Consideration Regarding the Exercise of Legality Control by the Prefect According to the Romanian Administrative Code

Associate professor **Eugenia IOVĂNAȘ**[1]

Abstract

According to Article 122 (4) of the Constitution, 'The prefect may challenge, before the administrative litigation court, an act of the county council, the local council, or the mayor, if he considers the act illegal.' The administrative control also strengthens the principle of decentralisation in the domain of public administration by the authority it gives the prefect to use the legal means specifically to control notification and order-and to establish which of the issued acts are illegal. From the content of the legal provisions listed above, it clearly results that the local public authority decides, in exercising its powers, only through decisions, in all fields attributed by law. Article 129 (6)(b) of the Administrative Code regulates the law of local councils to 'give in free use, for a limited time, movable assets and real estate, public or private, local or county property, as the case may be, to companies with no lucrative purpose, which develop charitable or public utility or public service activities'. The court of law has the duty to delimit the categories of these decisions, according to their legal nature of administrative acts, acts of civil law, commercial law, etc., with the consequence of delimiting the material competence of the administrative legal department in relation to other courts. In order for the decisions adopted to constitute adopted acts/issued as public power, even if censored under the conditions of the administrative legal department, they must aim at the public or public property. However, the prefect's prerogatives are limited, on the one hand, by the term by which he/she can operate upon certain illegal acts, and on the other hand by the fact that only the current management acts are not subject to control. In the interpretation of the provisions of Article 3 of the Administrative Disputes Law no. 554/2004, with subsequent amendments and completions, correlated with the provisions of Article 19 paragraph (1) letters a) and e) of Law no. 340/2004 regarding the prefect and the institution of the prefect, republished, with subsequent amendments and completions, and Article 123 paragraph (5) of the Constitution, the prefect is recognised the right to challenge before the administrative disputes court the administrative acts issued by local public administration authorities, within the meaning of the provisions of Article 2 paragraph (1) letter c) of the Administrative Disputes Law no. 554/2004, with subsequent amendments and additions.

Keywords: *prefect; administrative acts; legality control; public property.*

JEL Classification: K23

DOI: https://doi.org/10.62768/ADJURIS/2025/4/03

[1] Eugenia Iovănaș - Faculty of Humanities and Social Sciences, „Aurel Vlaicu" University, Romania, ORCID: https://orcid.org/0009-0008-0360-1617, iovanaseugenia@yahoo.com.

Please cite this article as:
Iovănaș, Eugenia, „Consideration Regarding the Exercise of Legality Control by the Prefect According to the Romanian Administrative Code", in Takemura, Hitomi & Steve O. Michael (eds.), *Public Law at the Crossroads of Technology, Jurisprudence and Governance in Contemporary Europe,* ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary, 2025, p. 46-54.

1. Introduction

This paper aims to address the legal issue regulated by the provisions of Article 3 of the Administrative Litigation Law No. 554/2004, with subsequent amendments and additions, in conjunction with the provisions of Article 19 paragraph (1) letters a) and e) of Law No. 340/2004 on the prefect and the prefect's institution, republished, with subsequent amendments and additions. (1) letters a) and e) of Law No. 340/2004 on the prefect and the prefect's institution, republished, with subsequent amendments and additions, in relation to Article 123(5) of the Constitution, according to which the prefect is recognised as having the right to challenge before the administrative court administrative acts issued by local public administration authorities, if these legal provisions allow the prefect to challenge before the administrative court not only administrative acts issued by the county council, by the local council or the mayor, but also other categories of legal acts issued by these local public authorities[2].

According to Article 123(5) of the Constitution, 'the prefect may challenge before the administrative court an act of the county council, local council or mayor if he considers that the act is unlawful.'

Article 3 of Law 554/2004 refers to the administrative control exercised by the prefect as follows: (1). *The prefect may challenge, in whole or in part, before the administrative court, the decisions adopted by the local council or the county council, as well as the provisions issued by the mayor or the president of the county council, if he considers these acts or provisions thereof to be illegal. The act or its provisions that have been challenged are suspended by operation of law. (2) The prefect is liable, under the law, administratively, civilly or criminally, as the case may be, at the request of the local or county public administration authorities whose acts have been challenged, if the administrative court decides that the administrative act has been* challenged *abusively.*[3] *The prefect may*

[2] For an analysis of the topic in other sectors see Jean-Christophe Le Coze (2024). "The Unfolding Regulator–Regulatee Relationship." In Jean-Christophe Le Coze and Benoît Journé (eds.) *The Regulator–Regulatee Relationship in High-Hazard Industry Sectors*, SpringerBriefs in Applied Sciences and Technology. Cham: Springer, https://doi.org/10.1007/978-3-031-49570-0_1.

[3] On 02-08-2007, Alin. (1) of Article 3 was amended by point 4 of Article I of Law No. 262 of 19 July 2007, published in the Official Gazette No. 510 of 30 July 2007.

directly challenge before the administrative court the acts issued by the local public administration authorities if he considers them illegal; the action shall be brought within the time limit provided in Article 11(1), which shall start to run from the moment the act is communicated to the prefect and under the conditions provided in this law. The action brought by the prefect is exempt from stamp duty.

With regard to the legal issue under discussion, we also draw attention to Article 129 (6)(b) of the Administrative Code, which regulates the right of local councils to 'give free use, for a limited period, of movable and immovable public or private property owned by the commune, town or municipality, as the case may be, to non-profit companies carrying out activities of public utilities and public services of local interest under the conditions laid down by law'. The question naturally arises as to whether; in exercising his right of administrative supervision, the prefect has the possibility of challenging before the administrative court all acts of local public administration authorities, regardless of their legal nature.

Firstly, it should be noted that it is clear from the content of the legal provisions listed above that the local public authority decides, in the exercise of its powers, only by administrative acts – decisions, in all areas assigned by law.

In order for the decisions adopted to constitute acts of authority adopted/issued under public power, even if they are subject to legality control under administrative litigation, they must concern public property, and public authorities must adopt administrative acts within the meaning of Article 2 of the Administrative Litigation Law[4].

Given that, according to Article 196 of the Administrative Code,[5] The mayor issues orders (2). The mayor's orders must be communicated to the prefect of the county within five working days of their signing. (7) The mayor's orders, local council decisions and county council decisions are subject to the legality control of the prefect under the conditions of the law governing his activity.

The prefect, pursuant to Art. 19 para. (1) let. a) and let. e) of Law No. 340/2004: (1) As a representative of the Government, the prefect shall perform the following main duties: a) ensures, at the county level or, where applicable, at the level of the municipality of Bucharest, the application of and compliance with the Constitution, laws, ordinances and decisions of the Government, other normative acts and public order; e) verifies the legality of the administrative acts of the county council, the local council or the mayor'.

According to Article 255 of the Administrative Code, the prefect exercises powers relating to the verification of the legality of Article 2(1)(c) and Article 3 of Law No. 554/2004 on administrative litigation define the administrative

[4] Cătălin Silviu Săraru (2019) *Contenciosul administrativ român*. C.H. Beck, Bucharest, p. 70 et seq.; Verginia Vedinaș (2024), *Drept administrativ*. XV[th] edition, revised and added, Universul Juridic, Bucharest, p. 349 et seq.; Dana Apostol Tofan (2020), *Drept administrativ.* Volume II. C.H. Beck, Bucharest, p. 127 et seq.

[5] Art. 196 let. b) The mayor and the president of the County Council issue orders.

act. For the purposes of this law, the terms and expressions below have the following meanings: c) administrative act – a unilateral act of an individual or normative nature issued by a public authority, in the exercise of public power, with a view to organising the enforcement of the law or the concrete execution of the law, which gives rise to, modifies or extinguishes legal relationships; contracts concluded by public authorities for the purpose of exploiting public property, performing works of public interest, providing public services, and public procurement are also considered administrative acts within the meaning of this law; special laws may also provide for other categories of administrative contracts subject to the jurisdiction of administrative courts.

Firstly, the fact that the institution of administrative supervision concerns only administrative acts is clear from the terminology of the law, since Article 19(1)(e) of Law No. 340/2004 expressly provides that 'the prefect […] shall verify the legality of the administrative acts of the county council, the local council or the mayor'.

However, the prefect's prerogatives are limited, on the one hand, by the time limit within which he or she may act on certain illegal acts and, on the other hand, by the fact that if the act is one of civil law, commercial law or labour law, it cannot be reviewed by the administrative courts, but only by the courts with jurisdiction in those matters.

It is true that Article 123 (5) of the Constitution does not expressly condition or limit the right of administrative protection exercised by the prefect, as it refers to 'an act of the county council, the local council or the mayor'.

However, the same text must be read in conjunction with the special law, namely Article 3 of the Administrative Litigation Law mentioned above, which expressly states that the prefect may challenge such an act before the administrative court[6].

2. The Exercise of Legality Control by the Prefect

In interpreting the provisions of Article 3 of the Administrative Litigation Law No. 554/2004, as amended and supplemented, in conjunction with the provisions of Article 19(1)(a) and (e) of Law No. 340/2004 on the prefect and the prefect's institution, as republished, with subsequent amendments and additions and of Article 123 (5) of the Constitution, the prefect is recognised as having the right to challenge before the administrative court the administrative acts issued

[6] For the new or historical specifics of other countries see, John F. Sly (1931), "County Government and Administration. By John A. Fairlie and Charles M. Kneier. (New York: The Century Co.1930. Pp. Xiii, 585.)", *American Political Science Review* 25, no. 1: 184–87. https://doi.org/10.2307/1946583; or Gene Clark (2025), *County Government: The Mechanics, Politics and Outcomes*, Kindle ed., ASIN B0F5PC5TFP, 93 p.

by the local public administration authorities, within the meaning of the provisions of Article 2(1)(c) of the Administrative Litigation Law No. 554/2004, as amended and supplemented. The action shall be brought within the time limit provided in Article 11(1), which shall start to run from the moment the act is communicated to the prefect and under the conditions provided in this law. The action brought by the prefect shall be exempt from stamp duty.

However, the provisions of Law No. 554/2004 limit the control exercised by the administrative courts to the administrative act, defined by Article 2(1) letter c) of the law, as being 'a unilateral act of an individual or normative nature issued by a public authority, in the exercise of public power, with a view to organising the enforcement of the law or the concrete execution of the law, which gives rise to, modifies or extinguishes legal relationships; contracts concluded by public authorities for the purpose of exploiting public property, performing works of public interest, providing public services, and public procurement are also considered administrative acts within the meaning of this law; special laws may also provide for other categories of administrative contracts subject to the jurisdiction of administrative courts.'

From the combined interpretation of the constitutional text and the provisions of Law No. 554/2004, it follows that the prefect exercises the right of administrative supervision only in respect of administrative acts issued by local public administration authorities, since only these acts are issued 'in the exercise of public power, in order to satisfy a legitimate public interest', within the meaning of Article 2(1)(b) of Law No. 554/2004.

With regard to the legal regime of administrative acts, it is unanimously accepted that only administrative acts 'are issued in the exercise of public power, and the prefect is, as provided for in. Article 1(3) of Law No. 340/2004, the guarantor of compliance with the law and public order at the local level*.' The text of* Article 123 (5) of the Constitution must also be read in conjunction with the provisions of Article 126 (6)*, which provide that the courts of law, by* way of contentious proceedings, are the guarantor of the constitutionality of the law and of the legality of administrative acts.[7]

The text of Article 123 (5) of the Constitution must also be read in conjunction with the provisions of Article 126 (6), which provide that the courts, through administrative litigation, exercise judicial review of administrative acts of public authorities, and administrative litigation, as regulated by Law No. 554/2004, concern only administrative acts.

Also, with reference to the amended Administrative Litigation Law No. 554/2004, pursuant to Article 10, the administrative court has the obligation to review, by way of substantive jurisdiction, depending on the legal nature of the

[7] Zsuzsanna Árva (2020), „Experience with the Legal Supervision of Hungarian Local Governments" *Curentul Juridic*, Year XXIII, No. 1 (80): 34–46.

administrative acts of authority, civil law acts, commercial law acts, etc., with the consequence of delimiting the material jurisdiction of the administrative court in relation to other courts of general jurisdiction.

As such, where an act of a public authority is an administrative act – as defined in Article 2(1)(c) of Law No 554/2004 – it may be challenged before the administrative court by the prefect if he considers the act to be unlawful; otherwise, if the act is one of civil law, commercial law or labour law, it cannot be censured in court through administrative litigation, but only before the courts with jurisdiction in the matter.

In this regard, the provisions of Law No. 340/2004 are relevant, which is a special law on the institution of the prefect and, as such, the legal provisions governing it are to be interpreted and applied strictly and cannot be extended to other acts not envisaged by the legislator, and the interpretation of the provisions establishing administrative protection can only be restrictive. Otherwise, to the extent that administrative protection would be extended beyond the limits set by the legislator, this would open the way for abuse of power by accepting the prefect's interference in private law acts, which is inadmissible.

Therefore, we consider that it is for the administrative court said to examine whether the scope of administrative supervision also covers e acts other than administrative acts issued by local public authorities, such as, for example, acts issued by public authorities concerning the private sphere or provisions of the mayor concerning civil, contractual or employment legal relationships, since such control of legality is a matter of interpretation and application of the law falling within the exclusive jurisdiction of the administrative court.

3. Relevant Case Law

By Civil Judgment No. 827 of 19 April 2016[8], the administrative action brought by the claimant, the Prefect of County A, against the defendant, Local Council F, seeking the annulment of the local council decision, was examined.

By the action registered with this court on 29 December 2015, the claimant, the Prefect of County A, requested, in opposition to the defendant, the Local Council of F, the annulment of Decision No. 53/27.05.2015 adopted by the defendant, stating in the grounds that Article 1 of Decision No. 53/27.05.2015 approved the sale by public auction of the land owned by the Romanian State, registered in Land Registry No. XX TN, old land registry no. XY TN with topographical no. xxx, with an area of 1440 square metres, land intended for construction yards, the decision was based on the provisions of Article 13 of Law no. 50/1991 on the authorisation of construction works, the provisions of Article 121

[8] Civil judgment no. 827 of 19 April 2016, published in the Official Gazette, Part I no. 555 of 5 July 2019.

(1) and (2) of the Romanian Constitution and the provisions of Article 36(2)(c) and (5) of Law No. 215/2001 on local public administration, republished; however, although local public administrations are granted certain rights, the decision adopted is unlawful on the grounds that it appears from the operative part that, for its adoption, the provisions of Article 13 of Law No. 50/1991, Article 121 (1) and (2) of the Romanian Constitution and the provisions of Article 36(2)(c) and (5) of Law No. 215/2001 on local public administration, republished, which cannot legally substantiate the decision in question.

According to Article 13(1) of Law No. 50/1991, the claimant argues that land belonging to the private domain of the state or administrative-territorial units may only be disposed of by their owner, and that administrative-territorial units may not dispose of land that is the private property of the state.

The claimant also stated that local public administration authorities are given the possibility to assess the conditions and circumstances of the adoption or issuance of administrative acts, as they have the power to assess the appropriateness of administrative acts, and the discretion granted to public administration bodies must be exercised within the limits of the law, so that, in order to meet the requirements of validity, the administrative act had to be adopted only within the sphere of competence conferred by law and the powers expressly provided for therein.

The court found that, by decision no. 53 of 27 May 2015, the defendant approved the sale, by public auction, of the land owned by the Romanian State, registered in the Land Registry under no. XX TN, old CF no. XY TN with topographical no. xxx, with an area of 1440 sqm, land intended for construction yards; the valuation report prepared by the authorised valuer was approved.

The claimant's action was dismissed on the grounds that, according to Article 3(1) of Law No. 554/2004 on administrative protection, the prefect may directly challenge before the administrative court acts issued by local public administration authorities if he considers them unlawful; the action must be brought within the time limit provided in Article 11(1), which starts to run from the moment the act is communicated to the prefect and under the conditions provided in this law.

The court also upheld the provisions of Article 19(1)(a) and (e) of Law No. 340/2004 on the prefect and the prefect's institution, as republished, with subsequent amendments and additions, and of Article 123(5) of the Constitution, the prefect is recognised as having the right to challenge before the administrative court administrative acts issued by local public administration authorities, within the meaning of the provisions of Article 2(1)(c) of the Administrative Litigation Law No. 554/2004, as amended and supplemented, mandatory, according with the provisions of Article 521(3) of the Code of Civil Procedure. It was concluded in the grounds that, according to the constitutional provisions, the right of admin-

istrative protection belonging to the prefect is implicitly circumscribed to administrative litigation, which is currently regulated by Law No. 554/2004; legal provisions limiting the control exercised by administrative courts to administrative acts, the prefect is recognised as having the right to challenge before the administrative court only administrative acts issued by local public administration authorities, within the meaning of the provisions of Article 2(1)(c) of Law No. 554/2004.

4. Conclusions

With reference to the point of view expressed in this paper, we support the opinion that even if Article 123 (5) of the Romanian Constitution does not distinguish between acts that can be challenged in court, the right of administrative protection belonging to the prefect is implicitly circumscribed to administrative litigation, which is regulated, by Law No. 554/2004 on administrative litigation.

In this regard, see also the provisions of Article 19(1)(e) of Law No. 340/2004, which are fully in line with the provisions of Article 3 of the Administrative Litigation Law, which is why it can be legally argued that limiting this review of legality exclusively to administrative acts limits the prefect's right to challenge in court only administrative acts, which also allows the prefect to challenge before the administrative court only administrative acts issued by the county council, the local council or the mayor, but not other categories of legal acts issued by these local public authorities, civil law, commercial law or labour law acts, legal acts subject to review by courts with jurisdiction in the respective matters.

Moreover, the fact that the administrative review institution only covers administrative acts is clear from the wording of the law, since Article 19(1)(e) of Law No. 340/2004 clearly says that 'the prefect […] checks the legality of the administrative acts of the county council, the local council or the mayor'. (1) (e) of Law No 340/2004 expressly states that 'the prefect […] shall verify the legality of the administrative acts of the county council, the local council or the mayor'.
To give a reason contrary to the provisions of public policy relating to the jurisdiction of the courts, in which case the administrative court would have to rule on legal relationships falling within the jurisdiction of the ordinary courts or the labour courts, as highlighted in the case law review action *seeking the annulment of the decision adopted by the local council acting on behalf of the Romanian State, in order to exercise the latter's prerogatives as owner of the land sold as private property and, since there is no question of public property, the only reasonable conclusion that can be drawn is that the defendant did not act in this case as a public authority, and the relationship between it and the applicant indicated in the action falls within the scope of private law and not public law, so that the*

provisions of Article 2(1)(c) of Law No, 554/2004 on administrative litigation, are applicable.

Therefore, in accordance with the constitutional provisions, the right of administrative protection belonging to the prefect is implicitly limited to administrative litigation, which is currently regulated by Law No. 554/2004.[9]

Bibliography

1. Administrative Code, published in the Official Gazette, Part I No. 555 of 5 July 2019, with subsequent amendments.
2. Apostol Tofan, Dana (2020), *Drept administrativ.* Volume II. C.H. Beck, Bucharest.
3. Árva, Zsuzsanna (2020), „Experience with the Legal Supervision of Hungarian Local Governments" *Curentul Juridic*, Year XXIII, No. 1 (80): 34–46.
4. Clark, Gene (2025), *County Government: The Mechanics, Politics and Outcomes*, Kindle ed., ASIN B0F5PC5TFP, 93 p.
5. Le Coze, Jean-Christophe (2024). "The Unfolding Regulator–Regulatee Relationship." In Le Coze, Jean-Christophe and Benoît Journé (eds.) *The Regulator–Regulatee Relationship in High-Hazard Industry Sectors*, SpringerBriefs in Applied Sciences and Technology. Cham: Springer, https://doi.org/10.1007/978-3-031-49570-0_1.
6. Săraru, Cătălin Silviu (2019) *Contenciosul administrativ român*. C.H. Beck, Bucharest.
7. Sly, John F. (1931), "County Government and Administration. By John A. Fairlie and Charles M. Kneier. (New York: The Century Co.1930. Pp. Xiii, 585.)", *American Political Science Review* 25, no. 1: 184–87. https://doi.org/10.2307/1946583.
8. Vedinaș, Verginia (2024), *Drept administrativ*. XV[th] edition, revised and added, Universul Juridic, Bucharest.

[9] Civil judgment no. 827 of 19 April 2016, published in the Official Gazette, Part I no. 555 of 5 July 2019.