

## **ADMINISTRATIVE JUSTICE IN EUROPE - ROMANIA REPORT -**

- **INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)**

### **1. Main dates in the evolution of the review of administrative acts**

The separation principle has its origins in the Organic Rules (1831, 1832), and has been afterwards established by the Developing Statute of the Paris Convention (1864) as well as the provisions of the Constitutions from 1866, 1923, 1938. Started for the first time in Romania by the Law for founding the State Council from 11<sup>th</sup> of February 1864, the Law on Administrative Disputes had a remarkable historical evolution, with changes from one political regime to another, determined by the changes that have interfered in the history of our country.

The legislation established, initially, the system of the special administrative jurisdiction, then the system of the common competent courts and in matter of administrative disputes, with certain peculiarities in a period or another, but it also mentioned the judge administrator system. This explains why, in the administrative doctrine, in the substantiation of the notion administrative dispute there could not been made an abstraction concerning the aspects regarding the activity of the administrative body with jurisdictional character.

After the Revolution from December 1989, the enactment of some special bills (Law no. 29/1990 on Administrative Disputes, replaced by the Law no. 554/2004 on Administrative Disputes) had the role of making from the administrative dispute an effective way to control the legality of the activity of the public administration (executive authority) by the specialized judicial court – the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice, the Administrative and Tax Litigations Chambers of the Courts of Appeal and of the tribunals – courts that are part of the judicial system. Hereinafter the references to Law no.554/2004, as further amended, mainly through Law no.262/2007 are as to the “*Law on Administrative Disputes*”.

### **2. Purpose of the review of administrative acts**

From the perspective of the constitutional provisions regarding the judicial court control over the public administration on the whole, the judicial courts has in view to rigorously carry out and make sure that the laws that provide for and give expression to the public interest are properly applied.

According to the competences established by the organic law, the court for administrative disputes solve the litigations where at least one of the parties represents a public authority and the conflict had come out either by issuing or concluding an administrative act, or by not solving in legal time or by giving an unjustified refusal for solving a petition regarding a right or a legitimate interest.

The administrative disputes court, as the case may be, is competent to suspend, to annul totally or partially the administrative act, and/or to oblige the public authority to issue an administrative act, or to issue another one, to perform a certain administrative operation, under the sanction of a penalty applicable for each day of delay to the forced party, being able to decide over the material and moral damages caused, if these have been asked to.

In some cases the court is competent to pronounce itself in what concerns the legality of administrative operations that were the basis of issuing the act submitted to the judgment.

When the object of the action in administrative disputes consists in an administrative contract, in accordance with the state of fact, the court could dispose the annulment of this one, totally or partially, force the public authority to conclude the contract where the claimant has the right to impose one of the party to perform a certain duty, to supply the agreement of one party, when the public interest asks to.

In all the situations, the court can establish, at the request of the interested party, an execution term as well as a fine for non-execution.

### **3. Definition of an administrative authority**

The public administration, seen as a whole, presents itself as a systematized ensemble of structured bodies considering their material and territorial competence. The central public administration is formed by the Government, Ministries and other specialized bodies subordinated to the Government or the ministries, as well as the autonomous administrative authorities. The local public administration is formed of the authorities organized at the level of the territorial administrative unities (villages, cities, towns and districts).

### **4. Classification of administrative acts**

The Law on Administrative Disputes classifies the administrative acts in administrative acts and administrative-judicial acts.

The administrative act is the unilateral act of an individual or normative nature issued by a public authority under a regime of public power, in order to organize the execution of the law or the concrete execution of the law, which gives rise to, amends or extinguishes legal relations. According to the same law, shall be assimilated to administrative acts the contracts concluded by public authorities for the valuation of public property, the performance of works of public interest, the provision of public services, public procurement. Also, special laws may also provide for other categories of administrative contracts which are subject to the jurisdiction of the administrative courts.

The administrative-judicial act is the act issued by an administrative authority invested, by an organic law, with special administrative jurisdiction,

## **I - ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS**

### **A. COMPETENT BODIES**

#### **5. Non-judicial bodies competent to review administrative acts**

The review of the administrative acts is accomplished in one of the following forms:

- Within the preceding administrative procedure, by an administrative authority (the authority that issued the contested act or the superior hierarchical authority);

- Within the administrative jurisdiction, by an administrative authority that is empowered by law to solve the dispute according to a special procedure similar to judicial procedure and to issue a judicial administrative decision subject to legality control carried out by a court;

- Within the judicial procedure, by a court (the court of first instance, the tribunal, the court of appeal or the High Court of Cassation and Justice, as the case).

## **6. Organization of the court system and courts competent to hear disputes concerning documents of administration**

In Romania, there are no special administrative courts, but chambers are set up within the ordinary courts according to the nature of the files (criminal cases, civil cases, administrative and tax suit cases).

The Romanian Judiciary System is set up as follows:

**The High Court of Cassation and Justice** is the supreme court of justice, which has its headquarters in the Romanian capital, Bucharest.

Within the High Court of Cassation and Justice, there are 4 divisions (sections):

- The 5-Justice Panel
- The First Civil Chamber;
- The Second Civil Chamber;
- The Administrative and Tax Litigations Chamber;
- The Criminal Chamber.

### *The Panel of Five Judges*

According to the Civil Procedure Code and the Law No.317/2004 on the Superior Council of Magistracy, the Panels of Five Judges rule in second appeal filed against disciplinary action decisions of the chambers of the Superior Council of Magistracy.

*The Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice:*

According to the stipulations of Law no.304/2004 on Judicial Organization and of the Civil Procedure Code, the Administrative and Tax Litigation Chamber rules on: • second appeals filed against decisions by Courts of Appeal, as well as upon other decisions, in cases set by law; • motions for revision, in cases set by law; • action for annulment; • case transfer applications, for the grounds set by the Civil Procedure Code; • conflicts of jurisdiction, in cases set by law; • any other motions assigned by law under its jurisdiction.

### **Courts of Appeal**

In Romania there are 15 Courts of Appeal acting within the district of which several tribunals and specialized courts function. The Courts of Appeal are established by Law No.304/2004 on Judicial Organization.

According to Law No.304/2004 on Judicial Organization, within the Courts of

Appeal, there are chambers for:

- Civil causes;
- Criminal causes;
- Commercial causes;
- Juvenile and family causes;
- Administrative and tax causes;
- Causes concerning labour and social insurance conflicts, as well as marine and river divisions;
- Other matters, depending on the nature and number of causes.

The Administrative and Tax Litigations Chamber of the Court of Appeal rules:

- In first instance, the causes for which it has competence under the Law on Administrative Disputes or under other special laws. For example, according to the provisions of the Emergency Ordinance of the Government No.194/2002 on Foreigners Legal Regime, the Bucharest Court of Appeal has exclusive competence to rule on causes regarding the refusal to grant the right of long-term residence for foreigners or the measure of declaring a foreigner as undesirable;
- The second appeal field against the decisions of the tribunals pronounced in first instance.

## **Tribunals**

The tribunals are organized at the level of each county and of Bucharest municipality. All the courts of first instance in that county or, as the case may be, in Bucharest municipality shall be included in the district of each tribunal.

Within the tribunals there are chambers or specialized panels for civil causes, criminal causes, juvenile and family causes, administrative and tax litigations, labour and social insurance causes, causes concerning trading companies, insolvency, competition causes or other fields and, in relation to the nature and the number of causes, specialized panels for marine and river causes.

In the field of administrative and tax litigations, the specialized chamber of the tribunal rules the causes according to its jurisdiction established by the Law on Administrative Disputes or by other particular laws.

## **Courts of First Instance**

The courts of first instance are organized in some localities of every county and in the districts of the Bucharest municipality, established in the appendix of the Law No.304/2004 on Judicial Organization.

According to Civil Procedure Code, in the area of administrative disputes, the courts of first instance have a limited jurisdiction in the cases expressly provided by law, as follows: the appeals against judgments of the public administration authorities with jurisdiction and other bodies with such activity, in the cases provided by the law (e.g., the complaint filed against the decisions of county land commissions, the complaint against the termination of admission

or rejection of the application for registration in the land register; the complaint against the decision to grant subsidiary protection or to reject the asylum application); any other requests made by law under their jurisdiction (e.g., the complaints against the acts regarding misdemeanours to the law on road traffic).

As you can see, all courts in the judiciary system have competence to review administrative acts according to their own competence established by law.

## **B. RULES GOVERNING THE COMPETENT BODIES**

### **7. Origin of rules delimiting the competence of ordinary courts in the review of administrative documents**

The competence of the courts in the review of the administrative acts is guaranteed by the Constitution and is stipulated, in general, by the Civil Procedure Code and especially by the Law on Administrative Disputes, as well as by other special laws.

Depending on the circumstances of the case (particularities of the disputed act or the special provision of the law), the competence in the area of administrative disputes is shared between all courts in the judiciary system, as it was mentioned in the answer to point 6.

### **8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals**

The Romanian Constitution stipulates that the administrative jurisdictions are optional and free of charge.

The Constitution acknowledges as well the jurisdictional functions of the Superior Council of Magistracy which acts as a court, through all its chambers, only in the field of the disciplinary responsibility of the judges and the prosecutors according to the procedure established by its organic law. Its decisions approved and issued following such attributions can be appealed before the High Court of Cassation and Justice.

Through organic laws, certain administrative authorities have attributions of special administrative jurisdiction, for example the National Council of Solving the Appeals in the matter of public procurement.

The jurisdictional administrative procedure is preliminary to the judicial action and is based on law general principles, respectively that of contradictorily, the guarantee of the defence right and of the independence of the jurisdictional - administrative activity.

The issued jurisdictional - administrative acts are submitted to the judicial control of the competent court for administrative disputes.

## **C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES**

### **9. Internal organization of the ordinary courts competent to review administrative acts**

See the answer to point 6.

### **10. Internal organization of the administrative courts**

See the answer to point 6.

## **D. JUDGES**

### **11. Status of judges who review administrative documents**

The judges ruling upon the administrative court cases have the same statute and the same professional background as the other judges from the justice system, the judge function being incompatible with any other public or private functions except for the teaching function from the higher education and those of training within the National Institute of Magistracy and the National School of Trial Clerks.

### **12. Recruitment of judges in charge of review of administrative documents**

See answer from point 13 and 14.

### **13. Professional training of judges**

The judges' admission in the Magistracy is usually made by contest, based on and taking into consideration various criteria such as the professional competence, the aptitudes and the good reputation and is realized, as the initial professional training of the judges, within the National Institute of Magistracy, with the approval of the Superior Council of Magistracy.

National Institute of Magistracy organizes continuous training programs dedicated to the magistrates, judges and prosecutors in function from all courts.

### **14. Promotion of judges**

After graduating the National Institute of Magistracy, the judges can be appointed probationer judges only at the first level court, having a one year probation period, after which they must take a capacity examination. Upon such the promotion they are appointed, by the President of Romania, at the proposal of the Superior Council of Magistracy and they become irremovable.

The judges' promotion from one level court to another is made only by national contest organized at national level to the limit of the vacant jobs existing at tribunals and court of appeal. Judges that fulfil certain conditions can participate to these contests. The legal conditions are the quality of their professional activity and at least some years of length service, as follows: 5 years of length service as a judge or prosecutor for the promotion at the

tribunal; 6 years of length service as a judge or prosecutor for the promotion at the court of appeal. For the promotion at the High Court of Cassation and Justice there are requested 15 years of length service as a judge or prosecutor and 3 years of effective service as judge or prosecutor at the level of the court of appeal.

The appointment on the leading positions within the courts is made by contest or examination, for a period of 3 years, with the possibility of reinvestment only once, with the condition of fulfilling some length service conditions and professional competence.

### **15. Professional mobility of judges**

The judges are irremovable and can be moved by delegation, transfer or promotion to another instance, only with their consent.

Taking into consideration their personal options, with the condition to pass some exams or contests and to the limit of the vacant jobs, the judges can occupy other positions in magistracy, respectively that of attorney or assistant of judge at the High Court of Cassation and Justice.

## **E. ROLE OF THE COMPETENT BODIES**

### **16. Available kinds of recourse against administrative acts**

The person injured in a right acknowledged by law or in a legitimate interest, by an unilateral administrative act, unsatisfied by the answer received at the preliminary complaint or the fact that he haven't received an answer in the legal time period stipulated, can notify the competent administrative disputes court, to request for the annulment of the document, totally or partially, for the coverage of the damage caused and eventually, repairs for moral damages. The competent administrative disputes court also be requested to solve the complaints of the individuals that consider themselves injured by non receiving from the administrative body a solution in the legal time period or by receiving an unjustified refusal of solving a petition, as well as by the administration refuse to effectuate a certain necessary administrative operation for the exercise or for the protection of the right or of his legitimate interest.

The court which is in charge of solving claims having such an object, can, as the case indicates, annul, totally or partially, the administrative act, force the public authority to issue an administrative act, to issue a certificate or to effectuate an administrative operation, being able to pronounce concerning the legality of administrative operations that stood at the base of issuing the act submitted to trial, deciding over the material and moral damages caused, if these have been requested for.

When the object of the action in administrative disputes consists in an administrative contract, the court can annul it, totally or partially, or can force the public authority to conclude the contract, can impose to one of the parties the fulfilment of a certain obligation or, anyway, can supply the consent of one of the parties, when the public interest requires so.

### **17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EU Treaty**

Starting February 15, 2013, when came into force, the New Civil Procedure Code (Law No.134/2010) provided a new mechanism for the harmonization of the jurisprudence, namely “The Preliminary Ruling on Legal Issues”, which is similar to the preliminary ruling under the Article 267 (Ex Article 234) of the EU Treaty.

According to the mentioned mechanism, the court (High Court of Cassation and Justice, Court of Appeal or Court of First Instance) invested with the final settlement of a case may ask to the High Court of Cassation and Justice to solve in principle a matter of law of which depends the substantive settlement of the case. The matter of law has to be new, not to be subject of an appeal in the interest of the law settled or pending. The High Court of Cassation and Justice shall pronounce a decision. The decision shall be published in the Official Gazette of Romania and is mandatory for the applicant court from the date the decision was pronounced and for the other courts from the date of publication.

### **18. Advisory functions of the competent bodies**

According to the constitutional principle concerning the power separation within the state, respectively the separation among the judicial, legislative and executive power, the judges do not have advisory functions. The judge’s position is not compatible with any other public or private positions, except for the teaching positions within the high education system.

According to the law, at the end of each year, the judges from the High Court of Cassation and Justice, within the United Chambers, establish the situations where the improvement of the legislation is necessary and inform the minister of justice about the amendment recommendations.

The president of the High Court of Cassation and Justice can allow the judges to inform themselves, at the court headquarter, that the law has been carried out correctly, informing the High Court of Cassation and Justice about the case law, and to establish situations that justify recommendations of improving the legislation.

### **19. Organization of the judicial and advisory functions of the competent bodies**

See answer to point 18.

## **F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES**

### **20. Role of the supreme courts in ensuring the uniform application and interpretation of law**

The Romanian Constitution stipulates that the High Court of Cassation and Justice ensure the interpretation and the application of the law by the other judicial courts, according to its competence.

In order to accomplish this goal of the High Court of Cassation and Justice, the Civil Procedure Code provides two mechanisms for the harmonization of the jurisprudence, namely:

**A.** The appeal in the interest of the law

In order to ensure the unitary interpretation and application of the law by all courts, the General Prosecutor, ex officio or at the request of the Ministry of Justice, the High Court of Cassation and Justice, the leaders of the Courts of Appeal and the Ombudsman have the duty to ask the High Court of Cassation and Justice to rule on the issues of law that have been resolved differently by the courts.

The High Court of Cassation and Justice shall pronounce a decision in the interest of the law that has no effect on the judgments under examination, neither on the situation of the parties in those proceedings. The decision shall be published in the Official Gazette of Romania and is mandatory for the courts from the date of publication.

#### **B. Preliminary ruling on legal issues**

The court (High Court of Cassation and Justice, Court of Appeal or Court of First Instance) invested with the final settlement of a case may ask to the High Court of Cassation and Justice to solve in principle a matter of law of which depends the substantive settlement of the case. The matter of law has to be new, not to be subject of an appeal in the interest of the law settled or pending.

The High Court of Cassation and Justice shall pronounce a decision.

The decision shall be published in the Official Gazette of Romania and is mandatory for the applicant court from the date the decision was pronounced and for the other courts from the date of publication.

On the other hand, it is worth mentioning that the Law on Judicial Organization provides that if a chamber of the High Court of Cassation and Justice considers necessary to revise its own case law, it interrupts the trial and inform the United Chambers of the High Court of Cassation and Justice that shall rule upon that with the legal summon of the parties from the file that trial was interrupted and shall be resumed after the pronouncement of the United Chambers over the intimation regarding the changing of the case law. In the presence of the above two mentioned mechanisms for the harmonization of the case-law, it is necessary to say that this last mentioned mechanism is not used in practice.

## **II - JUDICIAL REVIEW OF ADMINISTRATIVE ACTS**

### **A. ACCESS TO JUSTICE**

#### **21. Preconditions of access to the courts**

According to the Romanian law, before applying to the competent administrative disputes court, the party that considers itself injured regarding a right or a legitimate interest by an administrative act, has to request to the issuing authority the withdrawal of respective act, totally or partially, within 30 days from the date of the act communication. Under certain circumstances and only in case of the unilateral administrative acts, the preliminary complaint may be filed even after this time period but within no more than 6 months from the issuing date of the act. The complaint may be as well applied to the superior body in the administrative hierarchical order, if such exists. These provisions are applicable also in the case when the special law stipulates jurisdictional administrative procedure but the party has not chosen this.

Regarding the cases whose object consists in administrative contracts, the preliminary complaint signifies the conciliation procedure applied in the case of commercial disputes, therefore the dispositions from the Civil Procedure Code that regulates the respective procedure are adequately applied.

According to the law, the preliminary procedure in case of the actions introduced by the prefect, the Ombudsman, the National Agency for Civil Servants or by those who are in charge of the petitions of the injured persons by decrees or dispositions generated by decrees and also in the case of invoking an illegality exception are not compulsory.

At the same time the case law has established that the preliminary proceeding is imposed by the law only in case of the actions regarding the annulment of an administrative act and not in the case of the actions founded on the administration silence or on the unjustified refusal of solving the petition, when the action might be brought directly before the administrative disputes court.

## **22. Right to bring a case before the court**

The law on administrative disputes stipulates that any person/individual who considers itself injured on one of its rights or on a legitimate interest, by an administrative act or by not solving a petition, in a legal period of time, can ask the competent court of administrative disputes to annul the respective act, to recognize the right claimed or the legitimate interest and therefore to also repair the damage that caused to him. The legitimate interest can be private and public as well. The person injured by an administrative act with individual character, addressed to another person can also apply to the court of administrative disputes under same conditions.

Under the conditions stipulated in the law of administrative disputes, the actions can be introduced also by the Public Ministry, the prefect, the Ombudsman, the National Agency for Civil Servants or by any other injured person regarding a right or when a legitimate interest was injured.

## **23. Admissibility conditions**

According to the law, the injured person, defined as being any individual or a legal entity or group of individuals, holders of some subjective rights or private legitimate interests, must prove either an injured right, for instance a right of those fundamental rights stipulated in the Constitution or in the law, or to have a legitimate interest. The legitimate interest that may be public or private, signifies the possibility of requiring certain behaviour in the consideration of realizing a future and predictable subjective right, prefigured.

## **24. Time limits to apply to the courts**

The court claims by which the annulment of an individual administrative act is requested or the recognition of a right required and the coverage of the damages caused can be registered with the competent court within 6 months, term that starts running from different moments, as follows: (i) from the date of receiving the answer to the preliminary complaint, or as the case indicates, the date when the refusal of solving the petition, considered unjustified, was communicated, or (ii) from the date when the legal term of solving the petition without exceeding the limit of 1 year expired, or (iii) from the date of finishing the official report of closing the conciliation procedure regarding administrative contracts. Regarding the unilateral

administrative act, the law stipulates that in case of justified reasons, the claim can be registered after the 6 months term, but not later than 1 year from the issuing date of the administrative act.

## **25. Administrative acts excluded from judicial review**

In the present Law on Administrative Disputes, it is stipulated that the administrative documents of the public authorities regarding their relation with the Parliament, the command acts with military character, as well as the administrative documents where for their modification or abrogation is stipulated another judicial proceeding by organic law, are not submitted to the control of the administrative court. At the same time it is strictly stipulated that the administrative documents issued for the appliance of the regime of state of siege or of that of emergency, those that concern the defence and national security or those issued for the re-establishment of the public order, as well as for the elimination of the consequences of the natural calamities, infectious diseases and epizooties can be challenged in front of the administrative court only for the power abuse.

## **26. Screening procedures**

The actual legislation does not provide for any screening procedure of the appeals. All the petitions of appeal registered are distributed on a random basis with the use of specific computer programme, to the trial panels organized at the level of the courts.

## **27. Form of application**

According to the Civil Procedure Code which completes the provisions of the Law on Administrative Disputes, the court claim (action), drawn up in written, in Romanian language, must contain the name and the residence or the headquarters of the parties, for the legal entities is necessary to be indicated the registration number at the companies register or the entry number from the legal entities register, the fiscal code and the bank account, the name and the position of that who represents the party in the process, the object of the petition and its value, the real reasons on which the claims are based and the evidence on which relies each claim, and the certified copies of the convincing documents and of course the signature will be attached at the claim.

There are no compulsory provisions with regard to the form of the claim that can be hand written or typed; the legal existence already mentioned aiming the signature of the court claim either by the party himself or by mandatory.

## **28. Possibility of bringing proceedings via information technologies**

Under the current legal proceedings, it is not possible to register a court claim sent via internet, in a dematerialized form.

## **29. Court fees**

The actions formulated on the grounds of the Law on Administrative Disputes are

submitted to the stamp duty specific to the actions from the common civil law, and the stamp duty must be paid in advance. The legal actions that have more claims with different finality are taxed separately for each of these, considering their nature, except the cases when the law stipulates differently. If the tax has not been paid in the period of time specified by the law, the concerned party which usually is the claimant is informed about the payment of the amount owed until the hearing date established. Failure to comply with such duty is penalized with the annulment of the action or the petition. Based on special regulations or on the grounds of some special rules, some public authorities and/ or individuals are exempted from the stamp duties.

### **30. Compulsory representation**

In the causes of administrative disputes the defence or the assistance of the parties by a lawyer is not compulsory in none of the trial stages. The parties can present themselves unassisted in front of the court, they can write themselves the petitions and they can present their oral conclusions, without being compulsory the assistance or the representation of a counsel for the defence.

### **31. Legal aid**

Upon the request of the persons who can not afford the expenses of a trial, the court can grant free judicial assistance, that means exemptions, reductions, spread out payments or reprieves for the payment of the judicial stamp duties and the bails as well as the defence or the free assistance of a lawyer appointed by the lawyer bar.

The free judicial assistance may be may be required, totally or partially, whenever during the trial.

### **32. Fine for abusive or unjustified applications**

The Law on the administrative disputes does not stipulate such penalties. Under the conditions stipulated in the Civil Procedure Code the trial expenses are granted, only on request, to the party that obtained a favourable decision gained the day, these being covered by the opposite party that lost the case. The grounds of granting these expenses that might be solicited also by means of a separate action are based on the concept of trial fault.

## **B. MAIN TRIAL**

### **33. Fundamental principles of the main trial**

The fundamental principles applicable on solving the administrative litigations are not mentioned in the content of the Law on Administrative Disputes, being stipulated by the Constitution, by the Law regarding the judicial organization and by the Civil Procedure Code, the provisions of these ones being attached to the special administrative law, to the extent these are compatible with the character of the power reports that characterize the administrative field. The compatibility of the appliance of the norms of civil procedure is established by the court, when solving a case.

According to the Constitution, to the Civil Procedure Code and to the Law on Judicial Organization, the civil process is governed by the following fundamental principles: the right to a fair trial, in an optimal and predictable term; the principle of legality; the principle of the judge independence; the principle of equality of the parties in front of the justice; the principle of the free access to the justice; the principle of contradiction; the principle of the right to defence; the principle of the active role of the judge; the principle of availability; the principle of the publicity and of the oral debates.

These principles have their source in the intern law which has implemented the requirements of the European law, generally, as well as those of the article 6 paragraph 1 from the European Convention of the Human Rights.

As a special rule, the Law on Administrative Disputes stipulates that the claims addressed to the courts are judged urgently in public session.

The legal actions addressed to the court, whether it is a principal court claim or an incidental one, have to be presented in a written form and to contain the details of the court, the name, the address or the residence of the parties or, as the case may be, of the company or of the administrative authority and their headquarters and those of the representing person, too, the object of the petition and the signature.

### **34. Judicial impartiality**

The impartiality of the judge is ensured by norms contained in the Civil Procedure Code, and in their appliance the judge who knows that against him exists one of the stipulated challenge reasons, has the duty to notify his superior and to refrain from judging the case.

If the judge does not refrain voluntarily, the interested party may file a challenge proposal, such being done orally or in writing for one or for each judge sitting in the panel, before the beginning of any debates or, when the reasons for challenging appeared after the beginning of the debates, at the time when the challenge grounds are known by the person who makes the request. The judge against whom the challenge is proposed may declare afterwards that he abstains himself.

The challenge request for one or more of the judges is decided by another panel from the same court, in the council room, in absence of the parties but in presence and with the hearing of the challenged judge, who can not be part of the panel organization.

During the trial of the challenge petition no procedural measure can be taken.

The reasons for which a judge may refrain himself or be challenged are strictly stipulated by the Civil Procedure Code. For example, the judge who pronounced a decision in a certain case, cannot take part at the trial of the same case in review or in appeal, and nor in case of retrial after annulling. Also, as an example, we indicate that the person who was a witness, an expert or an arbiter of the same case can not take part in the trial as a judge. And, among other reasons shown, the judge can be challenged when he, his husband, their ancestors or the descendants, have an interest in respective case or when is the husband, the relative or relation, until the forth grade inclusively, with one of the parties involved in the litigation assigned to him.

### **35. Possibility to rely on the new legal arguments in the course of proceedings**

After submitting the legal action, the claimant is entitled to further complete or to modify it only until the first hearing date for which all parties concerned were legally summoned. After that procedural moment, only with the deliberate or implicit agreement of the defendant the modification of the legal action is permitted. In order for the parties not to be deprived of any degree of jurisdiction, the claimant can modify his action only in front of the first court, not in the appeal stages, when also the position of the parties cannot longer be changed, nor the legal grounds or the object of the legal action.

There are certain exemptions from this rule, for example if reasons of public order are invoked or other similar procedural exceptions, that can be raised by any of the parties, or by the prosecutor, or by the court *ex officio*, in any moment of the court case even directly pending the appeal stages.

### **36. Persons allowed to intervene during the main hearing**

According to the Civil Procedure Code, the participation of a third party within a pending trial between other persons can be realized by a voluntary or by a forced intervention.

The voluntary intervention can be to the “own interest” (also called main intervention) when the person who intervenes alleges his own right, or to the interest of one of the parties (also called subsidiary intervention), when it sustains only the defence of respective party.

The forced intervention is made at the initiative of any of the parties and it is determined by the interest of these of bring into trial third persons, from outside the trial until that moment.

As an application of the rule contained in the Civil Procedure Code, the Law on Administrative Disputes stipulates that the court of administrative disputes can summon on request, the social authorities interested into the object of the claim or it may bring to the debates of the parties, *ex officio*, the necessity of summoning and introducing into the proceedings other individuals or authorities, as well.

### **37. Existence and role of the representative of the State (“ministère public”) in administrative cases**

The Law on Administrative Disputes stipulates that the Public Ministry, when as a consequence of exercising the attributions stipulated by its organic law, appreciates that violation of the rights, of the liberty and of the legitimate interest of the individuals and/or legal entities is due to the existence of some individual unilateral administrative acts, issued by the public authorities with power abuse, with the preliminary agreement of these, it shall notify the administrative court from the residence of the individual or from the headquarters of the legal entity injured, the petitioner acquiring the position of claimant and shall be summoned in this capacity.

Also, when the Public Ministry appreciates that by issuing a normative administrative act, the public legitimate interest is injured; it shall notify the competent court of administrative disputes from the headquarters of the issuing public authority.

The representing person of the Public Ministry can participate in courts and present its conclusions in the administrative disputes, in any stage of the trial; whenever it appreciates it is necessary for defending the right order, the rights and the liberties of the citizens.

According to the Law on Administrative Disputes when it is about a major public interest, that could disturb severely the functioning of the administrative public service, the suspending request of the normative administrative act can be introduced also by the Public Ministry, *ex officio* or upon request.

These rules are the appliance of the general rule regarding the prosecutor's role in the civil trial stipulated by the Civil Procedure Code according to which the Public Ministry could start the civil action whenever it is necessary for defending the rights and the legitimate interests of minors, of the people under interdiction and of the disappeared people, as well as in other cases strictly stipulated by law. The prosecutor can draw conclusions in any civil court case, in any stage of this, if he appreciates that it is necessary for defending the right order, the rights and the liberties of the citizens and, under the law conditions it can also file an appeal against any decision.

When expressly stipulated by the law, it is compulsory for the prosecutor to participate and present its oral conclusions. One of these cases is, for example, the one stipulated by the Emergency Decree of the Government No. 194/2002 concerning the regime of the foreigners in Romania according to which in all the complaints and the petitions addressed to the courts on the grounds of this normative act, where the Romanian office for immigrations is part of, the prosecutor's participation is mandatory.

### **38. Existence of an institution or a person with a role analogous to the French "Commissaire du gouvernement"**

There are no such institutions.

### **39. Termination of court proceedings before the final judgment**

The court case could terminate before a final judgment is pronounced in the following cases:

- The claimant gives up to its claim or to the subjective right based on which the claim was filed;
- Total or partial acceptance by the defendant of the petitioner's requirements;
- The claim becomes out-of-date; that is a procedural penalty which determines the trial's ending in the stage that it is following its suspension for more than one year, due to the party's fault.

### **40. Role of the court registry in serving procedural acts**

Under the conditions of the Civil Procedure Code, the communication of the court claims ( petitions ) and of all the procedural acts is made internally, through the procedural agents of the court or through any of its employees, as well as through agents or employees of other courts, in the districts corresponding to the addressee of the procedural act. If the communication can not be done this way, then it shall be done by post, by registered letter with proof of receiving or by any other ways that assures the transmission of the document and the confirmation of receiving it.

#### **41. Duty to provide evidence**

In the administrative disputes as well as in the civil disputes, the rule is that the duty to provide evidence belongs to the claimant, since he is the one who initiates the proceedings before the competent court. There are some exceptions from this rule, cases when the defendant is the first who has the duty to provide evidence, for example the legal presumption that passes on the duty of providing evidence from the claimant to the defendant.

The Civil Procedure Code establishes that the judge has an active role, according to which he has the duty to use all the legal ways in preventing any mistakes regarding determination of the truth, based on establishing the facts and by the correct appliance of the law, with the purpose of pronouncing a substantial and a legal decision. The judges can, on the basis of this principle, take and order any and all evidences they consider necessary, even if the parties may not agree.

According to the Law on Administrative Disputes, when receiving the claim, the court may, together with the summon of the parties, ask the authority whose act is challenged, to immediately communicate respective act, together will all the documentation that stood at the base of its issuance, as well as other necessary papers for the case. The faculty of asking the above mentioned documents becomes an obligation for the court, in case the claimant is a third party or when the claim is introduced by the Ombudsman or by the Public Ministry.

#### **42. Form of the hearing**

The Romanian law system provides the publicity principle of the trial. This means that the debates, in any court case, except for the deliberation, takes place in presence of the parties and in front of any other persons from outside who wants to assist at the debates.

There are also exceptions from such rule, the court being able to decide the debates to take place in secret session, in case the public debates would injure the public order or the morality or the parties. In this case, the parties can be accompanied, besides their judges, by maximum two persons designated by them. Whether the trial takes place in public session or in the council room, the decision is always pronounced in public session under the nullity sanction.

The debates stage starts when the court clerk presents the report of the case, showing briefly the object and the stage of the trial, the way it was accomplished the procedure of summon the people called for trial and if there were accomplished the other measures ordered by the court at the previous hearings. At the High Court of Cassation and Justice the report of the case is presented by the assistant of the judge.

The president firstly give permission to speak to the claimant and then to the defendant, in order to sustain their arguments and their opinions. If necessary, the president of the panel can give permission to the parties or to their lawyers to speak several times, and can also interfere. The other members of the panel can ask questions to the witnesses or to the experts only by asking the president for permission, who may allow these questions to be addressed directly. If the prosecutor participates at the trial he will talk last, except for the case he started the trial, situation in which he will talk first.

The Romanian procedural law recognizes the mixed system of debating a case in front of the trial court, system which combines the oral procedure with the written procedure. This way, according to the Civil Procedure Code, the causes are debated orally, if the law does not

dispose differently. If one of the parties or the witness does not understand Romanian language certified translator or a reliable person shall be used. These rules apply to the experts as well.

The oral arguments of the parties and of other participants at the trial are recorded in writing in conclusions, testimonies of the witnesses, minutes. The court may ask the parties to also submit written conclusions or a written resume of their oral closing arguments.

### **43. Judicial deliberation**

According to the Civil Procedure Code, after finishing the debates, the judges shall deliberate in secret, either within a session or in the council room.

Only the members of the judge panel shall participate to the deliberations.

In the composition of the panel for deciding, in first instance, the causes concerning the labour conflicts and social insurance are comprised, besides judges, 2 judicial assistants who participate at the deliberations having just an advisory vote.

The assistants of the judge who participate at the hearing sessions at the High Court of Cassation and Justice also take part at the deliberations having just an advisory vote.

Even when the prosecutor participates at the hearing sessions, he can not be present at the deliberations.

## **C. JUDGEMENT**

### **44. Grounds for the judgment**

The judges have the duty to establish, correctly and in agreement with the parties' will, the facts submitted to trial, to identify the legal norms applicable to the judicial relationship between the parties and to apply them according to the law, by pronouncing a firm and legal decision.

The decision is pronounced according to the law and contains at least the following mentions: (i) the trial court which pronounced it and the name of the judges who participated at the trial; (ii) the identification data of the parties and of their representatives; (iii) the object of the legal claim and briefly, its supporting arguments ; (iv) the strong reasons that convinced the court, and those for which the claims of the parties were not taken into consideration; (v) the solution; (vi) the appeal way that be filed against it ; (vii) the period of time in which the appeal can be exercised; (viii) the mention that the pronouncement was made in public session; (ix) the signatures of the judges and of the clerk.

The motivation of the decision has to be pertinent, complete, concrete, convincing and accessible. The real reasons that a decision must contain represents the elements of the judicial syllogism, the pre-requisites that lead to the conviction of the trial court and the approval of the solution.

### **45. Applicable national and international legal norms**

The legality control of the administrative act is realized by the court of administrative

disputes in accordance with the legal provisions on the base of which the act was issued. The reference to the legal provisions is made considering the hierarchy of the judicial power of the laws: constitutional laws, organic laws, ordinary laws, judicial decrees and Governmental decrees. The legality control is realized also by references made to the treaties to which Romania is a signatory party. According to the Constitution these treaties are part of the intern law. Regarding the fundamental human rights, the constitutional provisions and implicitly, those from the national legislation, are interpreted and are applied in agreement with the Universal Declaration of Human Rights, with the agreements and all the other international treaties to which Romania is part of. In the case when there are some inconsistencies between the agreements and the treaties regarding the fundamental human rights to which Romania is part of and the national laws, the international treaties have priority, except for the case when the Constitution or the national laws contain more favourable provisions.

The legality control of the administrative act is also realized by reference to the principles stipulated in the European Convention of Human Rights and to the practice of European Court of Human Rights.

#### **46. Criteria and methods of judicial review**

In Romania, the legal system institutes a legal jurisdiction control within which the trial court is competent to realize a complete jurisdiction, meaning that it can dispose the annulment or the modification of the administrative act and also the recognition of the right claimed or the legitimate interest and the coverage of the damage caused to the injured person.

Considering the legality principle which governs the entire activity of the public administration, the competent administrative court realizes the legality control of the act submitted to verification and challenged in court in comparison with the governmental decrees with superior judicial power on the basis of which the act was issued. The competent administrative court can not pronounce with regard to the opportunity of issuance of an administrative act as long as it notes that this was issued by the public authorities that have such competence and with full observance of the legal provisions having superior judicial power. Within the control exercised, the competent administrative court verifies: if the claimant that file the court action was injured in a right or legitimate interest by an administrative act issued by the public authority summoned for trial or by not solving in a legal period of time or by the unjustified refusal of solving the petition applied to the public authority; when issuing the administrative act the public authority abusively used the power granted by law and it exercised the right of appreciation with the violation of the rights and the fundamental liberties stipulated by the Constitution or by the law.

The administrative court is competent to pronounce with regard to the legality of the acts or of the administrative operations that were at the base of issuance of the act submitted to trial.

According to the principle of power separation within the state, the court of administrative disputes can not pronounce a decision that would represent and would be a substitute for an administrative act.

#### **47. Distribution of legal costs**

With regard to the administrative disputes, similarly to the rule applicable in civil cases, the expenses caused by the initiation of the case are borne by the party who lost.

Specific to the administrative disputes is the fact that in case of not respecting the execution term of the final decision pronounced by the trial court, a fine of 20 per cent from the minimum gross wage per day of delay shall be applied to the leader of the public authority or, as the case may be, to the person in charge and the claimant has the right to receive reimbursement for any delay.

#### **48. Composition of the court (single judge or a panel)**

In first instance, the administrative disputes are judged by a panel of a single judge.

The appeals against the decisions pronounced in first instance are judged by a panel of three judges.

#### **49. Dissenting opinions**

The Civil Procedure Code regulates the institution of the dissenting (separate) opinion of the judge in minority. The dissenting (separate) opinion is registered in final part of the decision, after the presentation of the majority opinion that sustains the pronounced solution. The majority opinion is motivated and signed only by the judges who agree with it, and the separate opinion is motivated and signed only by the judge in minority.

#### **50. Public pronouncement and notification of the judgment**

The article 28 from the Law on Administrative Disputes stipulated that its provisions are completed with those of the Civil Procedure Code as far as these last are compatible with the specific nature of the authority reports within the public authorities, on the one side, and the people injured in their rights or their legitimate interests, on the other side, as well as with the procedure regulated by such specific law.

Regarding the pronouncement of the decision, the Civil Procedure Code stipulates that the decisions are pronounced by the president of the panel, in public session, even when the parties are absent. In justified cases, if the court does not take the decision immediately, its adjudication may be postponed for a period not exceeding 15 days. Parties are entitled to submit written conclusions within this time period. The pronouncement refers strictly to the solution in short of the decision.

According to the Civil Procedure Code the decisions are notified to the parties *ex officio*.

### **D. EFFECTS AND EXECUTION OF JUDGMENT**

#### **51. Authority of the judgment. Res judicata, stare decisis**

In the case of administrative acts of an individual nature, the judgment shall take effect only in respect of the parties to the litigation in which it was pronounced, according to the principle of Roman law *res inter alios acta aliis neque nocere neque prodesse potest*. It is

worth mentioning that the Romanian legal system does not regulate the judicial precedent, in the sense that this institution functions in the Anglo-Saxon law system.

In the case of administrative acts of a normative nature, the final judgment, that totally or partially annulled the act, is generally binding, its authority is not limited to the parties in the dispute and has power only for the future. The final judgment shall be published in the Official Journal of Romania (if concerning an administrative act issued by a central public authority, such as Government or ministries), or, as the case may be, in the official journal of the counties or of the municipality of Bucharest (if concerning an administrative act issued by a local authority, such as county or municipality council). If there is opened a new litigation regarding the annulment of an administrative normative act, that was previously annulled by a final court's decision, the court shall reject such a request as no longer having a legal object, as a consequence of the previous annulment of the act.

### **52. Powers of the court in limiting the effects of judgment in time**

In the case of administrative acts of an individual nature, following the decision to annul the act, the court may order, at the request of the injured party, the restoration of the situation prior to the issuance of the act, as well as the indemnification for the damage caused by issuing the illegal act. In other words, the judgment could produce effects from the date of the illegal act or from other past moment established by the court considering the particularities of the case.

In the case of administrative acts of a normative nature, the judgment to annul the act produces effects only for the future (*ex nunc*), is general binding and is not limited to the parties of the dispute.

### **53. Right to the execution of judgment**

The final decisions, by which the actions were rejected and were granted trial expenses, are invested with an execution formula and are enforced, according to the common civil procedure.

If due to the admission of the action, the public authority is obliged to annul, to replace or to modify the administrative act, to issue another one or to effectuate certain administrative operations, the execution of the final decision will be made within the term stipulated in the content of this, and if the term is not specified, within no more than 30 days from the date when the final decision was pronounced.

In case that the execution term of the decision is not observed, a fine of 20 per cent from the minimum gross wage per day of delay is applied to the leader of the public authority or, as the case indicated, to the person in charge and the petitioner has the right to receive reimbursement for delay. The offence and the reimbursement are applied, or are granted by the execution court on the petitioner request.

### **54. Recent efforts to reduce the length of court proceedings**

The entire legislation in matter of administrative disputes is submitted to the principle of solving such litigations within a reasonable time period.

The measures stipulated by the legislation in order to reduce the length of court proceedings specific to the administrative disputes consist in:

- Apart from the common procedures, the rule in matter of administrative disputes is that the court claims are judged with urgency, rule stipulated by the Law on Administrative Disputes;
- The final decision pronounced by the court is enforceable according to the law (*ope legis*), and the execution will be made within the term stipulated in the content of this and if the term is not specified, in no more than 30 days from the date when the final decision was pronounced, under the punishment of the fine applied to the leader of the public authority or, as the case indicated, to the person in charge.

## **E. REMEDIES**

### **55. Sharing out of competencies between the lower courts and the supreme courts**

See the answer to point 6.

In principle, the Law on Administrative Disputes establishes the competence of the courts according to the central or local rank of the administrative authority which issued the contested act and, in the case of tax disputes, according to the amount of the tax.

Thus, the tribunal is competent to review in first instance the administrative acts issued by local administrative authorities and also the administrative acts concerning taxes and duties, contributions, customs debts and their accessories up to 1,000,000 lei (about 220.000 euro). The tribunal's decision issued in first instance may be appealed in front of the court of appeal that pronounces a definitive decision.

The court of appeal is competent to review in first instance the administrative acts issued by local administrative authorities and also the administrative acts concerning taxes and duties, contributions, customs debts and their accessories higher than 1,000,000 lei (about 220.000 euro). The decision of the court of appeal issued in first instance may be appealed in front of the High Court of Cassation and Justice that pronounces a definitive decision.

By way of exception, in certain special situations, the competent court is established by law, irrespective of the competence-sharing criteria mentioned above. For example, all requests regarding administrative acts issued by central public authorities concerning amounts representing the grant from the European Union, regardless of value, are judged in first instance by the courts of appeal and the appeal is judged by the High Court of Cassation and Justice. Also, the courts of first instance have jurisdiction in administrative disputes exclusively on misdemeanours to the law on road traffic.

The special laws establish a special competence for some kind of administrative disputes, as follow:

- In case of the litigations regarding the contravention act, the competence in first instance belongs to the first level court, and the appeal is judged by the tribunal (The Government Ordinance no. 2/2001 on the legal regime of contraventions);
- The decisions of the Superior Council of Magistracy regarding the professional career and the rights of judges and prosecutors can be directly appealed before the

Administrative Chamber of the High Court of Cassation and Justice;

- The High Court of Cassation and Justice is competent to judge in first instance the appeal against the decision of the Board of Directors of the National Bank of Romania solving the complaint against the acts issued by the National Bank of Romania relating to a credit institution, including those relating to the persons in charge of the institution or branches and to the shareholders of the institution.

### **56. Recourse against judgments**

The Law on Administrative Disputes regulates the appeal as being the solely recourse way that can be exercised against the administrative decision pronounced in first instance. The appeal term is of 15 days, as well as for the common civil cases, running from the communication date. With regard to the administrative matters other appeal terms stipulated by the Civil Procedure Code are also applicable, as follows: the 5 days term when the decision is pronounced for solving the competence conflicts or the decision by which the court declares incompetent, etc.

The term of appeal in matter of administrative disputes is of 5 days from the communication date in case the decision appealed regards:

- A petition for suspending the execution of the administrative that was accepted;
- The execution court applies the penalty and grants reimbursement for non execution of the final decision within the period of time established by the court or within 30 days since it was pronounced.

The appeal is solved by the court hierarchically superior to the one competent to pronounce the decision in first instance.

## **F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF**

### **57. Existence of emergency and/or summary proceedings**

The law regulates, in matter of administrative disputes, an emergency procedure in order to ensure, according to the Recommendation R (89) of the Minister Committee of Europe Council, the temporary court protection of the rights and the legitimate interests of the individuals, in perspective of the detriments that could be caused to them by an administrative act: the suspension of the execution of the administrative act. This emergency and summary proceeding is similar to the interim measures provided by the Article 279 of The Treaty on the Functioning of the European Union (consolidated version) and, subsidiary, by the Article 39 of the Statute of the Court of Justice of the European Union.

The emergency of this measure is characterized by the fact that the legislator has clearly stipulated that the petition is immediately judged, the decision by which the measure is disposed is enforceable by law, and the appeal may be declared within 5 days from the decision pronouncement.

The suspension request of the administrative act execution is judged by summoning the parties, in public session.

The brief character of this procedure is marked by the fact that the court does not investigate the act's legality on the merits, of which suspension is claimed, but only verifies the accomplishment of the two conditions mentioned, that does not implicate the prejudice of the litigation on the merits.

### **58. Requests eligible for the emergency and/or summary proceedings**

The suspension of the execution of the administrative act could be disposed if two conditions are simultaneously accomplished: 1) a good justified case, regarding the existence of a strong doubt about the presumption of legality of the administrative act; 2) prevention of an imminent damage, of a future material prejudice, but predictable with evidence, or of a severe predictable perturbation of a public authority work or a public service. Regarding the fiscal administrative act, the Fiscal Procedure Code provides a supplementary condition of a bail amounting between 1,000 lei (about 220 Euro), for a fiscal claim of up to 10,000 lei, and 14,500 lei (about 3.200 Euro) plus 0,1% for what exceeds 1,000,000 lei (about 222,000 Euro), in the case of a fiscal claim higher than 1,000,000 lei.

### **59. Kinds of summary proceedings**

In addition to the above-mentioned summary proceedings, the Civil Procedure Code provides the Presidential Decree proceeding.

Within this proceeding, the court, establishing that the plaintiff has the appearance of law, will be able to order interim measures in cases of speed, to retain a right which would be delayed, to prevent imminent and irreparable damage, as well as to remove the obstacles that would arise in the course of execution. The order is provisional and enforceable. If the decision does not contain any indication of its duration and the actual circumstances of the case have not changed, the measures ordered shall take effect until the dispute has been settled on the merits.

According to the case-law, the proceeding of the Presidential Decree is not applicable for the suspension of the execution of the administrative act that can be subject to the summary proceedings provided by the Law on Administrative Disputes, mentioned in the answers to points 57-58.

## **III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES**

### **60. Role of administrative authorities in the settlement of administrative disputes**

With regard to the administrative disputes there are two stages and procedures: the preliminary stage and the court stage developed in front of the court. The administrative authorities have a pre-eminent role in the preliminary stage when it is realized:

- the intern control (within the authority);
- hierarchical control (by the hierarchically superior authority);
- preliminary proceeding (hierarchical administrative appeal)

Within this control forms that find their justification in the necessity of avoiding

administrative disputes submitted to trial, the administrative authorities have the possibility to identify and correct the administrative acts that they are about to issue or that they had issued, but which did not enter into the civil circuit, potentially harmful for the rights and the legitimate interests of the subjects in right, which they are addressed to.

An intermediate stage is represented by the control exercised by the administrative jurisdictions as a control form realized by the bodies with jurisdiction attributions, in the system of the public administration bodies, control that regards the legality of certain category of administrative acts stipulated by the law. This form of control is finalized by jurisdiction administrative acts that are submitted to judicial court control. According to the Constitution, administrative special jurisdictions are optional and free of charge. As an example, we mention the special administrative jurisdiction established in matter of public acquisition contracts, of public works concession contracts and services concession contracts, regulated by the Law No. 101/2016 on remedies in connection with the award of public procurement contracts, contracts and works concession contracts and services concession. According to this law, the decision issued by the National Council for Solving Complaints – as a special administrative jurisdiction – may be subject to complain in front of the court of appeal that issues a final decision.

### **61. Role of independent non-judicial bodies in the settlement of administrative disputes**

The Ombudsman is the independent public authority having the purpose of defending the people's rights and liberties in their relation with the public authorities.

When the Ombudsman appreciates that a certain administrative act is illegal or determines a power abuse of an administrative authority, it may register with the court of competent administrative disputes, a complaint in this respect, situation in which the person that notified this institution acquires the position of claimant (plaintiff).

### **62. Alternative dispute resolution**

Previous to the notification of the court, the disputes between the injured persons and the administrative authorities can be solved within the preliminary administrative proceeding by the potential accomplishment by the administration of the individuals' requests and complaints.

Subsequent to the notification of the court, the disputes of administrative right could be ended in case the summoned authorities accept to solve amicably the requirements of the injured persons. This could lead to a renouncement to the trial or to a decision establishing that the dispute has no longer an object. Such a manner of solving administrative disputes does not mean the conciliation nor the transaction according to the common civil procedural law.

The Law on Administrative Disputes does not regulate the arbitration proceeding as manner of solving the administrative disputes regarding administrative acts in general.

However, the arbitration procedure provided by the Civil Procedure Code is applicable to administrative contracts.

## **IV - ADMINISTRATION OF JUSTICE AND STATISTIC DATA**

## **A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS**

### **63. Proportion of the State budget allocated to the administration of justice**

In Romania the administrative jurisdiction does not have an independent and separate organization, different from the jurisdiction of common law.

The legality control of the administrative acts is realized by the specialized judges within the administrative matters, and by the fiscal and administrative disputes chambers of the tribunals, of the Courts of Appeal and of the High Court of Cassation and Justice.

Therefore, the administrative jurisdiction does not have a budget allocated, and is financed from the budget allocated to each court, this way the amounts necessary for the accomplishment of legality control of administrative acts cannot be divided.

### **64. Total number of magistrates and judges**

Starting with July 1, 2017, the High Court of Cassation and Justice has 120 judges and 114 assistants of judges.

The High Court of Cassation and Justice has no evidence of the precise number of specialized judges in the matter of administrative and fiscal litigation at the level of the other courts. It is worth mentioning that many of the Courts of Appeal and tribunals have mixed chambers for solving civil cases and administrative litigation as well.

### **65. Percentage of judges assigned to the review of administrative acts**

At the level of the High Court of Cassation and Justice, from the total of 120 judges and 114 assistants of judges, 31 judges (about 25%) and 24 assistants of judges (21%) are assigned to the Administrative and Tax Litigations Chamber

### **66. Number of assistants of judges**

See the answer to the point 65.

At the High Court of Cassation and Justice, continuously since 1925, there was the office of assistant of judges (assistant-magistrate). This office is present only at the High Court and also at the Constitutional Court and it's not specific to the inferior courts (courts of appeal, tribunals and first level courts).

The assistant of judge (assistant-magistrate) participates to the trial sessions, writes the endings, participates with advisory vote and writes decisions, according to the allocation made by president for all the members of the trial panel.

### **67. Documentary resources**

The High Court of Cassation and Justice has a library and an Information and

Documentation Centre in European Law. In autumn of 2001, the Netherlands' Government made through the cooperation program MATRA a substantial donation to the library of the High Court. This permitted the rearrangement of the collections and inventory, of the existing book's fond, as well the elaboration of law synthesis using the latest resources of documentation and information.

#### **68. Access to information technologies**

Every judge and assistant of judges within the High Court of Cassation and Justice benefits of a computer with access programs to the source of information in electronic format (legislation, books and jurisprudence selection).

#### **69. Websites of courts and other competent bodies**

The website of the High Court of Cassation and Justice is [www.sci.ro](http://www.sci.ro) and contains up to date information regarding the court activity. The webpage is available in Romanian language and also in English language.

### **B. OTHER STATISTICS**

#### **70. Number of new applications registered every year**

The number of new applications registered with the Administrative and Fiscal Disputes Chamber of the High Court of Cassation and Justice is presented as follows:

<b>2015</b>	<b>2016</b>	<b>2017 (first 6 months)</b>
5109	5724	3232

#### **71. Number of cases heard every year by the courts or other competent bodies**

The number of cases solved by the Administrative and Fiscal Disputes Chamber of the High Court of Cassation and Justice is presented as follows:

<b>2015</b>	<b>2016</b>	<b>2017 (first 6 months)</b>
4044	3684	2498

#### **72. Number of pending cases**

The number of the pending cases at the Administrative and Fiscal Disputes Chamber of the High Court of Cassation and Justice is presented as follows:

<b>2015</b>	<b>2016</b>	<b>2017 (first 6 months)</b>
5772	7812	8546

### **73. Average time taken between the lodging of a claim and a judgment**

<b>Year</b>	<b>Up to 2 months</b>	<b>2 - 4 months</b>	<b>4 - 6 months</b>	<b>Over 6 months</b>
<b>2014</b>	735	275	128	3710
<b>2015</b>	494	272	288	2990
<b>2016</b>	529	302	270	2583
<b>2017 (first 6 months)</b>	516	241	129	1612

### **74. Percentage and rate of the annulment of administrative acts decisions by the lower courts**

The High Court of Cassation and Justice has no such kind of statistical data.

### **75. The volume of litigation per field**

For the other specialized courts in the field of administrative and fiscal litigation (courts of appeal and tribunals), according to the Report on the state of justice for 2016 published on the site of the Superior Council of Magistracy, the statistical data are as follows:

- Courts of appeal: pending cases – 203,974, from which 28.70% are administrative and tax disputes;
- Tribunals: pending cases – 733,709, from which 28.70% are administrative and tax disputes.

## **C. ECONOMICS OF ADMINISTRATIVE JUSTICE**

### **76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets**

At present at the level of the High Court of Cassation and Justice, such studies or works are not available.