

**CONTROVERSY REGARDING THE ENFORCEMENT
PROCEDURE OF JUDGMENTS HANDED DOWN BY THE
ADMINISTRATIVE COURTS**

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ABSTRACT: *The prompt execution of the final court decisions delivered by the administrative courts is a necessary and essential step in order to improve the services of the state public administration. By the amendments to the Law no. 554/2004 over time, the Romanian legislator attempted to achieve this result. The presented paper attempts to step up the measures and provisions taken by the legislator in order to achieve the desired result.*

KEYWORDS: *enforceable titles; public administration; final judgments; mandatory; amendments*

JEL Classification: *K14, K23*

With the entry into force of the provisions of Law no.76 of 2012¹ on the implementation of the provisions of the Law no. 134/2010 on the Civil Procedure Code, through the amendments to the Law on administrative litigation of art.54 point 6 of this law, the *enforcement title* in the matter of administrative litigation was defined as “*The final judgments pronounced under this law are enforceable titles.*” How was it before?

Since the expedient enforcement of the final court decisions issued by the administrative courts of law is an imperative necessary for the correction and improvement of the activity of the state public administration, the Romanian legislator has been obliged to bring over time several adjustments to the Law on administrative litigation, no.554/2004², leading to this goal.

Thus, a first measure operated as a result of the amendments made to Law 554/2004 by the provisions of article 1, point 32 of the Law no. 262/2007³ amending and supplementing Law no.554 / 2004, on administrative litigations (as it was before) concerning the obligation to publish court judgments published in material of the administrative courts.

In that regard, the provisions in question provide for the fact that the final and irrevocable decisions of the judge annulling entirely or partly an administrative normative

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¹ Official Gazette of Romania, 2012. 30 05.Issue 365

² Official Gazette of Romania, 2004. 07 12.Issue 1154.

³ Official Gazette of Romania, 2007. 30 07.Issue 510.

instrument, given their binding nature and the fact that such a measure directly affects other legal relationships, should be *mandatorily published, after the explanatory statement*, in the Official Gazette of Romania, Part I, and in case the normative instrument is issued by a public authority at the county level, or at the level of Bucharest Municipality, the publication of the court decision will be made in the official monitors of counties or of Bucharest Municipality.

A first attempt to clarify the controversies regarding the enforcement of the final court decisions in administrative litigation matters was clarified by the use of the new instrument provided for by the Romanian legislator, in the Romanian Procedure Code for the unification of the non-unitary judicial practice, namely the notification of the High Court of Cassation and Justice, requesting a preliminary ruling on *the interpretation of the provisions of article 23 of Law no. 554/2004*.

On the grounds of the decision issued by the Panel for the solution of some legal matters of the High Court of Cassation and Justice⁴, the modalities for the interpretation of the provisions of article 23 in question can be identified.

These reasons provide that, *from a first point of view*, the national courts have held that the judgment annulling the administrative instrument of a normative nature takes effect only for the future, *ex nunc*, with regard to administrative instruments issued under of the document annulled after the annulment decision and cannot be opposed to the legal effects produced prior to the publication of the court decision in the Official Gazette of Romania, Part I, nor to the administrative instruments of an individual character previously issued.

The courts that embraced such a view appreciated that by the phrase “have power only for the future”, the provisions of art. 23 of Law no. 554/2004 set an exception from the principle according to which the nullity produces retroactive effects, so that the legal effects produced until the annulment remain in force..

By the provisions of art. 23 of Law no. 554/2004, the legislator introduced a derogation from the principle according to which a document declared null is considered never to have existed, so that the individual administrative documents issued prior to the annulment of the administrative normative document on which these were based, were issued in compliance with the provisions of the document with higher legal force effective at the date of their issuance.

It has also been argued that the recognition only for the future of the effects of the annulment of the administrative instrument with normative character is also a way of complying with the principle of legal relations security.

From another point of view, the courts have held that the provisions of art. 23 of Law no. 554/2004 were interpreted as meaning that the judgment for annulment of the administrative instrument with normative character produces legal effects both in respect of the subsequent administrative instruments *issued* after the publication of the decision in the Official Gazette of Romania, Part I, or, as the case may be, in the official gazettes of of the counties or of the municipality of Bucharest, as well as of individual administrative instruments which, *although issued prior to the publication, were subject to cases pending before the courts at the date of the publication of the annulment decision*.

⁴ Decision of the High Court of Cassation and Justice no.10/2015, 2015.

In support of this case-law, it has been shown that an interpretation to the contrary would deprive any person damaged by an administrative instrument of an individual nature issued based on an annulled administrative instrument and would have the effect of merely recognizing the right of access to court, as long as the damaged person can no longer request the annulment of the already annulled administrative instrument.

The courts that have taken up this point of view have held that the legal decision to annul the administrative instrument of a normative nature has effects similar to the decision of the Constitutional Court which allows an exception of unconstitutionality and its effects are on the cases pending at the date of publication of the decision in the Official Gazette of Romania.

These Courts also considered that an argument in this respect is that the phrase “have power only for the future” provided for by art.23 of Law no.554/2004 is also found in the art. 147 paragraph (4) of the Constitution.

The High Court of Cassation and Justice, analyzing the matter to be judged, namely the interpretation of the provisions of article 23 of Law no.554 / 2004 from the point of view of *the extent of the effects of the publication of the judgment which annuls an administrative instrument with normative character*, has solved the controversy created more than 8 years after the entry into force of the normative provision in question, stating by Decision no. 10/2015⁵ that: *“The provisions of article 23 of Law No. 554/2004 on administrative litigation, as subsequently amended and supplemented, shall be interpreted as meaning that the revocable / final judgment annulling entirely or partly an administrative instrument of normative nature also produces effects for the individual administrative instruments issued under it which, at the time of the publication of the judgment for annulment, are challenged in cases pending with the courts.”*

Going forward, to the provisions of article 24, paragraph 1, of Law no.554 / 2004, which provide for the obligation of the persons losing in decision of the administrative court to enforce the provisions of the decision within 30 days from the date it becomes final, unless otherwise expressly provided for in the operative part of the judgment, there are the following paragraphs of this article which created controversies after the amendment thereof in the Law, based on the provisions of article IV points 1 and 2 of Law no.138/2004 for the amendment and completion of Law no.134/2010 on the Civil Procedure Code, as well as for the amendment and completion of related normative instruments⁶.

In particular, the provisions of article 24 par. of Law no.554/2004 have been controversial. These stipulate that if the term of enforcement of the administrative decision has not been enforced voluntarily, further, within the limitation period for enforcement, the enforcement court, *by the settlement given with the summoning of the parties, shall apply a fine of 20% of the gross minimum salary on the economy, for each day of delay, which shall be an income to the state budget, to the manager of the public authority or, as appropriate, to the liable person, and to the plaintiff it shall grant penalties, under the conditions of art. 905 of the Civil Procedure Code.*

⁵ Official Gazette of Romania, 2015. 25 06.Issue 458.

⁶ Official Gazette of Romania, 2016. 01 04.Issue 243.

It is necessary to clarify the fact that according to the provisions of article 25 of Law no.554/2004, the enforcement authority in the matter of administrative litigation, which has solved the substance of the administrative litigation, applies the above mentioned provisions without the need the enforceability of the judgment, that is, the pronouncement of a decision to grant the enforcement made by the bailiff.

A first controversy concerned the application of this rule of law to court judgments in administrative matters, given before the entry into force of this provision of law.

More specifically, if the provisions of article 24 par. 5 of Law no.554/2004 stipulate that, in the absence of the debtor's request to the enforcement court for the application of the fine referred to in par. 3 of art. 24, the civil enforcement department of the enforcement court has to make the request, it is or is not applied to the judgments given before the entry into force of the amendments brought by art. 24 of Law no. 138/2004.

Once again the High Court of Cassation and Justice which, following the pronouncement of Decision no. 3/2016 on the solution of some legal matters, stated that: *"The provisions of art. 24 par. (5) of Law no. 554 / 2004 on administrative litigation, introduced by Law no. 138/2014 for the amendment and completion of Law no. 134/2010 on the Civil Procedure Code, as well as for the amendment and completion of some related normative instruments, also applies to the enforcement of the obligations established by final judgments before the entry into force of Law no. 138/2014"*.

In the reasons of the invoked decision, the High Court of Cassation and Justice argued that for the identification of the sphere of court decisions subject to the procedure regulated by art. 24 par. 5 of Law no. 554/2004, it is necessary to establish the law, and then the enforcement is performed.

Given that the provisions of Law no.554 / 2004 or other related normative instruments do not contain express provisions in this respect, the provisions of the Civil Procedure Code become incident, as expressly mentioned in the provisions of art. 28 of the Law no.554/2004.

On the other hand, according to art. 24 and art. 25 par. (1) of the *Civil Procedure Code*, it is clear that *the enforcement is governed by the law in force at the time it is started.*

Consequently, irrespective of the moment of the final ruling of the administrative court, the provisions of article 24 par. 5 of Law no.554/2004 will apply if the enforcement starts after the date these provisions enter into force.

Another controversy is related to the application of the provisions of article 25 par. 4 of Law no. 554/2004, which stipulate that, if the application for a fine, namely the application of penalties, was admitted, and within 3 months of its communication "the debtor does not carry out the obligation stipulated in the enforceable title", the enforcement court shall, upon the request of the creditor, *fix by the decision given with the summons of the parties, the final amount to be owed to the state and the amount to be paid as penalties.*

Thus, the legal practice is not unitary in relation to the moment based on which the final payment amount is individualized, in case the application for fixing the final amount owed as a fine to the state, respectively the penalties due to the debtor, is allowed.

More specifically, these will be calculated from the moment the enforcement title is final, or from the date of the notification the decision by which the fine and the penalties shall apply.

Also, the legal practice is not unitary, or even absent, regarding the fulfillment of the obligation ordered by the enforcement order within the 3 months after the communication of the conclusion setting the fine, respectively the amount of the penalties referred to in the provisions of art.4 of Law no.554/2004, respectively, whether these amounts will be more individualized or not in case of fulfillment of this obligation.

By civil sentence no. 255 issued by the Mureş Court in file no. 2690/102/2015, the court dismissed as unfounded the request for the final setting of the fine and penalties (compensations) made by the creditor of the obligation established by the enforceable title in the administrative litigation issue, given the fact that the debtor, although not fulfilling the obligation established by the enforceable title within the time frame established by the provisions of art. 24 par. 1 of Law no.554/2004, fulfilled it, however, within the 3-month period elapsed since the notification of the conclusion for the setting of the fine.

Last but not least, there have been controversies over the passive trial status of the entity in question as defendant in the case of applications made under article 24 paragraphs 3 and 4 of Law no. 554/2004.

Thus, paragraph 3 refers to the leader of the public authority bound by the enforceable title, or, as appropriate, to the liable person. The procedural framework is relatively easy to determine when the respondent public authority is a territorial administrative unit and the manager is the mayor's institution.

But what if the entity bound by the enforceable title is the mayor's institution? Will the individual occupying this position have passive trial quality or not? All the more so since it is possible for that person not to occupy the position at the time of application?

We assume that, given the provisions of article 26 of Law no.554/2004, which provide for the possibility of the leader of the public authority to take action against those guilty of the failure to enforce the decision, the individual in charge does not have a passive trial status.

However, the courts decided to the contrary⁷, stating that the purpose pursued by the legislator by regulating these legal provisions was precisely to individualize the person responsible for the failure to enforce a final judgment of administrative litigation, namely to sanction him/her as this aspect is a challenge necessary for the correct development of the activity of the public authorities, respectively the urgent remedy of the unlawful cases found by the courts in the course of its activity.

Another controversial issue is raised by the applicability of the provisions of the special procedure provided by the provisions of art. 24 of Law no.554/2004 on administrative litigations in Romania, regarding the enforcement of an enforceable judgment by which it was ordered the temporary suspension of the enforcement of an administrative instrument.

Regarding the situations covered by article 24 par. 1 (*the public authority has the obligation to conclude, replace or amend the administrative instrument, to issue another document or carry out administrative operations*), the courts have in principle appreciated that the special enforcement procedure regulated by paragraphs 3 and 4 of art. 24 shall not apply to any type of judgment given in the field of administrative litigation.

⁷ Civil Sentence of the Tribunal of Mures File no 2690/102/2015, 2015.

Thus, from the limiting list contained in paragraph 1 of article 24 it is clear that the special procedure contained in article 24 is intended to be applied to judgments which solved the grounds of the case, not at all some transitory situations as those solved based on art. 14 respectively art. 15 of Law no. 554/2004⁸.

It is obvious the fact that if for some of the provisions contained in Law no.554/2004 regarding the enforcement of the judgments, the High Court of Cassation and Justice, by binding decisions, imposed the interpretation of these provisions, the non-unitary judicial practice of the national courts in the interpretation of the other provisions belonging to this procedure require again the use of the levers offered by the Civil Procedure Code to unify it.

⁸ Civil sentence no. 3282 issued by the Appeal Court of Alba Iulia file no 4645/107/2012, 2012