

The Atypical Regime of the Appeal on Points in Law in Administrative Litigation. Some Comparative Elements with the Provisions of the Code of Civil Procedure

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Abstract

This study aimed to analyze the legal regime of the appeal, as a specific remedy, regulated by Law 544/2004 on administrative litigation. In this regard, we analyzed the legal regime regulated by the Code of Procedure regarding the appeal remedy, by reporting the special provisions in the field of administrative litigation, focusing on the deadline for filing the appeal, the subjects, the content of the application, the method of judging the application and the solutions that the appeal court can pronounce. In carrying out the study, we analyzed the updated legislative provisions, the specialized doctrine and relevant case law in the matter.

Keywords: appeal, remedy, administrative litigation, deadline, court solutions.

JEL Classification: K15, K23, K41

1. Introductory considerations

As can be seen, art. 20 of Law 554/2004 on administrative litigation, with subsequent amendments and updates², establishes the appeal on points of law as a means of appeal against a decision rendered in the first instance by the administrative litigation courts. Compared to common procedural law, which recognizes appeal³ as an ordinary means of appeal, Law 554/2004 on administrative litigation proposes a derogatory solution in this regard, by allowing the person dissatisfied with the solution rendered by the first instance to appeal the decision, directly with the appeal on points of law remedy (called "appeal")⁴.

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² Published in the Official Gazette no. 1154 of 07.12.2004.

³ The appeal is the means of appeal through which the party dissatisfied with the decision of the first instance requests the hierarchically superior court to reform the contested decision. See, Claudia Roșu, *Civil procedural law. Special part*, C.H. Beck Publishing House, Bucharest, 2021, pp.16-17; Gabriela Răducan, *Civil procedural law – Means of appeal. Non-contentious judicial procedure. Special procedures*, Hamangiu Publishing House, Bucharest, 2017, pp. 23-24; Daniel Ghiță, *Civil procedural law. Special part*, C.H. Beck Publishing House, Bucharest, 2017, pp. 205-206.

⁴ In judicial practice, it was noted that "as provided for in art. 2 of the Code of Civil Procedure, this normative act constitutes the common law procedure in civil matters, the provisions of this code also applying to other matters regulated by special laws, to the extent that they do not contain contrary provisions. In the matter of administrative litigation, by Law no. 76/2012 for the implementation of Law no. 134/2010, amending and supplementing the Law on Administrative Litigation no. 554/2004, the administrative litigation procedure was only partially modified, precisely in order to ensure the efficiency of the new procedural provisions, and, to the extent that the provisions of the special law do not contain certain provisions of the Code of Civil Procedure, they will be complied with the provisions of the code. After the adoption of the new Code of Civil Procedure, in the matter of administrative litigation, the system of double jurisdiction is maintained, namely, the courts of first instance that resolve administrative disputes are, as the case may be, the administrative and fiscal sections of the courts or courts of appeal, and the appeal against the judgments delivered by the

Thus, the decision rendered will be subject to appeal within 15 days of its issuance⁵. At the same time, the appeal will be heard urgently and will suspend the execution of the decision of the first instance. Regarding the solutions that the court of appeal may pronounce, as follows from the provisions of Law 554/2004 on administrative litigation, in the event of the appeal being admitted, the court of appeal, quashing the sentence, will retry the dispute on the merits. When the decision of the first instance was pronounced without judging the merits or if the judgment was made in the absence of the party who was illegally summoned both to the administration of evidence and to the debate on the merits, the case will be sent, only once, to this court. If the judgment in the first instance was made in the absence of the party who was illegally summoned to the administration of evidence but was legally summoned to the debate on the merits, the court of appeal, quashing the sentence, will retry the dispute on the merits⁶.

courts of first instance is also maintained by the provisions of art. 7 paragraph (3) of Law no. 76/2012, after the entry into force of the new Code of Civil Procedure. As such, and after the entry into force of the new Code of Civil Procedure, the appeal against the judgment of the court of first instance is exercised under the conditions provided for in art. 20 paragraph (1) of Law no. 554/2004, within 15 days from notification, this being suspensive of execution. Thus, the Court notes that, in the matter of administrative disputes, judgments delivered in first instance cannot be appealed, the only appeal for reform that can be exercised being that of the appeal. special provision contained in art. 20 paragraph (1) of Law no. 554/2004 remained applicable even after the entry into force of the new Code of Civil Procedure, a situation expressly regulated in art. 7 paragraph (3) of Law no. 76/2012, according to which, in the matter of administrative and fiscal litigation, as well as in the matter of asylum, no appeal is provided for". Timișoara Court of Appeal, decision of 11.02.2025. The decision can be consulted in full at: <https://sintact.ro/#/jurisprudence/553971492/1/decizie-nr-rj-59-d-7-e-379-d-2025-din-11-feb-2025-curtea-de-apel-timisoara-suspendare-executare...?cm=URELATIONS>, accessed on 20 November 2025.

⁵ Gabriela Bogasiu, *The Administrative Litigation Law commented and annotated*. 5th edition, revised and added, Universul Juridic Publishing House, Bucharest, 2022, pp. 392-394. In judicial practice, it was held that "the provisions of the administrative litigation law are relevant in this case, which in art. 20 paragraph (1) stipulates that: The decision pronounced in the first instance may be appealed by appeal, within 15 days from the communication. From the analysis of the documents and works of the file, it results beyond doubt that the appealed sentence was communicated on August 10, 2023, and the appeal was registered on September 6, 2023, therefore exceeding the legal term of 15 days provided for by the legal text cited above. According to the provisions of art. 185 paragraph (1) Civil Procedure Code: When a procedural right must be exercised within a certain term, failure to comply with it entails the forfeiture of the right, unless the law provides otherwise. The procedural act made after the term is null and void. According to art. 186 Civil Procedure Code, republished: (1) The party that has missed a procedural deadline shall be reinstated only if it proves that the delay is due to well-justified reasons. (2) For this purpose, the party shall perform the procedural act within 15 days at the latest from the cessation of the impediment, at the same time requesting its reinstatement. In the case of exercising appeals, this period is the same as that provided for exercising appeals. (3) The request for reinstatement within the time limit will be resolved by the court competent to resolve the request regarding the right not exercised within the time limit. "The appellant did not request reinstatement within the time limit, as provided for in the provisions of art. 186 paragraph (3) of the Code of Civil Procedure. Since in the case, the appellant did not claim and did not prove that he was prevented from exercising the appeal within the time limit, it will be found that the appeal is filed late and, pursuant to art. 496 of the Code of Civil Procedure in conjunction with art. 20 paragraph (1) of Law no. 554/2004, it will be rejected, as such". High Court of Cassation and Justice, decision no. 5140/2024 of 08.10.2024. The decision can be consulted in full at: <https://sintact.ro/#/jurisprudence/520882333/1/decizie-nr-5140-2024-din-08-nov-2024-inalta-curtea-de-casatie-si-justitie-bucuresti?cm=URELATIONS>, accessed on 20 November 2025.

⁶ According to art. 20 paragraphs (1)-(3) of Law 554/2004 on administrative litigation, with subsequent amendments and updates. See also Eugenia Marin, *Administrative Litigation Law no. 554/2004*.

We can observe in this sense a derogatory regime of the appeal in the matter of administrative litigation, which is why the other provisions relating to the legal regime of the appeal will be supplemented by the provisions of the Code of Civil Procedure in the matter⁷. Thus, in the matter of common procedural law, the appeal is a reformation appeal, non-devolutive (there is no retrial of the merits of the case), extraordinary, and as a rule, non-suspensive of execution (as we have seen in the matter of administrative litigation, it is suspensive of execution and not only)⁸. Regarding the subject of the appeal, art. 483 paragraph (1) Code of Civil Procedure establishes that the decisions given on appeal, those given, according to the law, without the right of appeal, as well as other decisions in the cases expressly provided for by law are subject to appeal⁹. The appeal is resolved by the hierarchically superior court to the one that issued the contested decision.

2. The atypical regime of the appeal on points in law in administrative litigation

In the regulation of the Code of Civil Procedure, the appeal term is 30 days from the communication of the decision and not 15 days as established by the provisions of Law 554/2004 on administrative litigation¹⁰. Moreover, given that we are normally discussing an extraordinary appeal (which can only be used in cases provided for by law), the Code of Civil Procedure establishes the following grounds for cassation in the content of art. 488 paragraph Code of Civil Procedure: when the court was not composed according to the legal provisions; if the decision was pronounced by a judge other than the one who took part in the debate on the merits of the trial or by a panel of judges other than the one randomly established for the resolution of the case or whose composition was changed, in violation of the law¹¹; when the decision was given in violation of the

Commentary on articles, Hamangiu Publishing House, Bucharest, 2020, pp. 469-475.

⁷ Published in the Official Gazette, no. 247 of 10.04.2015.

⁸ Gabriel Boroi, Mirela Stancu, *Civil procedural law. Judgment in appeals. Special procedures. Forced execution. 6th edition, revised and added*, Hamangiu Publishing House, Bucharest, 2023, pp. 95-97. We specify that the appeal on points of law can have several forms: main appeal, incident appeal and provoked appeal. Also consult Ioan Leș, *Civil procedural law. University course 2021*, Universul Juridic Publishing House, Bucharest, 2021, pp. 466-470.

⁹ Art. 483 paragraph (2) of the Civil Procedure Code establishes that decisions rendered in the applications provided for in art. 94 point. 1 letter. a)-j3), in those regarding civil navigation and port activity, labor and social security conflicts, in matters of expropriation, in applications rendered in the field of consumer protection, insurance, as well as in those arising from the application of Law no. 77/2016 on the payment of real estate to extinguish obligations assumed through loans, are not subject to appeal. Also, decisions rendered by the courts of appeal in cases where the law provides that first instance decisions are subject to appeal only.

¹⁰ Cătălin-Silviu Săraru, *Romanian administrative litigation*, C.H. Beck Publishing House, Bucharest, 2019, pp. 345-349.

¹¹ By Decision no. 52/2023, the High Court of Cassation and Justice admits the referral for the purpose of issuing a preliminary ruling and, consequently, establishes that: In interpreting the provisions of art. 488 paragraph (1) point 2 of the Code of Civil Procedure, in relation to those of art. 19 and 214 of the same code, within the grounds of appeal provided for in art. 488 paragraph (1) point 2 of the Code of Civil Procedure, the criticisms regarding the legality of the measure to change the composition of the appellate panel ordered by a decision of the court's management board cannot be analyzed, the legality of this decision being analyzed under the terms of the Administrative Litigation Law no. 554/2004, with subsequent amendments and supplements.

public order competence of another court, invoked under the terms of the law; when the court exceeded the powers of the judicial power; when, by the decision given, the court violated the procedural rules, the non-compliance of which entails the sanction of nullity; when the decision does not include the reasons on which it is based or when it includes contradictory reasons or only reasons unrelated to the nature of the case; when the authority of *res judicata* was violated or when the decision was given in violation or misapplication of the rules of substantive law¹².

As regards the subjects of the appeal, the appeal may be filed by the parties who participated in the trial in the first instance, in this case, the party dissatisfied with the solution thus pronounced¹³.

Given that there are no special provisions on the content of the appeal, we consider the provisions of the Code of Civil Procedure to be applicable. According to art. 486 Code of Civil Procedure, the appeal shall include the following information¹⁴: the surname and first name, the domicile or residence of the party in whose favor the appeal is exercised, or, as the case may be, the surname, first name and domicile of the conventional representative, the surname, first name and professional domicile of the lawyer who formulates the application or, for legal persons, their name and headquarters, as well as the surname and first name of the legal advisor who draws up the application. These provisions also apply if the appellant lives abroad; the surname and first name, the domicile or residence or, as the case may be, the name and headquarters of the respondent; indication of the judgment being appealed; the grounds of illegality on which the appeal is based and their development or, as the case may be, the mention that the grounds will be submitted in a separate memorandum; the signature of the party or, as the case may be, of the party's agent, the party's legal representative or the legal advisor.

In addition, the proof of the stamp duty¹⁵ and, if applicable, the special power of attorney, the power of attorney or the delegation of the legal advisor will be attached to

¹² In the unified interpretation and application of the provisions of art. 488 paragraph (1) of the Code of Civil Procedure, the ground of appeal criticizing the manner in which the trial court ruled, in relation to the provisions of art. 451 paragraph (2) of the Code of Civil Procedure, on the proportionality of the court costs representing the lawyers' fees, requested by the party that won the case, does not fall within the grounds for cassation provided for in art. 488 paragraph (1) of the Code of Civil Procedure.

See, Viorel Mihai Ciobanu, Marian Nicolae (Coord.), *The New Code of Civil Procedure. Commented and Annotated. Volume I*. 2nd edition, Universul Juridic Publishing House, Bucharest, 2016, pp. 1342-1346.

¹³ Ioan Leș, Călina Jugastru (Coord.), *Treatise on Civil Procedural Law. Vol. II*. 2nd edition, Universul Juridic Publishing House, Bucharest, 2020, pp. 58-60.

¹⁴ See also Gabriel Boroi (Coord.), *The New Code of Civil Procedure. Commentary on Articles. Vol. II. Art. 456-1134*. 2nd revised and added edition, Hamangiu Publishing House, Bucharest, 2016, pp. 135-140.

¹⁵ The payment of the stamp duty shall be made in accordance with the provisions of art. 24 of Government Emergency Ordinance no. 80/2013 on judicial stamp duties, provided that the application is not exempt from paying the stamp duty according to the law. Thus, the appeal against court decisions is taxed with 100 lei if one or more of the reasons provided for in art. 488 paragraph (1) points 1-7 of the Code of Civil Procedure is invoked. If the violation or incorrect application of substantive law norms is invoked, for applications and actions assessable in money, the appeal is taxed with 50% of the tax due on the contested amount, but not less than 100 lei; in the same case, for applications not assessable in money, the appeal is taxed with 100 lei. The incidental appeal and the challenged appeal are taxed according to the rules provided for in paragraphs (1) and (2). See, Delia Narcisa Theohari, *Judicial Stamp Duties. Commentary on Articles*, Hamangiu Publishing House, Bucharest, 2024, pp. 293-294.

the application¹⁶.

The appeal will be motivated by the application for appeal itself and will be submitted to the court whose decision is being appealed¹⁷.

As regards the rules of procedure, art. 494 of the Civil Procedure Code establishes as applicable the procedural provisions regarding the trial in the first instance and on appeal, to the extent that they are not contrary to those contained in the provisions provided for by law¹⁸. Furthermore, we recall that the provisions of art. 20 of Law 554/2004 establish that the appeal suspends execution and that the trial will be held urgently¹⁹.

In the matter of the solutions that the court of appeal may pronounce, art. 496 of the Civil Procedure Code establishes that the court, verifying all the reasons invoked and judging the appeal, may admit it, reject it or annul it or may find it obsolete and in case of admission of the appeal, the contested decision may be quashed, in whole or in part. Moreover, the provisions of the Civil Procedure Code (art. 497-498) distinguish between the solutions that the High Court of Cassation and Justice may pronounce and the other courts of appeal (the tribunal or the courts of appeal).

In the first hypothesis, the High Court of Cassation and Justice, in case of cassation, sends, only once during the trial, the case for a new trial to the court of appeal that pronounced the quashed decision or, when applicable and the conditions provided for in art. 480 paragraph (3) of the Civil Procedure Code, to the first instance, whose decision is also quashed. When the interests of the good administration of justice so require, the case may be sent to any other instance of the same level, except in the case of quashing for lack of jurisdiction, when the case will be sent to the competent court or another body with jurisdictional activity competent according to the law. If the quashing was made because the court exceeded the powers of the judiciary or when the authority of res judicata was violated, the application is rejected as inadmissible²⁰.

In the second hypothesis, if the jurisdiction to resolve the appeal belongs to the

¹⁶ Art. 83 paragraph (1) and art. 84 paragraph (1) of the Code of Civil Procedure establish that before the first instance, in appeal, as well as in cassation, natural persons may be represented by a lawyer or other representative. If the mandate is given to a person other than a lawyer, the representative may not draw conclusions on procedural exceptions and on the merits except through a lawyer, both at the stage of the investigation of the process and at the stage of the debates. At the same time, legal persons may be conventionally represented before the courts only by a legal advisor or lawyer, under the terms of the law.

¹⁷ Art. 487 paragraph (1) and Art. 490 paragraph (1) of the Civil Procedure Code.

¹⁸ Ioan Leș, *Civil Procedure Code. Commentary on articles. 3rd edition*, C.H. Beck Publishing House, 2022, pp. 850-852.

¹⁹ Anton Trăilescu, Alin Trăilescu, *Administrative Litigation Law. Comments and explanations. 5th edition*, C.H. Beck Publishing House, Bucharest, 2021, pp. 292-296.

²⁰ By Decision no. 79/2022, the High Court of Cassation and Justice admits the notification and establishes that, in interpreting the provisions of art. 497 of the Code of Civil Procedure, as amended by Law no. 310/2018 for the amendment and completion of Law no. 134/2010 on the Code of Civil Procedure, as well as for the amendment and completion of other normative acts, in correlation with the provisions of art. 492 paragraph (1), art. 498 and art. 501 paragraph (3) and (4) of the Code of Civil Procedure, if in the second procedural cycle the appeal is admitted, quashing the contested decision, the High Court of Cassation and Justice will retain the case for trial on the merits only when it would not be in a position to proceed to the analysis of the state of facts by reclassifying the facts or by completing or re-administering the evidence, otherwise the case will be sent for retrial to the court of appeal or, as the case may be, to the first instance. See Gheorghe Piperea (Coord.), *Civil Procedure Code. Comments and Explanations*, C.H. Beck Publishing House, Bucharest, 2019, pp. 931-937.

tribunal or the court of appeal and the contested decision has been quashed, the retrial of the case on the merits will be made by the appellate court, either within the term in which the appeal was admitted, in which case a single decision is issued, or within another term established for this purpose. The courts provided above shall be quash by reference, only once during the trial, if the court whose decision is being appealed has resolved the case without entering the trial of the merits or the trial was held in the absence of the party who was illegally summoned, both during the administration of evidence and during the debate of the merits. To retrial, the case shall be sent to the court that issued the quashed decision or to another court of the same rank as it, from the same district. The provisions of art. 497 of the Civil Procedure Code shall apply accordingly, in case of lack of competence, exceeding the powers of the judiciary and violation of the authority of res judicata²¹.

3. Conclusions

At the same time, in case of cassation, the decisions of the court of appeal on unresolved legal issues are binding on the court that is trying the merits. When the decision has been quashed for violation of the rules of procedure, the trial shall restart from the annulled act. After the cassation, the court of first instance shall try again, within the limits of the cassation and consider all the reasons invoked before the court whose decision was quashed. In the case of retrial after cassation, with retention or with referral, any evidence provided for by law is admissible²². Regarding this aspect, we recall that the provisions of the administrative litigation matter establish that in the event of the appeal being admitted, the court of appeal, quashing the sentence, shall retry the dispute on the merits. When the decision of the first instance was pronounced without judging the merits or if the judgment was made in the absence of the party who was illegally summoned both to the administration of evidence and to the debate on the merits, the case shall be referred, only once, to this court. If the trial in the first instance was conducted in the absence of the party who was illegally summoned to the administration of evidence but was legally summoned to the debate on the merits, the court of appeal, quashing the sentence, will retry the dispute on the merits.

Finally, the quashed decision has no force. The enforcement or insurance acts made based on such a decision are abolished by law, unless the court of appeal decides otherwise. The court will find this, ex officio, by the operative part of the cassation decision.

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²¹ Ion Deleanu (Coord.), *The New Code of Civil Procedure. Vol. I. (art. 1-612)*, Universul Juridic Publishing House, Bucharest, 2013, pp. 654-657.

²² Art. 501 of Civil Procedure Code.

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