

## **Short considerations about the application of the new Code of Civil Procedure in matters of administrative disputes Romanian - current issue of administration and justice**

**Assistant Professor Valentin - Stelian BĂDESCU, PhD.**

LUMINA-THE UNIVERSITY OF SOUTH-EAST EUROPE

Associate researcher of the Institute of Legal Research of the Romanian Academy  
*valentinbadescu@yahoo.com*

### **Abstract**

*We live in a time of deconstructing fundamental elements of life and obviously Romanian state institutions and almost understand that the right to remain so, a kind of Bible we relate, but we do not kill the flesh to show generations which is now formed. So provisions of the new Civil Procedure Code aims to respond to current goals, such as access to public litigants and procedural forms simple and accessible and accelerate the procedure, including the administrative courts.*

**Keywords:** *Civil Code, the Code of Civil Procedure Romanian administrative court, courts administrative dispute settlement, European Union law*

### 1. Argumentum

We live in a time of deconstructing fundamental elements of life and obviously Romanian state institutions and almost understand that the right to remain so, a kind of Bible we relate, but we do not kill the flesh to show generations which is now formed. So provisions of the new Civil Procedure Code aims to respond to current goals, such as access to public litigants and procedural forms simple and accessible and accelerate the procedure, including the administrative court. Following rigorously ensuring correct prerequisites for resolving the merits of the cases, within the national justice system, the Code is to eliminate the deficiencies in many cases, the decisions of the ECHR against Romania, both fundamentally wrong judicial solutions and for damages caused by the excessive length of judicial proceedings or for the lack of predictability resulting in inconsistent national case law. Therefore, also aimed at finding remedies and to eliminate another major deficiencies Romanian judicial system, namely non-unitary jurisprudence, due, among other things, legislative inconsistency and instability. Following the construction of a modern and balanced civil proceedings Code focuses in particular on measures likely to speed up the judicial response is achieved in a given

period, with respect, equally, the procedural rights of the parties and the fundamental principles of civil process.

This study seeks to highlight the impact suffered by the rules governing administrative litigation procedure following the entry into force of Law no. 134/2010 on the Code of Civil Procedure, shifting its focus to spot issues, especially as the time elapsed since the entry into force of the new civil procedural law until the time of writing is relatively short, we try to address theoretical issues rather than discussed practical issues, but without where it will be appropriate to make remarks, somewhat anticipatory, and in practical terms.

Entry into force of the new Code of Civil Procedure influenced and administrative litigation matter, the more that is not looming in the near future, the entry into force of the Administrative Procedure Code. Law no. 554/2004 regulating administrative disputes procedure was partially modified by law implementing the new Code of Civil Procedure, to ensure the effectiveness of the new provisions thereof, but it will keep special law rule to complement the gaps in the Code. Thus, within the scope of regulation, the new Code of Civil Procedure provides that its provisions are common in civil law, which expressly outlined in art. 2 para. Finally, the report includes any private law and public law, except of criminal law. The Code also applies in matters governed by other laws, to the extent that they do not contain provisions to the contrary, so that the Administrative Litigation Law will be completed with NCPC, to determine the procedure, a procedure is not justified derogatory in all respects. The law implementing the NCPC expressly agreed that the provisions of Law no. 554/2004 "is filled with the Civil Code and the Code of Civil Procedure, to the extent not inconsistent with the specific power relations between public authorities on the one hand and injured in their legitimate rights or interests, the the other part. "

## **2. Specifics administrative matter**

Specifics administrative matter, determined by the characteristics of the legal relationship born between authorities, public persons or between private and has led the adoption of a particular procedure, characterized by speed and balance the relationship between the parties, under the procedural aspect, since the particular is in a lower position of authority. Mostly, derogations from the rules of the common law concerns the

establishment of mandatory preliminary procedure, how instituting the proceedings, the deadlines, submission of documents required to file, how establishing procedural framework subjective judgment procedure in appeal, the judgment in its forms of advertising etc. Also, to the particular material, special procedures are in place for the plea of illegality, for action against government orders for suspension of operation of administrative or extraordinary assumptions for lodging appeals. But otherwise, the concrete procedure will be followed according to the rules laid down by NCPC, the common law, on which the special law has not. It will apply after the entry into force of the NCPC, according to the law implementing the code, for instance rules on summoning the parties, the formulation of requests in court of evidence, judgment, judicial remedies. It also matters extrinsic courts and other aspects of the application for summons, and timbrajul, will be solved by the same rule of the relationship between general and special norm. To this end, we evaluate the following report of the Code of Civil Procedure causal and the Law no. 554/2004.

### **3. Report of the Civil Procedure Code and the Law on administrative**

This relationship between the two laws is illustrated procedural provisions of article content. 28 para. 1 of Law no. 554/2004 as amended by section. 9 of art. 54 of Law no. 76 of 24 May 2012 for the implementation of Law no. 134/2010 on the Code of Civil Procedure. According to the legal rules, the provisions of the Administrative Litigation Act is supplemented by the Civil Code and the Code of Civil Procedure, to the extent not inconsistent with the specific power relations between public authorities on the one hand, and the rights of injured parties or legitimate interests on the other. As shown in art. 50 para. 4 of Law no. 24/2000 on legislative technique for drafting laws, the reference standard envisages the enactment current legal situation that is sent. Consequently, by amending rule enshrined in Art. 28 para. 1 of Law no. 554/2004 took into account the provisions of Law no. 134/2010 knowing that both the latter law and the Law. 76/2012 came into force on the same date, ie 15 February 2013.

In fact, in terms of this Act, the rule established by Art. 28 para. 1 of Law no. 554/2004 is the legal status of a rule of reference which emphasizes actually a legal connection between the two acts. As the name marginal text art. 28 para. 1 of Law no. 554/2004 "completing common law" may be amended from this point of view, the text

containing more a norm of reference. It is noted in the text content that you comment that the reference to common law rules rectum Civil Code and the Code of Civil Procedure is not automatic, that those provisions do not complete rules of Law no. 554/2004 only if compatible with the specific power relations between public authorities on the one hand and injured in their legitimate rights or interests on the other.

It should be noted in this context, for instance that the Administrative Litigation Act, although it is a special procedural law, completing the common law civil substantive law could behave discussions or to what extent could become compatible with the substantive rules of administrative law rules materials civil law. Because this is not the subject of this study, we summarize to emphasize that such compatibility can be detected on land rights institution prescription or tort action that can be driven and administrative law matters. Regarding the ratio of the Administrative Litigation Law and Civil Procedure Code should be noted that this can be arranged for and connection with art. 2 of this law proceedings. Thus, the provisions of art. 2 of the Code of Civil Procedure establishes the general applicability of the Code, that establishes the rule that the provisions of this code is the common law procedure in civil matters and for what matters code analysis rule establishes the possibility to apply in other matters, insofar as the laws governing them do not contain provisions to the contrary.

As a corollary of this last hypothesis, the rule laid down in art. 28 para. 1 of Law no. 554/2004 establishes the application of the Code of Civil Procedure in administrative matters, namely the administrative courts but expressly provides that application related to common law procedural rules are consistent with the specific power relations between public authorities on the one hand and injured rights or legitimate interests on the other. Therefore, taking into account the specifics of these relationships ordinary civil procedural rule is not automatically compatible and thus complements Administrative Litigation Law rules but this requires effective compatibility analysis which is done by the court on the occasion of the case which was vested.

Regarding the compatibility of Law no. 554/2004 with the rules of civil procedure in judicial practice was questioned whether administrative contentious matters may be used in security institution calling application. High Court by section profile decided that "can not be used to guarantee the midst of calling procedural court litigation, other than

in the circumstances expressly regulated by the provisions of art. 16 para. (2) of Law no. 554/2004, ie where the individual who has developed, delivered and completed the contested administrative act, or who is guilty of failing to address a request regarding a subjective right or a legitimate interest sued in terms of art. 16 para. (1) of the Act, in turn warranty calls on his or her supervisor who received the written order to develop or not develop the document. "The same decision was also held that" the complaint is thus inadmissible under warranty assumption made by the applicant for administrative dismissal of its application, the claims arising from the effects of the administrative act attacked, which can be exploited in contradiction with those not included in the report as part of judicial review deduced only by an action brought on principal , the competent court after the nature of the case. "In another case, related to the compatibility with the common law, the Supreme Court ruled that" a dispute concerning the order of several institutions jointly to pay salary rights falls the jurisdiction of the court settlement determined with reference to the defendant authority had rank in the system of public administration or in the court of appeal, when at least one of the defendants has the rank of a central public authorities. In such a case, the complaint is wrong disjunction regarding lower-level public authority in order declining jurisdiction of judgments in favor of the court. "From this point of view, to analyze in the following courts judgment in matters of administrative disputes.

#### **4. About the jurisdiction of the courts in matters of administrative disputes**

##### *4.1. Preliminary Issues*

Entry into force of the new Code of Civil Procedure and matters brought Romanian administrative courts a number of new elements that we consider to be useful for specialists, and individuals. If some regulations, quite a few, in fact, direct amends Law 554/2004, considered to be the framework law of the Romanian administrative courts, other regulations directly affecting indirectly induce the Code of Civil Procedure, and matters of administrative disputes Romanian, a number new items perfectly valid given that such disputes shall be tried by civil proceedings as it expressly refers to this procedure even art. 28 (1) of Law no. 554/2004.

New Code of Civil Procedure, although not significant distance from the old regulation has brought significant changes and unusual, both in terms of some

traditional institutions of civil procedure and especially, especially, on jurisdiction and territorial attribute courts. However, the new Code of Civil Procedure, perfecting monistic conception consecrated by the new Civil Code, the provisions of civil law with the unification of commercial law, in turn unifies the legal provisions governing the rules of substantive jurisdiction of the courts, eliminating the differential regulation rules of jurisdiction in civil and commercial matters. The ambience of the new regulations introduced by the new Code of Civil Procedure, Article review the application of the new Code of Civil Procedure Romanian administrative litigation matters, analysis, due to restrictions imposed typing could not be reported to the old provisions, in order to highlight both similarities and especially the differences to regulations established by the former Code of Civil Procedure nor will include comprehensive implications (except of illegality, the principle of celerity celerity litigation process-contentious legal regulation is supported by force - the principle of finding the truth, existing civil process has its support in matters of administrative litigation, procedural exceptions may be invoked in cases of dispute, of evidence etc.) analysis comes down, as I wrote in the title section only on the competence of courts in administrative litigations.

Contentious jurisdiction of the courts is clearly defined by Law no. 554/2004 but general issues related to the expression of competence and special text are incidents that exceed, in our opinion, and matters of administrative disputes so that recent changes are valid administrative litigation matters. Therefore the new texts of the Code of Civil Procedure are applicable to the administrative courts. Given the overriding concern to ensure the celerity of solving cases, while improving the quality of justice, proposed legislative solutions aim to respond, both directly and through the expected effects, this imperative, whether it is civil process steps resistemizarea so as to lead to a judicial dialogue, in clear and honest simplify procedural forms or modifying substantive jurisdiction of courts with the relocation of the appellate system and, finally, the measures that lead to empowerment parts of the process . Likewise, the purpose of relieving the courts, which would have direct consequences on the duration of the conduct of judicial proceedings, the code provides task required the judge to direct the parties to use mediation procedure in the process, as an alternative means of dispute resolution, the course of this procedure being suspended judgment. Returning to our

statement in the preamble expressions made previously for a fair presentation logic we analyze changes made to express the Code of Civil Procedure Law. 554/2004, on the settlement courts of first instance administrative dispute Romanian.

#### *4.2. Jurisdiction of the court of first instance on the settlement of administrative disputes*

An important argument that we should start analyzing it tribunal jurisdiction of administrative litigation, is the provisions of art. 73 para. 3 letter k of the revised Constitution, meaning that the administrative court is a constitutional matters governed by organic law. So regulating administrative litigation matter, the constitutional text, referring to the law, under art. 126 para. (2) of the Constitution republished jurisdiction of the courts and trial proceedings in the matter of administrative courts are established according to Law no. 554/2004 on administrative procedure. It appears that after the adoption of Law. 554/2004 on administrative provisions of art. 1 shall be consistent with the text of art. 52 of the Constitution, republished, meaning that, on the one hand, taking into account the decisions of the Constitutional Court has replaced the term "administrative authority" of the old law, Law no. 29/1990, the concept of "public authority", as administrative acts issued and public authorities other than the government, on the other hand has widened the scope of the injury, adding to the scope of injury, in addition to the subjective right and legitimate interest. In applying these texts Constitutional Law no. 304/2004 on judicial organization by the provisions of art. 36 para. (3), as this article was amended by Law no. 76/2012, stipulates that the courts operate sections or, where appropriate, specialized for various reasons, among which are found and administrative and taxation. In the matter of administrative courts under the transitional provisions established by art. 30 of Law no. 554/2004 states that until the formation of administrative tribunals tax disputes shall be settled by the courts administrative section.

Currently, although the provisions of art. 10 paragraph. (1) of Law no. 554/2004 refer to the administrative settlement of disputes by administrative courts -fiscale, such disputes shall be settled by administrative and fiscal departments operating within the county courts and in Bucharest, the Courts of Appeal and the High Court of Cassation and Justice, followed by the date of establishment of specialized courts, administrative disputes will leave the jurisdiction of the courts of common law and enter into

specialized courts. In this context, Law no. 554/2004 on the legal provisions expressly establishes administrative jurisdiction of the courts of administrative litigation and trial procedure administrative dispute. Thus, the provisions of art. 2 letter g) [art. 2 para. (1) f) before modification] are established courts in administrative courts or the administrative and fiscal section of the High Court of Cassation and Justice departments administrative and fiscal courts of appeal and administrative courts and tax. The issue of court jurisdiction to resolve disputes in the first instance administrative court is required to be analyzed in the context of general rules established by the Code of Civil Procedure in force and by reference to the provisions of NCPC and the Law no. 304/2004 on judicial organization following amendments thereto by Law no. 76/2012 on the implementation of Law no. 134/2010 on the Code of Civil Procedure. One caveat that it must be emphasized is that after the adoption of NCPC, by Law no. 76/2012 for the implementation of its administrative contentious matters is maintained double system instance or instances substantive administrative disputes are settled, as appropriate, administrative and fiscal sections of the courts or courts of appeal being maintained also by the provisions of art. 7 paragraph. (3) of Law no. 76/2012, after the entry into force of the NCPC, the appeal of appeal against judgments of courts of first instance. It must also mention that the NCPC, art. 95 pt. 1, referring to the law on court jurisdiction, ultimately settling disputes by administrative tribunals arising as the result of which will be discussed below, the provisions of Law no. 554/2004 on administrative procedure, the specific law, under the principle *specialia generalibus derogant*.

In terms of substantive jurisdiction of courts, as reflected in art. 10 paragraph. (1), as amended by Law no. 76/2012 it is shared, in terms of this legal text, between fiscal administrative tribunals and cutting administrative and fiscal courts of appeal, if the organic law provides otherwise. Given the fact that besides the common law substantive jurisdiction established by Law no. 554/2004, special organic law can be established special material competence of the administrative court, derogatory material common law jurisdiction established by Law no. 554/2004, we appreciate that in a future material to be analyzed and cases provided by law conferring jurisdiction of courts special, derogating from the provisions of Law no. 554/2004 on administrative procedure. After adoption of Law. 2/2013 on relieving the courts, Section 2 of the amended and

supplemented some laws in matters of administrative litigation and tax changes aimed essentially changing material and territorial jurisdiction for the resolution of disputes covered by administrative. These 20 acts are pending following that in Chapter III („transitional and final provisions ") to be established transitional provisions concerning the applicability of laws that have been modified by Law no. 2/2013 on the powers of the administrative courts, which were analyzed in the thesis. By special acts is regulated exclusive territorial jurisdiction of the administrative court in resolving administrative disputes. It should also be mentioned Bucharest Court of First Instance in solving administrative disputes under certain provisions of special laws, some of which are modified by Law no. 76/2012 for the implementation of the NCPC.

#### *4.3. Jurisdiction of the Court of Appeal in administrative*

##### *4.3.1. Jurisdiction of the Court of Appeal to resolve disputes in the first instance administrative*

Regulating the established by the new law civil procedure (Art. 96 pt. 1), the court of appeal conferred jurisdiction express exception in this matter, but do provide explicitly that the resolution of disputes in the first instance by the administrative courts of appeal is, according to the special law. Regarding the scope of administrative acts subject to administrative dispute resolved in the first instance by the courts of appeal, the new provisions do not expressly refer only to acts of the authorities and central institutions, therefore, new provisions are put in place in accordance with the provisions of the Constitution and Law no. 554/2004 on administrative procedure. In this context, the provisions of art. 96 pt. 1 of NCPC, referring to the provisions of the special law, Law no. 554/2004 on administrative procedure, the court of appeal in matters of administrative litigation was analyzed by reference to the provisions of art. 10 paragraph. (1) of Law no. 554/2004 on administrative procedure, the contents of which that disputes concerning administrative acts issued by central public authorities and those relating to taxes, contributions, customs duties and accessories thereof greater than 1,000,000 lei shall be settled in fact, the polling administrative and fiscal courts of appeal, if the organic law provides otherwise. The contents of this legal provision that, if the object is not contested administrative represented by a tax, fee, contribution or a customs debt, the competent court shall be determined by the central or local

positioning the body in the public administration system, irrelevant amount of the stated therein, the same rule is applicable to administrative contracts. A substantive change brought on jurisdiction background material litigation by the administrative courts of appeal is established by par. (11) art. 10 newly introduced by Law no. 76/2012, which confers exclusive jurisdiction background material polling administrative and fiscal courts of appeal in respect of all requests for administrative acts issued by central public authorities which involve considerable amounts of the grant from the European Union regardless of value. The power station administrative and fiscal appellate courts to resolve disputes in the first instance administrative jurisdiction is established and some special acts.

#### *4.3.2. Jurisdiction of the Court of Appeal to resolve appeals against decisions by the courts of first instance in matters of administrative disputes*

In the category of judgments by the courts of first instance, without appeal, which can be appealed to the department's administrative and fiscal courts of appeal are rulings by administrative and fiscal departments of courts in matters administrative disputes, according to art. 10 paragraph. (1) of Law no. 554/2004 on administrative and according to art. 20 para. 1 of the law may be appealed within 15 days from notice. As such, following the entry into force of the NCPC, the appeal against the judgment of first instance shall be exercised in accordance with art. 20 para. (1) of Law no. 554/2004, within 15 days of communication, which is suspend the execution. Jurisdiction of the Court of Appeal to settle, in accordance with the provisions of Law no 554/2004 on administrative appeals against decisions given by the departments of administrative and fiscal tribunals of first instance is devoted to legislative and 22 special acts recently modified by Law no. 76/2012 for the implementation of the NCPC.

Regarding the solutions we can appeal the court ruling, the provisions of art. 496 of NCPC does not differ from the provisions of the old Code, stating that if the appeal was admissible in principle, the court, checking all the reasons given and judging the appeal, it will be admitted, it may reject or cancel or lapse can be seen by . In case of admission of the appeal, the judgment under appeal be quashed, in whole or in part. In agreement with the solutions pronounced by the court of appeal established by art. 496 of the NCPC, amended by Law no. 76/2012 and the provisions of art. 20 para. (3) of

Law no. 554/2004. It should also be remembered and exclusive jurisdiction of the Court of Appeal in solving administrative disputes, conferred on the basis of special laws, some of which were modified with the entry into force of the NCPC. It should be considered and jurisdiction of the courts in other materials, it is necessary to analyze the context, courts in matters of dispute resolution processes derived from land by reference to the provisions NCPC or complaints made against decisions of county committees for the implementation of Law no. 18/1991 of the land, and that complaints directed against the order of the prefect or any administrative act of an administrative body refused allocation of land or land proposed award, which shall be settled by the court of first instance, according to art. 53 para. (2) and art. 54 of Law no. 18/1991 of the land and subject only to appeal. In this respect, it can be concluded that after the entry into force of the NCPC, courts competent to resolve such disputes returns. In respect of appeals against sentences handed down by judges, their sentences handed down in the matter of land processes that NCPC according to the competence of courts shall be subject to appeal, and courts handed down sentences in matters of land processes derived from the application of the Land Law no. 18/1991 shall be subject to appeal under the special law.

#### *4.4. Jurisdiction of the High Court of Cassation and Justice administrative litigation*

They are subject to appeal to the High Court of Cassation and Justice, pursuant to art. 97 pt. 1 of NCPC, judgments of the Court of Appeal in the first instance for litigation administrative acts of central public authorities (Art. 96 pt. 1). In this context, Art. 10 paragraph. (2) of Law no. 554/2004, states that the appeal against sentences handed down by administrative tribunals tax departments are judged by administrative and fiscal courts of appeal, and the appeal against the sentences imposed by sections of administrative and fiscal courts of appeal shall be heard by Department administrative and fiscal High Court of Cassation and Justice, unless the special organic law provides otherwise. Thus, in terms of solutions we can deliver High Court of Cassation and Justice after the appeal, the rule is quashed by reference, with the exception of administrative disputes resolved by administrative and fiscal section of the High Court of Cassation and Justice, when it will retry dispute on the merits. Also, given the transitional and final provisions of Law no. 2/2013, in view of the fact that this law

was changed competent to resolve administrative litigation department of administrative and fiscal High Court of Cassation and Justice at polling administrative and fiscal courts of appeal, the appeals are the High Court of Cassation and Justice - Department of Administrative and Fiscal entry into force of this law and that, under this Act, the competence of the courts of appeal shall be sent to the courts of appeal.

## 5. Conclusions

This paper has attempted to highlight the impact suffered by the rules governing administrative litigation procedure following the entry into force of Law no. 134/2010 on the Code of Civil Procedure, especially as the time elapsed since the entry into force of the new civil procedural law until the time of writing the present study is relatively short, and scientific research approach was more theoretical than practical, not missing and some remarks somewhat anticipatory, and in practical terms. The current issue of administration and justice on the application of administrative litigation matters Romanian NCPC remains open both critics and expert judgment of our doctrine on the subject, as well as our legal practitioners, especially individuals who want a quick and efficient justice, especially that the existence of a state-level governments and development involves legislation as support. This legislation, generically grouped in a branch of administrative law, must take into account the specificities of each report involving people with special status. Adding the specific national or regional, we can reach a complexity of cases in administrative litigation matters Romanian can easily lead to successful conclusion of justice, effective and valued by individuals.

## Bibliography

- Apostolache, M.C., Apostolache, M.A., *Deontologia functionarului public*, Bucuresti: Universitară, 2014.
- Apostolache, M.C., Apostolache, M.A., 'Corrections and completions that are imposed to constitutional dispositions and normative documents in the matter of local public administrations in Romania', in *Tribuna Juridica Journal*, No.3/2013, pp. 19-36.
- Leș, I., *Noul Cod de procedură civilă, comentariu pe articole*, București: C.H.Beck, 2011.
- Nica, Gh., *Teză de doctorat, Competența instanțelor judecătorești în materie civilă* [on-line], „Lucian Blaga” University of Sibiu, 2013, available on: <http://doctorate.ulbsibiu.ro/obj/do>.
- Tabacu, A., 'Citarea și comunicarea actelor de procedură potrivit Noului Cod de procedură civilă', 2011, *Revista Română de Drept Privat*, n0. 3, pp.120-135.
- Tabacu, A., 'Procedura contenciosului administrativ și noul Cod de procedură civilă', in *Revista Transilvană de Științe Administrative* 2(29)/2011.
- Ungur, L., *Implicațiile noului Cod de procedură civilă asupra litigiilor de contencios administrativ*, in *Fiat Iustitia*, No. 2/2012.
- Vedinaș, V., *Drept administrativ*, 5th edition, București: Universul Juridic, 2009.