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IS CASSATION RECOURSE AN EFFECTIVE REMEDY IN ADMINISTRATIVE CONTENTIOUS? IS THERE A NEED FOR A REFORM OF THE REMEDIES AND TO REPLACE CASSATION RECOURSE WITH APPEAL?

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Abstract

This study aims to approach the system of remedies in administrative contentious, from legislative, doctrinal and jurisprudential perspectives. From a historical perspective, was recourse the traditional remedy in administrative contentious or not? Under the current legislation, the cassation recourse, an extraordinary remedy, remedy of legality and with a restrictive regime of evidence, is an effective remedy in administrative contentious? Is there a need for a reform in the system of remedies and the replacement of the recourse by appeal? The conclusions of the study present the advantages and disadvantages of each remedy for the purpose of launching a debate on the choice between tradition and modernity.

Key words: *justice, administrative law, administrative contentious, remedies.*

INTRODUCTION

Administrative contentious has been defined as 'the set of rules for the

application of jurisdictional solutions to disputes related to administrative activity' (*Verginia Vedinaș 2018, p. 149*) or as a 'contradictory procedure through which a person transfers the conflict with a public authority to administrative courts.' *(Dragoș, p.1)*

In this system of procedural rules applicable to the resolution of administrative law conflicts, the system of remedies requires the existence of at least one remedy at law through which the conflict can be re-analysed by a higher court, after its resolution by an administrative jurisdictional entity or a lower court.

The system of administrative law remedies varies from one national legislation to another, and even within the same legislation, different procedures for resolving conflicts can be encountered.

In France, for instance, the procedural system is dualistic, with jurisdiction shared between the Council of State and administrative courts (administrative tribunals, administrative courts of appeal, and the Court of Cassation). The Council of State has the authority to resolve cases both on merits and in a second level of devolutive jurisdiction or even in cassation, handling recourses against resolutions passed in special administrative procedures.

Administrative courts have the authority to rule on substantive disputes in areas such as public service, tax litigation, in civil matters, pensions etc. The administrative courts of appeal handle appeals against resolutions passed by these administrative tribunals, while the Court of Cassation addresses cassation recourses against rulings from administrative courts of appeal. The French system provides several forms of appeal: cassation recourse, opposition, motions for revision, and appeals for the correction of clerical errors. *(Broyelle, 2024, p. 429 496)*

Several other states, such as Belgium, Italy, and the Netherlands have organised their administrative jurisdiction systems after the French model.

In Germany, the system of administrative jurisdiction is completely separate from public administration, administrative courts adjudicating all disputes in this area being: administrative tribunals, higher administrative courts, and the federal administrative court *(Săraru, 2022, pag. 36).*

Austria, Sweden and Portugal have adopted the German model, with jurisdictions autonomous from the administration.

In Romania and Spain, the system of administrative jurisdictions is integrated into the common law judicial system, with administrative disputes being resolved by specialised departments of ordinary courts.

In the United Kingdom, there are no administrative jurisdictions. Administrative law litigation is resolved by ordinary courts, noting that the British legal system is based on natural law and the precedential value of judicial precedent.

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The Code of Administrative Procedure of the Republic of Moldova[1] was adopted in 2018; it regulated the system of administrative jurisdictions, also integrated into the common court system, with specialized judges. District courts have full jurisdiction on the merits, while the courts of appeal resolve appeals against resolutions passed by lower court judges, and the Supreme Court of Justice has jurisdiction over solving appeals.

I. ADMINISTRATIVE CONTENTIOUS IN ROMANIA. HISTORICAL LANDMARKS IN THE MATTER OF REMEDIES AT LAW

The first regulations regarding administrative contentious in our country appeared in the United Principalities of Romania in 1864, under the governance of Prince Alexandru Ioan Cuza, who, adopting the French model, established the Council of State, with three main significant responsibilities: as an advisory body regarding draft laws, as an advisory body for the Government, and as a body with judicial powers in the field of administrative litigation *(Rarincescu, pag. 78*).

In 1866, the first Constitution of Romania was adopted, which, after just two years, abolished the Council of State and assigned the authority to resolve disputes between the administration and individuals to courts of common law.

During this period, bodies with jurisdictional powers in certain areas, such as taxation, pensions, etc., were also established (*Apostol Tofan, pag. 108*).

In 1905, the Law for the Reorganization of the High Court of Cassation and Justice was passed. Through this law, the Administrative Contentious Department was established within the Supreme Court, with responsibilities regarding the resolution of direct appeals filed against illegal administrative acts.

In 1910, a new Law for the Reorganization of the High Court of Cassation and Justice was passed; this abolished the Administrative Contentious Department, transferring jurisdiction to resolve cases in this area to ordinary tribunals. It should be noted that this law eliminated judicial review of legality, allowing courts to rule only on claims for damages caused by the issuance of illegal administrative acts, not on their nullity.

The first law specifically regulating administrative contentious was the 1925 Law of the Contentious Administrative, which, in Article 11, provided a single law remedy against decisions rendered on the merits by the courts of appeal, namely recourse to the Court of Cassation. Article 12 of the same law established a different type of recourse in this matter, in cassation. Similar to the current form of appeal in administrative contentious, the High Court of Cassation and Justice would rule on the merits of the case if the appeal were admitted.

[1] Published in the Official Gazette of the Rep. Of Moldova no. 309-320 of 17.08.2018

However, it should be emphasized that at that time, there were two ordinary remedy routes: appeal and recourse ***(****Ciobanu, Nicolae p. 1340).*

Another special law, namely the Law for the Court of Cassation and Justice, re-established the administrative contentious department under the name of the Third Section of the Court of Cassation and Justice (*Săraru, 2022, p. 434*). The aforementioned laws were prefaced by the provisions of the Constitution of 1923, which established a special text for administrative contentious, thereby instituting full jurisdictional review (for management acts) and annulment litigation (for acts of authority) in the Kingdom of Romania.

Through the Local Public Administration Law of 1936, Administrative Courts were established as entities with special jurisdiction, resolving only disputes related to acts issued by local authorities. During this period, the competence to resolve administrative contentious disputes was shared among ordinary tribunals, which handled disputes regarding management acts (including claims for damages), courts of appeal, which resolved disputes concerning acts of authority (including claims for damages related to these), administrative courts, which dealt with disputes regarding acts of local authorities, and a series of administrative jurisdictions with competences established by special laws.

What followed was a dark period for administrative litigation. During the communist era, administrative contentious was abolished by Decree No. 128/1948. Ordinary courts retained the competence to analyse only the legality of individual administrative acts and only where the law expressly provided for this possibility. By Decree No. 132/1952, the appeal route was abolished, making recourse the only ordinary remedy at law in all matters. Until the adoption of the Constitution of 1965, there was effectively no form of judicial control over the legality of acts issued by public authorities and institutions. Article 35 of the 1965 Constitution reintroduced the institution of administrative contentious, stipulating: '*the possibility for a person harmed in their rights by an illegal act of a state body to request, under the law, the annulment of the act and compensation for damages.'* Subsequently, Law no. 1/1967 was adopted regarding the adjudication by courts of requests from those harmed in their rights by administrative acts, according to which courts could rule on the legality of administrative acts but not on the appropriateness of their issuance.

After the Revolution, through Law no. 29/1990 regarding administrative contentious, the institution regained its role in the legal system, resuming the interwar tradition.

Following this law, administrative contentious departments were established within the tribunals and the Supreme Court of Justice, and starting with 1993, after the reestablishment of the courts of appeal, within the latter courts as well. Initially, the competence to resolve matters of administrative contentious belonged to the specialized departments of county tribunals (Article 6 of the law), and decisions issued by these courts on the merits could be challenged

to the Administrative Contentious department of the Supreme Court of Justice (Article 14 of the law).

After the amendment of the Code of Civil Procedure by Law no. 59/1993, the appeal was reintroduced into the system of remedies at law, and the courts of appeal were re-established. However, from the perspective of administrative contentious, the amendment consisted only of the sharing of competence on the merits between tribunals and courts of appeal, with the remedy against lower court decisions remaining recourse.

Nevertheless, it should be noted that, due to the provisions of Article 304/1 of the 1865 Code of Civil Procedure, the administrative contentious appeal had the traits of a hybrid appeal route, devolutive in nature, not being limited to the grounds for cassation provided by Article 304 of the 1865 Code of Civil Procedure.

Not much changed once Law no. 554/2004 regarding administrative contentious [2] entered into force. Articles 10 and 20 of the law-maintained cassations as the sole appeal route and also preserved the shared material competence between tribunals and courts of appeal. The appeal is suspensive of execution, and, following the interwar model, in case of admission, the appellate court must resolve the case on its merits, except in situations where a ground for cassation with referral is retained.

The true change in the legal nature of administrative contentious appeals came, paradoxically, not through the amendment of Law 554/2004, but through the entry into force of the new Code of Civil Procedure, in 2010. Law 134/2010[3] configured the appeal as an extraordinary means of attack, in cassation, with the grounds for appeal being exhaustively specified by law, accompanied by a very restrictive legal regime for evidence.

The question we pose is whether, in the current procedural system, the appeal represents an effective means of attack in administrative contentious, considering that it is a form of remedy at law where only the conformity of the ruling with the applicable legal norms is verified and which can be promoted for eight grounds of legality provided by Article 488 of the Code of Civil Procedure[4].

II. THE MAIN CHARACTERISTICS OF APPEAL IN THE MATTER OF ADMINISTRATIVE CONTENTIOUS UNDER CURRENT LEGISLATION

According to the provisions of Article 20 and Article 10 paragraph 2) of Law no. 554/2004 regarding administrative contentious, the only remedy at law in

[2] Published in the Official Gazette of Romania, part I, no. 1154 of December 7, 2004

[3] Published in the Official Gazette of Romania, part I, no. 485 of July 15, 2010

[4] Approved by Law no. 134/2010, published in the Official Gazette of Romania, part I, no. 485 of July 15, 2010 and republished in the Official Gazette of Romania no. 247 of April 10, 2015

administrative contentious is the appeal. There are some exceptions where a request for retrial is the legal remedy at law; however, these are special administrative procedures which, according to the provisions of Article 5 paragraph 2) of Law no. 554/2004 regarding administrative contentious, are not subject to the control provided by this law. Thus, in contravention matters, the court ruling passed on the merits regarding the administrative act – the minutes for establishing and sanctioning the contravention – can be challenged by request for retrial according to the provisions of Article 34 paragraph 2) of Government Ordinance no. 2/2001 regarding the legal regime of contraventions[5]. In public procurement matters, *'the ruling passed in cases of litigation and requests regarding compensation for damages caused during the awarding procedure, as well as those concerning the enforcement, annulment, nullity, resolution, termination, or unilateral cancellation of administrative contracts can be challenged by a request for* retrial', as provided by Article 55 paragraph 3) of Law no. 101/2016 regarding remedies and appeals in matters of public procurement contract awarding, sectorial contracts, and concession agreements for works and services, as well as for the organization and operation of the National Council for Solving Complaints[6].

In these conditions, it has been shown in doctrine and jurisprudence[7] that in administrative litigation, the appeal is the only compatible remedy at law *(Cătană, p. 426)* or that the request for retrial is incompatible with the specifics of the matter *(Săraru, 2024, p. 246).*

How does the appeal in common law differ from the appeal in administrative litigation? First of all, according to Article 10 paragraph 2) of Law no. 554/2004 regarding administrative contentious, recourse is suspensive of execution, which means that the public authority cannot be compelled to enforce the court ruling on merits *(Apostol Tofan, p. 172).* In another aspect, unlike common law, if the court of appeal admits the remedy at law, after annulment, it will resolve the case on its merits. This provision applies without distinction based on the rank of the court, so that even the High Court of Cassation and Justice (Î.C.C.J.), as a court of appeal in administrative contentious, will annul with retention and will re-examine the case on its merits. The only exceptions where Article 20 paragraph 3) of Law no. 554/2004 regarding administrative contentious allows, once only, for annulment with referral are as follows: when the ruling of the lower court was passed without examining the merits or when the judgment

[5] Published in the Official Gazette of Romania no. 410 of July 25, 2001, with subsequent amendments

[6] Published in the Official Gazette of Romania no. 393 of May 23, 2016, with subsequent amendments and completions

[7] ÎCCJ resolution (RIL panel) no. 17/2017, published in the Official Gazette of Romania no. 930/27.11.2017, par. 63

was made in the absence of a party which was illegally summoned both during the process of producing evidence and during the arguments on the merits.

Finally, unlike common law, the term for appeal in administrative contentious is 15 days from notification.

Apart from these differences, as a result of the provisions of Article 28 of Law no. 554/2004 regarding administrative contentious, the legal regime of appeal is that provided by the Code of Civil Procedure, meaning it is an extraordinary remedy at law that can only be exercised for grounds of legality, which are exhaustively specified by law.

The Romanian lawmaker opted for a closed system of grounds for cassation, modelled after the Italian system, listing exhaustively 8 grounds for cassation which essentially pertain to a violation or incorrect application of the law *(Nicolae, p. 153).* Moreover, if we analyse the fifth ground for appeal [Article 488 paragraph 1), point 5 of the Code of Civil Procedure], which states that *'when, by the ruling passed, the court violated procedural rules non-compliance with which attracts the sanction of nullity',* we will note that the first seven grounds for appeal are essentially procedural errors that lead to the nullity of the court ruling, and only point 8 of Article 488 paragraph 1) of the Code of Civil Procedure refers to the violation or incorrect application of substantive legal norms.

In systems which are open regarding grounds for cassation, specific grounds for cassation are not enumerated; instead, the legislator limits itself to indicating, in general terms, the purpose of the appeal. For example, in France, the new Code of Civil Procedure states in Article 604 that *'the appeal in cassation aims to obtain the censure by the Court of Cassation of the non-compliance with legal norms by the challenged ruling'* (*Nicolae, p. 144*) [8]. In these legal systems, it is up to the courts of cassation to establish, through case law, specific grounds for cassation.

What is important for this study is to emphasize that the closed system of grounds for cassation chosen by the Romanian legislator has led to the development of a non-unitary practice among the courts of appeal regarding the interpretation of cassation grounds and the classification of specific arguments expressed by parties within these grounds. In particular, the eighth ground for cassation has provided opportunities for diametrically opposed solutions from courts. According to Article 488 paragraph1), point 8) of the Code of Civil Procedure, cassation of a ruling can be requested when *'the ruling was passed in violation of or with incorrect application of substantive legal norms'.* It is very

[8] "Le pourvoi en cassation tend à faire censurer par la Cour de cassation la non-conformité du jugement qu'il attaque aux règles de droit"

difficult to draw a clear distinction between 'the state of facts' and the norm of 'substantive law'. Consequently, there is a wide range of approaches from the courts of appeal, some of which are even diametrically opposed. For instance, when the ground for appeal consisted of the illegal rejection, in the party's opinion, of its request for the administration of evidence deemed essential in the case, some courts have interpreted the ground for cassation broadly, considering that it falls under Article 488 paragraph1), point 8 of the Code of Civil Procedure[9], while others have found that the court of appeal does not have jurisdiction to analyse issues related to the administration and interpretation of evidence[10].

The existence of such a non-unitary practice undoubtedly affects the legitimate expectations of the litigant, especially in the field of administrative contentious where there is only one rather restrictive remedy at law available.

It is difficult to argue which orientation of practice is preferable: the restrictive one which respects the role and purpose of cassation appeal, or the extensive one, which considers it preferable to broaden the procedural rights of parties in appeal, given that this is the only remedy at law available.

Moreover, regarding the admissible evidence in appeal, Article 492 of the Code of Civil Procedure limits new evidence to documents, which, in the context of what has been previously stated, clearly restricts the appellant's ability to argue a specific ground for cassation.

It is true that the legislator envisioned this hybrid system of appeal in administrative contentious, allowing the court of appeal to resolve the merits of the case; however, the devolutive effect comes only after passing through the stage of analysing the grounds for appeal, which is often an insurmountable obstacle for the appellant.

Taking into account this brief overview of the legal regime of recourse in administrative contentious, we note that there are sufficient arguments to conclude that the restrictions imposed by the appeal procedure could influence the litigant's

[9] High Court of Cassation and Justice, administrative and fiscal contentious department, decision no. 3584 of June 28, 2023. The supreme court ascertained that, by rejecting the expert evidence, transgressed its obligation to play an active role, and consequently transgressed its obligation to effectively analyse the case. In the opinion of the supreme court, this vice puts it in the incapacity to perform judicial review (https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=210812#highlight=##)

[10] High Court of Cassation and Justice, second civil section, decision no. 1151 of June 25, 2020. The High court maintained that the means of producing accounting expert evidence is not an illegality critique and concluded that it cannot analyse this ground for cassation. (https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=171282#highlight=##)

effective right of access to a court, a right protected under Article 6 of the European Convention on Human Rights, in its civil component.

Therefore, in the continuation of this study, we will analyse the possibility or necessity of reforming the system of remedies at law in administrative contentious, particularly from the perspective of examining a draft law to amend the law on administrative contentious, which we have identified on the website of the Chamber of Deputies.

III. REPLACING RECOURSE WITH APPEAL OR CHANGING THE LEGAL REGIME OF RECOURSE?

The dilemma between appeal and recourse as remedies at law and that of appeal in administrative contentious is not new, having been previously analysed in doctrine *(Ursuța, p. 558-565).*

In 2022, the Chamber of Deputies adopted a draft law for amending Law no. 554/2004 regarding administrative contentious[11], which provides for the modification of Article 20 paragraph 2 so that rulings from the lower court can be appealed within 30 days from the communication of the ruling. The draft law also stipulates that the appeal is suspensive of execution, that rulings made in appeal are not subject to recourse, and that both evidence proposed within the timeframe before the first instance and evidence proposed late are admissible. Furthermore, the draft law maintains recourse as a means of remedy in the enforcement phase of rulings issued in administrative contentious, according to the procedure provided by Article 25 of Law no. 554/2004 regarding administrative contentious, against rulings issued under Article 24 paragraph 3) of the law[12], and replaces recourse with appeal in cases of rulings issued under Article 24 paragraph 4) of the administrative contentious law[13].

The text is perfectible, not meeting the criteria set forth by Law no. 24/2000[14], republished, regarding legislative technique; however, these can be corrected by the Senate as the decision-making chamber. For example, it would be preferable to use the phrase "decisions can only be appealed" (following the model of the Code of Civil Procedure) instead of "decisions made in appeal are not subject to recourse," or to eliminate the provisions regarding the admissibility

[11] Pl-x no. 2/2022 (https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=19743)

[12] The procedure provided by art. 24 par. 3) of Law no. 554/2004 refers to enforcing a fine on a legal entity, public authority or institution for a culpable non-execution of the obligation established by the administrative contentious court and granting penalties in favour of the obligation's creditor.

[13] The procedure provided by art. 24 par. 4) of Law no. 554/2004 refers to transforming the fine and penalties into compensation owed to the state and the creditor for continued non-execution of the enforceable title even after the enforcement of fines and the establishment of penalties.

[14] Republished in the Official Gazette of Romania, no. 463 of May 24, 2004

of evidence in appeal, provisions which, in our opinion, are redundant, doing nothing but repeating the system of Decision no. 2 of March 30, 2020, issued by the High Court of Cassation and Justice – RIL panel[15].

However, we must note the legislator's intention to introduce a single, fully devolutive, ordinary remedy at law in administrative contentious.

In the explanatory memorandum, the initiators of the law stated that the proposal aims to ensure equal opportunities in the administration of evidence, facilitate the act of justice, balance the power dynamics between individuals and authorities, and provide a legal framework for re-evaluating the merits of cases.

Currently, the draft law is with the Senate, which is the decision-making chamber, registered under number L309/2022[16], and is under consideration by the Senate's permanent committees.

At the same time, a draft law regarding the Code of Administrative Procedure has been published for public debate on the website of the Ministry of Development, Public Works, and Administration[17].

Surprisingly, Title VIII, Chapter II, Article 309, entitled "Recourse," fully adopts the current Article 20 of Law no. 554/2004 regarding administrative contentious. Therefore, it is intended to maintain a single remedy at law for administrative litigation, in the form of the current recourse. In the explanatory memorandum of the bill's initiator, there is no mention regarding Chapter II of Title VIII - Procedure for Resolving Requests in Administrative Contentious.

It is difficult to believe that the initiator of this draft law was unaware of the parliamentary initiative to amend the law of administrative contentious, which likely took into account the unfavourable opinions of the Economic and Social Council and the Legislative Council regarding this legislative proposal, in the manner they are motivated. Thus, a logical conclusion would be that by submitting it for public debate, there is a desire to gather a relevant number of legal opinions, after which a decision will be made for one of the options.

What, therefore, would be the advantages and disadvantages of each of the options presented earlier?

From one perspective, it has been argued that the legislative solution that establishes recourse as the sole remedy at law in administrative contentious has a long-standing tradition in Romanian administrative litigation *(Marin, p. 450).*

[15] Published in the Official Gazette of Romania, no. 548/2020‘ In the unified interpretation and application of the provisions of art. 470, art. 478 par. (2) and of art. 479 par. (2) of the Code of Civil Procedure, by relating the latter with art. 254 par. (1) and (2) of the Code of Civil Procedure, the notion of new evidence which can be proposed and approved in the appeal stage includes both evidence presented in lower court by writ of summons or statement of defence, and evidence which was not presented to lower court or were presented late, and regarding which the trial court has ascertained the time limit to have been exceeded.

[16] https://senat.ro/legis/lista.aspx?nr_cls=L309&an_cls=2022#ListaDocumente

[17] https://www.mdlpa.ro/pages/proiectlegecodadministrati8v21112023

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It is true that recourse is the traditional solution in Romanian administrative contentious; however, over time, this appeal route has had a non-homogeneous legal regime: it was an ordinary remedy alongside appeal during the interwar period, the only ordinary and devolutive remedy during the communist period, a hybrid remedy under Law no. 29/1990 and Law no. 554/2004 until the entry into force of Law no. 134/2010 regarding the Code of Civil Procedure, and partially devolutive in that it was not limited to the grounds for cassation of ordinary recourse, but was restricted regarding evidence to written proof. Finally, the current recourse is the most restrictive of all forms of remedy in administrative contentious, restrictive both in terms of grounds and evidence.

From a different perspective, the Supreme Court of Cassation and Justice (Î.C.C.J.)[18], asserts that it is a court of cassation and does not have the competence to judge appeals. We find that this argument is not entirely immune to criticism. On the one hand, in administrative contentious, recourse, as regulated by Article 20 of Law no. 554/2004 regarding administrative contentious, is devolutive even though it falls under the jurisdiction of the High Court; in this matter, the provisions of Article 497 of the Code of Civil Procedure regarding cassation with referral do not apply, but rather the provisions of Article 20 paragraph 3 of the Code of Civil Procedure, which provide the court's competence to re-evaluate the case on its merits after admitting the recourse, without distinguishing based on the rank of the court *(Trăilescu, p. 294).* On the other hand, in other areas, the Supreme Court also judges devolutive recourse and even appeals. For example, in disciplinary matters, the High Court rules on recourse against decisions of the Superior Council of Magistracy as a disciplinary court and recourse against the Council of Notaries Public in disciplinary matters, which are devolutive as a result of the interpretation given by the Constitutional Court[19]. In criminal matters, the High Court also hears appeals against its own decisions rendered in lower court. Therefore, it is not essential to the activity of the High Court to judge cassation recourse; it has the competence to judge both devolutive recourse and appeals.

Regarding the devolutive nature of the appeal, it can indeed be stated that the appeal is a much more comprehensive and less formal remedy at law than cassation. The appeal allows the court not only to analyse the legality of the decision but also to conduct an examination both in fact and in law. The parties

[18] High Court of Cassation and Justice, RIL panel, resolution no. 17 of September 18, 2017, published in the Official Gazette of Romania, no. 930 of November 27, 2017.

[19] CCR resolution no. 381/2018 and CCR resolution no. 291/2022, through which the Constitutional Court ascertained that the provisions of art. 51 par. 3) of Law no. 317/2004 on the Superior Council of Magistracy, also regarding the provisions of art. 75 par. 11) thesis III of Law no. 36/1995 of notaries public and notarial activity are constitutional only to the extent to which recourse provided by these law is devolutive.

can present any defence means to the court and can invoke any substantive or procedural exceptions. The appeal is a less formally demanding route, not requiring the framing of appeal grounds within a template exhaustively regulated by the legislator. We may say that the appeal is a more "user-friendly" means of appeal for litigants and, certainly, closer to the imperative of effective access to a court.

It could also be argued that in the recourse regulated by the law on administrative contentious, the court can administer any means of evidence after cassation; however, to reach this procedural stage, it is necessary first to identify grounds for illegality in the decision issued by the lower court, for the appellate court to find them well-founded, to order the cassation of the decision, and subsequently to proceed to re-evaluate the dispute on its merits.

Regarding this aspect of evidence administration, we could argue against the appeal that it is a remedy at law with a dilatory effect, such that the duration of the litigation would be longer than in the case of resolving recourse. The prompt resolution of administrative litigation is indeed a goal of the actions within the field of administrative law; however, the speed with which a conflict between public authority and an individual is resolved should not necessarily prevail over the imperative of delivering a thorough and lawful solution based on establishing the actual facts and correctly applying substantive law, as required by the rule imposed by Article 22 of the Code of Civil Procedure regarding the judge's role in uncovering the truth. On the other hand, if we consider that recourse resolution can have two procedural stages, as previously mentioned, there is no longer such a significant temporal advantage in favour of recourse.

Moreover, according to Article 20 of Law no. 554/2004, ‘when the lower court decision was passed without examining the merits or if judgment was made in the absence of the party who was illegally summoned both for the administration of evidence and for the debate on the merits’, the appellate court resorts to cassation with referral, which significantly increases the case resolution duration, considering that after the lower court ruling, a second appeal presumably follows. In the case of an appeal, this issue would not exist, as the court would reanalyse the case in fact and law in all situations. It should also be noted that, under Article 480 paragraph 3 of the Code of Civil Procedure, the appellate court can refer the case back to the lower court only at the express request of the parties, if it resolved the case without entering into a review of the merits or in the absence of summoning a party, or if it finds that the lower court lacked jurisdiction.

Lastly, it should be emphasized that appeals are judged by a panel of two judges, while cassation recourse is judged by a panel of three judges. At the level of the courts of appeal and the High Court of Cassation and Justice, multiple panels could be formed if cassation were replaced with appeals, which would actually lead to a reduction in the duration of case resolutions.

Thus, the argument regarding the duration of case resolutions is relative, with arguments to be found both in favour of appeals and cassation.

Certainly, replacing cassation with an appeal is not the only solution we can imagine when considering the reform of the system of remedies in the administrative contentious.

Recourse could be reformed to become a fully devolutive remedy at law, following the model provided by the Constitutional Court of Romania regarding the disciplinary responsibility of magistrates and notaries public[20]. However, in this case, the court would essentially be judging an appeal under a different name, and this remedy would deviate from the purpose of cassation recourse.

In doctrine, more radical solutions have also been proposed, such as the abolition of the appeal and the transformation of recourse into an ordinary remedy, combined with the reconfiguration of the challenge to annul and the regulation of cassation solely for issues concerning the conformity of the decision with legal principles, under the jurisdiction of the High Court of Cassation and Justice *(Nicolae, p. 303-490).* The author proposes several reform options for the system of remedies applicable to the entire civil procedural law, not just administrative contentious. Starting from the premise that there is no constitutional or infralegal imperative regarding the existence of a three-tier jurisdiction, it is proposed to abolish the appeal, reverting to the model of the 1952 reform, with a single ordinary remedy at law, namely recourse, merging courts with tribunals that would have full jurisdiction on the merits, and ordinary recourse being assigned to the courts of appeal. Concurrently, it is proposed to reconfigure the challenge to annul by adding grounds related to lack of motivation or nullity of the decision passed on the merits or in recourse. Cassation recourse would be under the exclusive jurisdiction of the High Court of Cassation and Justice and would aim only at pronouncing on '*the conformity of the challenged decision with applicable principles and rules of law, for the purpose of ensuring correct interpretation and uniform application'.*

We believe that such a system would be beneficial in administrative contentious if the material competence were no longer segregated between tribunals and courts of appeal, administrative tribunals were established, and these tribunals were granted full jurisdiction on the merits, while the courts of appeal would handle ordinary recourse. In this way, the High Court of Cassation and Justice would only judge an extraordinary remedy at law, for legality, which would not suspend execution, addressing only issues of principle. This would lead to the alleviation of the supreme court and to achieving the long-desired unification of judicial practice.

[20] Idem Note 15

CONCLUSION

In our opinion, recourse in administrative contentious, as currently regulated, raises certain issues regarding effective access to a court of law. At present, we believe that the appellate courts in administrative litigation are forced to interpret the grounds for cassation extensively, especially the one provided by Article 488 paragraph 1 point 8 of the Code of Civil Procedure, as procedural key factors are currently limited in cassation.

We consider that extensive debates involving all eminent jurists are necessary because, in the field of administrative law, more than in any other branch of law, there is a need not only for speed but also for predictability, stability of legal relationships, and the correct resolution of conflicts between public authorities and individuals within the natural framework of substantive law.

We also express our confidence that, alongside other valuable scholars of administrative law, we are contributing to identifying solutions regarding remedies at law in administrative contentious, both through this study and through our future research.

BIBLIOGRAFIE

1. Apostol Tofan, D., *Drept administrativ*, vol. I-II, Editura C.H. Beck, , București 2023;
2. Bogasiu, G., *Legea contenciosului administrativ comentată și adnotată*, Ediția a V-a, revăzută și adăugită, Editura Universul Juridic, București, 2022;
3. Broyelle, C., *Contentieux administratif*, 12e édition 2024-2025, Editure LGDJ, Paris 2024;
4. Bârsan, G.V., Marin, E., *Legea contenciosului administrativ nr. 554/2004 – adnotată*, Ediția a 3-a revăzută și adăugită, Editura Hamangiu, București, 2021;
5. Cătană, E.L., *Drept Administrativ*, Ediția 3 revăzută și adăugită, Editura C.H. Beck, București, 2023;
6. Ciobanu, V.M., Nicolae, M., (coord.), *Noul Cod de procedură civilă comentat și adnotat*, vol. I, ed. a II-a revizuită și adăugită, vol. II, Ed. Universul Juridic, București, 2016;
7. Dragoș, D. C. (2016), *Administrative Appeal*, in A. Farazmand (ed.), Global Encyclopedia of Public Administration, Public Policy, and Governance, Springer International Publishing Switzerland, DOI:10.1007/978-3-319-31816-5_1033-1
8. Marin, E., *Legea contenciosului administrativ nr. 554/2004 – Comentariu pe articole*, Editura Hamangiu, București, 2020;
9. Negruț, V., *Drept Administrativ – Serviciul public. Proprietatea publică*, Editura C.H. Beck, București, 2019;
10. Nicolae, M., *Teoria recursului în casație*, Editura Solomon, București, 2022;
11. Petit, J., Frier, P.-L., *Droit Administratif*, 18e edition 2024-2025, Editure LGDJ, Paris 2024;

12. Rarincescu, C., *Contenciosul administrativ român*, ed. a II-a; Editura ”Universală Alcalay&CO”, București 1936.
13. Săraru, C.S., *Drept Administrativ – curs universitar*, vol. I-II, Editura Universul Juridic, București, 2024;
14. Săraru, C.S., *Tratat de contencios administrativ*, Editura Universul Juridic, București, 2022;
15. Trăilescu, A., Trăilescu, A., *Legea contenciosului administrativ, Comentarii și explicații*, Ediția 5, Editura C.H. Beck, , București 2021;
16. Ubaud-Bergeron, M., *Droit des contrats administratifs*, 5e edition, Editure LexisNexis, Paris, 2024;
17. Vedinaș, V., *Drept administrativ*, ediția a X-a, revăzută și actualizată, Editura Universul Juridic, București, 2017;
18. Vedinaș, V., *Tratat teoretic și practic de drept administrativ*, vol. I-II, Editura Universul Juridic, București, 2018.
19. www.scj.ro;
20. www.cdep.ro;
21. www.senat.ro;
22. www.legis.md.