



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2023), pp. 60-71

CONSTITUTIONAL PROVISIONS REGARDING THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED / ADOPTED IN EXCEPTIONAL SITUATIONS

D.Ș. COMAN

Received 05.11.2023; accepted 02.12.2023

<https://doi.org/10.55516/ijlso.v3i1.140>

Dumitru Ștefan COMAN

Phd. Student

”Aurel Vlaicu” University of Arad

E-mail: stefeco@gmail.com

ORCID ID: <https://orcid.org/0000-0002-8179-090X>

Abstract

Conditions of admissibility of an action in administrative Litigation having as object the administrative acts issued/adopted in exceptional situations, we find them regulated in the Law no. 554/2004 of the administrative Litigation, while in other works we can find analyzed these problems under the form of the administrative Litigation, on the basis of the Law no. 554/2004, and on the basis of the constitution which is completed with the provisions of the special legislation applicable to the special situations.

In the specialty doctrine are identified, as rule, the following conditions of admissibility of an action in the administrative Litigation: the condition that the attacked act to be an administrative act; the condition that that act to affects a right recognized by law or a legitimate interest; the condition that the issued act to emanate from a public authority; the condition of the fulfillment the preliminary administrative procedure; the condition that the action to be introduced within a certain term.

In the light of these reasons detached form the constant jurisprudence of the Court from Strasbourg, the Romanian Constitutional Court ruled in the sense that providing a right of effective access to justice, it has to be analyzed also by considering the effects that a judicial decision has upon the right of the person who addressed the justice.

Key words: *administrative act, administrative Litigation, judicial control, public authority.*

INTRODUCTION

I. THE CONSTITUTIONAL AND LEGAL GROUNDS OF THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED IN EXCEPTIONAL SITUATIONS

The constitutional grounds referring to the judicial control exercised upon the administrative acts issued/adopted in exceptional situations, are the same with those regarding the control exercised by the juridical courts upon all the administrative acts. We say *in general*, because there are some particularities, which are going to strive to highlight.

A *first constitutional source* it is represented by the art. 52 that rules the *right of the persons affected by a public authority*. This one represents, at it is admitted by the specialty doctrine, both constitutional right and administrative right, a fundamental right that, together with the right to petition that is ruled by the art. 53 from the Fundamental Law, they for the category of the guarantees-rights (Tănăsescu, 2004, p. 106).

Why this constitutional ground does constitute a ground, for the judicial control exercised upon the administrative acts issued in special situations? That is because a person can be harmed also by an administrative act issued/adopted or concluded in exceptional situations, and act that is submitted to the judicial control in the conditions of the Law no. 544/2004, that institutes some particularities issued in this field. We owe to notice that art. 52 from the Romanian Constitution “*does not refer only to the acts issued by the executive (administrative) authorities, but it refers to all the acts issued by the public authorities, without discerning upon their juridical nature*” (Muraru, Tănăsescu, 2016, p.187).

The *second constitutional ground* is represented by art. 126 para. 2 (6), an article having a relatively recent history, an article that was introduced by the Law no. 429/2003 in order to revise the Constitution, by which three fundamental theses are consecrated, theses which are applicable also in the field of the administrative Litigation, to the administrative acts of the public authorities issued or adopted in exceptional situations:

- it is guaranteed the control of legality of all administrative acts of the public authorities, including those acts emanated from the public authorities in exceptional situations, and we can say that that is the rule. The Constitutional Court of Romania ruled in the sense that “*art. 126 para. 2 (6) does not exclude the possibility of exercising the judicial control of the administrative acts of the public authorities on other ways than that of the administrative Litigation, but it only guarantees such a control and it delimitates its sphere of applicability*”¹;

- are mentioned the administrative acts exempted from this control, namely *those acts which regard the reports with the Parliament and those acts having a*

¹ Decizia CCR nr. 1330/2010, publicată în M. Of. nr. 795/29 noiembrie 2010.

CONSTITUTIONAL PROVISIONS REGARDING THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED / ADOPTED IN EXCEPTIONAL SITUATIONS

military character. The regulation of the acts which are exempted it is comprised in art. 5 from the Law no. 554/2004 of the administrative Litigation, whose constitutionality has been confirmed by the Constitutional Court of Romania, through the Decision no. 946/2007², being ruled in the sense that art. 126 para. (6) “*it is limited only to the constitutional ruling of guaranteeing the judicial control of the administrative acts of the public authorities on the way of the administrative Litigation, from which are exempted in an absolute mode only two categories of acts, those of military command and those regarding the reports with the Parliament, which, by their nature, they are not submitted in any way to the judicial control*”. The Court also ruled upon the constitutionality of the provisions of the art. 5 para (2) from the Law of the Administrative Litigation no. 554/2004, also through the Decision no. 182 from 2nd of March 2006³, which the Court ascertained through, among other aspects, that “*The law text criticized doesn't exempt of judicial control, in an absolute mode, the administrative acts which it refers to, because of being obvious that the respective administrative acts are submitted, through the provision of the criticized law, to another judicial procedure, so that their judicial control is accomplished according to another procedure established through organic law.*”;

- it is admitted, through the second thesis of the text, the competence of the courts of administrative Litigation, to solve the requests of the persons who have been harmed by ordinances and dispositions which have been declared as unconstitutional.

The regime of this constitutional norm it developed by art. 9 from the Law no. 554/2004.

We appreciate that to these express constitutional texts there can be added the followings:

- art. 21 which consecrated the free access to justice for defending the fundamental rights, freedoms, and duties, through which it is instituted “*the presumption that any legitimate right or interest can be defended and, eventually, reestablished by an independent and impartial court, according to the rules established by law*” (*Sălăjan-Guțan în Muraru, Tănăsescu, 2022, p. 157*);

- the whole chapter VI of the title III from the Romanian Constitution referring to the judicial power, given the fact that this one is that which exercises the legality control upon the administrative acts issued/adopted/concluded in exceptional situations, the administrative Litigation being a component of the judicial power;

- art. 146, para. d) and e) which regulate the ulterior control (a posteriori) upon the Government Ordinances and, respectively, the solving of some judicial

² Decizia CCR nr. 946/2007, publicată în M. Of. nr. 782/19 noiembrie 2007.

³ Published in the M. Of. no. 366 from 26th of April 2006.

conflicts of constitutional nature among the public institutions, given the fact that these ones can have as object acts issued in exceptional situations, including constitutional conflicts occurring in exceptional situations, as there was that one regarding the question if the Parliament has or not the competence of approving the Government Decisions of declaring the state of alert⁴.

II. THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED IN EXCEPTIONAL SITUATIONS IN THE INFRA-CONSTITUTIONAL LEGISLATION

2.1. Determining the Legal Frame

A) The first normative act that we are relating to, it is the Law no. 554/2004 of the administrative Litigation, that consecrates express provisions regarding the acts issued in exceptional situations. It is about art. 5, that consecrates what the doctrine qualifies as *relative exceptions* (Dragoș, 2009, p.186).

B) O.U.G. no. 21 from 21st of April 2004 regarding the National System of Management of Emergency Situations⁵ contains express dispositions regarding the legality control exercised upon the administrative acts issued in exceptional situations.

Art. 42 provides in para. (1) rules regarding the mode of making known, by publishing it, the decisions regarding the state of alert⁶. In para. (3) we find the express disposition according to which “*The decisions mentioned by para. (1) can be attacked in the conditions of the Law no. 554/2004 regarding the administrative Litigation.*”⁷.

Art. 42 ^ 1 provides, in the first two paragraphs, rules for publicity regarding the decisions made by the National Committee for Emergency Situations, with normative character, issued for applying the provisions of the art.

⁴ To be seen the Decision of CCR no. 457 from 25th of June 2020, published in M. Of. no. 578/01st of July 2020.

⁵ Published in M. Of. No. 361 from 26th of April 2004.

⁶ Art. 42. “(1) *The decisions which it is declared through, it is prolonged through, or it ceases through the state of alert, on national level or on the territories of several counties, they are published in the Official Monitory of Romania, Part I, and those decisions which it is declared through, it is prolonged through, or it stops through, the state of alert, as also those decisions which it is established through, the application of some measures during the state of alert, on county level or of Bucharest Municipality, they are published in the Official Monitory of the respective territorial-administrative authority, and they come into force on the date of their publishing. (2) The decisions mentioned by the para. (1) are announced to the population, without any delay, through mass media, are broadcasted on radio and on TV, no more than two hours late form their adoption, and they are repeatedly retransmitted during the first 24 hours form the moment of declaring the state of alert.*”

⁷ On 30th of June 2021, Chapter VI of OUG no. 21/2004, it has been completed the Point II, Art. II from OUG no. 63 from 29th of June 2021, published of M. Of. No. 643 from 30th of June 2021.

CONSTITUTIONAL PROVISIONS REGARDING THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED / ADOPTED IN EXCEPTIONAL SITUATIONS

20⁸, and in the para (3) it consecrates a norm that is similar to that provided by art 42, according to which “*The Decisions of the National Committee specified by para (1) and (2)*”⁹ can be contested in the conditions of the Law of the administrative Litigation no. 554/2004, with the ulterior modifications and completions.”.

C) O.U.G. no. 1/1999 regarding the regime of the state of siege and of the state of emergency¹⁰ contains, at its turn, dispositions which uphold, on an implicit manner, the judicial control exercised upon the administrative acts issued in exceptional situations.

We are mentioning, in the first place, the provisions regarding the *acts issued in exceptional situations*, which, in their quality as administrative acts, they are submitted to the legality control, by the judicial courts of administrative Litigation, in specific conditions, as consecrated by art. 5 from the Law no. 554/2004. We are referring both the acts issued or adopted by the public authorities in exercising their attributions aiming the exceptional states, as there would be art. 14 regarding the *decree of instituting the siege state of the emergency state* or those comprised by the Chapter IV regarding the *military ordinances and orders of other public authorities*, as also art. 30 that refers to the contraventions ascertained through contraventional minutes-report, which are applicable to, the dispositions of the Government Ordinance no. 2/2001 regarding the judicial regime of the contraventions¹¹.

All these acts are submitted to the legality control in the conditions of the frame-law in the field of the administrative Litigation and in the field of the contraventions.

D) The Law no. 55/2020 provides aspects aiming to the legality control of some acts issued in exceptional situations and we are referring here the

⁸ Art. 20 provides the main attributions of the National Committee for Emergency Situations.

⁹ Art. 42 ^1 “(1) *The decisions of the National Committee having a normative character and issued for applying the provisions of art. 20, they will be immediately published in the Official Monitor of Romania, Part I. (2) Exempted from the provisions of the para. (1), in special situations which do not allow any delay, when the publishing flow cannot be fulfilled as specified by art. 12-14 from the Law no. 202/1998 regarding the organization of the Official Monitor of Romania, republished, with the ulterior modifications and completions, the decisions of the National Committee having normative character issued for applying the provisions of the art. 20, they will be immediately applied and they will be published in the Official Monitor of Romania, Part I, immediately that publishing will be possible. The special situations which do not allow any delay, as also the immediate applying, they are recorded in the content of the decision of the National Committee.*”

¹⁰ Published in the M. Of. No. 22nd/21st of January 1999.

¹¹ Published in the M. Of. No. 410 / 25th of July 2001, approved with modifications and completions through the Law no. 180/2002, published in M. Of. No. 268/22nd of April 2002, with the ulterior modifications.

contraventional minutes-reports. Thus, art. 68 provides, by para. (1), the application, for the contraventions it mentions, of the dispositions of Government Ordinance no. 2/2001, and by para. (2) it provides a derogation from the dispositions of art. 32 para. (3) from G. O. no. 2/2001, in the sense that the complaint against the *minutes-reports of ascertaining the contravention and of applying the sanction it won't suspend the fulfilling of the complementary contraventions sanctions applied according to art. 66¹²*.

Art. 72 para. (1) from the Law no. 55/2020, it sends us, in completion, to the *common law regulations applicable in the field, on the measure that these lasts ones do not contravene to the present law*.

This text was declared as unconstitutional by the Decision of CCR no. 392 from 8th of June 2021¹³, by which it was admitted the exception of unconstitutionality and it was ascertained that the dispositions of art. 72 para. (2) from the Law no. 55/2020, regarding some measures for preventing and combating the effects of the COVID-19 pandemic, referring to art. 42 para. (3) from the Government Ordinance no. 21/2004 regarding the National System for Management of the Emergency Situations, as also the legislative solution from the art. 72 para. (1) from the Law no. 55/2020, according to which the dispositions of this law are completed by the provisions of common law applicable in the field, in what regards the solving of the actions formulated against the Government's decisions by which it is instituted, it is prolonged, or it ceases the alert state, as also the orders and the instructions which establish the application of some measures during the alert state, they are unconstitutional. We are again mentioning here that art. 42 para. (3) from O.U.G. no. 21/2004, it provides that "*The decisions specified by para. (1) can be attacked in the conditions of the Law no. 554/2004 regarding the administrative Litigation*".

Through the mentioned decision, the Constitutional Court argues in the sense that the decisions which the alert state is declared by, or it is prolonged by, or it ceases by, as also those which the application of some measures it is established by, on the duration of the alert state, on national level or on the level of several counties, they cannot be attacked in the conditions of the law of the administrative Litigation, given the fact that they are adopted for only one month, and the procedure instituted by the Law no. 554/2004 does not create the frame for, within the limits of one month, to be judged a process on such a subject.

We are considering as very interesting the reasons formulated by the Constitutional Court in the paragraphs 43-48, and this is because they not only that rule an actual state of the law, which they reckon as unconstitutional, but the

¹² On 24th of December 2021, art. 68 was completed by the Point no. 3, Art I of the Law no. 295 from 13th of December 2021, as published in M. Of. No. 1183/14th of December 2021.

¹³ Published in M. Of. No. 688 / 12th of July 2021.

CONSTITUTIONAL PROVISIONS REGARDING THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED / ADOPTED IN EXCEPTIONAL SITUATIONS

contour a certain perspective for logification, which we reckon that the lawmaker should have it in sight, in the future.

Thus, the Court started their reasoning from certain constants of the jurisprudence of the European Court of the Human Rights in the field of the free access to justice, which the European Court deliberated through, upon the tight connection between the exigencies regarding the clarity and the predictability of the procedural juridical norms and the exercising of the right of free access to justice. Through the Decision from 21st of February 1975, pronounced on Golder Cause against the United Kingdom of Great Britain and of North Ireland, the Court highlighted the special importance it attributes to the principle of free access to justice for the very existence of a democratic society.

Through this decision, as it is impropriated also by the court for constitutional Litigation, the Court from Strasbourg achieved two objectives: a first aspect is that of clarifying the matter regarding the sphere of applicability of the art. 6 para. 1 from the European Convention for Defending the Human Rights and for Defending the Fundamental Liberties, in the sense that this one regulates not only the conditions necessary for having a fair trial, but also the right to accede to such a process for defending the rights mentioned by the law.

A second aspect aims to highlight the importance of exercising such a right in the context of a democratic society and of the rule of law, in the sense that its simple legal consecration, even on the supreme level, through Constitution, it does not necessarily mean that it is ensured its real efficacy too, as long as in practice, exercising it, it is hindered by obstacles. The access to justice must be provided, consequently, effectively and efficiently. And the purpose of the Convention for the Defending of the Human Right and of the Fundamental Liberties it is “to defend not theoretical or illusory right, but concrete and effective”¹⁴.

The European Court also stated, in another decision concerning a cause which Romania was processual part to¹⁵, that the principle of free access to justice implies also to be adopted, by the lawmaker, some clear procedural rules, which to comprise, with precision, the conditions and the terms which the litigants can exercise their processual rights. And a norm is “predictable” only when it is worded with sufficient precision, so that it allows any person to correct her/his conduct.

In the light of these grounds detached from the constant jurisprudence of the Court from Strasbourg, the Constitutional Court of Romania ruled in the sense

¹⁴ In this sense, it has been ruled by the Decision from 12th of July 2001, pronounced in the case of Prince Hans-Adam II of Lichtenstein against Germany, and the pilot-Decision from 12th October 2010, pronounced in the Cause Maria Atanasiu and others against Romania, quoted in the commented decision.

¹⁵ It is about the Decision from 29th of March 2000, pronounced in the Cause Rotaru against Romania.

that ensuring a right of effective access to justice, it must be analyzed from the point of view of the effects the judicial decision has upon the right of the person who addressed the justice.

Revealing in this sense it is the Decision no. 17 / 17th January 2017¹⁶, which it was argued by, that an effective right to justice “*it is not characterized only by the possibility of the court of justice to examine the ensemble of the presented means, arguments, and proofs, but it consists also of the fact that the pronounced solution determines the removal of the denounced transgression and of its consequences for the owner of the transgressed right*”.

The Constitutional Court of Romania mentions further on, in the paragraph no. 44, concerning the attacking in justice the Government’s decisions, the orders, or the instructions issued in order to set in place of some measures, during the alert state, the ensuring of an effective access to justice would be accomplished only on the measure that the pronounced decision determined, once the non-legality of the attacked administrative act it was ascertained, there were removed also the consequences of the respective act. Or, these effects of the judicial decision could not be obtained but on the measure that pronouncing that decision took place within the term of applicability of those administrative acts, which is at most 30 days from entering into force, as it is provided by the dispositions of art. 3 para. (1) and (2) and of the art. 4 para. (1) from the Law no. 55/2020.

Analyzing the dispositions of the Law no. 55/2020, the Constitutional Court ascertained that those do not contain any procedural dispositions which to guarantee the solving of the causes referring to the administrative acts for declaring or prolonging the alert state in a short term, which to ensure an affective right to access to justice (paragraph 45).

For edification, it is necessary to have in sight also the dispositions of the Law of the Administrative Litigation no. 554/2004, which themselves to not correspond either to such exigencies. Admitting that the court of justice would proceed to speeding up the solving of the actions which have as object the normative acts which the alert state is instituted by, it would still be held back to fulfill the requirements referring to the legal summoning of the parts and of the right of the opposing party to file a counterclaim, which must be communicated then to the plaintiff at least 15 days before the first court term¹⁷. Then the court has sat its disposal, at most 30 days which the which the decisions can be drafted in, as also the right to recurse in 15 days once the decision has been communicated¹⁸.

¹⁶ Published in M. Of. Of Romania, Part I, no. 261 from 13th of April 2017, paragraph 42.

¹⁷ According to art. 17 para. (1) from the Law no. 554/2004.

¹⁸ According to art. 20 para. (1) from the Law no. 554/2004. The Court also mentioned that, though the rule is that of suspending the execution of the attacked administrative act until the urgent solving of the recourse, in what concerns the administrative acts issued for removing the

CONSTITUTIONAL PROVISIONS REGARDING THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED / ADOPTED IN EXCEPTIONAL SITUATIONS

That is why, the Court reached the conclusion, (para. 47), that *applying the judging procedure as regulated by the Law of the Administrative Litigation, it would make impossible the pronouncing of a decision in such an interval shorter than 30 days, so that the effects of this decision would not be able to concretely remove the consequences of the administrative acts issued on the ground of the Law no. 55/2020.*

Due to these reasons, the constitutional court concluded (para. 48) that the dispositions of the art. 72 para. (2) from the Law no. 55/2020, referring to the art. 42 para. (3) from the Government's Emergency Ordinance no. 21/2004, as also the legislative solution from art. 72 para. (1) from the Law no. 55/2020, according to which the dispositions of this law are completed with the provision of common law applicable in the field in what concerns solving the actions filed against the decisions of the Government which it is instituted through, it is prolonged through, or it ceases through, the alert state, as also the orders and instructions which it is established through, the application of some measures during the alert state, they are unconstitutional, because of being contrary to the provisions of art. 1 para. (5), art. 21, and art. 52 para. (1) from Constitution.

Very interesting for the analyzed problem, it is the thesis according to which (para. 49), in order to remove the ascertained vice of unconstitutionality, and in order to ensure a clear regulation, which to effectively and efficiently guarantee the access to justice of the persons whose right or interests have been transgressed through adopting some Government's decisions, or by some orders or instructions issued by ministers for applying some measures during the alert state, on the ground of the Law no. 55/2020, the lawmaker it called to regulate a procedure whose content to be easily identifiable, clear and predictable, concerning the consequences, and which to ensure the possibility of solving the causes in an emergency regime, in a very short time, so that the pronounced decisions to be able to remove, concretely and efficiently, the consequences of the attacked administrative acts, within the period which those acts produce effects.

2.2. The Evolution of the Regulation Concerning the Legality Control of the Administrative Acts Issued/Adopted in Exceptional Situations, after the Year 1990.

The first regulation referring to this category of administrative acts it was the former Law no. 29/1990¹⁹.

According to art. 2 para. a) of that law, among the acts which could not be attacked at all in the administrative litigation, there were also *the measures taken*

consequences of epidemics, their suspension is not possible, according to art. 5 para. (3) from the Law no. 554/2004.

¹⁹ Published in M. Of. No. 122/8th of November 1990.

by the organs of the executive power for avoiding or removing the effects of some events which present public danger, as there are those issued consequently to a state of necessity or for combating the natural calamities, the forest fires, the epidemics, the epizooties, and other events of same graveness.

The syntagm *executive power* it referred to its extended acceptance, which included the public administration too, which represents a *system of organs of the state composed of the President of Romania, Government, ministries, and the other organs of the central specialty public administration organs, their deconcentrated services from counties and the authorities of the local public administration* (Trăilescu, 2010, p. 2).

In the specialty doctrine elaborated under the incidence of that law, it was established that *“though exempted from the Law of the administrative litigation, the judge still remains competent to verify their legality, by analyzing if they were issued in the conditions prescribed by the law”* (Negoită, 1996, p. 246).

The Law no. 554/2004 of the administrative litigation, it abolished the former regulation²⁰ and it recorded an evolution concerning the regulation of the judicial control upon administrative acts issued/concluded in exceptional situations.

We are appreciating here that there can be identified two big stages:

a) A first stage is represented by the initial form of the law, which provides, in art. 5 para. (3) that *“the administrative acts issued for applying the regime of the state of war, of the state of siege, or of the state of emergency, those regarding the national security and defense, or those issued for reestablishing the public order, as also those for removing the consequences of the natural calamities, epidemics, and epizooties, they could be attacked only regarding the excess of power”*. Through para. (4) it was provided that *“in the litigations mentioned by para. (3) are not applicable the provisions of art. 14 and 21”*.

We are ascertaining here that, in that first stage, the control regime of the legality of the acts issued/adopted in exceptional situations had two strong points:

- The action could be filed only if there was manifested excess of power, as it is defined by art. 2 para. (1) let. n) from the Law no. 554/2004, respectively *“exercising the appreciation right belonging to the public authorities by transgressing the limits of the competence provided by the law or by transgressing the citizens’ right and liberties”*;

- To the judicial control of the acts issued or adopted in exceptional situations it cannot be applied the procedure of the suspension based on art. 14, neither the provisions of the art. 21 that, at that time, they regulated the *recourse in special situations*, which has been abolished by the modification brought to the law in the year 2007.

²⁰ Art. 31 para. (2).

CONSTITUTIONAL PROVISIONS REGARDING THE JUDICIAL CONTROL EXERCISED UPON THE ADMINISTRATIVE ACTS ISSUED / ADOPTED IN EXCEPTIONAL SITUATIONS

From the doctrine elaborated under the incidence of the Law no. 554/2004, in the respective form, we retain that one according to which “*the relative exceptions – in the sense that these acts are exempted from the administrative litigation only if their illegality is subjective, referring to legitimate rights and interests of the juridical persons, based on the law, and not also when (a) the non-legality if objective, related to the laws regulating the issuing, or (b) their subjective illegality derives out of their issuing, with «excess of power», namely by transgressing the citizens’ right and liberties (art. 2 let. n)*”²¹.

b) a second stage, in which to the judicial control of the acts issued or adopted in exceptional situations it is imposed only one restriction, namely that of not being applicable the provisions of the art. 14²².

CONCLUSION

Here we have the “gravitational point” of the theme which we have approached, namely the control of some of the acts issued or adopted in exceptional situations, respectively the Government’s decisions which it is instituted by, it is prolonged by, or it ceases by, the alert state, as also the orders and the instructions which it is established by, to be applied some measures during the alert state: the fact that there is not in the legislation of the administrative litigation or in any other regulation of organic character, procedural norms which to allow the solving of those litigations within a reasonable term, in such a manner to be ensured the efficiency of the decision, because, otherwise, there are pronounced decisions which no longer have practical efficiency, in the sense that they cannot be effectively applied. And this is because the period of time which they have been adopted or issued for, it has elapsed and, meanwhile, there have been issued/adopted other administrative acts of the same kind, but different in content and characteristics, or, simply, the exceptional situation consequently to which they have been elaborated it does no longer subsists.

BIBLIOGRAPHY

²¹ Dacian Cosmin Dragoș, *Legea contenciosului administrativ. Comentarii și explicații* ed. 2, Ed. C. H. Beck, București, 2009, p. 186.

²² The present form of art. 5 para. (3) is the following: “*In the litigations referring to the administrative acts issued for applying the regime of war, of the state of siege, or of the state of emergency, those which concern the national security and defense or those issued for reestablishing the public order, as also for the removal of the consequences of the natural calamities, epidemics, and epizooties, are not applicable to them the provisions of the art. 44*”.

Dumitru Ștefan COMAN

1. Alexandru Negoită, *Drept administrativ*, Ed. Silvy, București, 1996;
2. Anton Trăilescu, *Drept administrativ*, ed. 4, Ed. C.H. Beck, București, 2010;
3. Dacian Cosmin Dragoș, *Legea contenciosului administrativ, Comentarii și explicații*, ed. 2, Ed. C. H. Beck, București, 2009;
4. Ioan Muraru, Elena- Simina Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, ed. 3, ed. C.H. Beck, București 2022;
5. Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice*, vol. I, ed. 15, Ed. C.H. Beck, București, 2016;
- Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu *Constituția României revizuită- comentarii și explicații*, Ed. All Beck, București, 2004;
6. Decizia CCR nr. 946/2007, publicată în M. Of. nr. 782/19 noiembrie 2007;
7. Decizia CCR nr. 1330/2010, publicată în M. Of. nr. 795/29 noiembrie 2010;
8. Decizia CCR nr. 182 din 2 martie 2006, publicată în M. Of. nr. 366/26 aprilie 2006;
9. Decizia CCR nr. 457 din 25 iunie 2020, publicată în M. Of. nr. 578/ 01 iulie 2020;
- Legea nr. 55 din 15 mai 20202020 privind unele măsuri pentru prevenirea și combaterea efectelor pandemiei de COVID-19, publicată în M.Of. nr.396 din 15 mai 2020;
10. O.U.G. nr. 21 din 15 aprilie 2004 privind Sistemul Național de Management al Situațiilor de Urgență, publicată în M. OF. nr. 361 din 26 aprilie 2004;
11. O.U.G. nr. 63 din 29 iunie 2021, publicată în M. Of. nr. 643 din 30 iunie 2021.
- O.U.G. nr. 1/1999 privind regimul stării de asediu și al celei de urgență, publicată în M.Of. nr. 22 din 21 ianuarie 1999;
12. O. G. nr. 2/2001 privind regimul juridic al contravențiilor, Publicată în M. Of. nr.. 410/25 iulie 2001, aprobată cu modificări și completări prin Legea nr. 180/2002, publicată în M. Of. nr. 268/22 aprilie 2002;
13. Hotărârea CEDO din 12 iulie 2001, pronunțată în Cauza Prințul Hans-Adam II de Liechtenstein împotriva Germaniei;
14. Hotărârea-pilot CEDO din 12 octombrie 2010, pronunțată în Cauza Maria Atanasiu și alții împotriva României, citate în decizia comentată;
15. Hotărârea CEDO din 29 martie 2000, pronunțată în Cauza Rotaru împotriva României.



This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.