RSP • No. 59 • 2018: 56-68

ORIGINAL PAPER

Some Considerations about Solutions of the Courts in the Area of Administrative Litigation

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Abstract:
The provisions of art. 18 of Law no. 554/2004 of the administrative contentious law, establishes that the administrative contentious instance may annul in whole or in part an administrative act. In addition to the application of this sanction, which intervenes for the causes of nullity of the administrative act, causes that may be prior or concurrent with the moment of adoption of the administrative act, the court may order the public authority to carry out certain legal acts or perform certain technical operations. According to the legal provisions, we note the court of administrative litigation may order the public authority to issue an administrative act, to issue another document, or to carry out an administrative operation. A regulatory administrative act contains generic and impersonal rules and may oblige certain legal behaviors from certain legal subjects but can guarantee or protect subjective rights for them. Regarding an administrative normative act, the legal provisions do not determine in concrete terms whether the court can order the obligation of the public authority to adopt such an administrative act. On the other hand, irrespective of whether the answer to such a legal situation is affirmative or negative, the question arises whether the court can apply sanctions for non-fulfillment of the implementing powers. In other words, if the public authority has to adopt a certain administrative normative act for the implementation of legal provisions, the failure to perform this task or the late exercise may cause damage. Therefore, the question then arises whether the opportunity that a public authority enjoys when adopting an administrative act is limited to the content of the act, to the manner in which the legal norm must be regulated, or to that feature must include the choice of when the public authority deems it necessary to adopt an administrative act of a normative nature.

Keywords: *Normative; Administrative; Litigation; Courts; Contentious.*

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The provisions of art. 18 of Law no. 554/2004 of administrative contentious establishes that the administrative contentious court may, in case it seesas founded the action brought by the party allegedly injured in a right or a legitimate interest by an administrative act, order the cancelation in whole or in part of that administrative act (Bogasiu, 2013:255).

In addition to the application of this sanction, which intervenes for cases of nullity of the administrative act, being prior or in the same time with the adoption of the act, the court may order the public authority to issue certain legal acts of an administrative nature or to perform certain administrative technical tasks, "to do" obligations.

According to the legal provisions, we note that the administrative contentious court has the power to oblige the public authority to issue an administrative act or to issue a different document in the possession of the institution, or to carry out an administrative operation (Iorgovan, 2008 et al.: 310).

Consider that this enumeration should notbe regarded as restricting, since the court can force a public administrative institution to carry out another task it has to accomplish, which falls into the generic category called administrative operation.

A normative administrative act contains generic and impersonal rules and may force certain legal conducts from certain legal subjects and at the same time can guarantee or protect subjective rights for them.

If we are referring to a normative administrative act, the legal provisions do not determine in concrete whether the court can order the public authority to adopt such an administrative act, so that the question arises whether such an obligation may be ordered by the administrative contentious court.

Whether the answer to such a question is affirmative or negative, the question arises whether the court can apply sanctions for the non-fulfilment of implementing the competences of adoption. In other words, we wonder whether it can be stated that if the public authority must adopt a certain administrative normative act, for the implementation of certain legal provisions, the failure to exercise that power or the late exercise causes prejudices to the subjects of the law envisaged by the act.

It is therefore necessary to analyze whether the opportunity in appreciation of which a public authority benefits from when adopting an administrative act is limited to the content of the act, to the manner in which the rule of law must be regulated, or whether, in that particular feature, we must also include the choice of the moment when the public authority considers it necessary to adopt an administrative act of a normative nature for the organization of the execution of the law.

The provisions of art. 18 of the administrative contentious law use the verb to oblige the public authority *to issue* an administrative act. This should not lead to the conclusion that the text of the law refers exclusively to the individual administrative act. It is true that in the administrative legal language the issuance of an act concerns, ordinarily, individual administrative acts, while the term of adoption of an administrative act is used in the case of administrative normative acts.

However, from the point of view of the meaning of the term[3], the action of adopting an act refers to the legal act issued by the public authority with a collective management that takes certain decisions by vote, to the action of voting draft legislation. The adoption is the expression of a collective will, while the issuance concerns the act that emanates from public institutions with unipersonal leadership. (This must not lead

to the conclusion that the administrative act, in the latter case, is the result of the single legal will of the head of the institution, but that he goes through the necessary legal procedure for a valid expression of the act, which involves different stages in which several persons, public servants have specific competences).

On the other hand, the legal provisions of art. 11 and 12 of Law no. 24/2000 regarding the technical legislative norms stipulate that a normative administrative act may be issued by a public authority also without the result of a collective expression, of a voting procedure of a collegial body such as the case of local or county council. Moreover, the text of art. 11 par. 5 expressly outlines that "other normative acts shall be published after they have been signed by the issuer".

Consequently, when considering the provisions of art. 18 par. 1 of the Law no. 554/2004, it is acceptable, in principle, the hypothesis in which the administrative contentious court may oblige the public authority also to issuing a normative administrative act, not only of an individual character one.

The text of the law does not make any distinction in this respect, so neither the interpreter is able to make such a distinction, according to the well-known Latin diction, *ubi lex non distinguit, nec nos distinguere debemus*.

In other respects, we note that according to the provisions of art. 4 par. 3 of the Law no. 554/2004 "the normative acts given in the execution of the laws, ordinances or decisions of the Government are issued within the limits and according to the norms which orders them." The primary purpose of any administrative act, including the normative one, is to create the legal framework for the application of a law or the enforcement of a law. As a result, the normative administrative acts enforce legal acts of a legislative nature, the obligation and the competence to adopt the normative administrative act being expressly stipulated by the law.

From this perspective, a court decision requiring the adoption of an administrative normative act, in the situation where the obligation derives from the law, would seem meaningless, it would be pointless. One could say that a double obligation to exercise regulatory competences, a legal one and one of a court of justice would be useless. The public authority is already bound by the law to have a certain conduct; the legislator established its direction of action through the primary regulatory act. The way to act is at the discretion of the public authority.

In this situation, the refusal to act in the manner established by the law or the fulfilment of the attributions with delay can cause damage to the subjects of law. On the other hand, a refusal to comply with the law can also have unfavorable constitutional consequences (eventually being dictated by divergent views of political nature).

The administration cannot refuse to comply with legislative acts adopted by the legislative authority. The primary purpose of the administration in a state governed by the rule of law is of an executive nature, which means that enforcing the law and ensuring that it is always respected by the recipients of the law is defining for the public administration.

The refusal to enforce a law by an administrative authority may result in a constitutional conflict between public authorities, which can be resolved by the Constitutional Court according to the provisions of art. 146 par. 1 let. e from the Constitution.

On the other hand, the administration is managed in its activity according to the principle of legality, which implies the fulfillment of its competences for the purpose of adopting the normative or individual administrative acts which the community or

individuals expect in order to clarify certain legal situations. These attributions must be fulfilled within a reasonable period of time in relation to the specificity of each legal report.

From this point of view, the state of expectation or the express refusal of non-adoption of an act, of non-exercise of the established attributions, is similar to exercising a right of appreciation by violating the competences provided by the law, respectively by fulfilling the legal obligations with excess of power.

In recent specialty theory(Podaru, 2007:35) it was emphasized that the feature of the administrative act to be an exorbitant act, distinct from private law acts must not be overlooked as "the administration is not the owner of the public interest, but rather its slave." To leave a concrete case unresolved is in contradiction with the role of the administration and with the expectations of legal subjects interested in clarifying the legal regime.

Contentious administrative courts may analyze the exercise of regulatory competence expressly granted to the public administration when it has been done with *excess of power*. In this case, the intervention of administrative justice must be accepted, the law of contentious expressly regulating the concept of excess of power.

In a case file (Decision nr. 2785/5.06.2012 of High Court of Cassation and Justice), it was noted that the Romanian Government acted with excess of power when it refused to adopt a motivated position to the legal notification of the Ministry of Agriculture and Rural Development in connection with the declaration of the state of calamity.

According to the provisions of art. 14 of the Law no. 381/2002, in force at the date of the dispute, "The Ministry of Agriculture, Food and Forests notifies the Government, which, according to the natural disasters and the size of the affected areas, declares the state of natural calamity by decision".

By the action filed to the Bucharest Court of Appeal – Contentious Administrative and Fiscal Section, it was requestedthe cancelation of a letter of the Ministry of Agriculture and the defendants to be obliged to fulfill the legal obligations in order to issue a Government decision to declare the state of natural calamity of the agricultural crops within the Calarasi county, withlegal fees.

The Court of First Instance rejected the invoked exceptions and ordered the defendant the Romanian Government, to, according to the notification and documentation submitted by the defendant Ministry of Agriculture and according to Art. 14 of the Law no. 381/2002, depending on the natural disasters, as well as the size of the affected area, to appreciate, reasoned, whether or not to declare the state of natural calamity.

The High Court of Cassation considered the first instance's solution to be well founded. It noted that there is an unjustified refusal by the defendant Romanian Government to resolve the request, within the meaning the provisions of Art. 2 par. 1 let. i and Law no. 554/2004, corroborated with the provisions of art. 2 par. 2 of the same normative act.

The provisions of art. 14 of the Law no. 381/2002 establish that the declaration of the state of calamity, the establishment of damaged areas shall be carried out by the Romanian Government by decision upon the notification of the Ministry of Agriculture.

The Supreme Court held that the recurrent authority, the Romanian Government, being legally notified by the defendant The Ministry of Agriculture and

Rural Development with information on the effects of the drought phenomenon and granting compensation, as well as the request to be submitted for analysis, has returned without justification and unlawfully the information to consider the opportunity, rather than deciding with motivation to the request of the respective ministry.

Consider that in this situation the opportunity analysis belongs to the Romanian Government. The Ministry of Agriculture represents only the public authority that analyzes the state of the facts, elaborates the necessary documentation for establishing the calamity and notifies the Government.

The sidestep and the lack of adopting a reasoned decision represent an exercise of the right to appreciation by violating the limits of competences established by law, by passivity, respectively an excess of power under the conditions of art. 2 par. 1 let. n of the Administrative Contentious Law.

Not least, it should be noted that the contentious courts did not substitute for the appellant's exclusive competences to declare the state of calamity because the pronounced solution orderedonly within the limits of the legality control.

The High Court censured the appellant's unjustified refusal to analyze and motivated appreciated with motivation on the request submitted by the defendant - the Ministry of Agriculture and Rural Development on the effects of the drought and granting of compensations.

On the other hand, the refusal to decide on the submitted complaint and to decide or not on declaring the state of calamity was also made in violation of the rights of the injured persons by the negative effects of natural phenomena. The excess of power of the central administrative authority was achieved by violating the rights of the agricultural producers, who were deprived of the payment of financial compensations to which they were entitled to according to art. 6 of the Law no. 381/2002. In fact, the legal action was brought by a legal person, an agricultural producer, who had various cultures damaged and was injured by the executive's passivity to declare the state of calamity with the specific legal consequences, the payment of legal compensations.

The decision of the High Court is also welcomed in view of the fact that it does not limit the excess of power to the status of a citizen natural person, as the text of the law suggests and observes that a public authority may manifest excess of power also by violating the rights of certain legal persons.

Consequently, we note that if the public administration has delegated a regulatory right to enforce a law, the refusal to exercise this attribute can be considered to be done with excess of power, in the situation when the norm from art. 2 par. 1 let. n of Law no. 554/2004, even if the regulatory obligation is expressly mentioned in a legal provision which was not enforced by the public authority.

In other respects, we consider that the injured person can only request to the administrative contentious court to order the issuing of the administrative normative act, when the obligation derives from a legal provision.

A notification to bring to justice that asks the court to give a decision to take place of a regulatory administrative act is inadmissible. (Râciu, 2009:356)

In this latter hypothesis, the principle of the exercise of the separation of powers in the state was violated. A court has only the power to oblige the public administration to perform its own duties, but it cannot be substituted to it.

Also, the administrative contentious judge cannot oblige to issuing an administrative normative act with certain content. As such acts are characterized as having a high degree of opportunity, the public authority acts with a strong discretionary

character.

The legal provisions establish in principle that a public authority must perform a particular activity, exercise a certain regulatory attribution. For example, according to the provisions of art. 40 and following of Law no. 350/2001 the public authorities have the competence to adopt the plans for the building of the national, county, regional territory, and according to the provisions of art. 44 elaborate urban planning documents regarding the general, regional and detailed urban plan. The elaboration of these urban planning documents and plans, their detailing is the exclusive attribute of the central or local authorities, being an executive administrative task.

Therefore, the court of administrative normative contentious may order only the cancelation of such an act or may oblige the public authority to issue it, if it reaches the conclusion that it is exercising with excess of power of the legal attributions. It cannot, however, oblige the administration to issue urban planning documents with a certain content, to be determined by the administrative contentious judge, since such a solution would constitute an interference with the exclusive competence of the administration.

For the same reason, we note that the administrative contentious judge cannot modify a normative administrative act, unless it issues a judgment canceling in part such an act, which obviously results in a modification of the act.

The overlapping of the judicial attributions and the breach of the powers of the judiciary was found by the High Court of Cassation and Justice in a case, decision no. 551/5.02.2013, in which it was analyzed the possibility of obliging the Romanian Government to issue a decision, in relation to the provisions of art. 58 par. 13 of the Law no. 446/2006 on the protection and promotion of the rights of persons with disabilities, according to which "the amount of the rights is updated annually with the index of the increase of the consume prices, by Government decision".

The Court of First Instance upheld the action and ordered the Romanian Government to adopt the decision in application of Art. 58 par. 13 of the Law no. 448/2006, considering that from analyzing the legal provisions they could not reach the conclusion that the legislator left to the Government's discretion the opportunity to issue a decision in order to update the amount of rights.

In the appeal, the Supreme Court held that the first instance court misinterpreted the legal provisions in question.

The means of evidence handled in this case demonstrates that the competent ministry, the Ministry of Labor, through the General Directorate for the Protection of Persons with Disability, submitted a draft Government Decision on updating the amount of the rights provided by art. 58 of Law no. 448/2006, the respective draft being in the endorsement procedure, following that after it will receive the notice of the relevant ministries and the notice of the Legislative Council, to be subject to the approval of the Government.

The Romanian Government is the only authority able to appreciate the necessity and the concrete possibility of achieving the indexation of the amount of the rights of persons with disabilities. The analysis of the opportunity of adopting the act, which in this case concerns all aspects of budgetary matters, is the exclusive attribute of the Government.

It has been appreciated that the administrative contentious judge cannot analyze in the place of the Romanian Government all aspects of opportunity inherent in issuing the decision.

In addition to the arguments presented by the High Court, I believe that in the

case in question, the factual situation implies the conclusion that the Romanian Government did not act with excess of power, as there is evidence that the decision-making procedure was in progress.

The court cannot require a solution to oblige an administrative authority to issue an administrative act without respecting the substance or procedural conditions established by the law for its valid adoption, by circumventing the prior notice procedure of the draft government decision subject to approval.

Also, Craiova Court of Appeal - Administrative Contentious and Fiscal Section (Sentence no. 108/2014, unpublished, remaining final by non-recurrence) rejected as inadmissible the end of the petition regarding the request of the applicant UAT com. Catane, Dolj County to oblige the Romanian Government to issue normative acts to restore the previous situation, respectively payment of the amounts of money established by the H.G. no. 255/2012, which decided to grant certain amounts of money from the Government's reserve fund to certain territorial administrative units.

By O.U.G. no. 15/2012, in art. V, it was established that "the unused sums up to the date of coming into force of the present Emergency Ordinance, shall be returned by the main authorizing officers from the local budgets to the state budget, in the account from which they were received."

The court held that in relation to the provisions of art. 8 and art. 18 of Law no. 554/2004, an action in administrative contentious seeking to oblige a public authority to issue an administrative act cannot be resolved without verifying the conditions of admissibility set out by law.

It was found that the submitted action did not fall within the scope of Law no. 554/2004, being considered inadmissible, because the Government cannot be forced to exercise the right of legislative initiative.

We consider that the solution of inadmissibility is necessary in the circumstances in which the applicant requires the court to force the Government to exercise the right of legislative initiative, the relations between the two powers, the executive and the legislative being exempt from the judicial control, regulated by Law no. 554/2004 of administrative contentious.

Consequently, the court of first instance rightly held that accepting the hypothesis in which the contentious judge could judicially control such aspects of constitutional nature would have the meaning of a genuine violation of the principle of separation and balance of powers in the state enshrined by the provisions of Art. l par. 4 of the Constitution.

In the present case, we see that the effects of the normative administrative act ordering the payment of the amounts to the local budgets were suppressed by an emergency ordinance, an act adopted by the Government, but which has a legislative nature, being legally superior to any administrative act. In case of contradiction between such acts, in the interpretation of a litigated legal report, the court will be give relevance, according to the principle of hierarchy of normative acts, primarily to the laws and legal acts assimilated to them.

Also, in the practice of the administrative contentious courts (Înalta Curte de Casație și Justiție, Semester I, 2007:17) it was assessed as inadmissible an action which requires the President and the Romanian Government, as representatives of the executive power, and the Romanian State through the Ministry of Finance, to carry out electoral promises.

In the present case, the applicant National Education Federation asked to be

issued a normative act to implement the electoral promise of allocating 6% of gross domestic product for education, according to a political program adopted by Parliament.

In this respect, through the counterclaim submitted in the file which had as main purpose the cessation of the union strike, it was appreciated that the executive authorities must be forced to take the necessary measures to identify the sources of funding for the promised funding to support the national education system.

The Bucharest Court of Appeal dismissed as inadmissible the request submitted by way of counterclaim. In the appeal, the High Court of Cassation and Justice rightfully found in the first instance judging that the applicant's request did not fall within the provisions of art. 1 of the Law no. 554/2004, since there is no contest to an administrative act which has caused an injury and there is no unjustified refusal by a public authority to solve a request within the legal term.

The invocation by the appellant of certain principles stemming from the Constitution and certain constitutional provisions does not exclude the legal obligation requiring that an administrative contentious action to be subject to the conditions and the characteristic object established by Law no. 554/2004 according to art. 1 and 8.

On the other hand, it was noted that the principle of separation of state powers requires the action to be dismissed as inadmissible, because the executive administrative authority cannot be obliged to carry out electoral promises.

The application is also inadmissible also from the perspective of obliging the Romanian Government to issue a normative administrative act, which would contain a specific content, special, in order to identify sources of financing, because the legislative attribute is constitutionally established in favor of the legislative power, the Parliament, such a request being in contradiction with the provisions of art. 1 par. 4 of the Constitution.

In addition, we consider that the adoption by the Parliament of a political program is not meant to establish or guarantee subjective rights, it does not represent a normative act that primarily regulates a certain social domain.

Therefore, there cannot be the case of a violation of a right or a legitimate interest by an administrative act, since the applicant cannot claim to the executive power a certain conduct in a situation where there is no regulated right to financing in a certain amount of the education system, as future and predictable, established by a normative act of the legislative power.

It should be emphasized that the annulment of an administrative normative act requires the abolition of the act with effect for the future, the act being unable to produce legal effects *ex tunc*. Consequently, such a legal penalty ordered by the court also entails the annulment of subsequent individual administrative acts issued under it.

As it happens in the case of the annulment of any legal act, the annulment of the normative administrative act also leads to the abolition of the act and of all subsequent legal acts that have been issued in dependence relation with the normative administrative act.

In this respect(Înalta Curte de Casație și Justiție, Semester II, 2007:181), by a decision of the High Court of Cassation and Justice it was stated that an administrative normative act that was adopted under a law which had not entered into force, should not be considered as valid and must be canceled. Similarly, it was considered that the act subsequent to the administrative normative act could not produce legal effects, and it is to be removed, being equally unlawful.

In the respective litigation it was found that until the date of the settlement of

the appeal at the level of the High Court, several final solutions were pronounced in other cases where Order no. 576/25 May 2006 was canceled, with a consistent judicial practice being established in this respect In that cases, it was considered that the respective order, an administrative normative act, was issued under a law which had not entered into force and consequently cannot produce legal effects.

Order no. 576/23 May 2006 was issued in the application of the Title VII of Law no. 95/2006. As this law entered into force at a later date, expressly provided in the text of the law, 30 days after its publication, namely on 28 May 2006, the administrative act order was issued in the organization of a law that did not come into force.

We recall that according to the constitutional provisions of art. 15 par. 2 of the Romanian Constitution, the law order only for the future, so that Law no. 95/2006 not being in force could not constitute legal support for the administrative authorities in the view of issuing the contested order.

With regard to this order, the High Court considered that the action was void in virtue of the previous definitive solutions of canceling of the legal act.

As regard the subsequent administrative act, Order no. 301/26.05.2006 being issued under the canceled normative administrative act, its validity is strictly connected to the administrative act with superior legal force under which it was issued, so that the annulment solution is also required for this individual administrative act.

Consequently, we appreciate that the Supreme Court has rightly found that it is necessary to admit the appeal, change the decision of the first instance court and cancel the subsequent individual administrative act following the previous declaration of the administrative normative act as unlawful. Regarding this case, we find that the administrative acts have been issued successively, so that there is no question of the transitional situation regarding the validity of the administrative acts issued during the period when the normative administrative act is in force.

From the way in which the provisions of art. 18 of the Law no. 554/2004 are written, we consider that the legislator has devoted an administrative contentious of full jurisdiction (Bogasiu, 2015:502) only by action in its achievement.

The court may annul an administrative act, oblige to carry out legal facts or acts or order the payment of material or moral damages to the injured person.

The court cannot ascertain the existence of a state of fact or the existence of a right. The law of contentious allows the access to the court of justice of the injured persons in a right or a legitimate interest. The existence of the injury is a background condition for submitting an action in administrative contentious. Removing it can only be done by way of an action in its achievement. Consequently, as an action in determination does not have the effect of removing the damage caused by an administrative act or of its annulment, an action for the declaration of the existence of a right is inadmissible.

From the perspective of the constitutional provisions of art. 52 which establish that the complainant is entitled before the administrative contentious court to obtain the recognition of the claimed right or of the legitimate interest, the Constitutional Court(by Decision nr. 87/2015) of Constitutional Court) rejected the exception of the unconstitutionality of the provisions of art. 11 of Law no. 29/1990, provisions that in the current law of the administrative contentious no. 554/2004 were resumed at art. 18, as unfounded, considering that the provisions of art. 48 (now 52 after the constitutional reform), which starts from the preliminary assumption of a right, cannot cause the action in administrative litigation to be transformed into a civil action in its achievement.

As stated above, the administrative contentious court may order the annulment of the normative administrative act in whole or in part, depending on the manner in which the action is submitted, the legal circumstances of the dispute and the means of evidence administered.

The court may also decide on the legality of the administrative operations, which have been the basis of the act contested in justice, according to art. 18 par. 2 of the Law no. 554/2004.

As far as this legal provision is concerned, it has been pointed out in the doctrine (Dragoș, 2005:288) that the court can only determine the legality of the operations and may only decide on their removal from the litigation. It is considered that the court cannot order the cancellation of these administrative operations in the absence of an action that respects certain legal terms and conditions.

In our opinion, the legal text has to be interpreted in conjunction with art. 1 par. 6 of the Law no. 554/2004 to which art. 18 par. 2 makes express reference. According to these provisions, the judge of administrative contentious may decide, in the event that he has been notified by the filed action also on the validity of the legal acts concluded on the basis of the unlawful administrative act, as well as on the legal effects produced by them.

Consequently, as the provision in art. 18 par. 2 is a legal norm that regulates a hypothesis in addition to that of art. 1 par. 6, we consider that the law is based on the premises that the party has expressly notified the court with the control of the validity of the administrative operations.

On the other hand, it should be noted that the administrative, individual or normative act is the result of certain technical-administrative operations that do not produce own legal effects. For the most part, these administrative operations are identified with the conditions of validity of the normative administrative act (Iorgovan, 2005: 17) and do not produce distinct legal effects.

Therefore, we consider that the court can directly decide on the legality of administrative operations in the case they constitute legal acts (for example the situation of complex administrative acts, the case of the agreement when the consent of a third public institution is required for the issuance of an administrative act), the legal provision leaving from the hypothesis in which the applicant expressly requests this in the notification of the proceedings.

These administrative operations, referred to in the text of the Law of Contentious, can produce legal effects in their own right, in which case they have the nature of separate administrative acts, the court being forced to analyze the will of the public authority, the legal consequences produced or the form of the act in order to determine whether that operation is an administrative legal act or not. (Vedinaș, 2017:420)

Where administrative operations are preparatory acts which have no legal effect, they are constituted under the conditions of validity of the contested administrative act, subject to the censorship of the judge in the action for verifying the lawfulness of the act.

If the object of the action is an administrative normative act, we consider that the court can censor directly all the background or procedural conditions necessary for the valid issuance of the act. It can analyze all the internal management operations that concern the entire procedure, by which the administrative normative act is adopted, operations that implement the way the administration achieves its competencies.

In other respects, corroborating the provisions of Art. 18 with those of art. 8 par.

1 of the Law no. 554/2004, we note that the court may order the public authority to resolve the administrative request. This can be done either by ordering the issuance of an individual administrative act or by issuing a document, certificate or performing a specific administrative operation.

As regards the decision to order the public authority to pay compensation or moral damages, we note that it is subsidiary to the main action. In this respect, rule the provisions of art. 18 par. 3, which establish that the court will decide on damages only after it decides on the main request. In my view, this claim for damages can also be formulated subsequently within the limitation period of prescribing, after the decision on the main proceedings has become final. Regarding this, it should be noted that there are situations in which the party cannot know from the time of the filing of the petition the extent of the damages produced, the claim for damages by separate way being regulated by the provisions of art. 19 of the Administrative Contentious Law.

It is underlined in the doctrine (Petrescu, 2009:502) that the actual amount of compensation must be proved by evidence of material damages and appreciated by the judge for moral damages, depending on certain parameters that characterize the human personality. We believe, however, that the assertion of moral damages does not automatically entail the granting of compensation, the applicant having to prove a moral damage.

It is possible that in the course of the trial, the public authority will repeal the administrative normative act. In this case, the court may order the dismissal of the action as being left without an object, only if the action had as its sole object the annulment of the act. If the injured party also claimed damages, the judge is required to decide on damages. This is done only by analyzing the validity conditions of the administrative act and only to the extent that the court would have ordered its annulment if the act had not been revoked / repealed.

No damages can be attributed to the objective contentious situation, when the action is promoted by qualified active subjects, the prefect or the National Agency of Civil Servants, who cannot claim personal injury. The special active quality is provided by the law given the role of these persons in legal terms, distinct aspect from the damage caused by the contested administrative acts.

These can be claimed in actions brought by the Public Ministry or the People's Advocate only if the plaintiff has been brought in the proceedings and added the claim by asking for damages.

Lastly, we note that the award of such damages cannot be made by the court of appeal ex officio, but only at the request of the plaintiff.

The final provisions of art. 18 from par. 5 and 6 of the Administrative Contentious Law are aimed at the celerity execution of the court decision issued by the court of administrative contentious.

The contentious court may determine to the public authority's task, under the sanction of a penalty applicable to the obliged party, for each day of delay for any of the situations of art. 18 par. 1 of the Law no. 554/2004.

In an opinion of the specialized theory (Trăilescu and Trăilescu, 2017: 351) it was argued that the provisions of art. 18 par. 5 have been implicitly abrogated by the legal norm of art. 907 Code of Civil Procedure, which establishes that for the non-fulfillment of the obligations to do or not to do it cannot be granted periodical payment damages.

We do not agree with the expressed opinion because the provisions of art. 907

Code of Civil Procedure shall apply only to the obligations laid down in Chapter IV of the Code of Civil Procedure, as expressly stated in the text of the provision.

On the other hand, the periodical payment damages provided by art. 907 Code of Civil Procedure although essentially represent also a sanction for the late execution of the obligation to do or not to do, established by an enforceable title, have a different legal nature than the delay penalties established for each day of delay according to art. 18 par. 5 of the Law no. 554/2004.

While periodic payment damages tend to compensate for the damage caused to the creditor for the non-execution or late enforcement of the enforcement order, delay penalties governed by the Administrative ContentiousLaw are established in favor of the state and aim at the celerity execution of the obligations imposed on the task of public authorities. For these reasons, these penalties in favor of the state have been doubled,at Art. 18 par. 6,by the fine that may be issued to the head of the institution or the institution itself.

The Administrative Contentious Law establishes two categories of delay penalties, those stipulated in art. 18 par. 5 which are established by the judge when solving the background of the case, being accessories to the main solution and those of art. 23 par. 3 which may be established in favor of the applicant, in case of enforcement proceedings.

It should also be noted that in all cases, therefore including also the situation in which the validity of an administrative normative act is put in question, or where the judge forces the authority to adopt such an act, the court may decide, through the operative part of the judgement, at the request of the interested party, on a term of execution.

This term of execution, which must be set in such a way that it does not coincide with the 30 days term stipulated in art. 24 par. 1 of the Law no. 554/2004, may come along with the fine provided for in art. 24 par. 2 which may be applied to the public institution bound by the contentious court order, of 20% of the gross minimum wage on economy per day of delay.

In conclusion, we appreciate that, in addition to the typical solutions for total or partial annulment of the administrative act, the administrative contentious judge may order a public authority to regulate such an act, if there is a legal provision forcing the administration to take such a measure, and the exercise of this task was done with excess of power.

As the provisions of Art. 18 of the Administrative Contentious Law shall be completed with those of art. 8, which refer to the object of the judicial action, the obligation to regulate cannot be ordered directly, but only to the extent that there is an unjustified refusal from the authority to solve a request. Moreover, as we have shown, it is clear from the judicial practice that the court cannot force the public authority to issue the act, by circumventing the legal conditions requiring the fulfillment of mandatory procedures, notices, etc. necessary for the validity of the act. Last but not least, it should also be emphasized that the administrative contentious judge cannot substitute for the administration's will and legal conception in the assessment of the opportunity of the administrative act or in the determination of the content of such an act, since it would constitute a violation of the principle of separation and balance of state powers enshrined by the provisions of art. l par. 4 of the Constitution.

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Article Info

Received: July 11 2018
Accepted: August 20 2018