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# HISTORY OF ADMINISTRATIVE LITIGATION IN ROMANIA

**Abstract:**

The history of administrative litigation in Romania denotes the sinuous evolution of the relationship between the citizen and the state, in parallel with the development of modern legal institutions. Starting with the establishment of the Council of State in 1864, inspired by the French model, and continuing with the oscillating legal reforms of the early 20th century, Romanian administrative litigation has undergone significant transformations on several levels, from administrative jurisdiction to judicial control, from annulment mechanisms to simple declarations of illegality. The paper analyses the successive legal regimes that shaped administrative litigation, culminating in its constitutional recognition in the 1923 Constitution. By exploring key legislative landmarks such as the Bădărău, Toma Stelian and Cantacuzino Laws, this study is suggestive both in reflecting doctrinal tensions and in the growing awareness of citizens' rights before the administrative power.

***Keywords:*** *administrative litigation, Council of State, constitutional law, Bădărău Law, Romania, Cantacuzino Law, Toma Stelian Law, administrative jurisdiction, rule of law, public administration.*

## 1. AN INTRODUCTION TO THE FIRST REGULATION OF ADMINISTRATIVE LITIGATION IN THE UNITED PRINCIPALITIES OF MOLDOVA AND WALLACHIA

Administrative litigation was instituted for the first time in our country by Law no. 167/1864 *for the establishment of the Council of State*[1]. This law set up, following the French model, the Council of State, which had legislative powers (preparation of draft laws), administrative powers (administrative counselling and disciplinary jurisdiction for civil servants) and administrative litigation powers. [2]

1 M. Of. Of 11 February 1864.

2 Săraru, Cătălin-Silviu. 'A Cross-Country Examination: Administrative Litigation in China and Romania.' Access to Justice in Eastern Europe 3, no. 20 (2023): 232–248. https://doi.org/10.33327/AJEE-18-6.3-a000313. For a comparative view, see Popa Tache, Cristina-Elena. 'Administrative Review and Reform Movements from the Perspective of International Investment Law.' In Administrative Law and Public Administration in the Global Social System: Contributions to the 3rd International Conference, Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective, October 9, 2020, edited by Julien Cazala and Velimir Zivkovic, 212–218. Bucharest: ADJURIS – International Academic

In the field of administrative litigation, the Council of State, in accordance with Article 51 of the Law, hears the claims of private individuals and legal entities whose interests have been harmed by:

a) the decisions of ministers given with excess of power or in violation of the laws and regulations in being;

b) judgements or acts of execution of prefects or other administrative agents given in violation of laws or regulations;

c) decisions of public works commissions.

Also, by virtue of Article 49 of Law No 167/1864, the Council of State could adjudicate, as the first or final instance, all cases of an administrative contentious nature assigned to it by a particular law. Thus, for example, the *law of expropriation for reasons of public utility* of 20 October 1864 provided that an appeal to the Council of State could be lodged against the decision of the County Council fining members of the County Expropriation Commissions who were absent without good reason from its proceedings.

Article 131 of the 1866 Constitution provided for the abolition of the Council of State and required the adoption of an ordinary law to allocate its powers. On 9 July 1866, a few days after the promulgation of the Constitution, a *law* was passed on 9 July 1866 *on the division of the various powers of the Council of State*. By this law, the contentious powers of the Council of State were divided among the Courts of Appeal and the other courts of ordinary law, and the disputes in question were to be judged according to the ordinary rules.

## 2. ADMINISTRATIVE LITIGATION ESTABLISHED BY THE BĂDĂRĂU LAW

On 1 July 1905, the *Law for the Reorganisation of the High Court of Cassation and Justice* (Bădărău Law[3]) was adopted, whereby Section III of the High Court of Cassation and Justice became competent to hear appeals against certain categories of administrative acts listed in the law. The administrative litigation established by this Act concerned a relatively small number of categories of administrative acts of authority. It was a ***contenti contentieux in annulment***, being a judicial means of examining the legality of administrative acts and deciding on their annulment, and a ***contenti contentieux subjectif***, questioning the legality of an act only insofar as it harmed the subjective rights of the appellant. [4]

## 3. ADMINISTRATIVE LITIGATION ESTABLISHED BY THE TOMA STELIAN LAW

The administrative litigation system established by the Law of 1905 was abolished by a new law of 25 March 1910, reorganising the Court of Cassation and Justice (Toma

Publisher, 2021.

3 The 1905 law was proposed by the conservative government, led by G. Cantacuzino, with Alex. Bădărău.

4 See, in this regard, *V. I. Prisăcaru*, Contenciosul administrativ român, 2nd ed. All Beck București, 1998, p. 34; *C.G. Rarincescu*, Contenciosul administrativ român, 2nd ed. 'Universală' Alcalay & Co., Bucharest, 1936, p. 90, 91.

Stelian Law). This law no longer recognised Section III of the High Court of Cassation and Justice as having jurisdiction in matters of administrative litigation, as disputes concerning the infringement of the rights of private individuals by administrative acts of authority were given to the county courts, which would hear cases under the rules of ordinary law. [5]

The system prior to the 1905 law thus reverts to the system prior to the 1905 law, with the only difference being that Article 74 of the Law established that these cases would be judged urgently and in priority. Thus, under the 1910 law, the ordinary courts were no longer entitled to annul illegal administrative acts.

Constantin Rarincescu emphasises that, 'although the litigation system of 1905 had been abolished, its basic idea had nonetheless made its way into the general legal consciousness, which could no longer reconcile itself with a reduced and limited litigation system, as in the system prior to the 1905 law. Thanks to this legal awareness, our courts gave a broad interpretation to Article 74 of the Law of 1910, which referred administrative litigation cases to the jurisdiction of these courts according to the *general principles of law*, considering that if, according to these principles, they could not annul an act but only award damages, there was nothing to prevent the State from being awarded even damages, at least when it prevents the lawful exercise of a right or refuses to satisfy a right of the plaintiff'[6].

## 4. ADMINISTRATIVE LITIGATION ESTABLISHED BY THE CANTACUZINO LAW

The Law of 17 February 1912 reorganising the Court of Cassation and Justice (the Cantacuzino Law) reverted to the system established by the 1905 Law and administrative litigation cases were again assigned to Section III of the Court of Cassation. In contrast to the rules of 1905, however, the 1912 Law no longer vested the Court of Cassation with the right to annul the contested administrative act, but only with the possibility, under Article 63 of the Law, to declare the act illegal and to invite the administrative authority to fulfil the request, to abolish or to amend the act. Thus, the cancellation of the act was made by the administrative authority itself[7]. Therefore, the administrative litigation established by the Law of 1912 is only a ***litigation for the determination of the legality*** of the administrative act and not a ***litigation for annulment*** as in the case of the administrative litigation established by the Law of 1905.

The Law of 1912 granted to Section III of the Court of Cassation a general subject-matter jurisdiction in the field of administrative acts of authority, stating in Art. 5 para. 3 lit. f) that it judges 'The appeals of those who claim to be injured in their rights by an administrative act of authority made in breach of the law, as well as appeals against the refusal of the administrative authorities to settle a claim relating to such a right'. Excluded from the judgement of Section III of the Court of Cassation were acts of government and acts relating to the exercise of administrative guardianship and hierarchical control. The contentious appeal before the Court of Cassation could be lodged, according to Article 31 lit. a) of the Law, either before or after the hierarchical appeal.

5 See *C. G. Rarincescu*, op. cit., 1936, pp. 92, 93.

6 Idem, p. 93.

7 Idem, p. 93.

## 5. REGULATION OF ADMINISTRATIVE LITIGATION BY THE 1923 CONSTITUTION

Administrative litigation becomes a constitutional institution through its regulation by the 1923 Constitution[8] in Article 107.

The administrative litigation regulated by the 1923 Constitution has the following features:

(a) the prohibition laid down in para. (1) of Article 107 of the Constitution of 1923 is characterised by the following features: (a) the prohibition of the establishment of special authorities of any kind with powers of administrative litigation. According to this prohibition, administrative tribunals, modelled on the French model, could not be set up to hear administrative disputes. It has been held in the legal literature that the prohibition laid down in the first sentence of Article 107 (1) of the Constitution did not apply to the special administrative courts, which continued to be set up and to operate after the adoption of the 1923 Constitution.[9]

b) the attribution of administrative litigation to the judiciary, as provided for in para. (2) of Article 107 of the Constitution. The courts had a general subject-matter jurisdiction to hear the claims of those whose rights had been infringed, according to para. (3) of Art. 107 of the Constitution, 'either by an administrative act of authority, or by an administrative act made in contravention of laws and regulations, or by the administrative authorities' unwillingness to settle the claim concerning a right'.

c) an ***administrative contenti contentious of full jurisdiction*** is established by which the court of law may annul the harmful administrative act and award damages to the injured person. According to the provisions of para. (4) of Article 107 of the Constitution, 'The judicial authorities shall judge whether the act is unlawful, may annul it or may award civil damages until the date of restoration of the injured right, and shall also have the power to judge the claim for damages, either against the administrative authority sued or against the guilty official'.

d) ***subjective administrative litigation*** is established, the action in court being reserved only to 'the person whose rights have been infringed' by the administrative authorities, according to para. (3) of Article 107 of the Constitution.

e) two categories of acts exempted from judicial review are established, in accordance with the provisions of para. (4) of Article 107 of the Constitution: acts of government and acts of military command.

8 M. Of. No 282 of 29 March 1923.

9 See *C. G. Rarincescu*, op. cit., 1936, pp. 98–99. The first administrative body with jurisdictional powers was the Court of Accounts, established by the Law of 24 January 1864. An example of special administrative jurisdictions set up after the adoption of the 1923 Constitution is the Central Revision Committee and the local revision committees set up by the Law of 3 January 1930, which were competent to control the legality of administrative acts and deeds of county and local public administration bodies.

## 6. THE FIRST SPECIAL LAW ON ADMINISTRATIVE LITIGATION ADOPTED IN 1925

In order to implement the provisions of Article 107 of the 1923 Constitution, the **Law of 23 December 1925 on Administrative Disputes** was adopted.

Naturally, the Law of 23 December 1925 on administrative litigation developed, along the lines of the 1923 Constitution, a litigation of full jurisdiction, with the court having the possibility, under Article 6 of the Law, to annul an act if it considers it to be illegal and to award civil damages, and subjective litigation, reserved only for those who 'claim to have suffered an injury to their rights', under Article 1 of the Law.

Applications under the 1925 Administrative Judicial Procedure Act were brought before the Court of Appeal in whose district the plaintiff was domiciled (Article 4 – 1 – of the 1925 Act). Appeals to the administrative courts were not subject to the prior lodging of administrative appeals with the authority issuing the act (appeal by way of grace) or with the higher hierarchical authority (hierarchical appeal).[10]

Applications under the Administrative Judicial Procedure Act could be lodged with the court at any time (Article 4 – 2 – of the 1925 Act). From this rule two exceptions were instituted:

(a) in the case of the replacement, removal or retirement against the law of lawfully appointed irremovable officials, applications were to be made within 30 clear days of their publication in the Official Gazette.

b) if the individual has addressed an application to the administration, the legal claim could be made after the expiry of a period of 30 days from the expiry of 30 days from the date of registration by the administrative authority or from its notification by the gatekeeper, and within 30 clear days from that date.

Applications in administrative disputes were stamped and charged in accordance with the law for actions at common law (Art. 5 – 1 – of the 1925 Act).

The Court of Appeals judged administrative appeals as a matter of urgency and in preference to all other cases and in a panel of 3 and was obliged to write up its decisions in this matter no later than 5 days after the judgement (Art. 9 of the 1925 Law).

The decisions of the Courts of Appeal were subject to appeal to the Court of Cassation within 15 days of communication (Art. 11 – 1 – of the 1925 Law).

Legal claims could be brought both against the administrative authority that had adopted the harmful administrative act and against the officials who had signed the act if the claims were for payment of compensation for damages for harm caused or damages for delay. Officials could also bring an action for damages against the hierarchical superiors from whom they had received a written order to sign the act (Article 14 of the 1925 Act).

The jurisdiction of the Courts of Appeal and the Court of Cassation in matters of administrative litigation established under the 1925 Act related exclusively to the judgement of disputes concerning administrative acts of authority, which mainly sought the annulment of the unlawful act and, secondarily, the award of damages, whereas the judgement of disputes concerning acts of public management of the public administration

10 Idem, p. 115.

(administrative contracts) was left to the ordinary courts under ordinary law[11]. However, by Decision No 1030/1929 of the Third Section of the Court of Cassation, it was held that administrative contracts are concluded by the administration to provide a public service and therefore have the character of acts of authority falling within the jurisdiction of the administrative courts under Article 1 of the Law of 23 December 1925.[12]

The Law of 23 December 1925 on administrative litigation established *litigation conducted by the courts of law* (courts of appeal and Section III of the High Court of Cassation) and remained the common law in this area until 1948.

Between 1930 and 1948, there was also administrative litigation conducted by *administrative courts* (Central Review Committee and Local Review Committees set up by Law No. 5 of 3 January 1930, later reorganised by Administrative Law No. 569 of 26 March 1936 and by Law No. 331 of 15 March 1939 into the Higher Administrative Court and Local Administrative Courts)[13]. We note that during this period, with the creation of these administrative jurisdictions, an approximation to the German system of administrative litigation was realised. However, compared to the German system, the jurisdiction of these administrative courts was limited. Thus, while *the courts of law* could examine the legality of all administrative acts *under the 1925 Administrative Jurisdiction Act (*with the exception of the grounds for non-reprimand set out in articles 2 and 3 of this Act), the *administrative courts* mentioned above could only review the legality of administrative acts adopted by local public administration authorities.

In order to avoid the double settlement of cases by *courts of law* and *administrative courts,* Article 52 para. 3 of the *Law for the Organisation of Administrative Courts no. 331 of 15 March 1939*, the principle *electa una via non datur recursus ad alteram* was applied, stating that 'the party who has chosen the court of administrative jurisdiction, according to the present law, may not apply to other administrative courts if the first court has given a decision on the merits or an interlocutory journal'[14].

11 Idem, p. 199, 200.

12 *C. Hamangiu, R. Hutschneker, G. Iuliu,* Appeals in cassation and administrative litigation. Comentariul Comentariul legiilor Curții de Casație și a Contenciosului administrativ, după doctrină și jurisprudență, Ed. 'Națională' S. Ciornei, Bucharest, 1930, p. 448.

13 In the doctrine it has also been argued that both the review committees and, later, the administrative courts would represent, by their competence and their way of organisation, real administrative tribunals and not only administrative jurisdictions (see, in this sense, *E. D. Tarangul*, Tratat de drept administrativ român, Cernăuți, Ed. Tipografiei Glasul Bucovinei, 1944, pp. 613–615; *A. Iorgovan*, Tratat de drept administrativ, vol. II, 4 th ed. All Beck, Bucharest, 2005, p. 511, 512). As regards the review committees, it must be said that they were set up and functioned during the period when the 1923 Constitution was in force, which, as we have seen, prohibited the establishment of specialised courts in administrative litigation matters by Article 107. The review committees could therefore only have the legal nature of administrative-judicial bodies. As regards the legal nature of the administrative courts, we note that they were set up after the adoption of the 1938 Constitution (M. Of. no. 48 of 27 February 1938), which allowed, according to Article 73 para. (1), the establishment of a 'jurisdiction' by law. Moreover, the administrative courts were composed exclusively of magistrates, unlike the review committees composed of magistrates and civil servants. Therefore, the administrative courts can be said to have had a similar status to a special court of law, an interpretation which is also permitted by the provisions of Art. 73 para. 1 of the 1938 Constitution.

14 See in this sense *V. I. Prisăcaru*, Contenciosul administrativ român, 2nd ed. All Beck București, 1998, p. 63.

## 7. LAW ON THE ORGANISATION OF THE CENTRAL AND LOCAL REVISION COMMITTEES OF 1930

Law No. 5 of 3 January 1930 established the Central Revision Committee and the Local Revision Committees as administrative authorities with jurisdictional activity, which were competent to review only the legality of administrative acts and deeds of **county and local** public administration bodies.

The Local Review Committees were 7 in number (based in Bucharest, Iasi, Cluj, Chisinau, Chisinau, Chernivtsi, Timisoara and Craiova) and were competent, according to Article 36 of the Law, to decide:

1. on all actions directed against the legal acts of the county and municipal administrative bodies of any kind, except those of the municipality of Bucharest;

2. on all actions directed against acts of administrative control (guardianship) exercised by the mayors and prefects;

3. on appeals against administrative elections of communes and counties;

4. on proposals for the dissolution of county councils and communes of any kind, except for the municipality of Bucharest, with their suburban districts and communes.

The decisions of the local revision committee are subject to appeal to the Central Revision Committee.

The Central Revision Committee decides, according to Article 38 of the Law, on:

In the first and last instance:

(a) on actions directed against the legal acts of the administration of the municipality of Bucharest, with its suburban districts and communes;

b) on all actions directed against acts of administrative control (tutelage) of the Ministry;

c) on proposals for the dissolution of the Bucharest City Council, with its suburban districts and municipalities.

In the last instance:

On all decisions rendered in the first instance by the local review committees.

Decisions of the Central Revision Committee were subject to appeal to the High Court of Cassation.

## 8. REORGANISATION OF THE CENTRAL REVIEW COMMITTEE INTO THE HIGHER ADMINISTRATIVE COURT AND OF THE LOCAL REVIEW COMMITTEES INTO LOCAL ADMINISTRATIVE COURTS

Article 244 of Administrative Law No. 569 of 26 March 1936[15] provided for the renaming of *the Local Review Committees* into *Local Administrative Courts* and of the *Central Review Committee* into the *Higher Administrative Court*, which retained their previous functions.

Subsequently, the *Law on the Organisation of the Administrative Courts No. 331 of 15 March 1939*[16] repealed *the Law on the Organisation of the Central Committee and Local Review Committees of 1930*.

Under the 1939 Act, the Higher Administrative Court and the Local Administrative Courts were bodies of administrative jurisdiction which scrutinised, like the review committees previously, the **legality of acts adopted exclusively by local public authorities**.

There were 10 Local Administrative Courts, one in each county[17], with their seat in the county's city of residence, while the Higher Administrative Court had its seat in the capital of the country.

According to the provisions of Article 37 of the 1939 Law, the Local Administrative Courts decided in the first instance:

1. on actions brought against unlawful administrative acts committed by local administrative bodies.

2. on actions brought by private persons injured by the unlawful refusal or unjustified silence of the local administration to perform an act or to render a service due.

The administrative courts could:

a) annul the act in whole or in part.

b) order the reinstatement of the injured parties to all the rights they had before the annulled act.

c) order that the service due be rendered or refrain from the action decided by the contested act.

d) order that the claims be entered in the local government budgets for the following financial year.

According to Article 40 of the Law of 1939, the Higher Administrative Court shall hear appeals against decisions of the administrative courts, applications for the transfer

15 M. Of. No 73 of 27 March 1938.

16 For an analysis of the competence and functioning of the review committees and then of the administrative courts, see *V. I. Prisăcaru*, op. cit., 1998, pp. 54–63.

17 The Administrative Law of 14 August 1938 established 10 counties as administrative-territorial units: Argeș County, Crișuri County, Danube County, Jiu County, Mării County, Mureș County, Nistru County, Prut County, Suceava County and Timiș County. The creation of these counties, which have no historical tradition, took place in the context of the dictatorship of King Charles II, following the administrative model of Fascist Italy and Yugoslavia during the dictatorship of King Alexander I.

of cases from one administrative court to another, conflicts of jurisdiction between administrative courts, and other matters assigned by law (for example, according to the provisions of Article 154 para. 2 of the Administrative Law of 1938, the decisions of the administrative courts in which they ruled on the applications of neighbouring owners for the annulment of illegally issued building permits were subject to appeal to the Higher Administrative Court).

The decisions of the Higher Administrative Court, like those of the Central Review Committee, could be appealed to the High Court of Cassation.

## 9. ADMINISTRATIVE LITIGATION BETWEEN 1948 AND 1967

The development of administrative litigation in Romania was halted with the establishment of the communist regime[18]. On the basis of the communist principle of the unity of state power and the subordination of all state bodies to the Grand National Assembly, it was considered that the courts could not control the activities of state administrative bodies. In order to implement this doctrine, Decree No 128/1948 was adopted *to abolish the administrative contentious proceedings and administrative courts*. This Decree repealed the Law on Administrative Disputes of 23 December 1925 and the Law on the Organisation of Administrative Courts of 15 March 1939.

From 1948 until the adoption of the 1965 Constitution, the courts could not review the legality of administrative acts, except in the cases expressly provided for by law (such exceptions were regulated in a limited number of normative acts, among which we mention: Decree No 184/1954 regulating the penalisation of contraventions, Decree No 278/1960 on civil status documents, etc.).

The Constitution of 1965[19] re-established the general competence of the courts to review the legality of administrative acts on the basis of the provisions of Article 35 (*a person who has been injured in his rights by an unlawful act of a state body may, under the conditions provided by law, request the competent bodies to annul the act and to compensate for the damage*) in conjunction with the provisions of Article 103 (*Courts and Tribunals shall hear the claims of those who have been injured in their rights by administrative acts and may also rule, under the conditions provided by law, on the legality of such acts*).

## 10. REGULATION OF ADMINISTRATIVE LITIGATION BY LAW NO 1/1967

On the basis of the provisions of the 1965 Constitution, Law No 1/1967 was adopted *on the adjudication by the courts of claims of those injured in their rights by unlawful administrative acts*[20]. According to the provisions of Article 1 of Law No 1/1967, a person whose right has been infringed by an unlawful administrative act may apply to the competent court, in accordance with the law, for the annulment of the act or for an order that the administrative body sued take the appropriate measure to remove the infringement

18 See comparatively **Scherzberg, Arno, and Josephine Seidl.**'*Administrative Litigation in Germany.*' *In Administrative Litigation Systems in Greater China and Europe*, edited by Yuwen Li, 22. 1st ed. London: Routledge, 2014. https://doi.org/10.4324/9781315565651. https://doi.org/10.4324/9781315565651.

19 B.Of. no. 1 of 21 August 1965.

20 B.Of. No 67 of 26 July 1967.

of his right and for compensation for the damage. Likewise, the unjustified refusal to fulfil a request concerning a right, as well as the failure to fulfil such a request within the time limit prescribed by law, was considered an illegal administrative act.

It should be noted that Law No 1/1967 provided for ***subjective litigation***, based solely on the infringement of a subjective right of the plaintiff, and ***of full jurisdiction***, with the court being able to pronounce measures to repair the damage. Compensation could only be awarded for material damage, as the communist system was reluctant to award compensation for non-material damage.

Law No 1/1967 established the rule of judicial review of administrative acts, with acts that could not be challenged being an exception to this rule expressly laid down by law.[21]

Judicial review of administrative acts was of a subsidiary nature and could be exercised only after an attempt had been made to restore legality through the administrative complaint procedure, in the form of an appeal for pardon or hierarchical appeal.[22]

The review exercised by the courts was strictly aimed at the legality of administrative acts, not at the appropriateness of their adoption.[23]

In the legal doctrine, it is considered that the institution of administrative litigation regulated during the communist period by the 1965 Constitution and Law no. 1/1967 had a purely propagandistic role characteristic of the totalitarian state, being purely formal, with no relevance in the defence of citizens' rights and counteracting abuses by administrative authorities.[24]

21 The categories of administrative acts exempted from review by the courts were mentioned in Articles 14, 15 and 16 of Law No 1/1967, and they are numerous: Art. 14 – 'The provisions of this law shall not be applicable to: a) administrative acts in connection with the defence of the country, state security or public order; b) administrative acts of planning; c) administrative acts of jurisdiction and administrative acts for the review of which the law provides for a different jurisdictional procedure than the one provided for by this law; d) acts in which the administrative body participates as a legal person under civil law. Likewise, the provisions of this Law shall not be applicable to the claims of state organisations concerning administrative acts. Article 15 – 'Acts concerning urgent measures taken for the prevention and control of epidemics, epizootics and epiphytic diseases or in other cases of calamity, and any measures taken in exceptional situations of the same nature shall not be subject to review by the courts as to their legality. Article 16 – 'Requests concerning the assessment and deduction of taxes and duties, insurance premiums by operation of law as well as fines provided for in the tax laws shall be dealt with by the bodies provided for by the special law and under the conditions laid down therein'.

22 See *I. Iovănaș*, Dreptul administrativ și elemente ale științei administrației, Ed. Didactică și Pedagogică, 1977, Bucharest, p. 292. Art. 3 of Law no. 1/1967 provided: 'Before applying to the court for the annulment of the act, the injured party shall, in defence of his right, within 30 days from the date on which he was notified of the administrative act, apply to the issuing body, which is obliged to resolve the complaint within the time limit prescribed by law. If the aggrieved party is not satisfied with the solution given to his/her complaint, he/she may refer the matter to the court within 30 days from the date of communication of the solution. If the aggrieved party has also lodged a complaint with the higher administrative body, the 30-day period referred to in the preceding paragraph shall be calculated from the date on which that body communicates the decision on the complaint. The complaint may also be submitted to the court if the issuing administrative body or the higher hierarchical body fails to resolve the complaint within the time limit prescribed by law. In all cases, however, the application to the court may not be lodged later than 6 months from the date of communication of the administrative act the cancellation of which is sought'.

23 *I. Iovănaș*, op. cit., 1977, p. 290.

24 *A. Iorgovan*, op. cit., vol. II, 2005, p. 514.

## 11. REGULATION OF ADMINISTRATIVE LITIGATION BY LAW 29/1990

After the Revolution in 1989 and the return to democracy, the *Administrative Disputes Act No 29/1990* was adopted.[25]

According to Article 1 of this law, any natural or legal person, if he considers that his rights, recognised by law, have been infringed by an administrative act or by the unjustified refusal of an administrative authority to resolve his claim concerning a right recognised by law, may apply to the competent court for the annulment of the act, the recognition of the right claimed and compensation for the damage caused. The failure to reply to the petitioner within 30 days of the registration of the petition shall also be deemed to be an unjustified refusal to deal with the petitioner's request concerning a right recognised by law, unless the law provides for a different time limit.

Therefore, Law 29/1990 established ***subjective litigation of full jurisdiction***. For the first time, it was expressly provided that the court would decide on both material and **non-material** damages.

Another novelty introduced by Law No 29/1990 was the establishment of the administrative litigation sections of the Supreme Court of Justice and the courts.

The legal action was conditional on the exercise of the preliminary administrative appeal procedure by offering the possibility to the issuing administrative authority or hierarchically superior administrative authority to revoke or modify the allegedly illegal administrative act.

Law no. 29/1990 established the possibility for the court to oblige the head of the administrative authority who failed to send the required works within the time limit set by the court to pay the State a fine of 500 lei for each day of unjustified delay.

The legal action could also be brought personally against the official of the defendant's authority, who could be obliged to pay damages jointly and severally with the administrative authority.

The management acts (administrative contracts and private management. acts) made by the State as a legal person and for the administration of its patrimony, were exempted from the application of the Administrative Judicial Procedure Act, and could be challenged according to the ordinary procedure.[26]

25 M. Of. No 122 of 8 November 1990. For a doctrinal analysis of the provisions of this law see *A. Negoiță*, Lei contenciosului administrativ, in Dreptul nr. 6/1991, p. 3-13; *A. Negoiță*, Lei contenciosului administrativ - aspecte de drept procesual in Dreptul nr. 7-8/1991, p. 12-20; *D. Brezoianu*, Contenciosul administrativ, Ed. Metropol, București, 1995; *V.I. Prisăcaru*, op. cit., 1998, p. 163-248.

26 See *R.-N. Petrescu*, Criterii de distingere între actele administrative de autoritate și actele de gestiune ale statului - implicații pe planul contenciosului administrativ, in Dreptul nr. 10/1992, p. 43. See on foreign investments Popa Tache, Cristina Elena. 'About the Human Rights and Consumer Protection in the Digital Age of Digital Services Act 2022 or What Aspects Interested Investors Should Pay Attention To.' International Investment Law Journal 3, no. 2 (July 2023): 121–132.

## 12. THE REGULATION OF ADMINISTRATIVE CONTENTI CONTENTIOUS PROCEEDINGS BY THE 1991 CONSTITUTION AND THE 2003 CONSTITUTIONAL AMENDMENTS

**The 1991 Constitution**[27] established in Article 48 para. (1) established the possibility for a person whose right has been infringed by a public authority through an administrative act or through the failure to respond to a request within the legal time limit to obtain recognition of the right claimed, the annulment of the act and compensation for the damage, the conditions and limits for the exercise of this right being established, according to Art. 48 para. (2) by organic law. Article 72 para. (3) lit. k) of the 1991 Constitution (now Art. 73 – 3 – lit. k) of the Constitution revised in 2003) expressly provided that **the regulation of administrative contentious proceedings is made by organic law**.

Following **the revision of the Constitution in 2003**, some changes have been made to the institution of administrative litigation. Article 52 para. (1) of the Constitution revised in 2003 gave the possibility to bring an action in the administrative contenti contentious procedure not only to a person who has been injured in a right, but also to a person who has been injured in a legitimate interest. Article 126 para. (6) of the Constitution revised in 2003 restricted the scope of administrative acts exempted from judicial review (the non-reprimand clause) to acts concerning relations with Parliament and military acts of command. The revised Constitution also specified that the administrative courts had jurisdiction to hear the claims of persons injured by ordinances or, where appropriate, by provisions of ordinances declared unconstitutional.

The constitutional amendments made in 2003 to the institution of administrative litigation and the evolution of social realities have made it necessary to adopt a new law on administrative litigation. Thus, Law No 29/1990 was repealed by **Law No 554/2004 on Administrative Litigation**, which is still in force.

## 13. THE REGULATION OF ADMINISTRATIVE CONTENTIOUS ROCEEDINGS BY LAW NO 554/2004

By Law no. 554/2004, the legislator has created a more complex regulation of administrative litigation, adapted to the evolution of society. This law regulates, in addition to ***subjective litigation***, based on the violation of a *subjective right* or of a *legitimate private interest*, ***objective litigation***, based on the violation of a *legitimate public interest*. Law no. 554/2004 extends the scope of the persons to whom the law recognised the possibility of bringing an action in objective litigation from the prefect (covered by the 1991 Constitution) to the People's Advocate, the National Agency of Public Servants, the Public Ministry, specifying in Art. 1 para. (8) that this type of action is in principle open to any subject of public law.

Law no. 554/2004 recognised the possibility of bringing an action before the administrative contentious court also for a third party who has been injured in a right or legitimate interest by an administrative act of an individual nature addressed to another subject of law.

The Act expressly provides that administrative contracts, which are assimilated

27 M. Of. No 233 of 21 November 1991.

to administrative acts within the meaning of the Act, may also be challenged before the administrative court.

The law also regulates the plea of illegality, actions against government ordinances, the conditions for appealing administrative normative acts in administrative contenti contentious proceedings, the nature of procedural deadlines, the procedure for enforcement of final judgments in administrative contentious proceedings, as well as other aspects that will be analysed below.

The evolution of society has meant that over time this law has undergone numerous amendments made by the legislator[28] or imposed by decisions of the Constitutional Court, which have admitted exceptions of unconstitutionality. [29]

## 14. CONCLUSIONS

The evolution of administrative litigation in Romania has been characterised by a legal dynamic specific to the modern Romanian state in search of a balance between the authority of the administration and the rights of citizens. Beginning with the establishment of the Council of State by Law no. 167/1864 and continuing with the successive reforms of the first half of the 20th century, one can observe an alternation between centralising tendencies and those of opening towards effective jurisdictional control over administrative acts. The relevance of this development lies in the lessons it provides for the present. The Bădărău Law of 1905 represented a significant stage in the consolidation of subjective and annulment litigation, while the Toma Stelian Law of 1910 marked a regression by returning to the trial of cases by the ordinary courts without the possibility of annulment of acts.

28 Law no. 554/2004 was amended by O.U.G. no. 190/2005 for the implementation of some necessary measures in the process of European integration (M. Of. no. 1179 of 28 December 2005), Law no. 262/2007 for the amendment and completion of the Administrative Disputes Law no. 554/2004 (M. Of. no. 510 of 30 July 2007), O.U.G. no. 100/2007 for the amendment and completion of some normative acts in the field of justice (M. Of. no. 684 of 8 October 2007), Law no. 100/2008 for the amendment of para. (1) of Article 9 of the Administrative Litigation Law No 554/2004 (Official Gazette No. 375 of 16 May 2008), Law No 202/2010 on some measures to speed up the resolution of cases (Official Gazette No. 714 of 26 October 2010), Law No 299/2011 for the repeal of para. (2) of Article 21 of the Administrative Litigation Law No 554/2004 (M. Of. no. 916 of 22 December 2011 and deemed unconstitutional in its entirety by DCC no. 1039/2012), Law no. 76/2012 for the implementation of Law no. 134/2010 on the Code of Civil Procedure (M. Of. no. 365 of 30 May 2012), Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code (M. Of. no. 757 of 12 November 2012), Law no. 138/2014 for the amendment and completion of Law no. 134/2010 on the Code of Civil Procedure, as well as for amending and supplementing some related normative acts (Official Gazette no. 753 of 16 October 2014), Law no. 212/2018 for amending and supplementing the Administrative Litigation Law no. 554/2004 and other normative acts (Official Gazette no. 658 of 30 July 2018), Government Ordinance no. 57/2019 on the Administrative Code (Official Gazette no. 555 of 5 July 2019). For an analysis of the transformations undergone by the Administrative Contentious Proceedings Law no. 554/2004 under the legislative amendments made to it over time see *V. Vedinaș*, Tratat teoretic și practic de drept administrativ, vol. II, Ed. Universul Juridic, Bucharest, 2018, pp. 161–179.

29 The provisions of Law no. 554/2004 have been the subject of numerous exceptions of unconstitutionality, some of which have been admitted by the Constitutional Court (such are the decisions of admission of exceptions of unconstitutionality: DCC no. 189/2006, DCC no. 647/2006, DCC nr. 65/2007, DCC nr. 660/2007, DCC nr. 797/2007, DCC nr. 1609/2010, DCC nr. 302/2011, DCC nr. 1039/2012, DCC nr. 459/2014). For an analysis of the Constitutional Court's decisions on Law no. 554/2004 see *C.-S. Săraru*, Administrative Litigation Law no. 554/2004. Examen critic al Deciziilor Curții Constituționale. 2004–2014, Ed. C. H. Beck, București, 2015.

Subsequently, the Cantacuzino Law of 1912 brought a compromise solution in the form of the contenticios de constatation, which reflected a more moderate legal vision of the relationship between the administration and the courts.

The constitutionalisation of administrative litigation by Article 107 of the 1923 Constitution was a point of legal maturity, enshrining the idea of the protection of subjective rights against abuses by the administration, even if the establishment of separate administrative courts was still not allowed. It is a historical development that supports the comparative view of the world states and therefore presents both legislative changes and paradigm shifts in the Romanian legal mentality in relation to the rule of law and the control of administrative legality.

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## ISTORIJA UPRAVNOG SUDSKOG POSTUPKA U RUMUNIJI

***Apstrakt:***

Istorija upravnog sudskog postupka u Rumuniji označava vijugav razvoj odnosa između građanina i države, uporedo s razvojem modernih pravnih institucija. Počev od uspostavljanja Državnog saveta 1864. godine, nadahnutog francuskim modelom, i kroz promenljive pravne reforme s početka 20. veka, rumunsko upravno sudstvo prošlo je kroz značajne transformacije na više nivoa – od administrativne nadležnosti do sudske kontrole, od mehanizama poništavanja do prostih deklaracija nezakonitosti. Rad analizira uzastopne pravne režime koji su oblikovali upravno parničenje, sa vrhuncen u njegovom ustavnom priznanju u Ustavu iz 1923. godine. Kroz istraživanje ključnih zakonodavnih prekretnica, poput Badarau, Toma Stelian i Cantacuzino zakona, ova studija ukazuje kako na doktrinarne napetosti tako i na rastuću svest građana o svojim pravima pred administrativnom vlašću.

***Ključne reči:*** *Upravni spor, Državni savet, ustavno pravo, Zakon Badarau, Rumunija, Zakon Cantacuzino, Zakon Toma Stelian, upravna nadležnost, vladavina prava, javna uprava.*

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