THE JUDICIAL PROCEDURE FOR THE CANCELLATION OF THE ALERT STATUS GOVERNMENT'S DECISIONS

Associate professor **Andreea TABACU**[1]

Abstract

After the Constitutional Court's control, by no.392/2021 decision, it was stated that Law no.554/2004, of administrative contentious, the basis of the judicial procedure for the cancellation of Government's Decisions, doesn't satisfy the idea of celerity which defines the principle of access to justice in the field of the cancellation of the alert status decision. The study aims to identify and analyze the most important problems revealed before the courts in this matter and to find solutions in order to elaborate procedural norms which are able to achieve the principle above mentioned.

Keywords: *administrative contentious, Government's Decision, state of alert, annulment, procedure*.

JEL Classification: K23

1. Introduction

For more than a year and a half, Romania has been on alert due to the Covid 19 pandemic caused by the spread of the SARS-CoV-2 coronavirus, during which the authorities took a series of measures to prevent and combat the effects of the pandemic, to increase response, to ensure the resilience of communities, to reduce the impact of the type of risk.

As these are mandatory administrative measures, they are available to the competent authorities through administrative acts which, although they are supposed to be issued in compliance with the Law, must be open to challenge in the courts[2], in a procedure that takes into account the specific situation which determined the elaboration of the act, of the urgency it implies, of the limited character in time of the ordered measure, of the need of a fast and efficient answer, which should reveal the fulfillment of the principle of ensuring access to justice recognized in art. 21 of the Fundamental Law and supranational norms[3].

In this respect, the legislator was surprised by the interventions of the Constitutional Court, which held that the judicial procedure as it should be applied, by the rules of reference in the initial form of Law no. 55/2020 and of the GEO no. 21/2004, is not an efficient one. The courts have had to deal with concrete and substantiated reactions of the litigants, who have argued the lack of a judicial procedure to effectively ensure the possibility of requesting the annulment of administrative acts issued in order to take specific measures to prevent and combat the effects of the pandemic during the state of alert.

Possibly due to the speed with which they were drafted and adopted in general, the relevant rules were not clear. Thus, regarding the measures provided by Law no. 136/2020[4] in the field of public health in situations of epidemiological risk, compared to the ambiguity of a provision, which was instead intended to be the best solution to allow the censorship of acts issued by public authorities in the field[5], the jurisprudence has fluctuated from the beginning on material, procedural competence, in the appeal, until the intervention of the legislator took place, which specified that it is about the common law court, civil, not the one of administrative contentious[6]. Thus, after announcing that all administrative acts of a normative nature concerning the establishment, modification, or termination of measures in this normative act can be challenged by any person who considers himself harmed in

[1] Andreea Tabacu - Faculty of Economics and Law, University of Pitești; Court of Appeal, Civil Section II, for administrative and fiscal litigation, Romania, andreea.elena.tabacu@gmail.com.

[2] Marin, E., *Legea contenciosului administrative nr. 554/2004, Comentariu pe articole*, Hamangiu Publishing House, Bucharest, 2020, p.153.

[3] Bîrsan, C., *Convenţia europeană a drepturilor omului, Comentarii pe articole*, 1st edition, CH Beck Publishing House, Bucharest, 2005, p. 457.

[4] Published in the Official Gazette of Romania, No. 884/28 September 2020.

[5] The quarantine of persons, the isolation acording to art. 3 let. a) and c), art. 7-8 of the Law no. 136/2020.

[6] Art 17 of the Law no. 136/2020.

his right or a legitimate interest to the competent court, with an action for annulment at the competent court, showing that this is the court of appeal, the administrative and fiscal contentious section, in whose territorial area the headquarters of the issuing authority is located, in art. 16 and 17 of the Law showed that any person who considers himself injured in a right or legitimate interest by an individual administrative act issued according to art. 7, art. 8 para. 3 and 4 of the Law may submit an action at the court in whose district he resides or domiciles or at the court in whose district the space or health unit in which he is isolated/quarantined is located, requesting the annulment of the act. Therefore, the appeal against the court decision was declined between the civil court and the contentious administrative court[7] since it was an administrative act.

However, in this area of quarantine and isolation measures, the existence of an urgent regulation can be noted, which tends to satisfy the idea of the effectiveness of the procedure and to ensure the possibility for the interested party to obtain a good court decision, for the situation.

More problematic is the situation of requests for annulment of normative administrative acts (Government decisions, declaring, prolonging, or terminating the state of alert, the decisions of the National Committee for Emergency Situations), which do not fall under Law no. 136/2020, as it does not concern the specific measures regulated by it, but refers to the state of alert and to concrete measures, adopted pursuant to art. 5 of Law no. 55/2020. For these, compared to the Decision of unconstitutionality no. 392/2021[8], there is no effective procedure, the one given by Law no. 544/2004 not being able to ensure access to justice and the guarantees of a fair trial from the perspective of the usefulness of the procedure.

2. The current legal framework

Law no 55/2020 does not provide any particular procedure for resolving requests for cancellation of normative administrative acts, which concern the concrete measures ordered by the authorities to increase the response capacity, ensure the resilience of communities, and reduce the impact of the type of risk.

Art. 72 of the Law refers in the first paragraph to the supplementation with the regulations of common Law applicable in the matter, insofar as the latter does not contravene the provisions of this Law. However, in the next paragraph, by means of a reference rule, it comes to exclude from the application of the Law of administrative contentious. Thus, by showing that for the state of alert established for the prevention and control of a COVID-19 pandemic, the provisions of (...) art. 42 of the GEO no. 21/2004[9] regarding the National Emergency Management System, which refers to Law no. 554/2004, Law no. 55/2020 eliminates any judicial procedure known for censoring normative administrative acts issued under it. In other words, the rule referred to in order to show that it does not apply, and which reveals the applicability of the Law on administrative litigation does not have any effect on the applications for annulment of the administrative acts in question.

Precisely the ambiguity of the texts and the paralysis of the access to justice through art. 72 of Law no 55/2020 has determined the Constitutional Court to declare unconstitutional art. 72 para 2 of Law no. 55/2020 with reference to art. 42 para. 3 of the GEO no. 21/2004 by Decision no. 392/2021[10], after which the interpretations claimed that the Law of administrative contentious is

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[7] Gadi, L.I., Cristea, B., *Competența materială procesuală de soluționare a apelului reglementat de art. 17 din Legea nr. 136/2020 vizând carantinarea persoanei și prelungurea izolării*, https://www.juridice.ro/691907/competenta-materiala-procesuala-de-solutionare-a-apelului-reglementat-de-art-17-din-legea-nr-136-2020-vizand-carantina-persoanei-si-prelungirea-izolarii.html, accessed on 2 November 2021.

[8] Published in the Official Gazette of Romania, no. 688/12 July 2021.

[9] Art. 42 para 3 of the G.E.O. no. 21/2004 states that the decisions which state, extend or cease the state of alert, as well as those establishing the application of some measures during the state of alert, at a national level or on the territory of several counties, may be challenged under the conditions of the Law no. 554/2004 on the administrative contentious.

[10] Regarding the exception for unconstitutionality of art. 3 para 2, of art. 4 para 1, second line and of art. 72 para 1 of the Law no. 55/2020 on some measures for the prevention and combat of the effects of COVID-19 pandemic, of art. 72 para 2 of the same law, with reference to art. 42 para 3 of the G.E.O. no. 21/2004 on the National Emergency Management System, as well as to the provisions of G.E.O. no. 192/2020 on the modification and amendment of the Law no 55/2020. on some measures for the prevention and combat

applied under art. 72 para. 1 of Law no. 55/2020, as it refers to common law.

The rules on access to justice, which the Constitutional Court held to be violated, particularly the settlement within a certain period leading to a decision that would be useful to the petitioner, were not covered by any text after declaring the rule mentioned above as unconstitutional. Therefore, the Law does not regulate a procedure that the courts can apply for applications for annulment of Government decisions, which would satisfy the need for a practical decision.

3. The position of litigants

The adoption of successive Government decisions to extend the state of alert led to the formulation of requests for annulment before the contentious administrative courts, in which it was argued as a priority that, despite the Decision of unconstitutionality, the legislator did not intervene to regulate the particular annulment procedure of the GD and to cover the legislative vacuum created.

The inventiveness of the litigants crossed from one end to the other the possible legal solutions and the unacceptable ones, starting with the request for application of Law no. 554/2004, however, in an ultra-fast manner, with communication and summons terms that fall within the term of 30 days for which it can produce GD effects, according to art. 4 of Law no. 55/2020, going through the analogy with the presidential ordinance and reaching the request to apply the general principles and, directly, by virtue of the Decision of the Constitutional Court, of a *sui generis* procedure not yet regulated.

In the hypothesis regarding the partial application of Law no. 554/2004, it was first argued that being an action directed against an administrative act of a normative nature that entered the civil circuit and produced legal effects, the prior complaint is no longer necessary. It was also shown that the court could set short deadlines in an urgent procedure to ensure its completion by pronouncing the sentence in the time frame in which the effects of GD occur.

Concerning the analogy with the presidential order procedure, it was argued that, given that there is no adequate remedy in domestic Law to invoke the nullity of Government Decisions in this regard, compared to the provisions of 13 of the ECHR respectively, the jurisprudence developed by the Court Strasbourg, in applying this text, it is necessary to recognize in each state the effectiveness of the procedural route which will produce effects promptly, be appropriate and effective concerning the request made. As Law no. 55/2020 does not provide for a procedure that satisfies the idea of a reasonable term, it is possible to apply the procedure of the presidential ordinance, which is the most urgent in the internal regulation.

Regarding the third hypothesis, of applying a *sui generis* procedure that satisfies the rigors retained by the Constitutional Court in its jurisprudence, it was argued that it is necessary to remove the internal rules of the Law of administrative litigation, which does not allow the right to access a court within a period optimal for the effective and speedy analysis of the application, compared to the provisions of the Charter of Fundamental Rights of the European Union, of art. 20 of the Romanian Constitution and art. 6 of the Code of Civil Procedure. It was also argued that the preliminary proceedings were incompatible with the need to complete the judicial proceedings within a maximum of 30 days, as opposed to the temporary duration of application of the GD and the need to ensure the right of access to court which would be devoid of content. Be required to follow the preliminary procedure since the contested administrative act would exhaust its effects until its completion. If it is considered that the request is inadmissible, it would practically eliminate any control from the contentious administrative courts, and the Romanian Government could issue successive decisions that cannot be annulled. Any action in this respect will be rejected on purely procedural issues. Therefore, it was argued that the possibility of applying short terms should be admitted in a substantive procedure to analyze the legality of the administrative act with a normative character, leaving unapplied the provisions of Law no. 554/2004, which do not satisfy the speed

of the effects of COVID-19 pandemic, as well as for the modification of Let a) of art. 7 of the Law no. 81/2018 on the regulation of teleworking activity, published in the Official Gazette of Romania, no. 688/12 July 2021.

requirement.

4. Possible answers

Preliminarily, it should be noted that para. 38 of the Decision of the Constitutional Court no 392/2021 shows that the lack of clarity of the regulation has direct consequences on the exercise of the right of access to justice, as the person concerned to challenge a Government decision or an order or an instruction issued under Law no. 55/2020 cannot identify the applicable procedural regulations, to comply with them.

Therefore, the first interpreter will be the plaintiff, interested in bringing an effective procedure before the court. The second, the judge, who will have to determine, depending on the investment, the parties' submissions and the findings of the constitutional review, to solve the case, not having the possibility to refuse to judge because the Law does not provide, it is unclear or incomplete, according to art. 5 para 2 of the Code of Civil Procedure.

In this context, replacing the above arguments (point 3), the hypothesis that, in no interpretation with legal value, that of the presidential ordinance can be retained should first be eliminated.

We agree that the Presidential Order is a fast-track procedure. Of all those regulated by the Code of Civil Procedure, they can be finalized as soon as possible. However, it must be stated, equally clearly, that that procedure, taken as such with all its features and conditions, cannot give rise to a review of the substance since the nullity of an act cannot be imagined as a provisional measure. *Quod nullum est nullum producit effectum*, definitive and retroactive, or the nullity does not produce provisional effects.

Therefore, although the admissibility of the presidential order[11] is not excluded in the matter of administrative litigation, by applying its specific character to the verification and ordering of the annulment of an administrative act, the compatibility of the provisional measure in urgent cases for retaining a right that would be damaged by the delay, or for the prevention of imminent damage that could not be repaired, enunciated in art. 997 para 1 of the Code of Civil Procedure, the essence of the presidential ordinance, with the disposition on the nullity of an act. In other words, the specific idea in the analyzed procedure is that the measure ordered by the court should be temporary and not prejudice the merits. However, the nullity/annulment of a normative administrative act cannot be provisional. The procedure in which it is analyzed and the request is resolved cannot be equivalent to a provisional measure within the Code of Civil Procedure.

Also, the analogy in the matter according to art. 5 paragraph 3 of the Code of Civil Procedure, cannot be recognized, as the code provides as a premise for the application of procedural rules in other matters to and the provisional measure cannot see a similarity, on the contrary, the two excluding each other.

On the idea of partial application of Law no. 554/2004, only of the procedural provisions that ensure the speedy resolution of these cases, it is first found that Law no. 55/2020 excludes from the application the mentioned normative act.

From the beginning, it must be specified that only the norms of the procedure proper are taken into account and not those of competence, contained in Law no. 554/2004, as the latter were not analyzed by the Constitutional Court.

If in art. 72 para. 1 of the Law shows that it is completed with the standard law regulations applicable in the matter, insofar as the latter do not contradict the provisions of this Law. It would seem that it is about Law no. 554/2004. In the second paragraph, the text shows that for the state of alert established for the prevention and control of a COVID-19 pandemic, the provisions of art. 42 of the GEO no. 21/2004 according to which the decisions declaring, prolonging, or terminating the state of alert, as well as those establishing the application of measures during the state of alert, at the

[11] Tabacu, A., *Ordonanța președințială în contenciosul administrativ*, „Revista română de jurisprudență (RRDJ)" no. 1/2016, pp.74-79.

national level or on the territory of several counties, can be challenged under the conditions the Law of administrative contentious.

Such an issue appears as a significant ambiguity in the text of the Law, since it refers to a law in one paragraph, after which, in the second, the application of that Law is denied, which was also pointed out by the Constitutional Court in its Decision no. 392/2021 (para. 35-35).

Indeed, it could be argued that Law no. 55/2020 was sent to the GEO no. 21/2004 in the form it had at the date of the adoption of the Law by the decisional Chamber (May 13, 2020), when it was not mentioned in the reference text about the Law no. 554/2004[12], so that the legislator referred to a text that did not provide anything at that time regarding the Law applicable to contesting normative administrative acts, being necessary art. 72 para 1. However, on the date of publication in the Official Gazette of Romania of Law no. 55/2020, GEO no. 21/2004 was already amended by GEO no. 68/2020[13] and had the current form in art. 42 para 3 provides for the application of Law no. 554/2004.

The arguments retained by the Constitutional Court in para. 33 of its Decision no. 392/2021 states that "a reference norm can only be interpreted as referring to a norm in force, belonging to the active fund of the legislation. To consider otherwise would be tantamount to the situation in which whenever the object of interpretation and application is a reference rule, it is supplemented by provisions in the form in force on the date of adoption (final vote) by the legislator of the reference rule, regardless of changes subsequently occurred in respect of the rule to which reference is made".

Therefore, art. 72 para 2 of Law no. 55/2020 must be interpreted as referring to art. 42 of the GEO no. 21/2004, in the form it has after its modification by GEO no. 68/2020.

Therefore, compared to the ambiguity of the text and its lack of predictability, being open the possibility of legal insecurity, the violation of art. 1 para 3 and para 5 of the Constitution.

If the procedural provisions of Law no. 554/2004 do not apply to these cases, it turns out that it is no longer necessary to argue why some of its rules should be left unenforced. However, even the Constitutional Court in its Decision scans the legislation to see if there are rules that meet the requirements of predictability and speed necessary to ensure access to justice in the matter of requests for annulment of the GD having as object the state of alert, also reviewing Law no. 554/2004 (para. 46).

Regarding the inapplicability of the preliminary procedure, we note that the argument given by the incidence of art. 7 paragraph 5 of Law no. 554/2004 is excluded, regarding the normative administrative acts not being able to be about an accurate entry in the civil circuit and production of the effects in the meaning of the text[14], corroborated with the fact that the same art. 7 in para. 1 ind. 1 the Law maintains the obligation to go through the procedure prior to normative administrative acts.

In art. 553 para 4 of the Civil Code, which completes the Law no. 554/2004, insofar as compatibility is provided, the goods object of private property, regardless of the owner, are and remain in the civil circuit, unless otherwise provided by Law, so that they can be alienated, may be prosecuted and may be acquired by any means provided by Law. Thus, regarding entry into the civil circuit, it is impossible to ascertain compatibility with it regarding the normative administrative acts that are not susceptible to entering the civil circuit, a notion reserved to the goods, not to the legal acts. It cannot be admitted that the normative administrative act entered the civil circuit and produced effects from the publication or another moment, for the simple fact that it is not susceptible to enter the civil circuit[15], art. 7 para. 5 of Law no. 554/2004 referring to the individual administrative acts.

Also, in the context in which the normative administrative act can be revoked at any time[16], to admit that once published, it produced effects and entered the civil circuit would draw the direct consequence of eliminating the preliminary procedure in all cases regarding the normative

[12] Art 42 had a single line which did not referred to the law on the administrative contentious.
[13] Published in the Official Gazette of Romania, Part I, no. 391/14 May 2020.
[14] Săraru, C.S., *Calitatea procesuală a părților în litigiile de contencios administrativ,* „Dreptul" no. 8/2019, p. 75.
[15] Tabacu, A., *Despre revocabilitatea actului administrativ cu caracter normativ,* „Revista Transilvană de Stiințe Administrative", no. 1(48)/2021, p. 114, on the opinions expressed by the famous authors Dragoș, D.C. and Podaru, Ov.
[16] Vedinaș, V., *Drept administrativ*, 12th edition revised and updated, Universul Juridic Publishing House, Bucharest, 2020, p. 379.

administrative act that does not exist until when it was published with minor exceptions[17], or this was not the intention of the legislator.

Therefore, the elimination of the application of the preliminary procedure cannot be based on the incidence of art. 7 paragraph 5 of Law no 554/2004, but on other arguments derived from the priority application of conventional and supranational provisions, as noted by the Constitutional Court in decision no 392/2021.

Thus, the principle of free access to justice implies the adoption by the legislator of clear rules of procedure, which include precisely the conditions and terms in which litigants can exercise their procedural rights[18] and which can have a good effect on the person concerned.

In the Decision of the Constitutional Court no. 392/2021, it is noted that in case of challenging in court the Government decisions, orders, or instructions of ministers issued in order to implement measures during the state of alert, under Law no 55/2020, ensuring adequate access to justice would be achieved only to the extent that the court decision would determine, once the contested administrative act is illegal, the removal of its effects and its consequences, such effects of the court cannot be obtained only to the extent that the ruling takes place within the period of applicability of those administrative acts, which is no more than 30 days after their entry into force (para. 44 of the Decision). However, compared to the limited time duration of the effects of the GD, following the preliminary procedure could annihilate the possibility of the petitioner to address the judge, as the response time given by Law to the authority overlaps with the term of 30 days provided in art. 4 of the Law no. 55/2020.

Therefore, compared to the requirements recognized in the jurisprudence of the European Court of Human Rights, mandatory for domestic courts, such as Law no. 554/2004 does not meet the condition of effectiveness and efficiency of the procedure, in the sense of opposing in the hands of the litigant a title that would be useful in the event of admitting the application, means that the procedural rules of the Law of administrative litigation enshrining the mandatory preliminary procedure

Regarding the establishment of short deadlines, which ensure the completion of the process by pronouncing the sentence within 30 days in which the GD or the contested order is in force, it is found that the main procedural provisions of Law no. 554/2004, as they do not have the capacity to determine the observance of the mentioned term.

Thus, even if according to art. 13 para 1 of the Law, upon receipt of the request, the court orders the summons of the parties may set a short time, it must take into account the principle of adversity, namely that, on the one hand, the issuing public authority is required to send to the file must have the necessary time to draft it and to which to attach the contested document with all the documentation underlying its issuance, and on the other hand, that the Law expressly states that the objection is communicated to the applicant at least 15 days before the first trial date.

Or, for the submission of the objection, the term from art. 201 para 1 of the Code of Civil Procedure, of 25 days from receiving the request and for its communication to the plaintiff, the special Law also provides a minimum term of 15 days until the trial term.

If we consider that the term of 25 days is provided in art. 201 para 1 of the code can be reduced according to art. 201 para 5 of the Code of Civil Procedure, the right of defense of the defendant authority will have to be respected, which must have a reasonable term for formulating the objection, not to mention the right of the plaintiff to take adequate knowledge of the content of the objection. He will also be able, with the utmost diligence, to observe the content of the objection in a short time, giving up the benefit of the 15 days. However, the procedural rules must be applied together, so it must be determined whether following this complete process of their application, the term of 30 days can be ensured.

Also, the fact that Law no 554/2004 stipulates that the court decision in the matter is drafted

[17] Art 11 para 2 of the Law no. 24/2000 on the classified normative acts.

[18] Para 41 of the Decision no. 392/2021 with mentions to the Decision of 29 March 2000, ruled in the application case *Rotaru v. Romania* and to the Decision of 26 April 1979, ruled in the application case *Sunday Times v. United Kingdom*.

and motivated within a maximum of 30 days from the pronouncement.

However, all these must be seen and understood in the context in which the Law stipulates that the Decision given by the first instance of administrative contentious can be appealed within 15 days from the communication, which cannot be ignored by the court the appeal being suspended. Therefore, the sentence is not enforceable until the completion of the procedure, by the expiration of the term of appeal, or by its resolution.

Moreover, if the request is admitted within several days, being ordered the annulment of the act, the issuing authority will appeal within 15 days from the communication, which will be resolved later, with the actual exceeding of the 30 days. If the action is dismissed, the declaration of the appeal by the applicant, even on the day of the judgment, will not ensure the adequate settlement of the appeal within a time limit which falls within that.

Therefore, the application of the court procedure according to Law no. 554/2004 does not guarantee access to justice according to the Decision of the Constitutional Court, even if some of the provisions would be left unenforced.

The third situation, regarding the application of a procedure determined by the basic rules, or by the principles in the matter, could be accepted in the context of the legislator's passivity in the sense of adopting norms that bring the law in line with the Constitutional Court's, based on the general principles of the procedure, the possibility of declaring an appeal, which will extend the procedure beyond the time limit, must be recognized.

Admitting that, being the annulment of a GD, the competent court in the first instance is the Court of Appeal, according to art. 10 paragraph 1 of Law no. 554/2004, in question being only the rules of procedure proper applicable, it is essential that according to the general rules on civil procedure, for the case of admitting the application for annulment, the sentence is not enforceable, and the application for annulment of a normative administrative act in the provisions of art. 448 of the Code of Civil Procedure cannot be done, taking into account the exceptional nature of the text and the fact that none of the situations regulated therein can be complied with on the assumption of annulment.

The application of art. 449 of the Code of Civil Procedure regarding the provisional judicial execution must be analyzed, on the one hand, through the prism of art. 5 paragraph 3 of Law no. 554/2004 and, on the other hand, by referring to the fact that this would imply an additional verification of the apparent validity of the right or of the fact that the non-taking of the measure is clearly detrimental to the creditor and may even imply a guarantee.

If the legislator opted for the effects of the administrative act issued for the application of the state of the emergency regime or for removing the consequences of epidemics by eliminating the possibility of suspending its execution, it means that he considered removing the normative act from the active legislative fund only after an analysis of the cancellation request, in which the solution of the first instance is not executory and not under the conditions of art. 14 of Law no. 554/2004 in a summary procedure. Therefore, from this perspective, the enforceability of the sentence cannot be accepted.

Regarding the requirements of art. 449 of the Code of Civil Procedure, by totally abstracting from the norms of Law no. 554/204, it is found that in order to rule on the provisional enforceability of the sentence, the court separately examines the apparent merits of the right or the consequences prejudicial to the plaintiff, in case of non-compliance with the annulment measure. It must also be stated that such enforceability of the judgment is provisional and is conditional on a final settlement of the appeal.

However, the Constitutional Court invoked in paragraph 43 of Decision no. 392/2021 the need for the pronounced solution to ensure the removal of the violation of the holder's rights without taking into account the provisional nature of this removal. Thus, it is noted that compared to the jurisprudence of the Strasbourg Court, the Constitutional Court ruled that ensuring a right of adequate access to justice must be analyzed in terms of the effects that the court has on the rights of the person

who addressed justice, in Decision no. 17 of January 17, 2017[19], noting that an effective right of access to justice "is not only characterized by the possibility for the court to examine all the means, arguments and evidence presented and to rule, but also by the fact that the solution determines the removal of the reported violation and its consequences for the holder of the violated right." However, if the normative acts on the state of alert which produce effects only for 30 days are attacked, the judgment rendered by the court would determine, once the contested administrative act is found to be illegal, to remove its effects and consequences, which can be obtained if the ruling takes place within the period of applicability of those administrative acts[20].

It is thus found that the Decision of the Constitutional Court shows that the judgment must be capable of taking effect at the time of its delivery, so that either the judgment must be enforceable, or it must be final at the time of delivery. However, such solutions appear to be incompatible with the field of administrative litigation in which the legislator provided in all cases the appeal as an appeal and opted for the final settlement of disputes so that the Decision becomes enforceable, so as not to leave the final Decision in the hands of one administrative contentious judge.

5. Proposals for *de lege ferenda*

Compared to the resolution given by the Constitutional Court in Decision no. 392/2021, a fast procedure, which could satisfy the requirements of access to justice in this matter, could be similar to the one referred to in art. 15 of Law no. 136/2020, with some corrections.

Provisions on the prior procedure, which would virtually annihilate the entire 30-day period on which the GD takes effect, should be excluded.

Compared to the specifics of the request, the necessary speed, the regularization procedure should not be performed separately but until the fixed trial term, not being applied the provisions of art. 200 of the Code of Civil Procedure.

The first-time limit could be set at the receipt of the request within a maximum of 5 days and the defendant could be obliged to file an objection two days before the trial period, the plaintiff will be aware of this from the file through his own due diligence. The case should be postponed in times of need from one day to the next.

The summons could be made by procedural agent, possibly by letter rogatory, as appropriate, or by electronic means, and the deadline for settlement should not exceed 10 days from receipt of the request for investment of the court.

The pronouncement should not be postponed, and the writing should be done within 24 hours of the pronouncement.

In the context of the recognition of the jurisdiction in the first instance of the Court of Appeal, being the annulment of an administrative act of a central public authority, the appeal will be resolved by the supreme court. It could be exercised within 24 hours of the ruling, and in order to resolve it, the case should be submitted immediately to the supreme court, physically and electronically. The High Court of Cassation and Justice, Administrative and Fiscal Litigation Section, should rule within 5 days of the referral, by final Decision.

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