

GENERAL ISSUES ON THE CONTROL EXERCISED BY THE PREFECT UPON THE LEGALITY OF ACTS ISSUED BY LOCAL PUBLIC ADMINISTRATION

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ABSTRACT

ADMINISTRATIVE CONTROL OF TRUSTEES EXISTS IN ALL EUROPEAN DEMOCRATIC STATES, SO THAT THE LEVEL OF ADMINISTRATIVE TERRITORIAL UNIT WITH THE HIGHEST DEGREE OF EXTENSION IS A REPRESENTATIVE OF THE STATE, SPECIFICALLY FOR THE ROLE OF THE EXECUTIVE, TO WATCH OVER THE APPLICATION OF THE LAW BY LOCAL PUBLIC ADMINISTRATION AUTHORITIES, INCLUDING THOSE OF THE AUTONOMOUS COMMUNITIES. THE PREFECT CAN ATTACK, IN THE COURT OF THE ADMINISTRATIVE COURT, AN ACT OF THE COUNTY COUNCIL, THE LOCAL MAYOR, OR IF IT CONSIDERS THE ACT ILLEGAL. THE ACT CHALLENGED IS SUSPENDED BY OPERATION OF LAW.

KEY-WORDS: THE ADMINISTRATIVE ACT, A REPRESENTATIVE OF THE STATE, ADMINISTRATIVE GUARDIANSHIP, THE ADMINISTRATIVE COURT.

Law No. 554/2004² devotes expressly in article 1 paragraph (3) to (9) that they can have an active procedural quality: the Ombudsman, the Public Ministry, public authority issuing a unilateral administrative act unlawful, the Act can no longer be revoked since it entered the civil circuit and product legal effects, the prefect, the national agency of civil servants and any subject of public law, the injured party in his rights or legitimate interests in through ordinances or provisions of the Ordinances of the Government unconstitutional.

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² Law No. 554/2004 with the amendments and additions made by: Law No. 262/2007 for the modification and completion of the law no. 554/2004 (M. Of. No. 510 of 30 July 2007); DCC nr. 797/2007 (M. Of. No. 707 of 19 October 2007); Law No. 97/2008 approving Government Emergency Ordinance nr. 100/2007 for the modification and completion of some legislative acts on Justice (M. Of. No. 294 dated 15 April 2008); Law No. 100/2008 modification of paragraph 1 of article 9 of the law on administrative courts no. 554/2004 (M. Of. No. 375 of 18 May 2008); Law No. 202/2010 on some measures to speed up the resolution of lawsuits (M. Of. No. 714 of 25 November 2010); Law No. 76/2012 for the implementation of law No. 134/2010 relating to the code of civil procedure (M. Of. No. 365 of 30 may 2012); Law No. 138/2014 published in M. Of. Nr. 753 of 16 October 2014.

As for democratic countries, at the level of administrative territorial units, there is a representative of the State, of the central executive, to keep watch over the application of the law by local public administration authorities, after the system French, traditional, in Romania also, this role lies with the prefect, who among the powers conferred by the law, has the authority to supervise compliance with administrative guardianship of the law by local public administration authorities and County, having thus the opportunity to address a legal administrative court where it considers that an administrative act is illegal.

The control exercised by the prefect upon local communities lies in close relation to the principle of local autonomy, a principle enshrined in the constitutional level and defined by art. 3 para. 1 of the Law on Local Public Administration no. 215/2001, republished, with subsequent amendments and additions as "right and the actual capacity of the local public administration authorities to resolve and manage, on behalf of and in the interests of the local communities they represent, Public Affairs, in compliance with the law ". The autonomy of local authorities is subject to the legal framework in which they evolve, i.e. the powers and resources available to them, and control mechanisms to which they are subjected. The administrative guardianship, in the regulation in our country, is intended as an exception to this principle, a liberal form of control over local communities, guardianship authority does not have the right to annul the Act, but only to attack him in front of administrative courts, which are the only institutions that can enforce such a sanction.³

Romanian legislation expressly regulated control of Trustees, unlike the French, who gave the name of the control exercised by the State in the Affairs of decentralized administrative authorities. The administrative guardianship knows two forms: more "tough", entitling the trustee to cancel the authority, approve or authorize the administrative act issued by a decentralized authority, and a second form, moderate, applicable in our country, giving Trustee Authority just right of referral to the administrative tribunal with a view to the annulment of that act.⁴

Subject of the legal action based on the provisions of art. 3 paragraph 1 of law No. 554/2004, as amended and supplemented, concerns, on one hand, the type of legal acts forming the subject of control of legality exercised by the prefect, and, on the other hand, the setting aside in whole or in part to the act considered to be wrongful, order to achieve the respective powers provided by law; the prefect may not claim damages, whereas the law No. 554/2004, as amended and supplemented, by art. 8 para. (1), conferring such a right only to natural or legal persons.⁵

Under art. 123 paragraph 5 of the Constitution of Romania, as authority for the supervision of compliance with the law by local public administration authorities, the prefect shall have the right to appeal against any administrative act in the Legal Department of an elected Council (local or County), mayor or any executive created under the law at the county level, when he considers that this act is illegal.⁶

In the public right-of-way, control of Trustees was established in French law and took over by us, as a counterweight to the decentralization of the administrative system and the recognition

³ Alina Georgiana Profiroiu, Cristina Titirișcă, *Some considerations on the control exercised by the prefect upon local communities*, Pushing of Administrative Sciences Magazine, 2 (39) / 2016, 169

⁴ Profiroiu, Titirișcă, *Some considerations on the control exercised by the prefect upon local communities...*, 170

⁵ Profiroiu, Titirișcă, *Some considerations on the control exercised by the prefect upon local communities...*, 171

⁶ Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu, *The revised Constitution of Romania-comments and explanations*, (Bucharest:All Beck Publishing house, 2004), 263

of the autonomy of the local public administration authorities, whereby the State retains the right to guarantee observance of the law in the work of these public authorities.⁷

Administrative control of Trustees exists in all European democratic States, so that for the level of administrative territorial unit with the highest degree of extension is a representative of the State, of the Executive with the role of watching over the application of the law by local public administration authorities, including those of the autonomous communities.

The administrative guardianship is regulated by art. 8 of the European Charter of local self-government, under the name of "administrative control of the activity of local public administrative authorities, administrative guardianship designation is avoided. Administrative supervision over the activity of local public administration authorities must be exercised respecting a proportional representation between the scale of the intervention of the supervisory authority and the importance of the interests which it means to be protected.⁸

Administrative doctrine when analyzing the concept of trusteeship administration, gave it different meanings, since the legislation does not explicitly use this form of administrative control. In the opinion of Professor Antonie Iorgovan, administrative guardianship "evokes in the public law of the monitoring bodies of Central State, as a rule, the Government and the Ministry of the Interior and local representatives from the Centre on the authorities local autonomous administration ". Sometimes, administrative guardianship over local communities shall be assessed as indicating a threefold plan, namely that of the control of the legality of administrative action, that of control over local authorities, namely the control over the duties delegated by the State.⁹

In Romania, the right of control over the administrative prefect adopted or issued by local public administration authorities and County, qualified as "administrative guardianship", is enshrined by article 123 paragraph (5) of the revised Constitution and the provisions of law No. 340/2004 relating to the prefect and the Prefect's institution, republished, and after the entry into force of the law on administrative courts no. 554/2004, administrative guardianship institution has explicit legal consecration by article 3 paragraph (1) of this normative act, as amended by law No. 262/2007.¹⁰ Thus, article 3 para. (1) of law No. 262/2007 provide that: "the prefect can attack directly before the Court of the administrative acts issued by local public administration authorities shall, if they deem unlawful; the action is inserted within the time limit provided for in art. 11 para. (1) that starts to run from the time of submission of the document to the prefect and under the conditions laid down in this law. Proceedings of the prefect is exempt from stamp duty ".

Through these provisions implemented article 123 paragraph (5) of the Constitution, according to which: "the prefect may attack in front of the Administrative Court, an act of the County Council, the local mayor, or if it considers the Act illegal. The Act challenged is suspended by operation of law ".

In a restrictive interpretation of the constitutional provisions it could be concluded that would be excluded from the control of administrative the acts of the President of the Trusteeship

⁷ Anton Trăilescu, Alin Trăilescu, *The law on administrative courts. Comments and explanations*, (Bucharest: C.H.Beck Publishing house, 2013), 41

⁸ Gabriel Niță, *Considerations of administrative supervision institution in the Romanian legal system*, http://revcurentjur.ro/old/arhiva/attachments_200734/recjurid073_410F.pdf

⁹ Iuliana Rîciu, *Administrative courts procedure*, (Bucharest:Hamangiu Publishing house, 2009), 131-132

¹⁰ Oliviu Puie, *Administrative appeal and judicial review in administrative contentious after the amendment of law No. 554/2004 of administrative courts by law. 262/2007*, (Bucharest:Universul Juridic Publishing house, 2007), 290-291

Council, whereas the constitutional text referred only to acts the County Council, but this is not yet the correct interpretation because, analyzing it article 20 of law No. 340/2004, republished, "the prefect verify the actions taken by the mayor or President of the County Council in their capacity as representatives of the State and administrative-territorial unit may refer to the competent bodies in order to establish the necessary measures, in accordance with the law ".¹¹

The prefect can promote directly the action for cancellation of the Administrative Court, without the necessity of conducting administrative procedure prior to the revocation or amendment of its issuer, according to the provisions of the legal provisions in force.

In practice, however, the prefect, after the acts of the local public authorities of the territorial-administrative are communicated by the unit Secretary and after verifying the legality of those acts, communicate with local authorities in order to restore legality amicably. This administrative usance is beneficial, because in many cases the disputes between the prefect and local governments on this topic have been resolved without the intervention of the Court of administrative law.¹²

The term for contestation is different, depending on the type of administrative act¹³:

- individual administrative acts may be appealed within the time limit of six months provided for in article 11 para. (1) of the Law on Administrative Courts, with the possibility of extension of the term for one year, pursuant to art. 11 para. (2) for serious reasons;
- administrative normative acts can be attacked at any time, on the basis of article 11 para. (4) of the Law on Administrative Courts.

Subject to the control of administrative guardianship exercised by the prefect is an administrative act but also the actions or acts similar in nature to the law on administrative courts, administrative act unilaterally-administrative silence and refusal unjustifiably solving the application.

Thus, the prefect, acting on the basis of the right and the legitimate interest of the public upon article 3 para. (1) of law No. 554/2004 as amended and supplemented, may, when he finds that inaction by a public authority is contrary to the public interest, to request it, through a petition, fulfillment of statutory duties, and in the case of silence or refusal, may cause conflict in front of the Administrative Court, which will oblige public authorities to achieve the statutory duties. This is the case, for example, of the mayor who refuses to submit to the Council the draft budget of the Council of the local premises or refuses to take note of the termination of the mandate of local counsel on other grounds than incompatibility.¹⁴

The subject of the application the judgment entered by the prefect may just be the annulment in whole or in part of the Act illegal. The prefect may not claim damages, since this possibility is ensured through law No. 554/2004 only to natural or legal persons.

In order to avoid irreparable effects, the Constitution stipulates the principle of suspension of the contested act being established a norm of protection both to the person in the face of possible

¹¹Rîciu, *Administrative courts procedure...*,142

¹² Anton Trăilescu, Alin Trăilescu, *The law on administrative courts...*,42

¹³Dacian Cosmin Dragoș, *The law on administrative courts. Comments and explanations*, (Bucharest:All Beck Publishing house, 2005), 136, see Rîciu, *Administrative courts procedure...*,138

¹⁴ Dacian Cosmin Dragoș, *The law on administrative courts...*,137

abuses of authority of local public administration, as well as to the national interests in relation to the local ones.¹⁵

In order to admit the action of the Commissioner, it is necessary to prove, like any legal action, the existence of procedural interest, because one can't ask annulment of an administrative act that has already exhausted the legal effects which are permanently and completely, whereas interest no longer appears (for example, a demolition permit deemed unlawful, but whose effects have been conclusively).¹⁶

Referral to the Court of judgment by the prefect with administrative action has as its goal the annulment of an authority of local public administration administrative act unlawful, the prefect is not harmed in a right or legitimate interest, it is a contentions objective truth.¹⁷

Concluding, the administrative guardianship is a concept focused on the administrative law doctrine, meaning a central control organ over local autonomous bodies and decentralized. It has two forms: the first, more "tough", entitling the Trustee Authority to cancel, approve, authorize the administrative act issued by a decentralized authority, while moderate form confers authority Trustees only the right of a referral jurisdictions for the purposes of administrative cancellation of that administrative action.

¹⁵ Constantinescu, Iorgovan et. all, *The revised Constitution of Romania-comments and explanations...*, 263

¹⁶ Rîciu, *Administrative courts procedure...*,140

¹⁷ Rodica Narcisa Petrescu, *Administrative law*, (Bucharest:Hamangiu Publishing house, 2009), 435

REFERENCES

1. **Alina Georgiana Profiroiu, Cristina Titirișcă**, *Some considerations on the control exercised by the prefect upon local communities*, Pushing of Administrative Sciences Magazine, 2 (39) / 2016
2. **Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu**, *The revised Constitution of Romania-comments and explanations*, All Beck Publishing house, Bucharest, 2004
3. **Anton Trăilescu, Alin Trăilescu**, *The law on administrative courts. Comments and explanations*, C.H.Beck Publishing house, Bucharest, 2013
4. **Iuliana Rîciu**, *Administrative courts procedure*, Hamangiu Publishing house, Bucharest, 2009
5. **Oliviu Puie**, *Administrative appeal and judicial review in administrative contentious after the amendment of law No. 554/2004 of administrative courts by law. 262/2007*, Universul Juridic Publishing house, Bucharest, 2007
6. **Dacian Cosmin Dragoș**, *The law on administrative courts. Comments and explanations*, All Beck Publishing house, Bucharest, 2005
7. **Rodica Narcisa Petrescu** *Administrative law*, Hamangiu Publishing house, Bucharest, 2009
8. **Gabriel Niță**, *Considerations of administrative supervision institution in the Romanian legal system*, http://revcurentjur.ro/old/arhiva/attachments_200734/recjurid073_410F.pdf
9. Law No. 554/2004 with the amendments and additions made by: Law No. 262/2007 for the modification and completion of the law no. 554/2004 (M. Of. No. 510 of 30 July 2007); DCC nr. 797/2007 (M. Of. No. 707 of 19 October 2007); Law No. 97/2008 approving Government Emergency Ordinance nr. 100/2007 for the modification and completion of some legislative acts on Justice (M. Of. No. 294 dated 15 April 2008); Law No. 100/2008 modification of paragraph 1 of article 9 of the law on administrative courts no. 554/2004 (M. Of. No. 375 of 18 May 2008); Law No. 202/2010 on some measures to speed up the resolution of lawsuits (M. Of. No. 714 of 25 November 2010); Law No. 76/2012 for the implementation of law No. 134/2010 relating to the code of civil procedure (M. Of. No. 365 of 30 May 2012); Law No. 138/2014 published in M. Of. Nr. 753 of 16 October 2014.