

The Procedure in the Administrative Legal Department

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Abstract: Law doctrine raised the question if such reference stipulation may or may not affect the self-judicial identity of the institution it completes. As concerning us, we agree on professor Iorgovan's theory according to which "the reference to Civil Proceedings Code does not change the judicial characteristic of administrative solicitor's office and consequently of the procedure applicable. This institution remains one of the public law, administrative law precisely in which additional proceeding stipulations can be found."

1. Characteristics of applicable legal proceedings

The law from 1925, as well as the current stipulation, contained not only well-grounded legal proceedings, but also legal proceedings stipulations, their reasons being due to the specific characteristics of litigation, which triggers a special procedure to notice the courts, to give the verdict, which is mainly different from the regular civil proceedings. Neither this law, nor the current one, has covered all the proceeding aspects.

Questions appeared on the fact if common law stipulations may be applicable to administrative solicitor's office within the lack of contrary special stipulations. This was due to the fact that the inter-war law stipulated no solution for this situation and did not mention Civil Proceedings Code either, as the current regulation does. The answer was positive, both doctrine and jurisprudence agree that "the solicitor's office law completes with common law proceedings"

The current regulation stipulates (art. 18) that "the regulations of this law complete with Civil Proceedings Code stipulations". Otherwise, this is not a singular situation for the Romanian legislation and Law 47/1992 -Constitutional Court makes reference to the Civil Proceedings Code. Labour Code has similar stipulations, too.

Analyzing the proceeding aspects applicable to the solicitor's office, we will start from two categories of applicable proceeding stipulations:

- a. specific proceeding stipulations established by Law 554/2004;
- b. general proceeding stipulations, common to regular proceeding, which is derived from Civil Proceedings Code.

As we are concerned, we will analyze some aspects of specific proceeding stipulations, while the second category is treated by civil proceeding.

2. Litigious sides for the administrative solicitor's office

A prejudiced person-Law 29/1990 mentions „natural or conventional person" can hold the claimer status and Constitution (revised in 2003) uses the term "prejudiced person", while Law 554/2004 undertakes the constitutional term.

The jurisprudence of administrative solicitor's office courts has the same concept which we do not share and we think is against the free spirit of Constitution , the free access to justice granted by art. 21- Fundamental Law.

As regarding the holders of right to appeal in administrative solicitor's office, Law 554/2004 recognizes this quality to the following law categories:

- a. the claimer-the prejudiced person according to art. 1, art. 2(1) a) mentions "natural or conventional person or groups of conventional persons, holders of subjective rights or private legitimate interests prejudiced through administrative instruments.
- b. The prefect's office may appeal the court on the basis of art. 123 paragraph 5-Constitution and the stipulations of Law 69/1991 on local public administration republished in 1996
- c. Some public authorities, as: Romanian Ombudsman, National Agency of Civil Servants,
Ministry of Public who protect citizens' rights and liberties.

Thus, Romanian ombudsman, according to art.5-Constitution, must protect "people's right and liberties". Law 554/2004 art. 1(3) stresses "on the basis of a natural person claim if he considers that the illegal act or the abuse of power of the administrative authority can be removed only by justice, he can appeal the solicitor's office from the claimer's address."

The Ministry of Public has a similar duty according to art. 130, but also to "represent the general interests of society and the order rule."

The National Agency of Civil Servants may appeal within administrative solicitor's office against the stipulations of local public authorities which break the law on civil positions stipulated by L 188/1999 on Civil Servants Rules, republished.

It follows that these two public authorities may appeal the solicitor's office courts to accomplish their constitutional regulations.

The quality of accused belongs (according to art. 1 L554/2004), to a public authority, meaning one of the three established authorities of states or others (as stipulated in Constitution).

As we have already showed, administrative stipulations may be appeal against in court, no matter which authority issued them.

According to art 16 (1), the jury admits that that appeal should be made either personally against the public official who conceived the stipulation or who has not issued it, only if damages are claimed. The public official acts as independent side during the trial (accused) and may subpoena his superior who ordered him to sign the stipulation of which lawfulness is trialed.

3. Types of appeals within solicitor's office depending on the previous administrative proceeding

L 554/2004 stipulates the proceeding rule according to which the appeal within administrative solicitor's office is preceded by the previous administrative proceeding.

It follows that, depending on the conditions of this procedure, the appeals within the administrative solicitor's office are classified in:

- a. appeals which oblige the claimer to be a subject of previous administrative proceeding before
addressing the administrative solicitor's office court, these being called rule
- b. appeals which do not oblige to such proceedings, e.g. appeals which deal with jurisdictional
administrative stipulations, categories of appeals mentioned by special stipulations , eg L 69/1991, revised in 1996 and republished which prescribes that appealing against a government law regarding the dissolution of a local council does not require the

previous proceedings.

- c. Appeals in which an unlike previous proceeding is met, triggered not by the reason of protecting a subjective right, but by the condition of the appeal holder. It is about the prefect's office which in the original condition of law they were absolved by a previous proceeding, but when speaking of the current stipulations we can refer to what we call an unlike form of previous administrative proceeding.

Thus, art. 111(2) oblige the prefect's office to request the local and county administrative authorities ten days before to reconsider the illegal fact in order to change it or to abolish it, as necessary.

4. Types of appeals within administrative solicitor's office

The stipulations of L 554/2004, related to Constitution, lead us to the following classes of appeals, depending on the object of claim:

- a. appeals demanding the abolishment of the stipulation (partial or total)
- b. appeals demanding the abolishment of the stipulation, accompanied by claiming financial or moral damages
- c. appeals which determine the issue of administrative stipulation
- d. appeals which oblige the accused when issuing the stipulation accompanied by the claim of financial and/or moral damages.

5. Papers that must accompany the claim

According to L 554/2004, art. 12, 'The claimer shall attach to the appeal the copy of the administrative stipulations he appeals against, the response of the public authority consisting in the refusal to solve the request. When the claimer has received no answer to his request, he will submit the copy of the written claim, the date and record number from the public authority, as well as any written proof of accomplishing the previous proceeding.'

It follows that the papers which must be submitted differ depending on the type of administrative Judicial act-regular or assimilated.

- a. when appealing against a regular administrative act, the claim shall be accompanied by the prejudicing administrative act, of which total /partial abrogation is requested;
- b. when appealing against assimilated administrative act, at the same time with the claim (depending on whether the authority issued a response or not) the following shall be attached:

- response of the public authority on the refusal to solve the claim (if there is such response)
- the copy of the claim demanding the act (certified for conformity with the original) if there is no response from the authority;
- the document which proves the accomplishment of the previous administrative proceeding.

Depending on the situation this document may decide:

- if only the pardoning appeal has been accomplished and the issuing authority responded, its response will be submitted .If this authority has not responded, the copy of the claim proving this procedure will be submitted;
- if both the pardoning and the hierarchical appeals were accomplished, both solutions will be submitted (if they exist), otherwise the claims proving the accomplishment of the procedure will be submitted.
- the proof of paying the stamp tax

Within the administrative solicitor's office, the stamp tax is a slender one, stipulated by L147/1997, the reason of it consisting of" the legislator's intention on making the administrative solicitor's office appeals accessible for the citizen to protect his rights."

-additional papers which the claimer consider necessary in his favor.

Art. 12 L 554/2004 enumerates the papers needed to submit with the claim of action in court and art. 13 (2) tells about the binding of" the issuing public authority to inform the court immediately on the act in question together with the papers which supported the issue

of the act, as well as other papers needed".

6. The competent courts

This topic was discussed on previously together with the fundamental characteristics of the administrative solicitor's office regulation and the double degree of jurisdiction, the ground and the appeal.

We have already mentioned that this matter had been revised in comparison with the stipulation from L29/1990, which founded departments of administrative solicitor's office in county courts (and Bucharest) and in The High Court of Justice (art.17). L554/2004 art 10(1) stipulates that the litigations on the administrative acts or those issued by the county and local public authorities as well as those regarding local taxes, contributions, customs debts and additional expenses up to 5 billion lei (ROL) are solved by the tax courts, and those regarding taxes, contributions and additional expenses exceeding 5 billion lei (ROL) by the administrative and tax solicitor's office departments, if not stipulated by special law.

L 554/2004 art. 13(2) stipulate that the appeal against the verdicts issued by the tax courts is held in administrative solicitor's office department. Such departments were founded within appeals courts providing the stipulations of L 92/1992 on the court organization and L 59/1993 on revising the Civil Proceedings Code and additional stipulations.

Currently, the administrative solicitor's office litigations are solved by county the tax courts and in Bucharest, the administrative solicitor's office departments and tax departments of Territorial Courts and The High Court of Cassation and Justice.

6.1. The rationae materiae

According to the original L 29/1990, the administrative solicitor's office litigations were being held Within the court (ground) and The High court of justice (appeal).

Art. 6 L 29/1990 stipulated that the appeals made on the grounds of art. 1 is the court responsibility or Appeal court within the claimer's address area, according to the material competence stipulated by art. 2 and 3 from Civil Proceeding Code.

But, according to L 554/2004, art 10 (1) and 10 (2), the administrative solicitor's office litigations and held (ground) within the county tax courts and Bucharest and the appeal within the tax and administrative solicitor's office departments of the Territorial appeal courts and Bucharest or The High Court Of Cassation And Justice.

Art. 10 (3) from L 554/2004 stipulates that "the claimer may address the court from his address or the address of the accused. If the claimer chose the accused address, the exception of the lack of the territorial competency." Thus, the material competency stipulated by art. 2 and 3 -Civil Proceedings Code is ambiguous, though it is being currently used within administrative solicitor's office litigations.

Art. 2 -c from Civil Proceedings Code stipulates that "Courts deals chiefly with trials and claims regarding administrative solicitor's office, except for those belonging to the appeal courts" According to art.3, which is not appropriate and doctrine characterizes it as "critical", the material competence of appeal courts is the following:

1. During first trials, suits and claims regarding administrative solicitor's office dealing with acts within the competency of central public authorities, prefect's office, decentralized public service on county level, ministries and the other central bodies, county public authorities and Bucharest. As appeal courts, the appeals against verdicts issued by courts during first trial
2. As appeal courts, against stipulations issued by the courts, as well as other causes stipulated
3. in other matters stipulated by law as under their competence.

Analyzing these rules, as regarding the material competency of administrative solicitor's office courts, it follows that:

- ground trials may be done by the administrative solicitor's office departments of county courts
- for the acts issued by the public authorities up to county level, that is village and town

(except for Bucharest) as well as those belonging to appeal courts, in litigations on acts issued by county authorities-Bucharest and central authorities

- appeal trial may belong either to appeal courts or to The High Court of cassation and justice

6.2 Territorial competency (rationae loci)

As it follows from art. 6 above, the administrative solicitor's office departs from the rule of territorial competency in common law, where the trial belongs to the court in the area of the accused, mentioning the competency of court from the claimer's address

This is just a special solution for the claimer's benefit who can leave it whenever necessary. Thus, the idea of the alternative nature of territorial competency regarding the administrative solicitor's office, the claimer can choose between the court within his area or the area of the accused.

The important fact is that any of the two courts has been appealed, they cannot pass the notice to each other, but they are obliged to keep and develop the trial.

7. Proceedings before ground court and appeal court

Such stipulations can be found in many paragraphs of L 554/2004, Chapter II-Proceedings to solve the claims within the administrative solicitor's office, art 7-Previous proceedings, art. 12, art. 13-16, art. 18, art.20 and 21.

It is worth mentioning that law refers to the tax court as ground court and to administrative solicitor's office within Appeal court, as well as the high Court of cassation and justice, as appeal court.

We consequently understand that in the current situation, the departments of administrative solicitor's office at appeal court level lead to stipulations and the current system of administrative solicitor's office courts must be taken into consideration.

L 29/1990 Art. 6 paragraph 2 established the emergency nature of the trial developed by the ground courts-" courts develop appeals in case of emergency within open trials, as stipulated by law". The same emergency shade accompanies the verdict which has to be given in a maximum of 5 days since the verdict".L 554/2004 mentions this emergency case only in art. 14 (2) "the court will solve the suspended sentence claim in emergency, both sides notice".

Art. 14 (1) stipulates the suspension of the act by the court. Thus, the claimer may request and the court may decide the suspension of the act till the final decision, on solid grounds in order to prevent from serious damage. The claim for suspension is submitted together with the main appeal and the court shall judge it in emergency even without sides citation, the verdict being executory. There is no separate record to suspend the act both claims shall be recorded with the same registration number and the court will pronounce on the suspension claim first.

According to L 554/2004, art 13 when receiving the appeal the court shall proceed to both sides citation and shall request the act and all the papers/works which represent its grounds from the institution which issued it. The same procedure shall be applied in case of unjustified refusal to solve the claim.

The law agrees on the ability of the court to fine the accused with 10% of gross salary when delays the submission of the requested papers by the court.

The verdict shall be closely related to the claim and the court may agree entirely/partially with the appeal or may reject it entirely/ partially. In this respect, art 18 mentions: -partial/entire abolishment of the act; -to oblige to the issue of another document, certificate

-the court may decide on the papers and the administrative procedures which supported the act at the same time with one of the two solutions, only if they have been appeal against, -if the appeal has been approved, the court may decide both on material and moral damages claimed.

The appeal within the administrative solicitor's office may be developed by tax and

solicitor's office of Courts (if the tax court has pronounced) or by The High Court of cassation and Justice.

The appeal period is 15 days since notice and may be suspended. Art 20 (1).Art. 20 (2) stipulates the same emergency nature of appeal.

When the appeal is approved, the sentence is abolished and the litigation is trialed again, according to 20 (3) L 554/2004. This stipulation is helpless, it does not stipulates the possibility of cassation when it is considered that the court has not analyzed the matter in its essence This drawback was replaced by practice as courts apply the cassation when necessary.

8 Execution of decisions

The procedures can be found in art. 22-24 L554/2004, chapter III-execution procedures. According to art 22. after closing the action, the public authority is obliged to issue, finish, replace or change the administrative act and the execution of sentence shall be accomplished in the period provided or 30 days since decision

The head of the public authority can be fined with 20 % of gross salary per every day of unjustified delay, stipulated by art. 24. paragraph 3. If the decision of court is not followed , the accused will be imprisoned for a period between 6 months-3 years or shall be fined with an amount between 25,000,000-100,000,000 ROL.

The claimer shall be rewarded for damages for the delay. The court shall decide in emergency at claimer's request with no stamp tax, both sides cited.

Art. 26 allows the accused to appeal those who prevented him from not accomplishing the decision.

9. Law control of administrative acts (illegality exception of act)

It is a direct control, specific to the administrative solicitors' office, the lawfulness of both the regular administrative act and the assimilated administrative act is checked.

The illegality of the act can be mentioned on exception rule, in litigations which refer to other subject than what the administrative solicitor's office refers to.

The post-war doctrine defined the illegality of act as" a mean to defend during a trial based on other grounds than the currency of the administrative law document, one of the sides can defend invoking this drawback and demands that the document shall not be considered for the solution.

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