Cumulation of Court Actions to Suspend the Enforcement of Unilateral Administrative Acts: Is It Possible?

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Abstract

The suspension of administrative acts requires proving the existence of those circumstances that are likely to create a serious doubt as to the legality of the administrative act and the need to temporarily remove the enforceability of the act in order to prevent imminent harm, which is analysed in concrete terms. The seat of the matter regarding the suspension of the execution of administrative acts by the court is Articles 14 and 15 of the Law no. 554/2004 on administrative litigation. Practical work in the field of law creates the prospect of analysing legal institutions in novel hypotheses, as well as in their interaction. For example, is it possible to file two applications for the suspension of the same administrative act, based on Articles 14 and 15 of the Administrative Proceedings Act No. 554/2004? In our opinion, the answer is positive, but also nuanced. The aggrieved persons justify a procedural interest in filing both claims, first of all, given their different effects over time. Moreover, Articles 14 and 15 can be used several times on different grounds, since Article 14 para. 6 also applies accordingly to Article 15 of the Act. The research conducted is accompanied by relevant case law, analytical insights and several conclusions.

Keywords: *administrative act, suspension of effects, well-justified case, imminent damage, administrative litigation.*

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1. Introduction

The suspension of the execution of an administrative act is *an exceptional and temporary measure* by which the court deprives the administrative act of its

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enforceability. The institution is a means of legal protection against damages suffered by injured parties as a result of allegedly unlawful administrative acts[2], but also a means of guaranteeing legality. Suspension may be ordered only in the conditions expressly provided for by law, the exceptions being of strict interpretation and application (*exceptio est strictissimae interpretationis*). The enforceability of administrative acts derives from the three *simple presumptions* associated with them: the principle of legality (the administrative act is in conformity with the law); authenticity (the administrative act is presumed to emanate from the competent public authority) and veracity (the act reflects a correct factual situation).[3]

The suspension of administrative acts requires proving the existence of those circumstances that are likely to create a *serious doubt as to the* legality of the administrative act and the need to temporarily remove the enforceability of the act in order to prevent imminent harm, which is analysed in concrete terms.

The seat of the subject matter as regards the suspension of the execution of administrative acts by the court is the provisions of Article 14 and Article 15 of the Administrative Judicial Proceedings Act No. 554/2004 (*Section 1*). The grounds for applying for a suspension of the administrative act under Article 14 and Article 15 of Act No. 554/2004 (hereinafter referred to as the ACL) are common. *The well-justified case* and the *imminent damage*, the two cumulative conditions for the suspension of administrative acts, have the same content. The distinction between the provisions of art. 14 and art. 15 of the LCA is the existence or not of an action for the annulment of the administrative act before the courts, which is verified in relation to the date of the application for the suspension. Secondly, the suspension of the execution of the administrative act can be ordered on the basis of art. 14 LCA *until the court has ruled on the merits of the case*, and on the basis of art. 15 LCA *until the final resolution of the case*.

Practical work in the field of law creates the prospect of analysing legal institutions in novel hypostases. For example, is it possible to successfully file two applications for the suspension of the same administrative act, based on Art. 14 and Art. 15 respectively of the Administrative Litigation Act No. 554/2004? We will present a case decision of the Craiova Court of Appeal which,

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[2] Cătălin-Silviu Săraru, *Tratat de contencios administrativ*, Ed. Universul Juridic, Bucharest, 2022, p. 375. See also Dana Apostol Tofan, „O nouă perspectivă în teoria actului administrativ (III)", *Studii și Cercetări Juridice*, Year 4 (60), no. 2, April-June 2015, pp. 159–165. The author also makes a comparative analysis of the legal institutions leading to the temporary or definitive termination of the effects of administrative acts.

[3] For the conditions of the suspension of unilateral administrative acts and the problem of suspension of unilateral normative administrative acts, see Anamaria Groza. *The effects of judgments on the suspension of normative administrative acts and their concrete consequences*, published in the book Spyridon Flogaitis, Cătălin-Silviu Săraru (editors), *Administrative Corpus Juris between Implementation, Reforms and Continuous Developments*, ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary, 2022, pp. 13–24.

although it did not settle this issue on the merits, facilitates an interesting reflection on the subject (*section 2*). In our opinion, the answer to the previous question is positive and we will present the arguments in the following study (*conclusions*).

2. Suspension of operation of the act (Article 14 of Law No. 554/2004) and application for a suspension by main action (Article 15 of Law No. 554/2004)

Article 14 of Law no. 554/2004 gives the possibility to the aggrieved persons, *in well-justified cases* and in order to *prevent imminent damage*, after having been notified, under the conditions of Article 7 of the same normative act, the public authority that issued the act or the hierarchically superior authority or within a maximum of 30 days from the date of becoming aware of the content of the act that can no longer be revoked, to request the competent court to order the suspension of the execution of the unilateral administrative act *until the court has ruled on the merits*. The suspension of the execution of the administrative act shall have the effect of ceasing any form of execution until the duration of the suspension has expired.

Article 2 para. (1) letter t) of Law no. 554/2004, define a *well-justified case* as a *circumstance related to the state of fact and law, which is such as to create a serious doubt as to the legality of the administrative act*. Under this condition, the legality of the act, the suspension of which is sought is not examined, this being the task of the contentious court which will examine the action for an annulment. In determining the existence of a well-founded case, the judge may only proceed to a summary analysis of the act, apparently without prejudging the merits, by reference to the factual and legal grounds invoked by the plaintiff on the basis of minimal evidence, excluding a substantive analysis of the legality of the administrative act.

It is important to note that if, in order to verify the criticisms raised by the plaintiff, the judge would have to administer complex evidence (*such as expert evidence*) or prejudice the merits of the case, the condition of a manifest appearance of illegality of the challenged act in favour of the plaintiff would not be met, but, on the contrary, there would be an appearance of legality of the administrative act.

The mere different interpretation by the parties of the legal provisions applicable in the present case (…) is not such as to conclude that the well-founded case condition is fulfilled. The divergence of the parties as to the incident in the present case of the normative acts does not constitute a ground of apparent unlawfulness of the contested act[4].

In its case law, the Supreme Court has held that the issuance of an act by

[4] Craiova Court of Appeal, administrative and fiscal litigation section, Decision no. 2164/2019, rolii.ro, cited in Gabriela-Victoria Bîrsan, Eugenia Marin, *Legea contenciosului administrativului nr. 554/2004 adnotată*, Ed. Hamangiu, Bucharest, 2021, p. 245, 246.

an incompetent body, the failure to justify the administrative act, the failure to indicate the legal basis for the issuance of the administrative act, the declaration as unconstitutional of the Government ordinance that was the basis for the issuance of the administrative act, the annulment or partial revocation of the administrative act by the issuing public authority or by the hierarchically superior authority may constitute such well-justified cases. According to the doctrine, indications of illegality may concern violations of both procedural and substantive law[5].

Imminent damage is defined by Art. 2 para. (1) letter ș) of Law No. 554/2004 as the *future and foreseeable material damage or, as the case may be, the foreseeable serious disruption of the functioning of a public authority or public service.* As has been held in national case law, the possibility of damage being caused is a question of fact, left by the legislature to the discretion of the judge. Administrative acts are enforceable ex officio and if the judge finds that enforcement could cause harm to the person to whom the act is addressed, he is entitled to suspend it.

In order to justify the suspension, the damage must fulfil the following conditions[6]:

- *It must not have occurred yet, because the law speaks of future damage*. Suspension of enforcement may also be requested in the case of damage caused by successive acts continued over time, the purpose of the suspension being to interrupt the realisation of those acts and thus prevent future damage.

- *Be pecuniary in nature*. The law refers to material damage, thus indicating its pecuniary nature. The suspension could not concern moral damages.

- *The occurrence must be certain, beyond doubt*. It cannot therefore be a question of possible loss, but only of certain loss, the future occurrence of which must be proved by the person who has applied for the suspension of operation of the measure.

The person who requested the suspension must also bring an action for the annulment of the act within a maximum of 60 days from the date of bringing the action for the suspension. If he or she fails to do so and it is established prior to the decision on the application for the suspension, the application will be dismissed as devoid of interest. If the suspension has been ordered, but the person has not lodged the application for the annulment of the administrative act within 60 days of the lodging of the application for the suspension of the act, the suspension shall cease automatically and without any formality. If the main application for the annulment of the administrative act is rejected, the effects of the suspension previously ordered in the first instance pursuant to Article 14 of the Act shall cease, the suspension having effected only until the first court hearing the

[5] Gabriela Bogasiu, *Legea contenciosului administrativ comentată și adnotată*; 5th edition, revised and added, Ed. Universul Juridic, Bucharest, 2022, p. 307.

[6] See Cătălin Silviu Săraru, *Contenciosul administrativ român*, Ed. C.H. Beck, Bucharest, 2019, p. 284-286.

application for an annulment has ruled[7].

From a procedural point of view, the court decides the application for an urgent stay of proceedings by way of an interlocutory application and by way of priority, with the parties being summoned, without following the procedure for regularising the application and without following the other stages prior to the setting of the first date for the first hearing. Those stages are not followed even in the appeal proceedings. The statement of defence, which is mandatory, shall be lodged on the case file at least three days before the date of the hearing and shall be noticed by the applicant on the case file, without being served.

The judgment deciding the request for a suspension may be appealed within 5 days from the date of communication and is enforceable by operation of law if the court has ordered the suspension of the administrative act. The appeal does not suspend execution. According to art. 14 para. 7, several successive requests for suspension cannot be made for the same reasons.

Article 15 of Law no. 554/2004 regulates the possibility of filing the application for a suspension together with the application for the annulment of the act, in the same action or in a separate action (filed within 60 days from the filing of the main action). The grounds for which the suspension of the administrative act can be requested under Art. 14 and Art. 15 of Law no. 554/2004 are common. *The well-justified case* and the *imminent damage*, the two cumulative conditions for the suspension of administrative acts, have the same content[8].

The distinction between the provisions of art. 14 and art. 15 of the LCA is made by whether or not the courts have an action for the annulment of the administrative act pending before them, which is determined by the date on which the application for the suspension was filed. Secondly, the suspension of the execution of the administrative act can be ordered on the basis of art. 15 LCA until the *final resolution of the case.*

The provisions on the expedited procedure, the appeal, the enforceability of the judgment, the possibility of bringing an action by the representatives of the Public Prosecutor's Office apply similarly to the suspension provided for in Article 14 of the ACL. Also, the appeal does not suspend the execution, and in the event of the admission of the substantive action, the suspension measure, ordered under art. 14, is extended by right until the final resolution of the case, even if the plaintiff has not requested the suspension of the execution of the administrative act under art. 15 LCA[9].

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[7] See Verginia Vedinaș, *Tratat teoretic și practic de drept administrativ,* vol. II, Ed. Universul Juridic, Bucharest, 2018, p. 287.

[8] See Claudiu Angelo Gherghină, „Suspendarea executării actului administratrativ cu caracter normativ", *Revista de Stiinte Politice*, No. 56/2017, pp. 100–111.

[9] On the suspension of administrative acts of a normative nature, see Alexandru Mitra, „*Considerații cu privire la întinderea efectele cutinderea effects of the suspension of the execution of administrative acts of a normative nature"*, *Revista de Drept Public* no. 3–4/2020, pp. 110–124.

3. When the „clarity" of theory meets the „novelty" of practice: Decision no. 2794/15.12.2023 of the Craiova Court of Appeal

By ***Civil Judgment no. 869/17.11.2023*** delivered by the unpublished judgment of the Gorj Tribunal, the plea of lack of interest, raised ex officio, was admitted and the request for a suspension of execution of the administrative act filed by the plaintiff SC B. S. SRL, against the defendants Municipality of Tg-Jiu and the Mayor of Tg-Jiu, on the basis of art. 15 of Law no. 554/2004, as being devoid of interest. In order to order this solution, the lower court essentially held that the administrative act represented by the provision of the Mayor of the Municipality of Târgu Jiu no. (…)/19.09.2023 had already been suspended in relation to art. 14 of Law no. 554/2004.

The Court held that the plaintiff sought by filing a new application, based on the provisions of Article 15 of Law No. 554/2004, to ensure the extension of the effects of the judgment delivered in relation to Article 14 of the same normative act, until the final resolution of the action for the annulment of the contested administrative act. Such an aim was not considered legitimate, because in the hypothetical situation in which the action for annulment would be admitted, the suspension of the execution of the provision was no. (...)/19.09.2023 would have been extended by rights under art. 15 para. 4 of Law 554/2004 until final resolution of the case.

The court also held that since the suspension had been ordered under Article 14 and the judgment rendered in the application for the suspension was enforceable by operation of law, the plaintiff no longer justified imminent harm at the time of filing the application under Article 15 of the LCA, since the administrative act no longer produced legal effects.

By ***Decision no. 2794/15.12.2023***, the Craiova Court of Appeal found that the lower court did not analyse the request for a suspension in relation to the provisions of Article 15 of Law no. 554/2004, so that the criticisms made by the appellant defendant, based on Art. 488 para. 1(6) and (8) of the Code of Civil Procedure were well founded.

The appellate court held that *the distinction* between the effects of the suspension provided for in Article 14 and Article 15 of Law no. 554/2004 was given by the *duration of* the two forms of suspension of the execution of administrative acts. The suspension of execution ordered under Article 14 lasts until the merits of the case are settled in the first instance, while the suspension ordered under Article 15 lasts until the final decision of the case.

The fact that the will of the legislator was to allow applications based on Article 15, even when there is a court's decision to order the suspension of enforcement under Article 14, is clear from the wording of Article 15(4): „in the event of the admissibility of the substantive action, the suspension measure ordered under Article 14 shall be extended by operation of law until the final reso-

lution of the case, even if the applicant has not requested the suspension of enforcement of the administrative act under paragraph. (1) (ICCJ, C.A.F. Section, Dec. no. 188/03.04.2009)". The very fact that the suspension is provided for under Article 15 attests to the legislator's intention to allow such a request to be made, within the limits set by Article 14 para. (6) of Law 554/2004.

The trial court did not make a distinction between the two forms of suspension, in which situation the plea of lack of interest was wrongly admitted, considering that the suspension of the effects of administrative acts regulated by art.14-15 LCA can only be requested alternatively, not being allowed the accumulation of the two remedies regulated by the legislator.

The Court did not find any legal grounds to support the lower court Finding that the purpose lacked legitimacy if the application for the suspension was granted. Secondly, the reasoning in the judgment to the effect that there was a purpose not to grant the new application for a stay of proceedings and, on the other hand, that there was no imminent damage was found to be contradictory. It was concluded that the lower court had decided the case without examining the claim on the basis of the legal basis relied on and, therefore, the case was quashed and remitted for retrial before the same court, with the obligation to examine the applicant's claim in the light of the provisions of Article 15 of Law 554/2004.

4. Conclusions

In our opinion, applications for the suspension of execution of an administrative act based on Article 14 and Article 15 of Law No. 554/2004 may be filed successively. Persons who consider themselves aggrieved by administrative acts which they consider to be manifestly unlawful may bring the action provided for by Article 14 after the commencement of the preliminary procedure or within 30 days of becoming aware of the content of the act which can no longer be revoked. If the action is well founded, the court shall order a stay of enforcement of the measure until such time as the court of first instance has given judgment. An appeal against the judgment may be lodged with a higher court, but such appeal shall not stay its enforcement. If the appeal is dismissed, the decision to suspend the administrative act becomes final, but if the appeal is upheld, the administrative act will resume its legal effects. We consider that an application for a suspension based on art. 15 of the LCA can be filed even if the previous application based on art. 14 of the LCA has been rejected, except in the case where the res judicata authority of the judgment based on art. 14 of the LCA can be challenged.

The action brought on the basis of Article 15 of the LCA can only be brought subsequently to the action brought on the basis of Article 14 of the LCA, since the former must be brought either together with the action for the annulment of the act or within a maximum of 60 days from the bringing of the main action.

It is clear that the injured parties have a procedural interest in bringing both applications successively, primarily because of *their different temporal effects*. Admissibility of the applications leads to the suspension of the administrative act, but the legal basis of the action entails a different length of time during which the effects of the administrative act will not be produced. Thus, a shorter or longer period of time may elapse between the *decision of the court of cassation* and the *final resolution of the case*, assuming the existence of several procedural cycles.

A second argument relates to the unique prohibition in the matter established by Art. 14 para. 6 of Law 554/2004. According to this article, 'no more than one successive application for suspension may be made for the "same". We interpret this provision as relating to the factual grounds of the application, in particular the constituent elements of the well-founded case, and not to the legal basis. The purpose of the prohibition seems to be to respect the res judicata effect of a first judgment. However, where the grounds are different, both factual and legal grounds, successive applications may be made. Therefore, Art. 14 and Art. 15 can be used successively and even more than once in the case of different grounds, since Art. 14 para. 6 also applies correspondingly to Art. 15 of the LCA.

Related to the interpretation of Art. 14 para. 6 of Law no. 554/2004, the case law of the Administrative and Tax Litigation Section of the High Court has been consolidated to the effect that the prohibition of successive applications does not cover the situation in which an application for a suspension based on Article 14 is followed by an application for a suspension based on Article 15 of the same law, but admissibility is analysed on a case-by-case basis, depending on the grounds invoked, the decision on the first application and the other circumstances of the case. [10]

In doctrine, the opinion has been expressed that Art. 14 para. 6 LCA is a transposition of art. 187 C. pr. civ. on the sanctioning of the abusive exercise of the parties' procedural rights, but, *per a contrario*, another request for suspension may be made if the plaintiff brings new arguments, compared to the arguments set out in the first request for suspension, by proving the well-founded case and the imminent damage[11].

In the present case, we consider that the correct choice was not to resolve the case by admitting the plea of lack of interest. The appellant plaintiff had the procedural interest to use both remedies of provisional judicial protection in administrative litigation, and as long as the legislator itself regulates two such remedies, it cannot be established that the party would seek to circumvent the effects of a court judgment by trying to extend the duration of the suspension of administrative acts.

Instead, the court's solid argument is that the condition of imminent dam-

[10] Gabriela Bogasiu, *op. cit.,* p. 311.
[11] Oliviu Puie, *Tratat teoretic și practic de contencios administrativ*, vol. II, Ed. Universul Juridic, Bucharest, 2021, p. 862.

age was not met. Since the first judgment had ordered the suspension of the administrative act on the basis of Article 14 of the LCA, any form of enforcement had ceased and it could no longer cause imminent harm to the applicant. However, the analysis must be carried out *in concreto*, in relation to the finality or otherwise of the judgment under Article 14 of the LCA. Even if the aggrieved person has obtained a suspension at first instance under Art. 14 LCA, it is possible that the suspension may be overturned on appeal, in which case the administrative act will again produce its effects and may even generate the imminent damage provided for by Art. 2 para. (1) lit. In such circumstances, the decision on the merits also depends on the assessment of the res judicata authority of the decisions handed down on the basis of Article 14 of Law No 554/2004.

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