu Publishing House, Bucharest, 2006), p. 149.

[7] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 1390 of 20th March 2006, in J.S.C.A.F. semester I/2006, (Hamangiu Publishing House, Bucharest, 2006), p. 150.

[8] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 1000 of 23rd March 2006, in J.S.C.A.F. semester I/2006, (Hamangiu Publishing House, Bucharest, 2006), p. 266 .

[9] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 3747 of 1st November, in J.S.C.A.F. semester II/2006, (Hamangiu Publishing House, Bucharest, 2006), p. 38.

On the non-fulfillment of the two conditions, the Supreme Court stated that a decision of a public authority cannot be suspended, by which it is decided the organization of a competition on the grounds that previously it had not been done the promotion, transfer or redeployment of public servants existing within an agency, no public servant holding a public position equivalent to those vacant which have been announced was included in the competition committee, the members of the competition committee did not possess the necessary knowledge for assessment of examinations, the secretariat of the competition committee was not provided by a public servant from the human resources department or by another public servant with responsibilities in this area, the committee for settling appeals has not been legally established, the applicant right to participate in both competitions has not been complied with and persons whose files did not correspond to the legal provisions have been admitted to take part in the competition. All these reasons, in the plaintiff's opinion were grounds subscribing to the well justified case, also being implied the condition of imminent damage.[10]

The court considered that in this situation, the condition of well justified case is not legally met, the circumstances alleged by the complainer, as well as the filed documents are not likely to cause a strong doubt in terms of legality of the contested administrative action.

There was no proof made on imminent damage to which the plaintiff would be subject by complying with the decision of organizing the competition, it occupying a certain position within the defendant authority. Damage caused by non-promotion of the plaintiff, previously to organization of contested competition, in a leadership position within the respondent is not obviously predictable and can not be ground for suspension of administrative action.

Also on these issues, we retain those ruled by the High Court of Cassation and Justice in Decision no. 1377 of 6th March 2007.[11] Thus, the assertions on the fact that the imminent damage produced to the plaintiff by the dismissal action from the public position, applied as a disciplinary sanction, consists in losing the salary rights, are not sufficient and conclusive in order to be considered that the legal requirements for the suspension of execution are met, as such assertions are not likely to overthrow, by themselves, the presumption of legality of the contested administrative action.

Assessment of the illegality of administrative action whose suspension is required under art. 15 of Law no. 554/2004, does not prove the existence of well-justified case, provided by art. 14, paragraph 1 of law as one of the conditions in which presence the measure of suspension may be ordered. In deciding on such assertions and thus examining the legality of the action, the court made a prejudgment of the substance, which exceeds the procedural framework of the application for suspension of administrative action.

The provisions of art. 14 of Law no. 554/2004 is a transposition into the national law of the provisions with principle value contained in Recommendation (89) 8 of the Ministers Committee of Europe Council on provisional legal protection in administrative matters, according to which 'interim protection measures can be primarily granted, if the enforcement of the administrative action is likely to cause serious damage, is likely to cause serious damage, repairable only with difficulty and under the condition of the existence of a prima facie case against the validity of such action." [12]

In decision no. 4748 of 16th December 2008, already mentioned above, the High Court of Cassation and Justice examines several issues arising from the application of art. 14 and 15 of Law no. 554/2004, as follows: according to art. 14, paragraph 1, the measure of suspension execution of

[10] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 1150 of 2nd February 2007, in J.S.C.A.F. semester I/2007, (Hamangiu Publishing House, Bucharest, 2007), p. 6.

[11] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 1377 of 6th March 2007, in J.S.C.A.F. semester I/2007, (Hamangiu Publishing House, Bucharest, 2007), p. 45.

[12] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 2090 of 19th April 2007, in J.S.C.A.F. semester I/2007, (Hamangiu Publishing House, Bucharest, 2007), p. 144.

the administrative action may be ordered only if two conditions are cumulatively met, which we presented in detail in this study. The fulfillment of two conditions must be substantially proved by the party and substantiated by the court by the sentence rendered.

In case of administrative actions charging the aggrieved party with the payment of a sum of money, the fulfillment of condition to prevent an imminent damage is not proven and demonstrated by the mere assertion that payment of such amount leads to a loss in the debtor's assets, because in this way it would reach the conclusion that this requirement is assumed in most administrative actions in this category, which would be contrary to the exceptional character of the suspension institution.

The asset retirement reason stipulated by art. 304, section 3 of Code of Civil Procedure is unsubstantiated in case the Court of Appeal is vested with the settlement of appeal against the conclusion by which it has been settled the request to suspend the execution of an administrative action, formulated pursuant to Art. 15 of Law no. 554/2004, as the issue of material competence of the First Instance Court need to be resolved by the court of first instance vested under article 1 and 15 of the Administrative Court Act with the action having the main object the annulment of the act and, subsequently, with extrinsic character, the suspension of executing such action, because the request for suspension can not be separated from case substance.

The practice of the High Court of Cassation and Justice brings into question other procedural issues related to decisions rendered on such test cases, such as the term for appeal against such decisions. According to the provisions of Art. 14, paragraph 4 of Law no. 554/2004, the court resolution or, if necessary, the sentence rendering the suspension may be appealed within five days of notification.

The mention provided in the content of the suspension decision, which aims at indicating a different appeal term than the one stipulated by law, is not likely to alter the statutory period of appeal and can not be taken into account in exercising it, according to the "nemo censetur ignorare legem" principle.[13]

Another important procedural issue is that according to which the request for suspension of administrative action formulated under Article 15 of Law no. 554/2004, i.e., within the main application containing annulment, is being settled urgently, but by summoning of the parties, as the legal text expressly provides and to allow the parties to exercise their right to defense.[14] A decision subject to a request of suspension, to the judgment of which the parties have not been summoned, violates not only the imperative text of the law, but also some of the fundamental principles of civil case, namely the adversarial principle and that of the defense right.

Conclusions

Of all the above issues, drawn from the practice of High Court of Cassation and Justice, it follows that the court may order the suspension of an administrative action, but only as an exceptional measure. Since this is an exceptional case of temporary interruption of the effects of the action, the court must carefully pronounce upon an evidence aiming only at issues related to the suspension of action, as well as the fulfillment or not of the conditions under which suspension may be ordered. Evidence cannot aim at the legality of the action itself, because the legality issues will be reviewed by the court on the occasion of the action of repeal. It should also be noted that the court must carefully separate those aspects concerning the suspension of those related to annulment, in order not to risk pre-empting on annulment of the action.

[13] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 3067 of 26th September 2006, in J.S.C.A.F. semester II/2006, (Hamangiu Publishing House, Bucharest, 2006), p. 42.

[14] To see, I.C.C.J.,s. adiminstrative and tax accounts, dec. no. 1966 of 12th April 2007, in J.S.C.A.F. semester I/2007, (Hamangiu Publishing House, Bucharest, 2007), p. 135.

Also, the court will have to take into account in the pronouncement of the judgment, the other procedural issues, corroborating in this regard the provisions of Law no. 554/2004 with those of the Code of Civil Procedure.

It can be also noted that the solutions are varied from case to case, being specifically about the review of fulfillment of imminent damage to well-justified case conditions. In this case, the use of jurisprudence in reasoning some requests for suspension must be done carefully, because of the risk of not identifying similar test cases.

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