JUDICIAL CONTROL OVER THE PUBLIC ADMINISTRATION: NOTION, LEGAL BASIS, ESSENCE

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Abstract: As a guarantee of the right to justice of a person injured by an act of a public authority, administrative litigation is an extremely important institution in a democratic state. From a historical perspective, judicial control over public administration in Romania, as an institution, has its origins in the early twentieth century, the first law that introduced the notion of administrative litigation in Romania was the Law of 1905 governing the organization and functioning of the Court of Cassation, or perhaps even earlier, in the law of 1864 which established the Council of State. As a modern institution, which has its basis in article 52 and article 126 para. 6 of the Romanian Constitution and is currently regulated by Law no. 554/2004, administrative litigation can be defined as that activity which the administrative litigation courts undertake for the purpose of resolving, in accordance with the provisions of the organic law, disputes in which a public authority plays the role of one of the parties (at least), the conflict arising either as a consequence of the issuance / conclusion of an administrative act, understood in the sense assigned by the legislator, or as a result of the failure to resolve a request within the legal term or, depending on the situation, as a consequence of unjustified refusal to give a resolution of a request having as object a legitimate right / interest. In this article we analyzed the meanings of the notion of "judicial control over public administration acts", its legal basis, its essence and characteristic features.

Keywords: administration, administrative act, public authority, administrative litigation, judicial control.

1. JUDICIAL CONTROL OVER PUBLIC ADMINISTRATION ACTS AND THE SEPARATION OF POWERS IN THE STATE

The concept of "judicial control over public administration acts" is presented as a judicial control mechanism whereby representatives of the executive power are obliged to comply with the provisions of normative acts; in other words, it is that coercive force that ensures compliance with the legal rules for the great mass of those administered[1]. In order for such a mechanism to be effective, it must be

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[1] D.C. Dragoş, *Procedura contenciosului administrativ*, Bucharest, All Beck Publishing, 2002, p. 1.

entrusted to independent bodies, separated from the executive power and protected from any kind of political influence, the purpose of which is to cut disputes arising in the activity of public administration of implementing laws[2]. These bodies that enjoy independence are the courts that materialize their role in limiting the excessive power of the executive in law enforcement through the institution of administrative litigation[3].

On the basis of the mutual control between powers that the separation of powers in the state entails and which also involves two-way control between the executive and the legislative power (insufficient to curb the tendencies to abuse the authority conferred by the law), the courts are vested with the power to control the legislative acts (in two ways – constitutionality control and conventionality control), but also the administrative acts of the executive power (through the control of legality). The doctrine considers that the most serious threat to a genuine democracy is the exaggerated strengthening of executive power "which happens when the elected leader of the executive concentrates power in his own hands, subordinates his legislature or even dissolves it and governs it largely by decrees"[4].

In this light, through its function of control over executive power, the judiciary holds a very important role. The position of the judge towards the Executive and the entire administrative apparatus is essential for a real democracy to function. The judiciary, which has become an intermediary between the the governed and the government, is transforming itself into a center of balance of the state. The State and its executive apparatus are subject to laws and judicial power, whether subject to the control of ordinary courts (in countries with predominantly ordinary jurisdiction) or to the control of special courts (in states with a parallel or mixed judicial system).

Despite the constitutional effort to prevent the exercise of one of the three "powers" by the same body of organs and to prevent abuses, political and social realities drain these constitutional precautions to a high degree and demonstrate the impossibility of "linking" the function to an organ or organ system. We can no longer speak, undeniably, of a clear separation of legislative power from the executive power as long as the same party or group/coalition of parties has control over both powers, the government has almost exclusively the monopoly of legislative initiatives, legislating by ordinances, and the head of state can veto the legislation, participating in this image in the exercise of legislative power[5].

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[2] T. Drăganu, *Introducere în teoria şi practica statului de drept*, Cluj-Napoca, Dacia, 1992, p. 11.

[3] C.C. Manda, *Drept administrativ comparat. Controlul administrativ în spaţiul juridic european*, Bucharest, Lumina Lex Publishing, 2005, p. 117.

[4] L. Diamond, Y. Chu, M. F. Plattner, H. Tien, *Cum se consolidează democraţia*, Bucharest, Polirom Publishing, 2004, p. 46.

[5] See T. Drăganu, *Drept constituţional şi instituţii politice – tratat elementar*, vol. I, Bucharest, Lumina Lex Publishing, 2000, pp. 255–265; I. Muraru, E. S. Tănăsescu, *Drept constituţional şi instituţii politice*, 12th edition, vol. II, Bucharest, All Beck Publishing, 2006, pp. 8–10; I. Deleanu, *Instituţii şi proceduri constituţionale – în dreptul comparat şi în dreptul român*, Bucharest, C.H. Beck Publishing, 2006, pp. 49–52.

The model theory of the separation of powers has never been anything but an ideal and, like any ideal, impossible to achieve. In the context of contemporary society, this theory must be overcome, first of all, by shifting the analysis from the institutional level to the level of the entire state mechanism, by redefining the functions in relation to all the forces/organs that compete in their exercise and not only with the bodies that formally exercise them. Of course, this theory has its pluses and minuses. Each function involves the intervention of three levels of social existence: the international level, the level of civil society and the state institutional level. The exercise of each function is conditional and limited by the relations of the respective community with international decision-making mechanisms. Civil society – in this case, the governed – is not only part of an entity that obeys and supports the actions of the governors; it engages in the exercise of power in an active, decisive manner. After all, political decisions are made at the level of the party system or the internal apparatus of the party; the influence of pressure groups, even not co-opted to the decision-making system, is not at all to be neglected in the process of forming social decision-making; media intervention is increasingly being felt both in terms of power levers and in the exercise of it. The state institutional level cannot be seen as functioning separately from the rest of the social mechanism because it has reactions to the action of external stimuli and, in many cases, becomes the exponent of decisions taken outside it. Under a second aspect, the theory of the separation of powers can no longer be summed up in the fact that, at the institutional level, each function is exercised by a single power, but by a plurality of organs that perform – together – that power. Virtually all state bodies, regardless of their formal power, contribute to the exercise of their own political – legislative and executive – state functions; even the judicial function can no longer be as independent as it would like or should, given that there are a multitude of other bodies endowed by law with jurisdictional prerogatives.

2. THE BASIS OF JUDICIAL CONTROL OVER PUBLIC ADMINISTRATION

The guarantee of the right to use a judicial control of administrative acts is as follows from Article 6 (right to a fair trial) and Article 13 of the European Convention of Human Rights conferring on any person (without distinction or preference) the right to be able to use the recourse to a national court in the event that the infringement of a right or freedom recognised by the Convention "would be due to persons who have acted in the exercise of their official powers". This statement covers all acts issued by the government or the public administration apparatus.

At national level, the basis for that right of control lies, in fact, in respect of the constitutional principle of legality laid down in Article 1 (5) of the Romanian Constitution. Legality, understood as the state in which strict compliance with the

rules of law is ensured, can only be achieved either by compliance with the legal provisions by all subjects of law (individuals and legal persons) voluntarily, or by means of the forced application of the law by resorting to the force of coercion of state power. Law No. 215/2001, regulating the local public administration, expressly stipulates the principle of legality, under which the way in which all administrative authorities are organized and operated must be subordinated to the law. Legality entails a conglomerate of obligations for subjects of law, of facilities, but also of prohibitions: "the law regulates three positions through the expressions: to have, to be able and not to be able. If something has to be done it is an obligation, if something can be done it is an option, and if something can not be done it is a ban"[6].

The principle of legality signifies that fundamental rule of law by virtue of which the subjects of law –individuals or legal persons, state authorities or non-governmental organizations, civil servants or employees, Romanian or foreign citizens, etc. – are obliged to comply with the provisions of the Constitution, of laws and other normative or individual legal acts, based on the law and applicable to all social relations in which they take part[7].

The principle of legality must be implemented in public administration as a whole. As a consequence, the entire activity of the administrative authorities, regarded in all its organizational and functional aspects (organizational structure, composition, tasks, way of incorporation, competences, principles and rules of operation of public administration bodies, relations established and developed between various institutions, public authorities, administrative structures in the Romanian State and other states), as well as the acts issued by them must comply with the provisions of the law (understanding by this , first of all, the Constitution – the fundamental law, but also the other organic and ordinary laws, as well as all the normative acts in force). Failure to comply with the laws amounts to a violation of this principle of legality, attracting the legal consequences that the law also provides.

On the basis of the principle of legality, the whole administrative body must be subordinated to the law, in accordance with its imperatives: "A structure and an activity of organizing the enforcement, enforcing and guaranteeing the enforcement of the law cannot exist independently of the law"[8].

According to the claims of specialists in the literature, this principle lies in two component elements, crystallized in the obligation to comply with the legal provisions and in the obligation of initiative to ensure correct application of the law.

Under the obligation to comply with the law, no body/authority component of the administrative system may issue or refuse to issue acts, nor may adopt

[6] I. M. Nedelcu, *Drept administrativ şi elemente de ştiinţa administraţiei,* Bucharest, Universul Juridic Publishing, 2009, p. 61.

[7] T. Pavelescu, *Drept administrativ român*, second edition, revised and completed, Bucharest, Pro Universitaria Publishing, 2007, p. 60.

[8] I. M. Nedelcu, *cit. work*, p. 74.

measures contrary to the law. By carrying out their activities, the authorities of the administrative system must comply with the provisions of the legal rules, this being the most important guarantee for citizens. It is essential for the existence of a rule of law that public administration actions follow rules and respect predetermined legal principles in order to remove the danger of any arbitrary action.

Obliged to take initiative to ensure the enforcement of the law, administrative authorities shall be responsible for adopting measures for the implementation of the legal rules. In other words, the administration has the permanent task of avoiding the inapplicability of the laws; the inaction of the administration, in the sense of not taking general enforcement measures, would result in the law remaining dead. In addition, the administration is also obliged to take an initiative to ensure the enforcement of judgments.

Respect for and assurance of the action of the principle of legality within the public administration, by its bodies, extends both in terms of its legal activity and in terms of its non-legal activity, both on the executive relations established within it and on external ones linked to third parties outside it[9].

In all its activity, the administration must comply with the law. The obligation to comply with the legal provisions cannot be restricted only to the passive attitude of compliance with the legal provisions or to refrain from committing or not an act by which the law is violated. The application of the principle of legality is more comprehensive, it goes as far as the active compliance of all subjects – individual or legal persons – with all the normative acts in force, i.e. to the obligation of all the bodies carrying public authority to act for the purpose of the enforcement of the laws.

However, as any principle contains exceptions, there are several exceptional situations to the principle of legality encountered in the activity of administrative authorities in which the application of that principle is mitigated. An example is the possibility for the Government itself to legislate through emergency ordinances or simple ordinances, based on the empowerment given by Parliament. In turn, the public administration has the prerogative to adopt legal acts of a normative nature as a matter of urgency in order to resolve problems arising in exceptional circumstances (urgent measures taken to avoid or eliminate the effects of events presenting public danger, including acts issued as a result of the triggering of the state of necessity, as well as measures taken to combat natural disasters or prevent other events of such gravity)[10]. In order for these administrative acts to be lawful, certain rules as regards form and competence must be respected and must be appropriate to the needs of the public interest in terms of their content and purpose.

[9] I. Santai, *Drept administrativ şi ştiinţa administrativă*, Cluj Napoca, Risoprint Publishing, 1998, p. 71.

[10] T. Pavelescu, *cit. work*, p. 61.

3. THE ESSENCE OF THE CONTROL OF ADMINISTRATIVE ACTS BY THE COURTS: CHARACTERISTIC FEATURES

From the above, and as the basic law itself requires by Article 126 para. 6 of Romanian Constitution which governs the administrative dispute, that right of control by the courts over administrative acts is distinguished by a specific content, crystallised into several characteristic features.

The control carried out by the courts is one of the ways of ensuring the legality of administrative acts and, at the same time, of ensuring the pre-eminence of national interests in relation to local interests, as well as ensuring the prevalence of the legal unit of the State.

With regard to judicial control, some authors of the French literature have supported the view that the subjecting of public administration acts to judicial control does not require, as a necessary and binding condition, the existence of an administrative jurisdiction, nor is it a sufficient guarantee for the citizens of the State[11].

The judicial control of public administration acts, viewed in comparison with administrative control, is distinguished by a number of characteristic features such as: the performance of judicial control falls to judges, as opposed to administrative control which is carried out by the administrative authorities; the judge verifies the administrative acts only in the light of their conformity with the law in extensive meaning[12], whereas the administrative authority may also decide on the appropriateness of administrative acts; the court does not self-refer, resolving a dispute arising in the activity of the law enforcement administration only after a referral has been lodged by the person concerned, as long as a body empowered with administrative-jurisdictional activity is authorized to act of its own motion; the judgment obtained as a result of the conduct of the administrative dispute is vested with the power of the work judged, instead, the administrative acts, even those of control, are, in principle, revocable[13].

In Romania, the legal basis underlying the administrative dispute is contained in Article 52 of the Constitution, which stipulates the right of the person harmed by a "public authority" to obtain "recognition of the right or legitimate interest, annulment of the act or reparation of the damage", this right being guaranteed also by other articles of the fundamental law such as: Article 21 which gives the right of free access to justice, Article 73 para. 3 let. k), which classifies the law of administrative litigation in the category of organic laws; Article 123 para. 5, which gives the prefect the opportunity to appeal, in line with administrative litigation, the acts of the local administrative authorities (mayor, local council and county council), Article 126 para. 6, which guarantees the exercise of judicial control over

[11] J. Ziller, *cit. work*, p. 438.

[12] See L. Favoreu, *Ordonances ou réglements d'administration publique? La destinée singulière des ordonances de l'article 38 de la constitution*, in "Revue Française du Droit Administratif", nr. 5/1987, p. 686 and following.

[13] C.C. Manda, *cit. work*, p. 117 and following.

public administration acts by expressly setting out two exceptional hypotheses and at the same time by assigning to the courts of administrative litigation the power to settle the claims of persons whose interests have been harmed by government orders, or, depending on the situation, by certain provisions of government ordinances (simple or emergency ordinances) considered unconstitutional by the Constitutional Court.

According to the current opinions in the doctrine of administrative law, administrative litigation institution is regarded, in a broad sense, as consisting of all disputes arising between a holder of public power – either an authority of the administration, or a public official or an authorized structure in the field of the provision of public services – on the one hand, and – on the other hand – another subject of law, all these disputes falling within the competence of the courts[14]. In other words, the administrative litigation is an institution which designates, in principle, the totality of the legal disputes in which the administered and the public administration authorities arise as parties, as a result of the arbitrary application of the laws, regardless of the legal nature of those disputes, which may belong either to common or public law[15].

In restricted sense, the term "administrative litigation" refers only to the totality of the disputes which the legislature has placed within the jurisdiction of the administrative litigation sections. Consequently, that concept would strictly refer to those disputes in which public administration authorities act in accordance with the legal regime of administrative law, on the basis of the power conferred by law[16].

In the light of the intended purpose and using as a reference criterion the nature of the legitimate right/interest harmed, the distinction between the two forms (subjective and objective) is relevant – the subjective administrative litigation, which has as its object the protection of private rights and interests and the form of objective administrative litigation, by which the public interest is protected[17].

In Romanian law, the concept of "judicial control over public administration" has as main characteristic features the following:

– the object over which it is exercised is composed of the typical and assimilated administrative acts[18], in which the administrative entity appears as the subject carrying public power.

By referring to the subject-matter of the action in administrative litigation – namely the administrative acts which may be challenged by way of litigation, it must be noted that this is the case for unilateral acts of an individual or normative

[14] A. Iorgovan, *cit. work*, p. 455.

[15] Al. Negoiță, *Drept administrativ*, Bucharest, Silvy Publishing, 1996, p. 216.

[16] R.N. Petrescu, *Drept administrativ*, Cluj-Napoca, Accent Publishing, 2004, p. 365.

[17] I. Alexandru, *Tratat de administrație publică*, Bucharest, Universul Juridic Publishing, 2008, p. 673.

[18] See D.C. Dragoș, *Legea contenciosului administrativ. Comentarii și explicații*, Bucharest, All Beck Publishing, 2005, pp. 87–109.

nature belonging to an administrative entity, issued by it as a public authority, by virtue of the powers of organising the enforcement of the laws and of applying the law in concrete terms.

In the case of normative acts issued by the Government on the basis of the authority given by the Parliament, the person who considers that his legitimate interest or a right guaranteed by law has been harmed because of an order or orders considered unconstitutional can bring an action in litigation to the court, under the terms of Law No. 554/2004. The court of administrative litigation shall act on the actions of these persons, settling them on the merits, but only after the judgment has been given in constitutional litigation; if not, the action is to be declared inadmissible on the merits and therefore dismissed;

– includes the work of all public administration authorities at central, territorial and local level;

– aims – in the vast majority of cases – to verify only the legality of administrative acts, not the opportunity. In carrying out their supervisory activity, the courts call into question the issue of opportunity only in an exceptional manner and only by treating it as an element of legality. For example, an administrative authority takes a decision based on a manifest error of assessment of the state of affairs, thus turning the purpose of that decision from the imperative of the public interest.

– does not enjoy exclusive character;

– as a rule, it occurs after the adoption or execution of the act of an administrative nature, the court verifying the legality of measures/acts already adopted, but may also occure before or at the same time with the execution of the act which, as a consequence, is suspended/disbanded[19];

– does not take the form of the so-called "full jurisdiction control" since the court – despite having competence to suspend or annul the administrative act or, where appropriate, order the removal of the damage caused or compensation for the damage suffered – cannot, however, adopt another necessary act or measure since it would mean substituting for the powers and role of the issuing administrative body. It is therefore necessary to have a court order which constitutes the basis for issuing another administrative act in accordance with the provisions of the law;

– is a form of control which the court carries out on the basis of its general substantive jurisdiction[20] of verifying the administrative act in terms of legality – with legal exceptions;

[19] See also The Decision of the High Court of Cassation and Justice No. 18 of 2 October 2017 on the appeal in the interest of the law on the interpretation and application of the provisions of Article 14 and 15 of Law no. 554/2004 on administrative litigation, as amended and supplemented, and Article 435 of the Code of Civil Procedure, concerning the assumption that the application for suspension of the execution of an administrative act of a normative nature and the effects of that solution vis-à-vis the parties to the dispute, as well as third parties, published in the Official Gazette no. 970 of December 7, 2017, available at http://legislatie.just.ro/Public/DetaliiDocument/195494.

[20] See A. Trăilescu, *Drept administrativ*, fourth edition, Bucharest, C.H. Beck Publishing, 2010, p. 329.

– the procedure for exercising control is a specific one, of a judicial nature, based on the principles of adversarial debate and the independence of judges;

– because, in advance, other State authorities may be seised for the purpose of verifying the legality of the contested measures/acts, the judicial control is subsidiary in nature, sometimes being the last way on which a person can resort after the recourse – without success – to the path of prior administrative control or after carrying out the conciliation procedure in the context of administrative controls.

– Article 1(1) of the Law on administrative litigation No. 554/2004 refers to "any person" who would consider himself/ herself injured in his legitimate right or interest, thereby resulting the idea that the subjects of the referral to the court may be individuals, but also legal persons – in the sphere of private or public law, paragraph 8 of the same article containing the words "any subject governed by public law".

In the case-law, it was decided that local councillors, being in the exercise of the local authority and having a joint and several responsibility for the decisions of the local council (not those who voted against) or, where appropriate, a personal one for the work they carry out in carrying out the mandate, enjoy active procedural legitimacy in attacking decisions which they consider to be unlawful, under the Law of administrative litigation and the provisions of Article 52(1) and Article 53 (1) of Law No. 215/2001 on local public administration[21].

With regard to the mayor, he cannot challenge the legality of a decision of the local council either in his own name or as a representative of the administrative-territorial unit because the two authorities have different powers – deliberative and executive – and a relation of subordination of one of them to the other cannot be established. The mayor has only the possibility to refer the matter to the prefect of the county who can bring the action for annulment under the Law of administrative litigation[22].

In connection with the second category (legal persons), the literature highlighted the active procedural quality of a trade union organisation, which – on the basis of the Law on Social Dialogue No. 62/2011 and Law No. 554/2004 – may stand in court on his own behalf without seeking an express mandate from its members[23]. In addition, any association or foundation shall enjoy the right to act to pursue the achievement of a general interest (local or group interests) which may

[21] Bucharest Court of Appeal, eight section, adm. and fiscal litigation, decision nr. 821 of April 2, 2005, in *Curtea de Apel București. Culegere de practică judiciară în materia contenciosului administrativ și fiscal, 2005,* Bucharest, Universul Juridic Publishing, 2006, pp. 402–405.

[22] Suceava Court of Appeal, adm. and fiscal litigation section, decision nr. 311 of February 26, 2010, cited in Gabriela Bogasiu, *Legea contenciosului administrativ, comentată și adnotată*, third edition, revised and completed, Bucharest, Universul Juridic Publishing, 2015, p. 36.

[23] M. Eftimie, *Acțiune în contencios administrativ formulată de o federație sindicală. Organism social interesat. Calitate procesuală activă, comentariu la decizia nr. 3671 din 21 septembrie 2012 a ÎCCJ, s. cont. adm. fisc.*, in "Revista Română de Jurisprudență", nr. 1/2013, pp. 85–93.

consist in the adoption of necessary legislation in certain areas which relate to their specific activity[24].

Law on administrative litigation no. 554/2004[25] provides for the possibility of appearing before the court for both the Public Prosecutor's Office and the Ombudsman, but the holder of the action remains the person injured as a result of the issuance of the contested administrative act. Article 1 (1) second thesis of the abovementioned law shows that the legitimate interest to which has been affected may be both personal and public.

The provisions of Article 1 para. 2 of the same law emphasize the idea that a third person may also bring an action if he/she has been affected in his legitimate rights/ interests by the contested administrative act of which another person is the addressee. Thus, the case-law held that the refusal of a local administrative authority to order the correction of a draft plan prejudicial to the applicant may be "censored" by the court with jurisdiction in matters of administrative dispute even if the applicant was not a party to the contract of sale and purchase which had as its annex the draft of the plan[26].

The action may be brought both against the public authority which issued the contested act and against the subject of law which was the addressee of the act, on the basis of Article 7 para. 3 of Law No. 554/2004, the latter having the possibility to give evidence and to make its defence in response to the applicant's claims. If the third party applicant does not request that the addressee (beneficiary) of the contested administrative act be introduced, the application for annulment of the contested act cannot be accepted, as is apparent from the provisions of Article 78 para. 2 of the Civil Procedure Code[27].

Moreover, the Ombudsman may also enjoy the status of holder of an action in subjective litigation, referring the matter to the court when it concludes that the refusal of the administrative authority to carry out its legal duties or the illegality of the act can only be removed by way of justice in order to defend an individual who thus acquires the status of plaintiff[28]. Therefore, the actions which the Ombudsman introduces into subjective administrative litigation reflect the receptivity of this institution to cases in which subjective interests of individuals are violated and all

[24] In this case, it concerns the group interest of the Romanian Audiovisual Communications Association and the general interest of the adoption of legislation necessary for the development of the audiovisual field. See High Court of Casation and Justice, adm. and fiscal litigation section, Decision nr. 2034 of March 29, 2005, in *Buletinul Casației* nr. 3/2005, p. 5.

[25] Modified by Law nr. 262/2007.

[26] Ploiești Court of Appeal, adm. and fiscal litigation section, decision nr. 89/2005, in "Jurisprudența Curții de Apel Ploiești, 2005", Bucharest, C.H. Beck Publishing, 2006, p. 202.

[27] Article 78 para 2 of Civil Procedure Code stipulates: "In contentious matters, where the legal report inferred from the judgment so requires, the judge shall put into question the need for the introduction of other persons into question. If neither party requests the third party to enter in question and the judge considers that the case cannot be resolved without the third party's participation, he shall reject the application without ruling on the substance".

[28] If the petitioner fails to take action brought by the Ombudsman at the first court date, the administrative court shall annul the application.

other legal means, characteristic of its legal purpose, are exhausted. Through objective litigation actions, the entire order of law and, by implication, the rights of the citizen are protected. Applications in the latter category shall be submitted only in their own name and, in accordance with the provisions of Article 28(3) of Law No. 554/2004, they may no longer be withdrawn.

The intervention of the Public Ministry can occur in the context of subjective administrative disputes, but also of objective litigation ones. The referral to the court of administrative litigation may be made by the representative of the Public Prosecutor's Office if he considers that there has been an injury/violation of a legitimate personal or public interest. Moreover, the representative of the Public Prosecutor's Office has open the possibility of his participation at any stage of the process of resolving any application in administrative litigation, where he considers that his participation is necessary for the purpose of defending order within the rule of law as well as the rights of citizens.

The Law on administrative disputes also stipulates that actions may also be brought in administrative litigation by the National Agency of Civil Servants, the Prefect, as well as by any subject belonging to public law.

As regards the right of action of the prefect against unlawful acts (objective litigation), his justification must not be confused with the basis of the action in administrative litigation justified by the injury of a subjective right or a legitimate private interest[29].

On the basis of the above mentions and the provisions of Article 2 (1) of the Law on administrative litigation No. 554/2004, which attributes the meaning of the terms and phrases used in its contents, we may define the administrative litigation (dispute) as that activity which the administrative courts undertake for the purpose of settling, in accordance with the provisions of organic law, of disputes in which a public authority plays the role of one of the parties (at least), the conflict being born either as a consequence of the issuance/closure of an administrative act, understood in the sense assigned by the legislator[30], or as a result of the failure to resolve a claim within the legal time limit or as a consequence of the unjustified refusal to resolve an application relating to a legitimate right/interest.

[29] N. Scutea, M.M. Popa, *Unele controverse doctrinare privind Legea contenciosului administrativ la un an de la intrarea sa în vigoare (partea I)*, in "Revista de Drept Public", nr. 1/2006, pp. 56–72.

[30] Article 2 (1) let. c) of Law no. 554/2004 defines the administrative act as "the unilateral act of an individual or normative nature, issued by a public authority with a view to the enforcement or organisation of the enforcement of the law, giving rise to, modifying or extinguishing legal relations; contracts concluded by public authorities having as their object the enhancement of public property are treated also as administrative acts, for the purposes of this law".