

About the Competent Court in the Matter of a Litigation Regarding the Annulment of a Decision Whose Object Is the Release from a Public Management Position

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Abstract

The present study will analyze the aspects related to the competent court in the matter of the request for annulment of a decision ordering the release from a public management position, from the perspective of decision no. 5746/2022 of the High Court of Cassation and Justice. The supreme court in Romania established that in the mentioned situation the provisions of the Administrative Code prevail over the provisions of Law no. 554/2004 of the administrative litigation. This decision, which is based on a litigation registered before the Dolj Court, has a particularly important role in the matter of jurisdiction in a delicate issue of administrative law.

Keywords: administrative litigation, Administrative Code, public servant, High Court of Cassation and Justice.

JEL Classification: K23, K41

1. Introduction

The High Court of Cassation and Justice recently ruled on the competent court in the case of a dispute regarding the annulment of a decision by which the release from a public management position was ordered.

The decision of the supreme court was issued in the context of a negative conflict of jurisdiction between the Dolj Court and the Craiova Court of Appeal.

The factual situation is as follows: the plaintiff, contrary to the defendant National Animal Husbandry Agency "Prof. DR. G.K. Constantinescu", submitted a request to the Dolj Tribunal, through which he requested the annulment of the decision ordering his release from the public office of management as head of service, with reintegration into the position held and payment of damages - interests.

Following the analysis of the request, the Dolj Court admitted the exception of material incompetence² of the Dolj Court and declined the case, for competent resolution, in favor of the Craiova Court of Appeal, administrative and fiscal litigation section.

The court motivated the decision with reference to art. 10 para. (1) from Law no. 554/2004 of administrative litigation, which establishes the following³: *disputes regarding administrative acts issued or concluded by local and county public authorities, as well as those regarding fees and taxes, contributions, customs debts, as well as their accessories of up to 3,000,000 of lei are settled in substance by the administrative-fiscal courts, and those regarding the administrative documents issued or concluded by the central public authorities, as well as those regarding fees and taxes, contributions, customs debts, as well as their accessories greater than 3,000,000 of lei are settled on the merits by the administrative and fiscal litigation sections of the appeal courts, unless a special organic law provides otherwise.*

The Dolj Court ruled that given the fact that the National Agency for Animal Husbandry "Prof. Dr. G. K. Constantinescu" ... is a specialized body of the central public administration, with legal personality, fully financed from the state budget, subordinate to the Ministry of Agriculture and Rural Development⁴, the jurisdiction in this case belongs to the Craiova Court of Appeal.

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² See regarding the exception of material incompetence Cătălin-Silviu Săraru, *Tratat de contencios administrativ*, Ed. Universul Juridic, Bucharest, 2022, p. 353-357.

³ Published in Official Gazette no. 1154 from 7th December 2004.

⁴ See Decision no. 5746/2022 of the High Court of Cassation and Justice, Department of Administrative and Fiscal Litigation, at the web address: <http://www.scj.ro/1093/Detail-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=201908#highlight=##>, accessed in 8th June 2023.

2. The analysis of the situation

The Craiova Court of Appeals, following the analysis of the situation, admitted the exception of material incompetence of the Craiova Court of Appeals, declining the case for trial by the Dolj Court.

According to the legal provisions in the matter, there was a negative conflict of jurisdiction, the case was suspended, and the High Court of Cassation and Justice was notified regarding the resolution of the negative conflict of jurisdiction, according to art. 133 point 2) and art. 135 para. (1) of the Civil Procedure Code.

The Craiova Court of Appeal mentioned the fact that the Dolj Court is the competent court, according to art. 536 of the Emergency Ordinance of the Government no. 57/2019 (Administrative Code)⁵, which establishes the following: *the cases that have as their object the service report of the civil servant are under the jurisdiction of the administrative and fiscal litigation section of the court, except for situations for which the jurisdiction of other courts is expressly established by law.*

Notified of the negative conflict of jurisdiction, the High Court of Cassation and Justice established the following: *The High Court considers that for the pronouncement of this jurisdiction regulator, two procedural aspects are relevant in the case, namely: the applicant's quality as a civil servant and the object of the case, which concerns the report of the plaintiff's service, which became litigious due to his release from the public management position by the defendant employing public institution.*

According to art. 536 of the Administrative Code "Cases whose object is the service report of the civil servant are under the jurisdiction of the administrative and fiscal litigation section of the court, except for situations for which the jurisdiction of other courts is expressly established by law."

Therefore, the legislator instituted a special material competence, derogating from the general provisions provided by art. 10 of Law no. 554/2004, in the matter of disputes concerning the service relationships of civil servants, this being the factual and legal situation deduced from the judgment in the present case, which is why the High Court finds that the resolution of the case, in the first instance, falls within the competence material of the administrative and fiscal litigation section of the court.

Considering the provisions of art. 10 para. (3) from Law 554/2004 which establishes as the territorially competent court the one at the plaintiff's domicile, which he initially agreed to submit the plaintiff, the High Court finds that the Dolj Court, the administrative and fiscal litigation section is the competent court from the point of view of materially and territorially to solve this case⁶.

The legislation in the field of administrative law has undergone important changes in the recent period. The administrative code has the role of regulating, among other things, the legal regime of civil servants, including establishing rules regarding the possibility to challenge in court the decisions issued by local and central public institutions and authorities.

Given that the Administrative Code also refers to matters of jurisdiction in the matter of the courts, it is possible that conflict situations may arise, especially between the provisions of the Administrative Code and Law no. 554/2004 of the administrative litigation.

In this context, the supreme court resolved an important conflict of jurisdiction between the courts, which has as its object a dispute intervened precisely as a result of the interpretation of the mentioned normative acts.

The High Court of Cassation and Justice, starting from the nature of the object of the case, the quality of the parties, but also from the statute of special regulation of the Administrative Code, established the priority application of the provisions of the Administrative Code in the matter, thus, the adjudication of disputes whose object the removal from office of a leading civil servant is the competence of the administrative and fiscal litigation sections of the courts, as provided by art. 536

⁵ Published in the Official Gazette, no. 555, from 5th of July 2019.

⁶ See Decision no. 5746/2022 of the High Court of Cassation and Justice, Department of Administrative and Fiscal Litigation, at the web address: <http://www.scj.ro/1093/Detail-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=201908#highlight=##>, accessed in 8th June 2023.

of the Administrative Code.

3. A comparative overview

In disputes concerning the annulment of a decision to dismiss from a senior public office, the competent court may vary according to the jurisdiction and law of the country concerned. As a general rule, cases of this kind fall under administrative law and are settled before administrative or other specialised courts. In most countries, disputes concerning administrative decisions are often settled by the administrative tribunal or a court with administrative law jurisdiction. In some jurisdictions, such cases may go all the way to higher courts, such as the Supreme Court or the Constitutional Court, depending on the importance or nature of the contested decision. Specialised commissions or arbitration and mediation procedures can be found to resolve disputes with public authorities which can be used as a preliminary step before going to court or as an alternative to the judicial process.

The comparative approach allows us to identify significant differences in the competent court. In the US, such disputes may end up in federal or state courts, depending on the circumstances⁷. For the United Kingdom cases concerning the annulment of administrative decisions can be brought before the administrative courts⁸. In France, such disputes are settled by administrative courts, such as the *Conseil d'État* - the highest administrative court in France with jurisdiction in administrative law cases. Germany, through administrative courts such as the *Verwaltungsgericht* (Administrative Court) in the federal states, deals with such administrative disputes. Cases can go all the way to the federal court, the *Bundesverwaltungsgericht* (Federal Administrative Court), in certain circumstances. In Japan, administrative courts or civil courts may be involved in such disputes, depending on the nature of the decision and its court of origin. The Supreme Court of Japan also has an important role in interpreting the law.

In Romania, administrative litigations are judged by the administrative contentious sections, organized at the tribunals, the courts of appeal and the High Court of Cassation and Justice. Disputes are judged under Law no. 554/2004 of *administrative contentious*. The provisions of Law no. 554/2004 shall be complemented with the provisions of the Civil Code and those of the Civil Procedure Code to the extent that they are not incompatible with the specific nature of the authority relationships between public authorities, on the one hand, and the persons aggrieved in their legitimate rights or interest, on the other. The justice-making activity in a state of law must be based on a set of principles that guarantee the establishment of truth and observance of the law in all cases subject to judgment, thus ensuring a fair trial. These principles include the independence and impartiality of judges⁹.

The legal landscape for disputes concerning the annulment of decisions affecting senior public office has changed significantly in recent years. Recent legal developments in various jurisdictions, including Romania, have brought about changes in the interpretation of the relevant legislation, with a profound impact on the courts having jurisdiction in such cases.

An increased focus on administrative law and specialised administrative courts has been noted in many countries. The recent approach underlines the importance of having specialised judicial bodies that can effectively review and adjudicate these cases, which is a positive step towards ensuring justice in administrative matters. The need for clear jurisdictional guidelines means that legal systems need to provide unambiguous rules so that litigants know where to bring their cases and so that courts hear them efficiently, which is intended to contribute to a more transparent and accessible legal system.

The recent approach recognises the challenge of balancing administrative powers and duties with the protection of individual rights. Courts are increasingly required to scrutinise decisions of

⁷ An example would be the Federal Circuit Court, which handles federal cases, or the State Supreme Courts, which have jurisdiction over matters of state law.

⁸ The specific example would be the High Court of Justice, which has a specialised administrative section.

⁹ See Maria Grzymisławska-Cybulska, Kajetan Górny, Cătălin-Silviu Săraaru, *Romanian, Polish and German judge disqualification in disputes of administrative litigation*, in „Juridical Tribune - Tribuna Juridica”, Volume 7, Special Issue, October 2017, pp. 6-25.

public management authorities to ensure that they are lawful and comply with the principles of the rule of law, while respecting the legitimate exercise of administrative functions.

With respect to global variations in expert analysis, it is relevant to recognise that the approach to determining the competent court in such cases can vary significantly from one jurisdiction to another because legal systems around the world have their own unique characteristics, and recent manifestations reflect the tendency to adapt to changing needs and realities in each jurisdiction.

In dealing with such cases, legal professionals, including judges, lawyers or researchers, are faced with interpreting and implementing recent approaches. Their expertise is essential in navigating the nuances of administrative law, ensuring that justice is served and that the principles of the rule of law are respected. Further research and comparative studies in this area are to be encouraged as they give a chance for the best possible resolution and can shed light on the effectiveness of the recent approach in different jurisdictions. Analysing the results of cases and their impact on administrative law jurisprudence can help refining and improving legal systems.

4. Conclusions

A number of relevant social factors can be considered in the analysis. One of them is the economic one¹⁰. In addition to all this, specific crisis conditions continue to influence these situations in particular¹¹. In conclusion, the recent approach in determining the competent court in cases related to the annulment of decisions affecting public management positions reflects a broader development in administrative law. It emphasises specialised administrative courts, clear jurisdictional guidelines and the delicate balancing of administrative discretion with individual rights. It is desirable that all legal systems, not just the Romanian one, adapt to these changes, with an emphasis on monitoring and researching outcomes to ensure fair and just administration of the law.

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¹¹ For some specific details, see Ionel Didea, Diana Maria Ilie, *Restructuring Practice is Now Growing Worldwide Post-Covid Insolvency*, „International Investment Law Journal”, Volume 2, Issue 1, February 2022, pp. 14-45.