The communication of administrative decisions and the course of the time limits for challenging them. Comparative law solutions and perspectives of evolution in Romanian law

PhD. student **Nicolae-Alexandru CESLEA**[1]

Abstract

The paper considers the mechanism of communicating administrative decisions in relation with the consequence over the course of the time limits for contesting them. The study begins with an analysis of the solutions found in comparative law and continues with the national perspective that includes a vertical approach, analyzing the normative versions of the last 30 years and those of today, as well as a horizontal approach, within the existing system in the current regulation. In the latter case, we target the provisions on the communication of administrative decisions to the beneficiary in relation to those on the communication to the third party, the regulation on the establishment of minimum and maximum time limits and the form that the communication must take to trigger the contestation time limits.

Keywords: *administrative act, administrative decision, beneficiary, communication, legislative evolution, notification, time limit, third party.*

JEL Classification: K23

1. Introduction

The analysis from the perspective of comparative law has the advantage of creating a unit at the level of world law, but, most importantly, helps the normative evolution, in the sense that the legislator can identify the best solutions to fit the Romanian legal system.

In Romanian law, communication is one of the operations that cannot be analyzed without observing the evolution of the legislation and the jurisprudence. The last 30 years have known a varied legal regime, mainly shaped by the practice of the national courts[2].

In terms of communication, the tradition of law occupies a second place, and current solutions cannot ignore previous systems, in order to meet the need for regulation consistency and effective methods of informing the interested persons. Once these elements ignored, the courts, including the Constitutional Court, will do nothing but intervene to restore the normative balance.

The paper addresses the question of communication of administrative acts and the course of time limits in the pre-trial administrative procedure. The paper

[1] Nicolae-Alexandru Ceslea - Doctoral School of Law Faculty, University of Bucharest, Romania, alex.ceslea@ymail.com.

[2] For details, see Nicolae-Alexandru Ceslea, *Communication of administrative acts. The role of the courts in developing the rules of administrative contentious. Legislative evolution and practical aspects*, „Academic Journal of Law and Governance" no. 8/2020, pp. 31-46.

has a vertical approach, analyzing previous and current normative versions, as well as a horizontal approach, within the existing system in the current regulation.

Thus, the paper begins with an analysis of the solutions found at international level - the first section in which we aim to position the national regulation among the other existing solutions in comparative law -, then continues with the identification of solutions for the communication of administrative decisions arising from the national legislative evolution of the last 30 years - second section. In this second section we aim to find a series of constants and identify the best means of communicating administrative legal documents[3].

Also, in the analysis of the current regulation we seek to demonstrate that the legal provisions are not coherent. In this way, the third section addresses, on the one hand, the unjustified difference between the provisions governing the starting point of the time limits reserved to the beneficiary of the administrative decision and the one reserved to the third party and, on the other hand, the lack of justification for setting minimum and maximum time limits for them. The fourth section completes the last one with an argument related to the form that the communication must take to trigger the contestation time limit.

The arguments presented in these latter two sections support the solution identified in the second section, considering, in addition, the proposal to eliminate the minimum and maximum system for challenging administrative decisions.

For the fluency of the exposition, we indicate at this point the conclusion we seek to demonstrate: a coherent system for communicating administrative decisions and a consistent mechanism regarding the starting point of the time limits proves to be the one in which the minimum and maximum time limits are eliminated, in which the time limit for the contestation of an administrative legal document reserved to the beneficiary starts from the moment of communication, and for the third party from the moment they became aware, by any means, of the existence of the act, the periods in which the third party undertake reasonable efforts to obtain the act not being considered for the calculation of the contestation term.

Such a finding will remain valid for the solutions identified in the comparative law that benefit from a similar regulation, the analysis operating both from the systems in comparative law to national law and from national law to systems in comparative law.

2. Solutions regarding the communication of administrative decisions deriving from comparative law

In France, according to art. R. 421-1 of the Administrative Justice Code[4], the application before the court[5] can be submitted within 2 months from the

[3] To attenuate the difficulties arising from the language correlation of the terms in different systems of law, we note the equivalence between the notions of "administrative legal document", "administrative decision" and "administrative act". Also, between "time limit" and "term".

[4] *Code de justice administrative*, available at https://www.legifrance.gouv.fr/affichCode.do?cidTexte =LEGITEXT000006070933, last accessed 06.08.2020.

[5] This section focuses on the time limit for challenging administrative decisions, regardless of how they are challenged, respectively through the pre-trial administrative procedure or the direct filing

moment of notification or from the publication of the administrative decision, regardless of whether the action is brought by the beneficiary or by a third party[6]. In the field of urban planning[7], according to art. 600-2 of the Urbanism Code[8], third parties can address the court for contesting the building, arrangement or demolition permit within 2 months from the moment the permit was displayed at the construction site.

Also in French law, we point out the solution that arose from the need to protect the principle of legal certainty in the sense that the administrative act that does not include the mention regarding the means and time limits of contestation[9] may be challenged within a maximum period of 1 year from the notification[10].

In the Grand Duchy of Luxembourg, according to art. 13 of the Rules of procedure before administrative courts[11], the term for contesting the administrative acts is 3 months and runs from the moment of notification to the beneficiary or from the day when the third party could become aware of the administrative decision.

The doctrine pointed out the case-law of the Luxembourg courts in the sense that the existence of permanent visual contact on the building site of the beneficiary determined the moment at which the time limit for contestation started

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of an action in court. For details on systems in which the preliminary procedure is mandatory or optional, see Dacian Cosmin Dragoș, *Procedura contenciosului administrativ*, All Beck Publishing House, Bucharest, 2002, pp. 26-49, Rodica Narcisa Petrescu, Olivia Petrescu, *Actualitatea recursului administrativ în dreptul român. Unele considerații cu privire la o reglementare recentă din dreptul francez*, „Transylvanian Journal of Administrative Sciences" no. 2 (31)/2012, pp.81-90.

[6] For details on the legal regime of the term see Daniel Chabanol, François Bourrachot, *Code de justice administrative*, 9th edition, Le Moniteur Publishing House, Paris, 2019, pp. 477-497.

[7] Particular regulations are also found in taxation, social security law, labor law, banking law, education, in the case of civil servants, including military, for details, see Rhita Bousta, Arun Sagar, *Alternative Dispute Resolution in French Administrative Proceedings*, in Dacian Cosmin Dragoș, Bogdana Neamțu, *Alternative Dispute Resolution in European Administrative Law*, Springer Publishing House, Berlin, 2014, p. 67, Lucienne Erstein, *Le recours administratif préalable obligatoire nouveau*, in „La Semaine Juridique: Administrations et Collectivités territoriales" no. 44/2012, act 736; Jean Michel, *Les recours administratifs gracieux, hierarchies et de tutelle*, La Documentation française Publishing House, Paris, 1996, pp. 32-40; Eugénie Prévédourou, *Les Recours Administratifs Obligatoire: Etude comparée des droits allemand et français*, LGDJ Publishing House, Paris, 1996, pp.114-150.

[8] *Code de l'urbanisme*, available at https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074075, last accessed 06.08.2020.

[9] According to art. R. 421-5 of the Administrative Justice Code, the administrative decision that was notified to the person concerned is not opposable if it does not include the information on the means and time limits of contestation.

[10] Phillipe Cossalter, *Le recours contre les actes administratifs individuels est enfermé dans un délai raisonnable d'un an: la sécurité juridique de l'acte administratif au prix de la sécurité juridique de l'administré, Note flash sous CE Ass. M.A. c/Ministre de l'administré, Note flash sous CE Ass. M.A. c/Ministre de l'économie et des finances n.387763*, in „Revue générale du droit on-line" no. 24040/2016, available at www.revuegeneraledudroit.eu/?p=24040, last accessed 06.08.2020.

[11] Law of 21 June 1999 on Rules of procedure before administrative courts, available at http://legilux.public.lu/eli/etat/leg/loi/1999/ 06/21/n2/jo, last accessed 06.08.2020.

for the third party[12]. At the same time, it was pointed out that, regarding time limits, the principle of legal certainty must be balanced with that of effective access to justice[13].

Similar to Luxembourg law is the regulation on the protection of the rights of persons affected by binding decisions issued by an agency or body of the European Union[14]. With a similar wording, art. 263 paragraph (6) from the Treaty on the Functioning of the European Union[15] that adds the element of the publication of the administrative decision[16].

Also, in the case of the administrative appeal filed by the European Commission in exercising the control over the legal documents of the Member States[17], no time limit is set within which the Commission may request the Member State to revoke the decision considered contrary to the community law[18]. On the other hand, the time-limit for submitting the pre-trial administrative complaint regulated by the Staff Regulations of Officials of the European Union[19] runs from the moment of communication of the administrative decision, respectively from the date on which the beneficiary took note of the decision concerning him/her. For the third party the time limit starts from the date on which he/she took note of the decision, but at the latest from the date when the decision was published[20].

In German law, the general time limit for submitting the pre-trial administrative complaint starts from the moment when the decision is

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[12] Marc Feyereisen, Jérôme Guillot, *Procédure administrative contentieuse*, 4th edition, Larcier Publishing House, Luxembourg, 2018, p. 123.

[13] Idem. The author indicated that, as noted in Geouffre de La Pradelle v. France, application no. 12964/87, Judgment of the European Court of Human Rights of 16.12.1992, paragraph 33, an extremely complex system of legal provisions on time limits for challenging administrative decisions is likely to affect this balance.

[14] See Siegfried Magiera, Wolfgang Weiß, *Alternative Dispute Resolution Mechanisms in the European Union Law*, in Dacian Cosmin Dragoș, Bogdana Neamțu, *loc. cit.*, p. 516.

[15] Treaty on the Functioning of the European Union, treaty published in the Official Journal of the European Union no. C326/26.10.2012, pp. 0001-0390.

[16] According to them: actions brought by a Member State, European Union authorities and by individuals against administrative acts "shall be instituted within two months of the publication of the measure, or it its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be". We find the same solution in the draft of the ReNEUAL Code, for detail, see Paul P. Craig, Herwig Hofmann, Jens-Peter Schneider, Jacques Ziller, *ReNEUAL Model rules on EU Administrative Procedure*, Oxford University Press Publishing House, Oxford, 2017, p. 135.

[17] The current art. 258 of the Treaty on the Functioning of the European Union.

[18] See Dacian Cosmin Dragoș, *Recursul administrativ prealabil în dreptul administrativ comunitar*, „Transylvanian Journal of Administrative Sciences" no. 2(5)/2000, p. 119.

[19] Staff Regulations of Officials of the European Union, published in Official Journal of the European Union no. 45/14.06.1962, p. 1385, art. 90 (2).

[20] Idem, p. 121; the publication of the individual decision takes place under the conditions of article 25, paragraph (3) of the Statute: "Specific decisions regarding appointment, establishment, promotion, transfer, determination of administrative status and termination of service of an official shall be published in the institution to which the official belongs. The publication shall be accessible to all staff for an appropriate period of time".

communicated to the interested person, beneficiary or third party[21], being adopted a similar regulation to the one in France regarding the setting of a maximum term of 1 year for submitting a pre-trial complaint if the decision does not include the means and the time limit for contestation[22].

In the field of urban planning, an interesting solution has been identified in Ireland. Before applying for a building permit, the beneficiary must publish in a local newspaper and set up an information panel expressing his intention to build, without the need for formal notification to the neighbors. At the same time, the public authority prepares weekly lists of applications for authorization which are displayed at their headquarters and in libraries so that interested parties can submit observations[23]. Third parties have the possibility to file an administrative pre-trial complaint addressed to the competent public authority, having a period of 4 weeks from the day of issuance of the administrative decision[24].

The authorization or the decision issued by the administrative appeal board can be challenged within 8 weeks from the issuance, respectively within the same time limit from the date of first publication of the notification on the issuance of the administrative act. Even in these conditions, the court may extend the appeal for justified reasons[25].

In Hong Kong, the application before the court must be filed as soon as there are grounds for challenging the administrative decision[26], the legal provisions being in the following sense: "The application before the court shall be made as soon as possible and in any case in a three-month period from the date on which the first grounds for contestation arose, unless the court considers that there are reasonable grounds for extending the period in which the application can be made"[27].

Although there are sufficient reasons why regulation is favorable in terms of judicial policy or legislative prescription[28], the cited author proposes, however,

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[21] Ulrich Stelkens, *Administrative Appeals in Germany*, in Dacian Cosmin Dragoș, Bogdana Neamțu, *loc. cit.*, pp. 9, 16.

[22] For details, see Mahendra P. Singh, *German administrative law in common law perspective*, Springer Publishing House, Berlin, 2001, p. 220.

[23] Geraint Ellis, *Third party rights of appeal in planning: Reflecting on the experience of the Republic of Ireland*, in The Town planning review No. 73(4)/October 2002, p. 433.

[24] According to art. 37 (1) (a) and (d) of Law no. 30/2000 on Planning and Development issued by the Irish Legislative Authority, House of the Oireachtas, Planning and Development Act, available at http://www.irishstatutebook.ie/eli/2000/act/30/enacted/en/ print.html, last accessed 06.08.2020.

[25] According to art. 50 (4) (a) (i) to (iii) of Law No. 30/2000 on planning and development.

[26] Stephen Thomson, *Dare to Diverge: Time for Administrative Law in Hong Kong to Stand on Its Own Two Feet*, in The Chinese Journal of Comparative Law, Vol. 7, no. 3/2019, pp. 442-447, also Johannes Man Mun Chan, *Administrative Law*, in Hong Kong Law Journal no. 37/2007, p. 4.

[27] Hong Kong Supreme Court Rules, Chapter 4A O 53, Rule 4 (1), available at https://www.elegislation.gov.hk/hk/cap4A, last accessed 06.08.2020. For the existing legislative system in Australia, which has developed in a similar context, see Enid Campbell, Matthew Groves, *Time Limitations on Applications for Judicial Review*, in „Federal Law Review of Australia" no. 32(1)/2004, p. 29, available at http://classic.austlii.edu.au/au/journals/FedLawRw/2004/, last accessed 06.08.2020.

[28] For details, see Stephen Thomson, *Administrative Law in Hong Kong*, Cambridge University Press Publishing House, Cambridge, 2018, pp. 42-51; Stephen Thompson, *Leave Without Delay: The*

amending the rule to remove the three-month limitation. This is because the courts verify whether the condition of promptly formulating the application is met, the application to the court within three months, respectively the formulation after this deadline are not elements that present guarantees regarding the admissibility of the action[29].

In New Zealand there is no strict regulation on the time limits within which an administrative act can be challenged[30]. Similar regulation we find in the Canadian province of Newfoundland and Labrador, with the observation that the application to the court, filed after a significant period of time, may result in the dismissal of the lawsuit[31].

In the Canadian province of Québec, according to art. 529 of the Civil Procedure Code[32], applicable also to the administrative contentious, the application to the court must be submitted within a reasonable period from the moment of issuing the administrative act. In this regard, the courts have ruled that a period of 30 days meets this standard, yet this time limit could be exceeded for justified reasons[33]. At the same time, the Canadian courts assess on a case-by-case basis under what conditions the person concerned may have effectively challenged the administrative decision, holding that difficulties in hiring a lawyer[34] constitutes such a justified reason for exceeding the 30-day time limit.

It can be observed that in the legal systems of the world we find multiple solutions regarding the moment from which the time limits for contesting administrative decisions start to run. We find from more rigid systems, in which the time limits start from the moment when the administrative act is displayed or published (the case of building permits in France, the general regulation in European Union, respectively the case of legal documents that harm the interests of third parties issued in public service field by the European Union), to systems

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Requirement to Make Prompt Application for Leave to Apply for Judicial Review, in Hong Kong Law Journal vol. 45, Part 2, 2015, pp. 451-452.

[29] Stephen Thomson, *op. cit. (Dare to Diverge)*, pp. 445.

[30] See paragraph 8 of the Judicial Procedure Act 2016, available at http://www.legislation.govt.nz/act/public/2016/0050/latest/ whole.html, last accessed 06.08.2020, and the 2016 Rules of the High Court of 2016, section 30, available at http://www.legislation. govt.nz/regulation/public/2016/0225/latest/DLM6959801.html, last accessed 06.08.2020.

[31] See Case of Neil Batstone v. Workplace, Health, Safety and Compensation Review Division and Workplace, Health, Safety and Compensation Review Commission, decision of the Supreme Court of Newfoundland and Labrador pronounced at 14.06.2010, paragraph 21, available at https://app.vlex.com/#search/jurisdiction:CA/Batstone+v.+Workplace+Health%2C+Safety+and+Compen sation+Review+Division/WW/vid/680751281, last accessed 06.08.2020. It was noted that the time limit should be analyzed on a case-by-case basis from the perspective of a standard of reasonableness.

[32] Civil Procedure Code applicable in the Quebec region, available at http://legisquebec.gouv.qc.ca/en/showDoc/cs/C-25.01?& digest=, last accessed 06.08.2020.

[33] See Case of Henri Loyer v. Commission des Affaires Sociales et Société de L'Assurance Automobile du Québec pronounced by the Court of Appeal of Québec on 28.04.1999, available at http://canlii.ca/t/1n8vb, last accessed 06.08.2020.

[34] See Case Duchesne v. Québec (Commission des affaires sociales) pronounced by the Court of Appeals in Québec on 26.07.1990, available at http://canlii.ca/t/1r076, last accessed 06.08.2020.

where it is necessary to communicate the administrative act to the third party (common law in France and Germany), up to systems in which a certain time limit is set, but the judge will assess on a case-by-case basis (Ireland, Hong Kong, New Zealand, Canada and Australia). We also find a solution which does not regulate a time limit for challenging an administrative act (the case of administrative acts considered contrary to Community law within the European Union).

The Romanian legal system has known more rigid solutions in relation to the third party. Unlike the case of France, the hypothesis of the time limits regarding the building permits, and the European Union, the hypothesis of the general rules, respectively the acts regarding the staff regulation, in which the terms start at the latest from the moment of intervening a form of publicity of the administrative act, in Romanian law this form of publicity lacked, so that the time limit started from the moment of issuance of the administrative decision[35].

The Romanian regulation had not found a correspondent for the existing solution in the French and German common law systems, in which the time limits start from the moment of communicating the act to a third party, but we can observe influences from the Anglo-Saxon systems in which the judge can soften the rules imposed by law.

Although we partially find the identified solutions in comparative law in our law system, however, the current regulation of Romanian law is not consistent, being established a time limit that can start from the chosen moment by the third party, as we will show.

As we have shown in the introductory part, we support the approach of the national regulation to the solution adopted by Luxembourg and the European Union - found in the general regulation, respectively in the case of administrative acts issued by European Union agencies or bodies - in which the time limits for the third parties run from the moment they could became aware of the administrative decision.

The Romanian legal system also knows a regulation of the minimum and maximum terms which not only does not find its correspondent in the other systems presented but ends up not justifying its existence in our law either.

In France and Germany, a limitation was imposed in a specific case, namely the 1-year time limit for the communication of an administrative act which does not include the means and time limit for challenging its content. It cannot be argued that this regulation has any correspondence in our legal system, respectively in the case of the maximum terms established by law, given the fact that the French/German rule has specific conditions in which it intervenes and different scope. The indicated time limit regards communicated administrative acts, while the maximum time limits in the Romanian law do not concern such a hypothesis.

The analysis in an international context has the advantage of identifying and advocating for the best solutions to fit the Romanian legal system. The solutions found in national law, as well as the analysis of the set of regulations

[35] As we will show in section 2.

identified in the comparative law, help to identify a suitable system regarding the communication and the start of the time limits. Ideally, the solution should find legal consecration, but the intervention of the judge to make these rules more flexible is welcome, as long as it does not curl with the limits of arbitrariness. The legislative body can also be encouraged to maintain the adopted solution when it is found in other systems or it can modify the provisions in consequence.

3. Solutions regarding the communication of administrative decisions deriving from the legislative evolution of the last 30 years

In the interval between the moment of the adoption of Law no. 29/1990[36] and present, a first element that draws our attention is the fact that the legislator did not establish any rule regarding the concrete means of communicating the administrative decisions. At the same time, if the case of the beneficiary of the administrative legal document was not subjected to important legislative variations, the situation of the third party experienced a different evolution.

As we noted on another occasion[37], according to Law no. 29/1990, the time limit in which the third party could challenge an administrative decision counted form the date on which he became aware of the existence and content of the legal document. Subsequently, following the adoption of Law no. 554/2004[38], the third party had a period of 30 days from the date on which he became aware of the existence of the administrative legal document to file a pre-trial complaint, without being able to exceed a period of 6 months from the issuance of it.

As of 2007, this period of 6 months from the issuance of the administrative decision was no longer applied to the pre-trial complaint addressed by a third party[39], being sufficient that the third party became aware of the existence of the administrative legal document, and not of the content, in order for the 6-month time limit to address the pre-trial complaint to start. Shortcomings were reported for this solution, consisting in restricting access to justice, when the third party could not obtain the administrative decision in time to formulate all the arguments, and the court found that that the deadline to modify the application was exceeded[40].

Several constants can be underlined from the evolution of the legislation, judicial practice and of the jurisprudence of the Constitutional Court.

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[36] Law on administrative litigation no. 29/1990, published in the Official Journal of Romania, Part I, no. 29/07 November 1990.

[37] See Nicolae-Alexandru Ceslea, *op. cit. (Communication...)*, p. 38.

[38] Law on administrative litigation no. 554/2004, published in the Official Journal of Romania, Part I, no. 1154/07 December 2004.

[39] The Constitutional Court, by Decision no. 797/27 September 2007, published in the Official Journal of Romania, Part I, No. 707/19 October 2007, noted that "not being subject to any form of publicity, the individual unilateral administrative decision is not opposable to third parties, so they have no real possibility to know the date of its issuance. (...) it is impossible for the third parties to know about the existence of an administrative decision addressed to another subject (...) it is obvious that access to court for these categories of persons is practically blocked".

[40] Nicolae-Alexandru Ceslea, *op. cit. (Communication...)*, p. 40.

Thus, it is confirmed that the means of communication of administrative legal documents are not related to certain formalities, being necessary the proof in the sense that the administrative decision was communicated to the beneficiary. Instead, the regulation on the communication of the decision to a third party had the following solutions: the contestation time limit started from the date when the administrative act was issued, from the moment when the third party became aware of its existence, respectively when the third party became aware of the content of the decision.

It can be observed that the first option is advantageous in terms of the short period in which the administrative decision becomes definitive, but is unrighteous to the third party, as we have shown. As the legislative solution has been censored by the Constitutional Court, for reasons related to the coherence of the regulation, it will not be possible to adopt it in similar parameters in the future. If such a situation were to be reached, nothing would prevent the Constitutional Court from ruling in the same way as it did before.

However, the main reason why the Constitutional Court admitted the exception of unconstitutionality and eliminated the solution in the sense that for the third party the time limit cannot start from the moment of issuing the administrative decision was that they are not subject to publicity conditions, so it is impossible for the third party to challenge it. The question remains: *if administrative decisions would be subject to certain conditions of publicity, could a regulation be adopted in the sense that the terms for contestation start from the moment the legal document is issued?*

Such a suggested solution, as long as it has not been explicitly censored, within the limits of the considerations of the Constitutional Court, cannot be excluded. To the extent that publicity formalities are effective and seek to inform third parties of the content of the administrative legal document, nothing can prevent the legislator from instituting such regulation. We identified such examples in the case of building permits in France, respectively the case of legal documents that harm the interests of third parties issued in public service field by the European Union[41].

The second and third variants, consisting in the challenge of the administrative legal document from the moment when the third party became aware of its existence, respectively of its content, constitute two other variants that are positioned at the extremities.

As we have shown, the solution regarding the starting point of the time limit for submitting the contestation linked to the moment when the third party became aware of the existence of the administrative decision can raise a series of problems regarding the free access to justice, on the background of imputing the time interval in which the third party seek to obtain the administrative legal document.

[41] See Section 1.

The resolution of such a shortcoming may take place by adjusting the wording of the legal text in the sense that the time limit starts from the moment when the third party became aware, by any means, of the existence of the decision, the periods in which are made reasonable efforts to obtain the act would not be calculated as periods of the contestation term. In certain matters it is also welcomed to ensure certain conditions of publicity, for example, in the case of building permits, the installation of the panel regarding the authorization process at the construction site which is likely to increase the information of third parties and to shorten the period in which the administrative act becomes definitive[42].

In the current regulation we find the third variant, Law no. 212/2018[43] amending the legal regime of the communication in the sense that it establishes that the time limit for formulating the pre-trial complaint starts from the moment when the third party becomes aware, by any means, of the content of the administrative decision[44].

Such a legal regime allows the debate on the legality of an administrative decision to be undertaken at important periods of time, paving the way for harassment of beneficiaries. Thus, although it is aware of the existence of the administrative act, the third party may maintain this uncertain situation for a considerable period of time, so that at the time he chooses at will, to take the necessary measures to challenge the legal document[45].

In such cases, similar with the Anglo-Saxon system judge[46], it is up to the courts to balance the principle of legal security and the principle of legitimate trust[47] with the principle of legality[48], but it should not be disregarded that in this case we are at the limit of arbitrariness.

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[42] Nicolae-Alexandru Ceslea, *Evoluția legislativă a instituției procedurii administrative prealabile. Privire specială asupra modificărilor de regim juridic aduse prin Legea nr. 212/2018,* Doctoral research report no. 1, Doctoral Law School of the Faculty of Law, University of Bucharest, 2019, p. 88.

[43] Law no. 212/25 July 2018 for amending and supplementing the Law on administrative litigation no. 554/2004 and other normative acts, published in the Official Journal of Romania, Part I, no. 658/30 July 2018.

[44] According to art. 7 para. (3) of Law no. 554/2004 thus amended: "It is entitled to file a pre-trial complaint also the harmed person in a right or a legitimate interest, by an individual administrative decision, addressed to another subject of law. The pre-trial complaint, in the case of unilateral administrative acts, will be addressed within 30 days from the moment when the harmed person became aware, by any means, of the content of the legal document. For justified reasons, the pre-trial complaint may be formulated beyond the 30 days term, but not later than 6 months from the date on which the third party became aware, by any means, of its content (...)".

[45] Nicolae-Alexandru Ceslea, *Evoluția legislativă... op. cit.*, p. 88.

[46] See Section 1.

[47] For details on the principles of legal security and legitimate trust, see Ion Brad, *Revocarea actelor administrative. Instituția revocării sub exigențele dreptului european*, Universul Juridic Publishing House, Bucharest, 2009, pp. 134-173, Ovidiu Podaru, *Drept administrativ. Vol. I. Actul administrativ. (I) Repere pentru o teorie altfel*, Hamangiu Publishing House, Bucharest, 2010, pp. 296-304, Cătălin-Silviu Săraru, *Contenciosul administrativ român*, C.H. Beck Publishing House, Bucharest, 2019, pp. 111-112.

[48] Nicolae-Alexandru Ceslea, *op. cit. (Evoluția legislativă...)*, p. 88.

The experience of the last 30 years helps us to identify balanced solutions in terms of communicating administrative acts to third parties. The analysis carried out in this section shows that such a solution is the one in which the term for challenging an administrative decision starts from the moment when the third party became aware, by any means, of its existence and, in order to improve the regulation, we consider that the periods during which he/she makes reasonable efforts to obtain the legal document should not be taken into consideration.

4. The unjustified difference between the provisions governing the time limits reserved for the beneficiary and the third party. The lack of reason for the establishment of minimum and maximum time limits

In this section and the next one we will analyze the deficiencies arising from the current regulation, the identified solutions being likely to support the proposal presented in the previous section. In addition, as it is no longer justified, we also note the option of eliminating the system of minimum and maximum time limits.

The provisions of art. 7 para. (1)[49] of Law no. 554/2004 establish that the beneficiary can challenge the administrative decision within 30 days from the communication, respectively, for justified reasons, within a term of 6 months from the issuance. It can be observed that the term of 6 months calculated from the issuance has as working hypothesis the situation in which the decision is communicated, and the beneficiary has not filed a pre-trial complaint within 30 days.

Such an assessment entails two consequences. On the one hand, it is irrelevant whether a period of 6 months has elapsed since the issuance of the administrative decision if it has not been communicated, only from the moment of communication the 30-day period begins to be calculated.

On the other hand, if the administrative legal document was communicated after 6 months from the issuance, this benefit is no longer available to the beneficiary, so that if he exceeds the 30 days term, the administrative appeal will be rejected as belatedly.

Regarding the situation of the third party, the provisions of art. 7 para. (3) of Law no. 554/2004 were modified by Law no. 212/2018[50], in the sense that both the 30 days term and the longer one of 6 months, for justified reasons, start from

[49] According to them: "Before addressing to the competent administrative court, the beneficiary of an individual administrative act who considers himself harmed in his rights or in a legitimate interest shall request to the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the decision, its revocation, in whole or in part. For justified reasons, the harmed party, addressee of the act, may submit a pre-trial complaint, in the case of unilateral administrative legal documents, beyond the term provided in paragraph (1), but not later than 6 months from the date of issuance of the act". We find a similar formulation in the basic form of the law.

[50] These dispositions are cited above.

the date on which the third party became aware, by any means, of the content of the administrative decision.

While the beneficiary may be placed in a situation where he can no longer benefit from the longer period for submitting a pre-trial complaint, the third party has a short period and a longer period for addressing a pre-trial complaint, both starting from the moment when the third party becomes aware, by any means, of the content of the administrative act.

From the perspective of the difference of legal regime between the situation of the beneficiary of the administrative legal document and that of the third party, it can be observed that the legislator, on the background of pronouncing the decision of the Constitutional Court no. 797/2007, paid more attention to the situation of the third party, which had the consequence of favoring him in relation to the beneficiary.

The decision of the Constitutional Court took into account that the situation of the third party is highlighted exclusively on the basis of the publicity of the administrative decision and the access to justice, and not from the perspective of a maximum term in which the third party may no longer challenge the administrative act.

Compared to the above, we note a first shortcoming of the current regulation, being without justification the establishment of the difference in treatment between the beneficiary and a third party in terms of the maximum period for contestation.

On the other hand, the amendment of the legal text on the starting point of the time limits for submitting a pre-trial complaint by the third party, from the perspective of the minimum and maximum period of time, in addition to the unjustified difference in treatment from the beneficiary's situation, also reveals further shortcomings.

The system of minimum and maximum time limits was justified by the doctrine from the perspective of protecting the security and stability of legal relationships[51]. Thus, the interested person has a short term in which he can challenge an administrative decision, which starts from when the party can act, and a longer term whose fulfillment entails the completion of the legal situation arising from the administrative act, when the legal document becomes definitive.

In the present moment, from the point of view of amending the text on third parties, the minimum and maximum time limits system is no longer justified, since the reasons for such a mechanism have ceased. The time limits start from the same moment and no longer imply the existence of a short term that runs from the moment the party could act, and a longer one whose fulfillment entails that the administrative decision is final.

In this way, we consider that the maximum time limit reserved to the third party has become a grace period. This term is preferential even in relation to the

[51] Antonie Iorgovan, *Tratat de drept administrativ*, Volume II, 4th edition, "All Beck "Publishing House, Bucharest, 2005, p. 589.

regulation considered flexible of the civil law[52], although administrative law is about authority legal relationships in which the rigor of the law should prevail.

The same clarifications remain valid for the situation of the beneficiary. In addition, the basis of the minimum and maximum time limits was undermined by the preferential regulation on the maximal term reserved to the third party, but also by the consequences of the interpretation that the 6-month term has the inaccurate presupposition that the administrative decision is communicated before the fulfillment of this 6-month period, exposed at the beginning of the section.

A coherent regulation in the case of the beneficiary would take the form in which the longer 6-month term, for justified reasons, would also start from the communication of the administrative decision. But this would affect, once again, the foundation of the system of shorter and longer time limits, as has already happened in the case of the third party.

We also note that the regulation of the maximum term in the case of the third party cannot be retrograded in the sense that a time limit starts from the moment when the administrative decision is issued, as it happened until the pronouncement of the decision of the Constitutional Court no. 797/2007, or from the moment the third party became aware, by any means, of its existence, compared to the shortcomings underlined in the case law[53]. At the same time, compared to the discrepancy found between the legal regime of the minimal and maximum time limits available to the beneficiary, a similar solution cannot be adopted in the case of a third party.

A coherent development would go beyond the limits of the amendments proposed in this section and would be in the sense of unifying the means of contestation by a single term with starting point the moment of communication to the beneficiary or third party and rallying to a system similar with the civil law, comprised by the regulation regarding the course of the terms, suspension, interruption and rescheduling.

5. A supplementary argument related to the form which the communication must take to determine the count of the time limit to challenge an administrative decision

In this part of the paper, we will continue the argumentation started in the previous section in terms of the similarity between the notions of communication of the administrative decision, specific to the beneficiary, and the moment when the third party became aware of the content of the administrative act, by any means. If these notions are similar, it is strengthened the assessment that there is no

[52] Under the civil law, the system is divided into the regulation of the course of the time limits, suspension, interruption and rescheduling, according to art. 2522 - art. 2550 of the Civil Code, Law No. 287/2009 on the Civil Code, republished in the Official Journal of Romania, Part I, No. 505.15 July 2011. We cannot ignore the fact that the provisions on the course of time limits, suspension, interruption, and rescheduling are applicable in administrative law, in addition to this grace period.

[53] See above section 2.

reason why the regulation should be different between the beneficiary and a third party.

Starting from the principle that administrative decisions must take, in principle, the written form[54], the communication operation is carried out by personal delivery, simple mailing, registered letter, the display at a certain address or by other means[55].

The initial form of the text had a certain logic[56], starting from the idea that the interested party could easily become aware of the existence of the administrative legal document, even orally or after reading the information panel, in the case of building permits. Instead, after modifying the text of art. 7 para. (3) of Law no. 554/2004, the maintenance of the phrase "by any means" with reference to the modality in which the third party becomes aware of the content of the administrative act implies the existence of a notion with important implications in terms of informing about the administrative decision.

The law does not establish a detailed regulation of the communication operation[57]. The phrase "by any means" maintained in the content of the legal text is sufficiently generous and does not impose any distinction as the administrative decision may be personally communicated, by mail or displayed, respectively orally or in any other similar way.

However, there are no essential differences between the notions of communication of the administrative decision and the moment the third party became aware of its content, by any means[58], especially in the conditions in which the purpose of the two operations is the same: the information of the interested person about the content of the legal document. A notable difference could be underlined by the fact that the communication operation is an official one, which is carried out only by the authority through the appropriate methods, and the moment when the third party become aware of its content is determined by a more relaxed framework, so that it may include the transmission of the act by any other person, in different contexts, the text stressing on this aspect by including the phrase "by any means".

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[54] See Antonie Iorgovan, *op. cit.*, p. 52, Rodica Narcisa Petrescu, *Drept administrativ*, Hamangiu Publishing House, Bucharest, 2009, pp. 318-319, Ovidiu Podaru, *op. cit.*, pp. 219-220, Verginia Vedinaș, *Tratat teoretic şi practic de drept administrativ*, Volume II, Universul Juridic Publishing House, Bucharest, 2018, pp. 49-51.

[55] See Rodica Narcisa Petrescu, *op. cit.*, p. 327, Ovidiu Podaru, *op. cit.*, p. 220, Alexandru-Sorin Ciobanu, *Drept administrativ. Activitatea administraţiei publice. Domeniul Public*, Universul Juridic Publishing House, Bucharest, 2015, p. 70. In the category of other means, we can mention the electronic communication, for an example of digitalization of the administration, see the case of Portugal, Fernanda Paula Oliveira, Carla Machado, *Papers, my friend, are blowing in the wind: towards a paperless administration*, „Perspectives of Law and Public Administration Review", vol. 7, issue 1, May 2018, pp. 1-29.

[56] Prior to the amendment by Law no. 212/2018, art. 7 paragraph (3) of Law No. 554/2004 had the following form: "It is entitled to file a pre-trial complaint also the harmed person in a right or in a legitimate interest, by an individual administrative decision, addressed to another subject of law, from the moment he became aware, by any means, of its existence, within the limits of 6-month term regulated in paragraph (7)".

[57] For example, similar to other matters, see in fiscal law, in civil procedure, contraventions, etc.

[58] Nicolae-Alexandru Ceslea, *op. cit. (Communication...)*, p. 42.

On the other hand, the content of an administrative legal document is given by a series of extrinsic, formal elements, such as the existence of a motivation, a signature, even of some annexes[59], etc. Such a content implies the examination of the written form of the administrative decision and, consequently, entails the need for corresponding communication of such act.

Also, following the analysis of Law no. 554/2004 as a whole, we can complete the missing fragments from the mechanisms with which the administrative contentious operates. Thus, it can be observed that the provisions of art. 12[60] and art. 13 para. (1)[61] of Law no. 554/2004 leaves no room for interpretation, the text starting from the presupposition that the plaintiff, beneficiary or third party, holds the copy of the contested administrative decision, which implies the remittance to them of the administrative act. This answer both the question of the form of the administrative act, which must take the written form, but also the communication to the beneficiary or third party.

Considering the above, we can draw the correspondence between the communication referred to in art. 7 para. (1) of Law no. 554/2004 and the moment, the third party becomes aware of the content of the administrative act to which art. 7 para. (3) point. Therefore, we appreciate that the notions of communication of the administrative act and the moment the third party becomes aware of its content, by any means, are similar.

Communication in the current normative state is a full form of informing the interested party, so there is no reason for the regulation on communication to know any differences between the situation of the beneficiary and that of the third party.

Adding the partial conclusions of the previous section, we consider that, once again, a coherent legislative evolution requires the unification of the legal regime of the pre-trial complaint in the sense that there is an identity between the situation of the beneficiary and the third party when referring to communication of administrative acts and the course of time limits for challenging them.

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[59] We refer to the annexes that include urban planning and spatial planning documents that are an integral part of the building permit, for details see Oliviu Puie, *Contencios administrativ și fiscal. Legea nr. 554/2004. Legea nr. 212/2018, OUG nr. 57/2019 privind codul administrativ. Corelări legislative. Comentarii. Explicații. Doctrină. Jurisprudență*, Universul Juridic Publishing House, Bucharest, 2019, pp. 36-37.

[60] According to them: "The applicant shall attach to the action a copy of the contested administrative or, as the case may be, the reply of the public authority notifying him of the refusal to resolve his application. If the applicant has not received a reply to his application, he will submit a copy of the application, certified by the number and date of registration attributed by the public authority, as well as any document proving the fulfillment of the pre-trial complaint, if it was mandatory. If the applicant sues the authority that refuses to enforce an administrative act issued following the favorable solution of a prior request or following the pre-trial complaint, he shall file a certified copy of this act"; a similar text we find in the former art. 8 of Law no. 29/1990.

[61] According to them: "Upon receipt of the request, the court shall order the summoning of the parties. The issuing public authority shall communicate the contested decision with all the documentation that substantiate the legal document and those necessary to resolve the case. The court may request from the issuer any other documents necessary for resolving the case"; a similar wording had the former art. 10 of Law no. 29/1990, the notable difference being that the court had the possibility to request the administrative act from the authority.

However, we express our reserves about such a system in which the administrative act should be communicated to all third parties, an approach that may prove difficult and even impossible. Such an effect is also present in the current regulation[62].

Therefore, we consider that the option proposed in the first section is the only one that corresponds to a coherent system and can prevent the manifestation of all the analised shortcomings: the time limit for challenging an administrative decision by the beneficiary should start from the moment of communication of the act, and for the third party from the moment he became aware, by any means, of its existence, the periods in which the third party makes reasonable efforts to obtain the legal document not being considered for the calculation of the contestation time limit. To this solution is added the proposal to eliminate the minimum and maximum system for challenging administrative acts.

6. Conclusions

The analysis in an international context has the advantage of identifying and advocating for the best solutions to fit the Romanian legal system. The solutions found in national law, as well as the analysis of the set of regulations identified in the comparative law, help to identify a suitable system regarding the communication and the start of the time limits.

Ideally, the solution should find legal consecration, but the intervention of the judge to make these rules more flexible is welcome, as long as it does not curl with the limits of arbitrariness. Such findings will remain valid for the solutions identified in the comparative law that benefit from a similar regulation, the analysis operating both from the systems in comparative law to national law and from national law to systems in comparative law.

The experience of the last 30 years helps us to identify balanced solutions in terms of communication of administrative decisions and the course of contestation time limits in the Romanian legal system.

A coherent mechanism for communicating administrative acts and for the course of the terms proves to be the one in which the minimum and maximum time limits system is eliminated, in which the time limit for contesting the administrative decision by the beneficiary start from the moment of communicating the legal document, and for the third party from the moment when he became aware, by any means, of the existence of the act, the periods in which the third party undertakes reasonable efforts to obtain the act not being considered for the calculation of the contestation time limit.

[62] See Section 2, the paragraphs on challenging administrative acts by third parties after considerable periods of time.

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