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PRINCIPLES OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTS LAID DOWN IN THE RECOMMENDATIONS ADOPTED BY THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE AND THEIR TRANSPOSITION IN ROMANIA

Abstract:

The article analyses the fundamental principles of judicial review of administrative acts, as recommended by the Committee of Ministers of the Council of Europe, and their transposition into Romanian law. The study begins by emphasising the importance of the European Convention on Human Rights, ratified by Romania in 1994, and the essential role of its Art. 6 on the right to a fair trial and the trial of cases within a reasonable time by an impartial court. It details the main recommendations adopted by the Committee of Ministers in the field of administrative litigation, including Rec (2007)7 on good administration and Rec (2004)20 on judicial review of administrative acts. The recommendations aim at ensuring effective access to justice, protecting individual rights against administrative abuse, ensuring effective judicial review and establishing alternative dispute resolution mechanisms. The article examines the implementation of these recommendations in Romania, assessing how Romanian case law and legislation have integrated these principles into the administrative litigation system, thus contributing to the strengthening of the legal protection of citizens' rights vis-à-vis administrative authorities.

Keywords: administrative acts, administrative litigation, Committee of Ministers of the Council of Europe, alternative methods of resolving disputes.

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1. Introduction. European Convention on Human Rights and the recommendations of the Committee of Ministers of the Council of Europe in the field of administrative litigation

The European Convention on Human Rights and the Committee of Ministers of the Council of Europe. The *European Convention on Human Rights* was signed on November 4, 1950 in Rome, within the framework of the Council of Europe, and established supranational control of human rights for the countries party to it. The Convention entered into force on September 3, 1953. Romania ratified the Convention by Law 30/1994².

Article 6 of the Convention enshrines the right of the parties to a fair trial and to have their cases decided within a reasonable time by an independent and impartial tribunal established by law.

The Committee of Ministers of the Council of Europe is composed of the Ministers of Foreign Affairs of the member states and is competent to take appropriate action to achieve the aim of the Council of Europe, including by recommendations addressed to the governments of the member states. These recommendations, although non-binding in nature, contribute to the creation of a common legal area of member states.

In the field of the protection of the rights of persons aggrieved by administrative acts, the recommendations of the Committee of Ministers are intended to bring together the aspects of convergence between the administrations of the Member States, representing, together with the EU Treaties, the pillars of the European Administrative Space.

2. Main recommendations of the Committee of Ministers of the Council of Europe in the field of administrative litigation

The main recommendations of the Committee of Ministers of the Council of Europe in the field of administrative disputes are³: Recommendation Rec (2007)7 of the Committee of Ministers to member states on good administration adopted on June 20, 2007; Recommendation Rec (2004)20 of the Committee of Ministers to member states on judicial review of administrative acts adopted on December 15, 2004; Recommendation Rec (2003)16 of the Committee of Ministers to member states on the enforcement of administrative and judicial decisions in the field of administrative

² Published in the Official Gazette no. 135 of May 31, 1994.

³ See <https://www.coe.int/en/web/cm/adopted-texts>.

law adopted on September 9, 2003; Recommendation no. (2001)9 of the Committee of Ministers to Member States on alternative dispute resolution between administrative authorities and private parties adopted on September 5, 2001; Recommendation no. Recommendation No. R(89)8 of the Committee of Ministers to Member States on the Interim Protection of Courts in Administrative Matters adopted on September 13, 1989; Recommendation No. R(87)16 of the Committee of Ministers on Administrative Proceedings concerning a Large Number of Persons adopted on September 17, 1987; Recommendation No. R(80)2 of the Committee of Ministers on the Exercise of Discretion by Administrative Authorities adopted on March 11, 1980; Resolution number (77)31 of the Committee of Ministers on the Protection of the Individual in Relation to Acts of Administrative Authorities adopted on September 28, 1977.

These recommendations implement the provisions of Article 6 of the European Convention on Human Rights in the field of administrative litigation.

The content of these recommendations will be discussed below.

Recommendation Rec (2007)7 of the Committee of Ministers to member states on good administration adopted on June 20, 2007. This Recommendation contains in annexe the Code of Good Administration. Section III of the Code of Good Administrative Behaviour regulates appeals against administrative decisions (Art. 22) and the award of compensation for damage caused by unlawful administrative decisions (Art. 23).

Individuals have the right to apply, directly or by way of exception, for a judicial review of an administrative decision directly affecting their rights and interests.

Administrative appeals prior to the exercise of judicial reviews are in principle possible. They may, in certain cases, be mandatory. They may concern the appropriateness or legality of an administrative decision.

Individuals may not suffer any damages from public authorities for challenging an administrative decision.

Public authorities are liable for damages caused to private persons by unlawful administrative decisions or due to negligence on the part of the administration or its officials.

Before bringing actions for damages against public authorities before the courts, private persons may be required to first present their claims to the authorities concerned through administrative appeal.

Judgments against public authorities awarding compensation for damages shall be enforced within a reasonable time.

Public authorities or injured private persons, as appropriate, should be able to bring legal proceedings against public officials to hold them personally liable.

Recommendation Rec (2004)20 of the Committee of Ministers to member states on the judicial review of administrative acts adopted on December 15, 2004. The Recommendation defines administrative acts as consisting of two categories:

a) individual and normative legal acts and material actions of the administration taken in the exercise of public power which may affect the rights or interests of natural or legal persons;

b) refusal or failure of the administrative authority to act when it is required to act on a request made by a natural or legal person.

Judicial review in administrative contentious matters is defined by the Recommendation as the examination and determination by a court of the legality of an administrative act and the adoption of appropriate measures, with the exception of a review by a constitutional court.

The judicial review of administrative acts shall be carried out in compliance with the following principles:

1. Scope of judicial review. All administrative acts should be subject to judicial review. Such review may be carried out either by direct action or by way of a plea of illegality. The court should be able to examine any infringement of the law, including lack of competence, procedural irregularity and abuse of power.

2. Access to judicial review. Judicial review should be available at least to natural and legal persons in respect of administrative acts directly affecting their rights or interests. Member States are encouraged to consider whether access to judicial review should not also be open to associations or other persons and bodies empowered to protect collective or community interests.

Natural and legal persons may be required to use administrative remedies (appeals) before resorting to judicial review. The duration of the procedures for resolving claims through these appeals must not be excessive.

Natural and legal persons should be given a reasonable period of time to start judicial review proceedings.

The cost of access to judicial review should not be such as to discourage applications. Legal aid should be available to persons who lack the necessary financial resources where the interests of justice require it.

3. An independent and impartial tribunal. Judicial review should be carried out by a tribunal established by law whose independence and impartiality are guaranteed. The tribunal may be an administrative tribunal or part of the ordinary judicial system.

4. The right to a fair trial. The time within which the court takes its decision must be reasonable in the light of the complexity of each case and the procedural steps or delays attributable to the parties, while respecting the adversarial principle.

There should be equality of arms between the parties to the proceedings, with each side being able to present its case without being disadvantaged.

Unless national law provides for exceptions in important cases, the administrative authority should provide the court with documents and information relevant to the case.

The procedure should be adversarial. All evidence admitted by the court should, in principle, be made available to the parties for adversarial argument.

The Tribunal should be able to examine all points of law and fact relevant to the case presented by the parties.

Procedures should be public, except in exceptional circumstances.

The judgment should be pronounced in public.

The judgment should be reasoned. Courts should state with sufficient clarity the reasons on which they base their decisions. While it is not necessary for a court to deal with every point raised in the argument, a conclusion which, if accepted, would be decisive for the outcome of the case requires a specific and express response.

The decision of the court reviewing an administrative act should, at least in important cases, be subject to appeal to a higher court, unless the case is referred directly to a higher court in accordance with national law.

5. Effectiveness of judicial review. If a court finds that an administrative act is unlawful, it should have the necessary jurisdiction to remedy the situation in order to comply with the law. In particular, it should have the power at least to annul the administrative decision and, if necessary, to send the case back to the administrative authority to take a new decision in conformity with the judgment. It should also be competent to require the administrative authority, where appropriate, to perform a task.

The court should also have the power to award costs and damages in appropriate cases.

The court should have the power to grant interim measures of protection pending the trial.

Recommendation Rec (2003)16 of the Committee of Ministers to member states on the enforcement of administrative and judicial decisions in the field of administrative law adopted on September 9, 2003. This Recommendation also covers the enforcement of judicial decisions against administrative authorities.

The Recommendation states that Member States should ensure that administrative authorities enforce court decisions within a reasonable time.

In the event of non-enforcement of a judicial decision by administrative authorities, an appropriate procedure should be laid down to enable the enforcement of that decision, in particular by means of an injunction or a coercive measure.

Member States should ensure that the liability of administrative authorities is involved in the event of erroneous non-execution of judicial decisions. The individual liability of public officials who have to execute court decisions could also be engaged in disciplinary, civil or criminal proceedings in case of non-execution.

Member States should ensure that, where administrative authorities are ordered to pay a sum of money, they must do so within a reasonable time.

The interests of the administrative authorities in the case of non-execution of pecuniary sentences must not be lower than those owed by private persons to the administrative authorities in a similar situation.

It would be desirable to ensure that the administrative authorities have the necessary financial means to avoid cases where the insufficiency of these means would prevent them from fulfilling their obligation to enforce pecuniary sentences.

Where administrative authorities do not enforce pecuniary sentences, Member States should also consider the possibility of seizing certain assets of administrative authorities within the limits provided for by law.

Recommendation number (2001)9 of the Committee of Ministers to Member States on alternative dispute resolution between administrative authorities and private parties adopted on September 5, 2001. The Recommendation refers to the following alternative dispute resolution procedures: domestic administrative appeal, conciliation, mediation, settlements and arbitration.

Although the Recommendation is aimed at settling disputes between administrative authorities and private individuals, some alternative means may also serve to prevent disputes before they arise; this is particularly true of conciliation, mediation and settlements.

Alternative dispute resolution. Procedures should be applied either generally or for disputes of a specific nature, in particular those relating to individual administrative acts, contracts, civil obligations and, in general, for disputes concerning pecuniary claims.

Determining the most appropriate alternative dispute resolution depends on the issue in dispute.

The regulation of alternative routes must be done either by institutionalising them or in a way that allows their adoption on a case-by-case basis, depending on the decision of the parties involved.

Regulation of alternative routes must

- a. ensure that the parties are adequately informed about the possibility of having recourse to alternative remedies;
- b. ensure the independence and impartiality of conciliators, mediators and arbitrators;
- c. guarantee fair procedures that ensure respect for the rights of the parties and the principle of equality;
- d. guarantee, as far as possible, transparency in the use of alternative routes and a degree of discretion;
- e. to ensure the execution of the solutions found by resorting to alternative remedies.

The regulation should provide that the resolution of the dispute through alternative dispute resolution procedures should be achieved within a reasonable timeframe, by introducing time limits or by other means.

The Regulation should provide that recourse to such alternative dispute resolution may have the effect, in certain cases, of suspending the enforcement of the act either automatically or following the decision of a competent authority.

Certain alternative means, such as internal administrative appeal, conciliation, mediation and settlement, can be used before going to court. The use of these remedies could be mandatory as a precondition for legal proceedings⁴.

Some alternative routes, such as conciliation, mediation and settlement, may be used during legal proceedings, possibly on the recommendation of the judge.

The use of arbitration should, in principle, exclude court proceedings.

In all cases, the use of alternative remedies must allow for a judicial review, as this is the ultimate guarantee for the rights of both the people who appeals to the administration and the administrative body.

In principle and subject to the applicable rules, the use of alternative legal remedies should lead to the suspension or interruption of the limitation periods laid down for bringing proceedings.

Internal administrative appeal. In principle, internal administrative appeals should be allowed for any act. They may concern the appropriateness and/or legality of an administrative act. Internal administrative appeals may be made mandatory in certain cases as a prerequisite for going to court. Internal administrative appeals will be examined and decided only by the competent bodies.

⁴ For some related issues see Leyland, P. (2016). *The Constitution of the United Kingdom: A Contextual Analysis* (3rd ed.) Hart Publishing.

Conciliation and mediation. Conciliation and mediation may be initiated by the parties involved, by a judge or may be made mandatory by law. Conciliators and mediators must set up separate meetings with each party or simultaneously with the aim of finding a solution. Conciliators and mediators may invite the administrative authority to annul, withdraw or modify the administrative act on grounds of expediency or legality.

Transaction. Administrative authorities will not use the transaction to avoid their obligations unless the law permits it. Under the law, public officials who take part in a procedure for the purpose of negotiating a settlement must be vested with the necessary authority to reach a compromise.

Arbitration. The parties will be able to decide on the law and procedure to be followed in arbitration within the limits imposed by law. The arbitrators' decisions may be based on equity if the law so provides or the parties have so decided. Even if arbitrators are not authorised to rule primarily on the legality of an act with a view to its annulment, they may do so as a preliminary step in deciding on the merits of the case.

Recommendation No. R(89)8 of the Committee of Ministers to Member States concerning interim protection of courts in administrative matters adopted on September 13, 1989. This recommendation states that where a court is seized with a challenge to an administrative act and the court has not yet made its decision, the applicant may ask the same or another competent court to take interim measures of protection against the administrative act.

The person concerned has the same right to apply to a competent court for interim measures of protection before challenging the act before the courts, in urgent cases or when an administrative complaint has been lodged against the administrative act, the lodging of which has no suspensive effect in itself and has not yet been resolved.

In deciding whether the applicant should be granted interim protection, the court takes into account all relevant factors and interests. Interim measures of protection may be granted in particular if the execution of the administrative act is likely to cause serious harm which could only be remedied with difficulty and if there is a *prima facie* Case against the validity of the act.

Provisional protective measures ordered by the competent court may take the form of suspending, in whole or in part, the execution of the administrative act, ordering the total or partial re-establishment of the situation existing at the time of the administrative act or at any time thereafter and imposing on the administration any appropriate obligation in accordance with the jurisdiction of the court. Provisional protective measures shall be granted for such period as the court deems appropriate. They may be subject to conditions and may be reviewed.

Provisional protective measures shall in no way prejudice the decision to be taken by the court before which the administrative act is challenged.

The procedure before the court will be expeditious. Except in urgent cases, the procedure will be adversarial and will allow access to interested third parties.

Where, in urgent cases, the persons concerned could not be heard before the court which granted provisional protection, the case will be re-examined at short notice.

Recommendation R(87)16 of the Committee of Ministers on administrative procedures concerning a large number of persons adopted on September 17, 1987. The Recommendation states in Article VII that where a large number of persons are involved in administrative or judicial review proceedings, the court or review body may, with due regard to fundamental principles and with due regard to the rights and interests of the parties, implement various measures to simplify the procedure, such as the obligation for persons participating in the proceedings and having common interests to choose one or more common representatives, the selection and hearing of test appeals and notification by public notice⁵.

Recommendation No. R(80)2 of the Committee of Ministers on the exercise of discretion by administrative authorities adopted on March 11, 1980. Point IV of the Recommendation states that an act adopted in the exercise of a discretionary power must be subject to a review of its legality by a court or other independent body. This review does not exclude the possibility of a preliminary review by an administrative authority empowered to decide on both the legality and the appropriateness of the act.

Where no time limit has been fixed by law for the taking of a decision in the exercise of a discretionary power and the administrative authority fails to take the decision within a reasonable time, its failure to do so may be subject to review by an authority competent for that purpose.

A court or other independent body reviewing the exercise of a discretionary power has the power to obtain information necessary for the exercise of its functions.

Resolution (77)31 of the Committee of Ministers on the protection of individuals in relation to acts of administrative authorities adopted on September 28, 1977. This Resolution lays down the principles which apply to the

⁵ See for a comparative view of Craig, P. P. & de Búrca, G. (2015). *E.U. Law: Text, Cases, and Materials* (6th ed.). Oxford University Press. This work provides an in-depth analysis of European law principles, including the relationship between European law and administrative and judicial review. See also Arnall, A. (2006) *The European Union and its Court of Justice* (2nd ed.). Oxford University Press, where you can find a detailed examination of the role of the Court of Justice of the European Union, which intersects with the themes of judicial review and the protection of rights in the European Union.

protection of natural or legal persons in administrative proceedings in respect of any individual measures or decisions (individual administrative acts) taken in the exercise of official authority which are of such a nature as directly to affect their rights, freedoms or interests.

Right to be heard. With regard to any administrative act which is likely to adversely affect his rights, freedoms or interests, the person concerned may present facts and arguments and, in appropriate cases, provide evidence to be taken into account by the administrative body. The person will be informed in a timely manner and in a manner appropriate to the case about his/her rights.

Access to information. At his request, the person concerned shall be informed, prior to the adoption of an administrative act, by appropriate means, of all available factors relevant to the adoption of that act.

Assistance and representation. The person concerned may be assisted or represented in the administrative procedure.

The motivation of the act. Where an administrative act is likely to adversely affect his rights, freedoms or interests, the person concerned shall be informed of the reasons on which it is based. This shall be done either by stating the reasons in the act or, at the request of the person concerned, by communicating those reasons in writing within a reasonable period.

Remedies. Where an administrative act in written form adversely affects the rights, freedoms or interests of the person concerned, the act shall indicate the usual remedies against it and the time limits for using them.

3. The implementation in Romania of the recommendations of the Committee of Ministers of the Council of Europe in the field of administrative litigation

Alternative dispute resolution in administrative disputes. Most of the recommendations of the Committee of Ministers of the Council of Europe in the field of administrative litigation have been implemented in Romania through the provisions of Law no. 554/2004 and special laws. We emphasise, however, that with regard to the alternative means of settling disputes between administrative authorities and private parties mentioned in Recommendation numbers. (2001)9 of the Committee of Ministers, Law No. 554/2004 regulates only **administrative appeal**.

As for **arbitration**, it is an alternative to private jurisdiction (Art. 541 para. (1) C. proc. civ.), the state and the public authorities may resort to arbitration only when the law or international conventions expressly allow it (Art. 542 para. – 2 – of the Code of Civil Procedure). Thus, arbitration is regulated in the field of public procurement contracts and works concessions and service concession contracts by

art. 57 of Law no. 101/2016 *on remedies and remedies in matters of awarding public procurement contracts, sectoral contracts and works concession and service concession contracts, as well as for the organisation and functioning of the National Council for the Settlement of Disputes*. The possibility of having recourse to arbitration in disputes concerning unilateral administrative acts is not regulated and therefore not possible.

Mediation is regulated in Romania by Law no. 192/2006⁶. This law defines mediation as a way of resolving conflicts amicably, with the help of a third specialised person acting as mediator, under conditions of neutrality, impartiality, confidentiality and with the free consent of the parties (art. 1 para. – 1 – of Law no. 192/2006).

According to Art. (4) of Law no. 192/2006, strictly personal rights, such as those concerning the status of the person, as well as any other rights which the parties, according to the law, cannot dispose of by agreement or by any other means allowed by law, cannot. Be subject to mediation. However, **in administrative contentious administrative proceedings, the issuing authority and the aggrieved person cannot decide by agreement on the legality of the contested administrative act**. It has been pointed out in the doctrine that the public interest and the legality of administrative acts cannot be negotiated, and compromise solutions are incompatible with the precision and rigour that public authorities must demonstrate in carrying out their work⁷.

Mediation in administrative litigation may be used for the civil side of the administrative litigation process, namely to determine the amount and methods of payment of compensation for material and moral damages claimed by the injured party as a result of the annulment of the harmful administrative act by the court.

Mediation may also be used in administrative litigation in cases where it is expressly mentioned by law. One such case is the possibility to resort to mediation in the procedure of enforcement of administrative-fiscal acts (see art. 230¹ C. proc. fisc. and Order of the President of the A.N.A.F. No. 1757/2019 *for the approval of the mediation procedure, as well as the documents that debtors submit in order to support their economic and financial situation*⁸). The mediation procedure shall apply to debtors for whom the enforcement procedure has been initiated by the service of the summons and who, within 15 days of service of the summons, submit to the competent tax authorities a notification of the intention to mediate. The subject of the mediation procedure between the tax authority and the debtor shall be tax liabilities,

⁶ Law no. 192/2006 on mediation and the organisation of the mediator profession published in the Official Gazette no. 441 of 22 May 2006, as amended.

⁷ See Vedinaş, V., Gentimir, V. C. *Can the mediation procedure be used in disputes arising from public administration activity? Aspecte rezultate din activitatea Curţii de Conturi a României*, in "Dreptul" nr. 1/2017, p. 152.

⁸ Published in the Official Gazette, Part I No 549 of July 4, 2019.

finances of any kind, as well as other budgetary claims, as identified in the summons for which the notification has been submitted. From the date on which the debtor notifies the tax authority of the intention to mediate, the enforcement procedure is suspended. The mediation procedure may relate to:

a) clarification of the tax liabilities entered in the summons if the respective debtor objects to them;

b) analysis by the tax authority together with the debtor of the economic and financial situation of the debtor in order to identify optimal solutions for the discharge of obligations, including the possibility to benefit from the payment reliefs provided by law.

With regard to the **settlement** as an alternative method of settling administrative disputes, it is defined in the doctrine as a sign-signatory contract by which the parties, seeking to put an end to an existing lawsuit or to prevent the outbreak of an imminent lawsuit, make mutual concessions in the sense that they waive certain rights or stipulate new benefits in exchange for waivers consented to by the other party⁹.

Settlement involves the making of mutual concessions, both parties giving up part of their originally asserted claims and on that basis reaching a compromise solution. Settlement thus differs from acquiescence where there is an unconditional admission of claims asserted by the other party in court.

It has been emphasised in the doctrine that the settlement, having as its purpose the termination of an existing lawsuit, is compatible with any lawsuit whose trial procedure is dominated by the principle of availability¹⁰. It has also been emphasised in doctrine and case law that, even if this principle primarily concerns civil litigation, being specific to the trial procedure enshrined in the Code of Civil Procedure, it is nevertheless also compatible with administrative disputes. In this regard, it has been pointed out that it is the plaintiff who establishes the procedural framework by indicating the persons summoned to the proceedings¹¹ and that the holder of the right injured by the administrative act cannot be prevented from waiving the administrative action that he himself has brought in order to protect that right¹². We emphasise, however, that the specificity of the administrative law regime also imposes exceptions

⁹ Costin, M.N., Xostin, M. C. *Dicționar de Drept Civil*, vol. III, Ed. Lumina Lex, Bucharest, 2004, p. 469. For similar definitions see Fr. Deak, *Tratat de drept civil. Contracte speciale*, Ed. Universul Juridic, Bucharest, 2001, p. 555 and Dogaru I. (coord.), *Drept civil. Contractele speciale*, Ed. All Beck, București, 2004, p. 949.

¹⁰ See Costin, M.N., Costin, C.M. *Compatibilitatea contractului de tranzacție cu litigiile de contencios administrativ*, "Revista de Drept Comercial" no. 12/2006, p. 114.

¹¹ A. Iorgovan, L. Vișan, A. S. Ciobanu, D. I. Pasăre, *Law on Administrative Litigation with amendments and additions to date*, Ed. Universul Juridic, Bucharest, 2008, p. 377.

¹² Costin, M. N., Costin, C. M *op. cit.*, 2006, p. 116.

to the principle of availability, some of which are expressly indicated by Law no. 554/2004¹³, others resulting from the systematic interpretation of this law, as well as of the other regulations on administrative contracts.

With regard to **disputes concerning unilateral administrative acts**, we consider that, as in the case of mediation, the public authority will not be able to negotiate the legality of an administrative act, but will be able to reach an agreement with the injured party, as confirmed by the administrative judge, on the method of payment of compensation for material and moral damages caused by the administrative act annulled by the court.

Also, under Article 28 para. (1) of Law no. 554/2004, in principle, the **transaction contract may also be used in disputes concerning administrative contracts, subject to the limits imposed by the public law regime**. Thus, in administrative contracts, the following may not be the subject of a transaction between the contracting public authority and the private contracting party: regulatory clauses which are unilaterally laid down by the public authority in the public interest, mandatory statutory rules which enshrine the public law regime governing such contracts, the principles governing the functioning of public services, the competence of public officials and, in general, all those provisions which apply to administrative contracts for reasons of public interest protection. The settlement contract may be used in disputes concerning contractual terms in administrative contracts.

A Transaction May not be entered into whereby the contractor undertakes to waive its claims in exchange for an undertaking by the contracting public authority to waive its right of control. Nor may a transaction be entered into whereby the public service under the concession is no longer provided or is provided at a lower standard than that contracted for until the contracting public authority has paid its outstanding debts, as this would be contrary to the principle of the continuous and permanent provision of public services.

It has been stated in case law: ‘The fact that the judicial settlement is not included in the list in Article 1 of Law no. 101/2016 *on remedies and remedies in matters of public procurement contracts, sectoral contracts and works concession and service concession contracts, as well as for the organisation and functioning of the National Council for the Settlement of Disputes*, does not give the settlement concluded in matters of public procurement a purely civil nature that would exempt it from the jurisdiction of the administrative and tax court ... such an inclusion is not necessary in view of the fact that the court settlement is a procedural manifestation

¹³ Article 28 para. (3) of Law no. 554/2004 states that ‘actions brought by persons governed by public law and by any public authority, in defence of a public interest, as well as those brought against normative administrative acts may no longer be withdrawn, unless they are also brought in defence of the rights or legitimate interests of natural or legal persons governed by private law’.

of the will of the parties to a public procurement contract, a will expressed in relation to the rights and obligations arising from that particular contract, with a view to settling the dispute between them.¹⁴

4. Conclusions

Although the recommendations of the Committee of Ministers are at the forefront of legal convergence at European level, they are not binding. Consequently, the application of these recommendations in national legislation varies significantly from one Member State to another. In Romania, although some progress has been made, the full and coherent transposition of these principles into the administrative litigation system is not always uniform.

In practice, judicial review of administrative acts in Romania suffers from certain shortcomings. Although fundamental principles such as access to justice and the right to a fair trial are provided for, the excessive length of administrative procedures and the lack of resources of the courts lead to poor implementation of the right to a trial within a reasonable time. The high costs associated with access to justice, including court fees, lawyers' fees and prior administrative procedures, may discourage individuals or legal entities from initiating an administrative procedure. Although the recommendations provide for legal aid for those without financial resources, the application of these provisions is still limited in Romania.

Although the Council of Europe's recommendations are not binding, Romania should adopt clear legislative measures to ensure their implementation. In particular, priority should be given to the inclusion in national legislation of the principles of free and unhindered access to justice, transparency and accountability. The proposals for improvement are centred on the adoption of clear legislative measures to implement the Council of European principles, simplify administrative procedures and reduce the costs of access to justice. They also recommend increasing resources for the judiciary, developing alternative dispute resolution and improving the transparency and impartiality of decisions.

¹⁴ Decision No. 2168/2020 of the Second Civil Section of the ICCJ (<https://www.scj.ro/736/Cautare-jurisprudenta>).

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PRINCIPI SUDSKE KONTROLE UPRAVNIH AKATA UTVRĐENIH U PREPORUKAMA KOMITETA MINISTARA SAVETA EVROPE I NJIHOVA TRANSPOZICIJA U RUMUNIJI

Sažetak:

U radu se analiziraju osnovni principi sudske kontrole upravnih akata na osnovu preporuka Komiteta ministara Saveta Evrope, i njihova transpozicija u rumunsko pravo. Članak počinje isticanjem značaja Evropske konvencije o ljudskim pravima, koju je Rumunija ratifikovala 1994. godine, i suštinske uloge njenog člana 6 o pravu na pravično suđenje i suđenje u razumnom roku od strane nepristrasnog suda. U njemu su detaljno navedene glavne preporuke koje je usvojio Komitet ministara u oblasti upravnih sporova, uključujući Preporuku (2007)⁷ o dobroj upravi i Preporuku (2004)²⁰ o sudskoj reviziji upravnih akata. Preporuke imaju za cilj obezbeđivanje efikasnog pristupa pravdi, zaštitu prava pojedinca od administrativne zloupotrebe, obezbeđivanje efektivne sudske kontrole i uspostavljanje alternativnih mehanizama za rešavanje sporova. U članku se ispituje primena ovih preporuka u Rumuniji, procenjujući kako su rumunska sudska praksa i zakonodavstvo integrisali ove principe u sistem upravnih sporova, doprinoseći jačanju zaštite prava građana u odnosu na organe uprave.

Ključne reči: upravni akti, upravni spor, Komitet ministara Saveta Evrope, alternativni načini rešavanja sporova.

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