Communication of administrative acts. The role of the courts in developing the rules of administrative contencious. Legislative evolution and practical aspects

Nicolae-Alexandru CESLEA

ABSTRACT

Throughout the legislative evolution carried out over the last 30 years, the courts have played an important role in establishing the legal regime applicable to the operation of communication of administrative acts. Nor can it be denied that the practice of the courts emphasized the shortcomings of the regulation, thus triggering the initiation of the procedures for amending the legal provisions regarding communication of administrative acts.

From the initial regulation given by the former Law no. 29/1990 regarding the administrative litigation, in which no distinction was made between the situation of the beneficiary and the third party in relation to the administrative act, to a regulation in which greater attention is paid to the communication of the administrative act to the third party, a considerable period of time passed during which jurisprudence has played a central role.

The study begins with the problem of conceptualizing the notion of communication and determining the legal regime as a result of qualifying the communication operation as an element that falls within the scope of material law. The central part of the paper concerns the concrete analysis of the legislative evolution and the role of the courts in this process. The final part brings in discussion the challenges that will be faced by law practitioners having as starting point the current form of the legal text. The last legislative changes put in foreground absolutely new challenges with which courts will be confronted, and their intervention will be, in the same sense as until now, significant.

Bringing to the forefront and awareness the evolution of the regulation regarding the operation of the communication helps create a picture of the legislative changes in order not to arrive at the same solutions that presented shortcomings, all towards a healthy and coherent legislative evolution.

KEYWORDS: *administrative act, legislative evolution, communication, third party, case law.*

1. Introduction

The communication of the administrative acts is a particularly important aspect in the administrative law, both from the perspective of protecting the principle of security of legal relationships[1)] and from the perspective of protecting the principle of free access to justice[2)].

The question regarding the security of the legal relationships is favorable to the beneficiaries of the administrative act, with the communication and the expiration of contestation terms, in general, the administrative act becomes definitive and can no longer be annulled by the courts. On the other hand, the principle of free access to justice is favorable to the third parties and implies the interpretation of the legal provisions in the sense that they are given the possibility to challenge the administrative act without imposing unreasonable limitations, in the latter category including the contestation terms.

In this regard, we can already draw the preliminary theses of the present paper, in the sense that we intend to analyze how the courts have chosen to give priority to one of the two principles of law that are in opposition, the principle of security of legal relationships and the principle of free access to justice, and, consequently, how they chose between the diametrically opposed interests of the beneficiaries and of the third parties in relation to the administrative act.

To begin with, we considered it useful to conceptualize the notion of communication and to integrate it in the domain of application of material law or procedural law, in order to determine what in the sphere of law influenced the courts. The importance of analyzing these aspects arose also from observing the opinions in the doctrine that are still divided regarding the classification in the sphere of material or procedural law of the elements next to the communication operation, as is the problem of the legal nature of the contestation terms of the administrative acts.

The central part of the paper deals with the legislative evolution of the legal provisions governing the communication operation and what contribution the courts have had. From the establishment of the rules regarding the communication of the administrative acts to the third party, in the conditions in which his situation was not regulated by the law, to the concrete way of applying the legal provisions in the matter, to highlighting the main shortcomings of the different regulations, the courts have been positioned at the center of the problem of communication of administrative acts.

---

1) For details on this principle in administrative law, see Brad, I., 2019, *Revocarea actelor administrative. Instituția revocării sub exigențele dreptului european*, Bucharest, Romania: Universul Juridic Publishing House, pp. 122-173; Podaru, O., 2010, *Drept administrativ. Vol. I. Actul administrativ. (I) Repere pentru o teorie altfel*, Bucharest, Romania: Hamangiu Publishing House, pp. 296-304; Săraru, C.S., 2019, *Contenciosul administrativ român*, Bucharest, Romania: C.H. Beck, pp. 111-112.

2) For details on this principle, see Chiriță, R., 2016, *Paradigmele accesului la justiție. Cât de liber e accesul liber la justiție?*, article published on 08.12.2016, available on http://www.unbr.ro/publicam-articolul-intitulat-paradigmele-accesului-la-justitie-cat-de-liber-e-accesul-liber-la-justitie-reprodus-cu-acordul-autorului-lect-univ-dr-radu-chirita-facultatea-de-d/.

In the last part of the paper are presented the current legal provisions regarding the communication of administrative acts, as modified by Law no. 212/2018[3)], the main shortcomings of this regulation are identified, including those arising from the multitude of interpretations that the text can generate regarding the moment from which the term of contestation of administrative acts begins to expire, the general conclusion being that the legislative changes will bring absolutely new challenges to the courts, whose intervention will be, in the same sense as before, significant.

2. The notion and legal nature of the operation of communication of administrative acts

In the specialized legal literature, the communication of the administrative acts is defined as "the operation by which the issuing administrative body notifies the interested party an administrative act"[4)], also "sending an individual administrative act to the subject of law concerned (the recipient of the act), either through direct delivery, either by posting at the address where he/she has his/her address"[5)].

In relation to the second definition, the first one has a broader content from two points of view. Thus, on the one hand, the operation of the communication is not limited only to the sending of the administrative act, but also to the operation of informing about the existence of the administrative act that does not necessarily imply the presentation in written form of the administrative act, and, on the other on the one hand, the number of the subjects of communication is much wider. The second definition involves the written form of the administrative act and is intended only for the recipient of the administrative act.

The communication operation was also defined in the doctrine as "an administrative operation subsequent to the issuance or adoption of an administrative act that may concern other subjects of law than the addressees of the act"[6)], the last part of the definition being exemplified by the administrative acts communicated to the mayor and prefect pursuant to art. 197 paragraph (1) and (2) of the Administrative Code[7)]. This definition aims to emphasize that the sphere of the recipients is wider, without being limited to the beneficiary of the administrative act.

---

3) Law no. 212/25 July 2018 for amending and completing the Law on administrative contentious no. 554/2004 and other normative acts, published in the Official Journal of Romania, Part I, no. 658/30 July 2018.

4) Petrescu, R.N., 2009, *Drept administrativ,* Bucharest, Romania: Hamangiu Publishing House, p. 327.

5) Ciobanu, A.S., 2015, *Drept administrativ. Activitatea administrației publice. Domeniul Public*, Bucharest, Romania: Universul Juridic Publishing House, p. 70.

6) Vedinaș, V., 2018, *Tratat teoretic și practic de drept administrativ*, Vol. II, Bucharest, Romania: Universul Juridic Publishing House, p. 76.

7) Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, published in the Official Journal of Romania, Part I, no. 555 of July 5, 2019. Thus, according to art. 197 of the Administrative Code "(1) The general secretary of the territorial unit/subdivision communicates the administrative acts provided in art. 196 paragraph (1) to the prefect within

In the same sense as the last definition, but also with the second definition set out in the first paragraph of the section, it was also noted that the operation of the communication consists in "the fact of a public authority to inform officially and personally, by a specific means, the recipients of a norm or other public authorities"[8].

In the current framework of the regulation, on the basis of what will be presented in this study[9], we will define communication as an operation that falls within the scope of the administrative procedure, within the legal regime applicable to the administrative act, and implies the disclosure of the content of an administrative act, in the form which the administrative act take, to the interested person, beneficiary or third party, or to a certain public authority.

There is no general regulation of the operation of communication of administrative acts. The legal nature and the applicable legal regime can be established by interpretation starting from the relation with the norms of material law and civil procedural law, as well as from the legal norms that contain mentions regarding the communication of the administrative acts.

The administrative act is the one that produces effects in the matter of administrative law, as well as in the other matters of the law, the communication determining, in principle, the moment from which the administrative acts begin to produce these legal effects[10]. In relation to the provisions of Law no. 554/2004[11], the operation of the communication of the administrative act appears in the context of the regulation of the legal regime of the pre-trial administrative complaint procedure, in relation with the term for formulating the preliminary complaint[12], being able to claim that the operation of the communication concerns a condition regarding the referral to the court, respectively it concerns the exercise of the right to action, so that it is

no more than 10 working days from the date of adoption, respectively of the issue. (2) The decisions of the local council shall be communicated to the mayor". Similar provisions can also be found in matters of administrative guardianship art. 3 paragraph (1) of Law no. 554/2004: "(1) The prefect may directly attack before the administrative contentious court the acts issued by the local public administration authorities, if he considers them illegal; the action is formulated within the term provided in art. 11 paragraph (1), which begins to expire from the moment of communication of the act to the prefect and under the conditions provided by this law (...)".

8) Podaru, O., *op. cit.*, p. 217.

9) See the present section and Section 4. Communication of administrative acts in the current regulation.

10) For details, see Vedinaș, V., *op. cit.*, pp. 82-87. Also, Clipa, C., 2018, *Ne îndreptăm spre facultativitatea plângerii administrative prealabile? Câteva observații pe marginea modificării neriguroase a art. 7 alin. (5) din Legea cu nr. 554/2004 a contenciosului administrativ*, article published on 01.10.2018, available on www.juridice.ro.

11) Law no. 554/2004 regarding the administrative dispute, published in the Official Journal of Romania, Part I, no. 1154/07 December 2004.

12) According to art. 7 paragraph (1) of Law no. 554/2004, in the form currently in force: "Before addressing the competent administrative litigation court, the person who is considered harmed in his right or in a legitimate interest by an individual administrative act addressed to him must request the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the act, to revoke it, in whole or in part".

considered that the operation of the communication constitutes an aspect that falls within the scope of the civil procedural law and the application of the corresponding legal regime[13)].

This assessment can be made more so as the current doctrine has not yet stabilized with regard to the question of qualifying the 30 day term for submitting a pre-trial administrative complaint, within a term specific to the material law, a deadline[14)] or a prescription term[15)], respectively a deadline term[16)] specific to procedural law, so that the problem of framing the communication in the scope of the norms of material law or of civil procedural law is of further interest. If it can be deduced that elements of the legal regime of the administrative act, of the administrative procedure, have been qualified as elements that fall within the scope of the civil procedure, then, all the more, the temptation is also regarding the communication operation.

In other words, if the term for formulating the prior complaint is an element that falls within the scope of the civil procedure, then so is the proximate element, dependent on it, the operation of communicating the administrative document must benefit from the same interpretation. But in this way the entire legal regime of the administrative act could enter the field of civil procedure, which would qualify the administrative act itself as a procedural act.

However, the administrative act, the terms of the pre-trial administrative complaint procedure and the communication of the administrative acts are not elements specific to the civil trial, since the civil trial follows the activity carried out by the court, the conduct of the parties and other participants in the court, the latter norms constituting the rules that regulate the organization and the conduct in civil trial[17)].

The 30 day term for submitting the pre-trial administrative complaint is viewed in correlation with the legal nature of the administrative act, which is a manifestation

---

13) The provisions of art. 153-173 of the Civil Procedure Code carefully regulates the procedure of communication of the procedural acts, provisions that can be applied under the conditions of art. 28 paragraph (1) of Law no. 554/2004: "The provisions of this law are supplemented by the provisions of the Civil Code and those of the Code of civil procedure (...)". Law no. 134/2010 on the Civil Procedure Code, republished in the Official Journal of Romania, Part I, no. 247/10 April 2015.

14) Dragoş, D.C., 2009, *Legea contenciosului administrativ. Comentarii şi explicaţii*, Second Edition, Bucharest, Romania: All Beck Publishing House, p. 228; Nicolae, M., 2010, *Tratat de prescripţie extinctivă*, Bucharest, Romania: Universul Juridic Publishing House, p. 1035. A deadline specific to the material law has as an effect the loss of a material right.

15) Petrescu, R.N., *op. cit.*, p. 466. The prescription term implies the loss of the right to constraint the defendant.

16) Podaru, O., 2014, *Despre prescripţie şi pseudo-prescripţie în contenciosul administrativ*, in Curierul Judiciar Review no. 1/2014, p. 35; Rîciu, I., 2012, *Procedura contenciosului administrativ. Aspecte teoretice şi repere jurisprudenţiale*, Bucharest, Romania: Hamangiu Publishing House, p. 217. A deadline specific to the procedural law has as an effect the loss of a procedural right.

17) Boroi, G.; Stanciu, M., 2015, *Drept procesual civil*, Bucharest, Romania: Hamangiu Publishing House, pp. 1, 5.

of will[18] concerning a material administrative law relationship and in correlation with the legal nature of the administrative appeal, which, although it belongs to the administrative procedure, also constitutes a material law element in relation to the civil procedure. The administrative appeal is part of the administrative procedure, an administrative route of appeal, the civil procedural provisions establishing only the condition of the pre-trial procedure, the condition of following it before the trial is initiated. From this perspective, we consider that the legal regime applicable to the administrative act, the term of formulating the pre-trial complaint and the operation of the communication is that of material law.

It should also be noted that the doctrinal dispute regarding the qualification of the 30 day term for formulating the pre-trial complaint was maintained even when, once the Law no. 554/2004 was adopted, the term corresponding to the 30 days term, that of 6 months for formulating the pre-trial complaint over the term, in case of solid reasons that justified the exceeding of the general term, was expressly qualified as prescription[19]. As we have already noted in another study, in order to maintain the regulation consistency, in order to ensure a harmonization of the legislation, the term of 30 days is required to receive a qualification similar to that of 6 months, as long as they perform similar functions[20]. These differences of interpretation remain important reasons for drawing the net distinction between the institutions of material law, regardless that they are qualified as administrative procedures, and those of civil procedure, the qualification thus determining the applicable legal regime.

The doctrine addresses the issue of the communication of administrative acts as a procedural form subsequent to the issuance of the administrative act[21], an aspect that implies that the operation of communicating administrative acts does not affect their validity, but conditions their entry into force, respectively their third party effect[22]. Of course, the validity of any legal act relates to the moment of its issuance, and any element subsequent to its issuance is outside the scope of the institution of the nullity of the administrative act, but what is interesting to note is the qualification of the communication operation as a *procedural form*.

It is sufficiently clear that there are administrative procedural forms, which from the perspective of the civil procedure constitute elements of material law, and, since it concerns the legal regime of the administrative acts, the communication takes into

18) For details, see Vedinaș, V., *op. cit.*, pp. 27-34.

19) Thus, according to art. 7 paragraph (7) of Law no. 554/2004 in the form in force at the date of adoption: "The prior complaint in the case of unilateral administrative acts can be introduced, for justified reasons, beyond the term provided in par. (1), but not later than 6 months from the date of issuing the act. The term of 6 months is a prescription term"; in the current form of the regulation, the phrase regarding the qualification of the longer term as prescription term can be found in art. 7 paragraph (3) of Law no. 554/2004.

20) Ceslea, N.A., 2018, *Termenele de prescripție și decădere în materia dreptului administrativ*, Dissertation paper, University of Bucharest, Faculty of Law, Master's program: Private Law, Scientific Coordinator Prof. Univ. Dr. Marian Nicolae, Bucharest, p. 32.

21) Iorgovan, A., 2005, *Tratat de drept administrativ*, Vol. I, 4th Edition, Bucharest, Romania: All Beck Publishing House, pp. 63-64, Petrescu, R.N., *op. cit.*, p. 327, Vedinaș, V., *op. cit.*, p. 76.

22) Ciobanu, A.S., *op. cit.*, p. 70.

account the administrative procedures, viewed from the perspective of the material law. The situation is similar to the regulation of the fiscal law, in which the Fiscal Procedure Code[23)] represents material law in relation to the civil procedure and works on the basis of different mechanisms.

The importance of qualifying the operation of communication as an element that falls within the scope of material law or civil procedure is essential, given that the rules of civil procedure regarding communication are strict, while those of material law have not benefited of increased attention in the regulation. In this context, the courts intervened, establishing a series of rules regarding communication, which were highlighted in the process of the evolution of the legal provisions in the matter.

3. The evolution of the legal provisions regarding the communication of administrative acts and the corresponding jurisprudence[24)]

The provisions of the Law on administrative disputes no. 29/1990[25)], like the previous legislation[26)] did not include a general title regarding the operation of the communication of the administrative act[27)], its legal regime being determined by the doctrine and the practice of the courts.

---

23) Law no. 207/20.07.2015 regarding the Fiscal Procedure Code, published in the Official Journal of Romania, Part I, no. 547/23 July 2015.

24) The paragraphs within this section represent an adaptation of the result of the research carried out within the program of the Doctoral School of Law of the Faculty of Law, University of Bucharest, presented in the Research Report no. 1 sustained on September 30, 2019, unpublished, before the commission composed of coordinator Prof. Univ. Dr. Verginia Vedinaș, Assoc. Univ. Dr. Dan Drosu Șaguna, Assoc. Univ. Dr. Alexandru-Sorin Ciobanu and Lecturer Univ. Dr. Bogdan Dima.

25) Law of the administrative contentious no. 29/1990, published in the Official Journal of Romania, Part I, no. November 29, 1990.

26) The specific legislation from the modern administrative law, based on the principle of separation of powers in the state, respectively Law no. 167 for the establishment of a state council of February 11, 1864, published in the Official Journal of Romania of January 11, 1864, the Law for the administrative dispute of December 23, 1925, quoted in full in Annex IX Rarincescu, C.G. 1936. *Contenciosul administrativ român*, 2nd Edition, Alcalay & Co. Universal Publishing House, Bucharest and Law no. 1/1967 regarding the trial by the courts of the claims of those harmed in their rights through illegal administrative acts, published in the Official Bulletin no. 67/26 July 1967.

27) Based on the provisions of art. 5 of Law no. 29/1990: "Before requesting the court to annul the act or to compel his release, the person who is considered harmed by an administrative act shall address for the defense of the right or, within 30 days from the date when the administrative act was communicated or at the expiration of the term provided in art. 1 paragraph 2, to the issuing authority, which is obliged to resolve the complaint within 30 days from the date of the complaint. In case the person who is considered harmed by an administrative act is not satisfied with the solution given his complaint, he can notify the court within 30 days from the communication of the solution. If the person who is considered harmed by an administrative act addressed with a complaint also to the hierarchically superior administrative authority to the one who issued the act, the 30 day term, provided in the previous paragraph, is calculated

Law no. 29/1990 did not expressly regulate the situation of the action brought by the third party, but, in the practice of the supreme court[28], the right of the third party to challenge an administrative act was recognized, the moment from which the term for formulating the pre-trial complaint was considered to expire starting with the date on which the third party became aware of the existence and content of the act. In the practice of the same court[29], it was also held that the formulation of a complaint against an administrative act presumes the knowledge of its content.

During the analyzed period, this was a first step taken by the courts in completing the regulation given to the operation of communicating administrative acts to a third party. Although this interpretation was not confined to the limits of the attributions of the judicial authority to judge, however, the intervention of the supreme court not only determined an important aspect, not regulated by the legislation in the matter, but it also drew the direction followed by the subsequent regulation.

Law no. 554/2004[30] kept the same format as the previous legislation regarding the communication of the administrative act to the beneficiary, without establishing the concrete way in which the communication takes place.

Regarding the situation of the third party, the provisions of art. 7 paragraph (3) and (7) in conjunction with art. 7 paragraph (1)[31] of Law no. 554/2004 expressly regulated its situation. These provisions were interpreted in the way that the third party had a period of 30 days from the moment when he became aware of the existence of the administrative act to submit a pre-trial complaint to the administrative authority, but not later than 6 months from the issuance of the administrative act[32]. The only notable benefit of this mechanism was that it followed the legal regime of the prescription for

from the communication by that authority of the solution given to the complaint. The court may also receive the case if the issuing administrative authority or the hierarchically superior authority does not resolve the complaint within the term provided in par. 1. In all cases, the application to the court may not be made later than one year from the date of communication of the administrative act whose cancellation is requested".

28) By the decision no. 580/27 March 1997, pronounced by the Supreme Court of Justice, presented in Anghel, V.; Preda, M., 1998, *Decizii și hotărâri ale Curții Constituționale și Curții Supreme de Justiție în probleme ale administrației publice și agenților economici*, Bucharest, Romania: Lumina Lex Publishing House, pp. 609-610.

29) In this respect, the decision 1775/08 November 1996, in Anghel, V.; Preda, M., *op. cit.*, pp. 610-612.

30) In the initial form of the text of art. 7 paragraph (1): "Before addressing the competent administrative litigation court, the person who considers himself harmed in his right or in a legitimate interest by a unilateral administrative act must request the issuing public authority, within 30 days from the date of communication of the act, it's revocation, in whole or in part. The complaint can be addressed equally to the higher hierarchical body, if it exists".

31) In the initial form: "(2) It is entitled to file a pre-trial complaint also the harmed person in his right or in a legitimate interest, through an individual administrative act, addressed to another subject of law, from the moment he became aware, by any means, of its existence, within the limits of the term of 6 months provided in par. (7)", and the provisions of par. (7) "The pre-trial complaint in the case of unilateral administrative acts may be filed, for justified reasons, also over the term provided in par. (1), but not later than 6 months from the date of issuing the act. The term of 6 months is a prescription term".

32) The solution is also confirmed by the doctrine. In this regard, see Iorgovan, A., *op. cit.*, p. 589.

the 6 months term which started to expire from the moment of the issuance of the administrative act. But this limitation imposed by art. 7 paragraph (7) of the law has proved to be mostly unfair to the third party.

Thus, the term of 30 days was starting to expire regardless of whether the third party came into possession of the act, being sufficient for him to be aware of the existence of this act. If the third party became aware of the existence of the act after the expiry of the limitation period of 6 months from the issuance of the administrative act, the right to make a pre-trial complaint was considered to be fulfilled, and the preliminary complaint would be rejected for this reason.

In order to counteract the unfairness of the regulation towards the third party, by the Constitutional Court Decision no. 797/27 September 2007[33)] the exception of unconstitutionality of the provisions of art. 7 paragraph (7) of Law no. 554/2004 was granted. It was found that the text is unconstitutional insofar as the term of 6 months from the issuance of the administrative act applies to the pre-trial complaint submitted by the third party. It was held that the administrative acts are not opposable to the third parties, they are not communicated or subject to any form of publicity, so that they don't have the possibility to become aware of its existence from the date of issue. In this way, third parties find themselves in an objective impossibility to know the existence of the administrative act, which is why the term cannot be calculated from the moment of issuing the administrative act.

In the configuration given by the presented decision of the Constitutional Court to the right to submit the pre-trial complaint, it was sufficient to prove that the third party was aware of the existence, and not the content, of the administrative act, to begin the expiration of the 30 day term, respectively, for justified reasons, not later than 6 months from the same moment.

In the practice of the courts[34)], starting from those established by the Constitutional Court in the cited decision, it was appreciated that the acknowledgement of the existence, and not of the content of the administrative act, must be effective, the burden of proof being at the adversary. Thus, the simple contact between the beneficiary and the third party or, in the case of building authorizations, the display of the investment identification panel[35)] raised on a secluded, isolated land, do not meet these requirements[36)].

---

33) Published in the Official Journal of Romania no. 707/19 October 2007.

34) In this regard, sentence no. 1783/20 March 2017 pronounced by the Bucharest Court - The Second Section of Administrative and Fiscal Contentious, unpublished, definitive by renouncing at the right, established by decision no. 4976/22 November 2017 delivered by the Bucharest Court of Appeal – VIII Section of Administrative and Fiscal Contentious, unpublished.

35) According to art. 1 of the Order of the Ministry of Public Works and Spatial Planning no. 63/1998 regarding the obligation to display in the visible place the investment identification panel, published in the Official Journal of Romania, Part I, no. 345/11 September 1998.

36) Ceslea, N.A., *op. cit.*, pp. 38-39. As a general rule, these assessments also remain valid in the current legislative framework, in that the acknowledgement of the content of the administrative act must be appreciated in concrete, on a case-by-case basis, and should not be easily presumed. In other words, there must be a firm conviction of the judge that the third party knows the content of the administrative act, and any means of evidence can be administered in this regard.

Although it appeared as an evolution of the regulation, representing another stage in the development of legal norms regarding the communication of administrative acts, this form of the legal provisions had a shortcoming. Specifically, the third party was held accountable for the period of time within he followed the necessary steps to obtain the administrative act and to challenge it. In other words, his right to defense was seriously affected in the situation when he found out immediately about the existence of the administrative act, then he addressed the issuing authority, but the authority did not answer or refused to communicate the administrative act, and until a court ruling regarding the obligation to communicate the administrative act, both the 30 day term and the maximum 6 month term for submitting the pre-trial complaint would had expired. In this way, the third party was in a position to challenge the administrative act without being aware of the content of it, in a way that proved inefficient, being deprived at least of the right to submit an effective administrative appeal.

In the presented context, we also add the lack of reluctance of the courts to prohibit the third party from modifying the application with new reasons of illegality of the administrative act, when the third party became aware of the content of the administrative act from the case file after the first trial term[37)].

Even if the reported practice concerns a request to suspend the execution of the administrative act, it does not exclude that in other stages prior to the trial or in other procedural stages this practice did not manifested. The third party could reach the stage of the administrative appeal, the stage of the procedure of suspending the administrative act and even the stage of formulating the action before the court without knowing the content of the contested administrative act.

Indeed, if the third party came into possession of the document at a subsequent moment to the first term of the trial, the procedural provisions require the solution to be in the same manner as the one ordered in the cited sentence. This is because the legality[38)] and the delivery of the judgement in an optimal and predictable term[39)] are principles of the civil procedure. It should not be forgotten that the principle of

---

37) In this regard, sentence no. 1913/19 March 2019, pronounced by the Bucharest Court - Second Section of Administrative and Fiscal Contentious, unpublished, definitive by rejecting the appeal, as unfounded, by decision no. 435/09 July 2019 delivered by the Bucharest Court of Appeal - Section VIII of Administrative and Fiscal Contentious, unpublished. It was held that "the aspects relating to the modification of the application after the first court term, as the Court has already considered that the provisions of art. 14 of Law no. 554/2004, interpreted in a logical way, require that the reasons for the suspension, the justified case and the imminent damage, must be known reasons at the time of the submission of the application before the court, and, after the first trial term, the procedural provisions allow the applicants to supplement the reasons for suspension only with the agreement of the parties, according to art. 204 para. 3 from the Code of Civil Procedure".

38) According to art. 7 of the Code of Civil Procedure "(1) The civil trial is carried out in accordance with the provisions of the law. (2) The judge has the duty to enforce the provisions of the law regarding the implementation of the rights and the fulfillment of the obligations of the parties".

39) According to art. 6 paragraph (1) of the Code of Civil Procedure "Everyone has the right to a judgement of his case (...) in an optimal and predictable term (...). For this purpose, the court is obliged to order all the measures allowed by law and to ensure the celerity of the procedures".

celerity was enshrined in the context of Romania's multiple sentences by the European Court of Human Rights for the duration of the proceedings, this also being the context of the adoption of this regulation[40].

Although "it is the attribute of the sufficiently general norms of the Code of civil procedure, the general framework in this matter, but also of the specific flexibility of the norms of the general law, that can include in the regulatory sphere all the aspects of the trial"[41], however it would have been appropriate to consider that, in the presented hypothesis, the limitation to modify the application until the first term of the trial should not be applicable.

In the conditions in which the Code of civil procedure elevates to the rank of principles the right to a fair trial[42], equality[43], good faith[44] and guarantee of the right to defense[45], we note that the provisions of art. 204 para. (1) and (3) of the Code of Civil Procedure[46] have not been designed and, therefore, cannot be adapted to such scenarios as those presented in the previous paragraphs, so they should be removed from application. In this way, the regulation regarding the communication and contestation of the administrative act by the third party would have been close to a reasonable standard.

4. Communication of administrative acts in the current regulation

By Law no. 212/2018 the problem presented in the previous paragraphs is solved, the term for submitting the pre-trial complaint by the third party starts to expire from the moment of the acknowledgement, by any means, of the content of the

40) As can be observed from the explanatory statement of the draft law registered at the Chamber of Deputies under no. PL-x no. 413/2009 which materialized in the content of Law no. 134/2010 regarding the Civil Procedure Code, available on www.cdep.ro.

41) Ceslea, N.A., *op. cit.*, p. 27.

42) Based on art. 6 paragraph (1) of the Code of Civil Procedure "Everyone has the right to a fair trial (...)".

43) According to art. 8 of the Code of Civil Procedure "In civil litigation the parties are guaranteed the exercise of procedural rights, equally and without discrimination".

44) Based on art. 12 paragraph (1) of the Code of Civil Procedure "The procedural rights must be exercised in good faith, according to the purpose for which they were recognized by law and without infringing the procedural rights of another party".

45) According to art. 13 of the Code of Civil Procedure "(1) The right to defense is guaranteed; (3) The parties are assured of the possibility to participate in all the phases of the trial. They can have access to the file, propose evidence, defend themselves, present their written and oral arguments and exercise the legal remedies, in compliance with the conditions provided by law".

46) According to these legal provisions: "(1) The applicant may amend his application and propose new evidence, under the sanction of forfeiture, only until the first term at which he is legally summoned. In this case, the court orders the postponement of the case and the communication of the modified request to the defendant, in order to formulate the welcome, which, under the sanction of the decay, will be filed with at least 10 days before the fixed term, to be investigated by the applicant in the case file; (3) Modification of the request for judicial appeal over the term provided in par. (1) may take place only with the express agreement of all parties".

administrative act[47]. But this way of solving the problems arising under the applicable legal regime until the time of the adoption of Law no. 212/2018 generates completely new ones.

Thus, it is noted that the situation of the third party becomes unjustifiably privileged in relation to that of the beneficiary, the latter having 30 days from the communication to formulate the prior complaint and, in case of exceeding the latter term for justified reasons, 6 months from the issuance of the act[48], while the third party has 30 days, respectively 6 months, in case of exceeding the latter term for justified reasons, from the moment when he became aware of the content of the act[49].

Then, the current regulation raises the question whether the acknowledgement of the content of the administrative act, specific to the situation of the third party, is similar to that of the communication of the administrative act, specific to the beneficiary's situation. This in the context in which the acknowledgement of the content of the administrative act implies the awareness of all its elements, both intrinsic and extrinsic. To illustrate, the third party become aware of the signature applied to the administrative act only after observing the written form of the act that involves the operation of communicating the administrative act. Such an appreciation entails the possibility to challenge the administrative act by the third party after considerable periods of time from the moment of issuing the administrative act, an aspect that raises important problems in the sphere of the principle of security of legal relationships, respectively, as the case may be, of the principle of free access to justice.

At the same time, one of the most important problems raised by the recent legislative modification is the establishment of the legal regime in the case of submitting the application before the court, whose object is the annulment of the administrative act, for the hypotheses in which the pre-trial complaint is not necessary.

---

47) According to art. 7 paragraph (3) of Law no. 554/2004 as amended: "It is entitled to file a pre-trial complaint also the harmed person in his right or in a legitimate interest, by an individual administrative act, addressed to another subject of law. The pre-trial complaint, in the case of unilateral administrative acts, will be filed within 30 days from the moment the harmed person became aware, by any means, of the content of the act. For justified reasons, the pre-trial complaint can be formulated within 30 days, but not later than 6 months from the date on which it became aware, by whatever means, of its content (...)".

48) According to art. 7 paragraph (1) of Law no. 554/2004 amended as follows: "Before addressing the competent administrative litigation court, the person who is considered harmed in his right or in a legitimate interest by an individual administrative act addressed to him must request the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the act, the revocation of it, in whole or in part. For justified reasons, the harmed subject, the addressee of the document, can file the pre-trial complaint, in the case of unilateral administrative acts, also over the term provided in par. (1), but not later than 6 months from the date of issuance of the act".

49) The paragraph represents the adaptation of the result of the research carried out within the program of the Doctoral School of Law of the Faculty of Law, University of Bucharest, presented in the Research Report no. 1 sustained on September 30, 2019, pp. 86-88, unpublished, before the commission composed by coordin. Prof. Univ. Dr. Verginia Vedinaș, Assoc. Univ. Dr. Dan Drosu Șaguna, Assoc. Univ. Dr. Alexandru-Sorin Ciobanu and Lecturer Univ. Dr. Bogdan Dima.

In the doctrine[50], it has already been pointed out that the legislator was not concerned by issue of the time limit when submitting an application in the situation when it is not necessary to formulate the pre-trial complaint, proposing to apply by analogy the provisions of art. 11 paragraph (3)[51] of Law no. 554/2004. In this way, the similarity with the situation of the application submitted by the prefect, the People's Advocate, the Public Ministry or the National Agency of Civil Servants is drawn.

But this proposed solution is not unique. Only the preference can guide us to the option set out in the previous paragraph. The situation of the action filed by the third party is more similar to that of the action submitted by the beneficiary, than that of the listed authorities. In this way, the provisions of art. 11 paragraph (1) and (2)[52] of Law no. 554/2004 can be applied by analogy. These provisions allow the action to be filed within 6 months, respectively 1 year from the communication or, as the case may be, from the moment of acknowledgement of the content of the act. As a consequence, the interested person will no longer have a maximum term of 1 year from the issuance of the administrative act, as in the case of the action made available to the listed authorities, but of 6 months, respectively 1 year from the communication (the beneficiary's case), respectively the acknowledgement of the content of the administrative act (the case of the third party), if it is appreciated that the latter two operations are different.

On the other hand, a more rigorous interpretation implies the prohibition of analogy, in accordance with art. 10 of the Civil Code[53]. Thus, as the provisions of art. 11 of Law no. 554/2004 do not regulate an express and limited derogation from the previsions instituting a term for submitting an application when the pre-trial complaint is no longer necessary, the rules of the common law regarding the prescription terms becomes applicable, respectively art. 2.500 and following of the Civil Code.

---

50) Clipa, C., *op. cit.*

51) According to these legal provisions: "(3) In the case of actions filed by the prefect, the People's Advocate, the Public Ministry or the National Agency of Civil Servants, the term begins to expire from the date when the existence of the illegal act was known, the provisions of para. (2)".

52) According to art. 11 of Law no. 554/2004: "(1) Requests for the annulment of an individual administrative act, an administrative contract, the recognition of the claimed right and the reparation of the damage caused by an administrative act can be submitted within 6 months from: a) the date of communication of the answer to the pre-trial complaint; b) the date of communication of the unjustified refusal to solve the request; c) the date of expiry of the term for solving the pre-trial complaint, respectively the date of expiry of the legal term for solving the request; d) the date of expiry of the term provided in art. 2 paragraph (1) lit. h), calculated from the communication of the administrative act issued in the favorable solution of the request or, as the case may be, of the pre-trial complaint; (2) For justified reasons, in the case of the individual administrative act, the application may be submitted also over the term provided in par. (1), but not later than one year from the date of communication of the act, the date of acknowledgement, the date of the application's submission or the date of the conciliation report, as the case may be", applied mutatis mutandis.

53) Law no. 287/2009 regarding the Civil Code, republished in the Official Journal of Romania, Part I, no. 505/15 July 2011. According to the mentioned provisions: "Laws derogating from a general provision, restricting the exercise of civil rights or regulating civil sanctions apply only in the express and limited cases provided by law". These legal provisions are applicable under the conditions of art. 28 of Law no. 554/2004, cited above.

In the presented normative context, the communication of the administrative acts, including the acknowledgement, in any way, of the content of the act, can be placed in a secondary position in a certain situation that can be detached from the activity of the courts[54]. It is thus achieved a balance of the legal provisions by the passage of time and by certain legal effects produced by the administrative act, without the need to establish express rules that limit the right to submit an application before the court. Thus, without an explicit solution in this regard, but analyzing the preliminary measures ordered by the court during the procedures[55], the idea that the judge can be put in a position to weigh all the circumstances of the case in relation to the protection the principle of legal certainty.

Specifically, in analyzing the legality of an administrative act, on the background of the passing of a considerable period of time from the moment of issuing the administrative act[56] and the generation of certain legal effects by the administrative act in question, if there are several arguments that sustain the need to protect the security of the legal relationships, the administrative act can be maintained in the legal order. In this way, the passage of time and, therefore, the communication of the administrative act, will be placed in a secondary position, their place being taken by the analysis of the most important effects that the administrative act has produced and, thus, the way in which the principle of legal security takes precedence.

In this way, no matter what interpretation they consider to be more convincing regarding the term within which the administrative act can be challenged in the event that no pre-trial complaint is necessary, but also for the hypotheses where the communication is vitiated or for differences of interpretation regarding the notion of acknowledgement in any way of the content of the administrative act by the third party, if the judge reaches the analysis of the merits of the case, it should not be omitted that the courts have the duty to use also the arguments regarding the protection of the principle of legal security in relation to the effects produced by the administrative act.

Regarding the problems generated by the new legislative modifications for the communication of administrative acts, without ignoring the contribution of the doctrine, the role of the courts will continue to be important, as it has happened until these legislative changes. This important intervention of the courts is possible in the context of the existence of a considerable margin of appreciation that is based on the lack of a clear regulation, the current legal provisions offering multiple solutions to the problem related to communication of administrative acts.

---

54) In this regard, see the court proceeding finalized with sentence no. 7384/04.11.2019 pronounced by the Bucharest Court - Second Section of Administrative and Fiscal Contentious, indefinite, unpublished, in a dispute in which the question of the legality of a building permit was raised. Based on this permit a building was raised and the comprising apartments were subsequently sold to the population.

55) Consisting of supplementing the evidence for the selling of the apartments.

56) Regardless of whether this passage of time has been left unsanctioned by a relaxed interpretation of the legal provisions on communication or as a result of a vitiated communication.

5. Conclusions and implications

In the context that the rules of the civil procedure regarding the communication are strict, while those of the material law still enjoy a relaxed regulation, the qualification of the communication operation as an element that enters into the field of material law is of particular importance, because in this way the legal regime is determined.

The attributions of the courts are manifested, in principle, within the notions of interpretation and application of the law. However, the courts intervened in the regulation regarding the communication of administrative acts, establishing a series of rules that subsequently determined the successive changes in the legislation.

This paper highlights the intervention of the courts during the last 30 years, as well as the role they played in shaping the provisions on communication. Also, identifying the main legislative changes and determining the legal regime applicable to the communication operation helps to avoid the adoption of the same legislative solutions that presented shortcomings, all in order to determine a healthy and coherent legislative evolution.

If a series of elements were identified on the basis on which the courts could somehow stabilize the legal regime applicable to the operation of the communication of the administrative acts, the last legislative changes raise absolutely new challenges for the courts, challenges that will put the judges in the situation to choose from several possible interpretations which have diametrically opposite consequences.

BIBLIOGRAPHY

1. Anghel, V.; Preda, M., 1998, *Decizii şi hotărâri ale Curţii Constituţionale şi Curţii Supreme de Justiţie în probleme ale administraţiei publice şi agenţilor economici*, Bucharest, Romania: Lumina Lex Publishing House.
2. Boroi, G.; Stanciu M., 2015, *Drept procesual civil*, Bucharest, Romania: Hamangiu Publishing House.
3. Brad, I., 2009, *Revocarea actelor administrative. Instituţia revocării sub exigenţele dreptului european*, Bucharest, Romania: Universul Juridic Publishing House.
4. Ceslea, N.A., 2018, *Termenele de prescripţie şi decădere în materia dreptului administrativ*, Dissertation paper, Bucharest, Romania: University of Bucharest, Faculty of Law, Master's program: Private Law, Scientific Coordinator Prof. univ. dr. Marian Nicolae.
5. Chiriţă, R., 2016, *Paradigmele accesului la justiţie. Cât de liber e accesul liber la justiţie?,* article published on 08.12.2016, available on http://www.unbr.ro/publicam-articolul-intitulat-paradigmele-accesului-la-justitie-cat-de-liber-e-accesul-liber-la-justitie-reprodus-cu-acordul-autorului-lect-univ-dr-radu-chirita-facultatea-de-d/.
6. Ciobanu, A.S., 2015, *Drept administrativ. Activitatea administraţiei publice. Domeniul Public*, Bucharest, Romania: Universul Juridic Publishing House.

7. Clipa, C., 2018, *Ne îndreptăm spre facultativitatea plângerii administrative prealabile? Câteva observaţii pe marginea modificării neriguroase a art. 7 alin. (5) din Legea cu nr. 554/2004 a contenciosului administrativ*, article published on 01.10.2018, available on www.juridice.ro.
8. Dragoş, D.C., 2009, *Legea contenciosului administrativ. Comentarii şi explicaţii*, 2nd Edition, Bucharest, Romania: All Beck Publishing House.
9. Iorgovan, A., 2005, *Tratat de drept administrativ*, Vol. II, 4th Edition, Bucharest: Romania: All Beck Publishing House.
10. Nicolae, M., 2010, *Tratat de prescripţie extinctivă*, Bucharest, Romania: Universul Juridic Publishing House.
11. Petrescu, R.N., 2009, *Drept administrativ*, Bucharest, Romania: Hamangiu Publishing House.
12. Podaru, O., 2010, *Drept administrativ. Vol. I. Actul administrativ. (I) Repere pentru o teorie altfel*, Bucharest, Romania: Hamangiu Publishing House.
13. Podaru, O., 2014, *Despre prescripţie şi pseudo-prescripţie în contenciosul administrativ*, in Curierul Judiciar Review no. 1/2014.
14. Rîciu, I., 2012, *Procedura contenciosului administrativ. Aspecte teoretice şi repere jurisprudenţiale*, Bucharest, Romania: Hamangiu Publishing House.
15. Săraru, C.S., 2019, *Contenciosul administrativ român*, Bucharest, Romania: C.H. Beck Publishing House.
16. Vedinaş, V., 2018, *Tratat teoretic şi practic de drept administrativ*, Vol. II, Bucharest, Romania: Universul Juridic Publishing House.

ABOUT THE AUTHOR

Nicolae-Alexandru Ceslea, PhDc., Doctoral School of the Faculty of Law, University of Bucharest.

Email: alex.ceslea@ymail.com.