

LAW 554 of 2 December 2004 (*updated*)

On Administrative Litigations
(updated last on 19 May 2008*)

RETURNED BY: PARLIAMENT

*) The original text was published in the Official Journal 1.154 of 7 December 2004. This is the updated text as compiled by S.C. "Centrul Teritorial de Calcul Electronic" S.A. Piatra-Neamț until the date of 19 May 2008, with the amendments and supplements brought by: EMERGENCY GOVERNMENT ORDER 190 of 21 November 2005; DECISION 189 of 2 March 2006; DECISION 647 of 5 October 2006; DECISION 65 of 25 January 2007; DECISION 660 of 4 July 2007; LAW 262 of 19 July 2007; DECISION 797 of 27 September 2007; RECTIFICATION 797 of 27 September 2007; LAW 97 of 14 April 2008; LAW 100 of 9 May 2008.

**) NOTE from C.T.C.E. S.A. Piatra-Neamț:

Under art. II of LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007, cases pending in court on the date of enactment of Law 554/2004 shall continue to be tried based on applicable law at the moment the action was filed. As a matter of exception, enforcement of final Court Rulings returned under Law 29/1990 and yet unenforced at the date of enactment of Law 554/2004 shall be performed under the new provisions.

Stipulations concerning the motion to dismiss on grounds of unlawfulness, as well as the due process guarantees present in Law 554/2004, with its subsequent amendments, shall also apply to cases pending on court at the date of this Law's enactment. The motion to dismiss on ground of unlawfulness can be made also for unilateral administrative acts issued previous to the enactment of Law 554/2004 in its initial text; such motions shall be examined through reference to applicable law at the time of issuance of the unilateral administrative act.

Art. III of the same law stipulates that Court Rulings returned on the basis of Law 554/2004 and remained final without having had an examination on the merits of a motion to dismiss on grounds of unlawfulness, which was originally dismissed as inadmissible, can make the object of a motion for review; such a motion can be filed within 3 months of the enactment of this Law.

The Parliament of Romania has adopted this Law as follows:

CHAPTER I

General Provisions

Art. 1 – Litigation Cases within the Scope of This Law

The side wording describing Art.1 has been amended by item 1 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(1) Any person that deems him/herself aggrieved in a legitimate right or interest by a public authority, through administrative action, or as a consequence of such authority's failure to resolve such person's petition within the timeframe provided by law may approach the jurisdictional Administrative Litigations Court with a request for the rescinding of the contested action, or the recognition of the claimed right or of the legitimate interest, and for the reparation of the damage sustained as a consequence thereof. The legitimate interest may be both private and public.

(2) This Law also recognizes the right to approach the jurisdictional Administrative Litigations Court of third parties aggrieved in their rights or legitimate interests through an administrative action of an individual nature and regarding another subject of law.

(3) The Ombudsman, acting by virtue of the legislation regulating this institution, shall verify the complaint and, if he/she finds that the unlawfulness or the abuse of the action taken by the public authority can only be settled in a court of law, he/she may refer the case to the Administrative Litigations Court at the petitioner's place of residence. By this legal process, the Petitioner becomes a Plaintiff and shall be summoned to appear in court in this capacity. If the Petitioner fails to join the action filed by the Ombudsman by the date of the first hearing, the Administrative Litigations Court shall dismiss the action.

Paragraph (3) of Art. 1 was amended through item2 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(4) The Public Ministry, in the exercise of the duties residing with it under the legislation governing its activity, if finding that the rights, liberties and legitimate interests of persons have been violated by individual unilateral administrative decisions of the public authorities by abuse of such authorities' power, shall, after securing their previous agreement, refer the case to the jurisdictional Administrative Litigations Court at the place of residence of the aggrieved natural person or at the place of business of the aggrieved legal entity. By this legal process, the Petitioner becomes a Plaintiff, as of right, and shall be summoned to appear in court in this capacity.

Paragraph (4) of Art. 1 was amended through item 2 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(5) Whenever the Public Ministry finds that, in the issuance of a regulatory administrative decision, a public interest is harmed, the Public Ministry shall refer the case to the jurisdictional Administrative Litigations Court at the place of business of the issuing public authority.

Paragraph (5) of Art. 1 was amended through item 2 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(6) The public authority that has issued an unlawful unilateral administrative act may request the court to declare it null and void, whenever such decision may no longer be revoked because it has already entered the civil circuit and has produced legal effects. In case such action is sustained, the Court shall also rule, if it was so seised through the legal action filed, on the validity of legal acts performed on the basis of the unlawful administrative act and on the legal effects produced thereby. Such action can be filed within one year of the date of issuance of the administrative act.

Paragraph (6) of Art. 1 was amended through item 2 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(7) A person aggrieved in his/her rights and/or legitimate interests by unconstitutional decrees or parts thereof issued by the Government may petition an Administrative Litigations Court according to the provisions hereof.

Paragraph (7) of Art. 1 was amended through item 2 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(8) Under this Law and the special laws, administrative litigation procedures may be initiated by the Prefect and by the National Civil Servants Agency, as well as by any subject of public law.

Paragraph (8) of Art. 1 was amended through item 2 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(9) The representative of the Public Ministry can attend the administrative litigation proceedings in court, at any stage of the procedure, whenever they feel it to be necessary in order to protect lawful order and citizens' rights and liberties.

Paragraph (9) of Art. 1 was amended through item 2 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 2 – Terminology

(1) For the purposes hereof, the words and phrases herein below shall mean as follows:

a) aggrieved person – any person whatsoever who is a holder of substantive rights or a legitimate interests that has been aggrieved by an administrative authority through an administrative decision or failure to resolve a petition within the required deadline; for the purposes hereof, the designation of aggrieved person can also be extended to a group of individuals without independent legal entity status, holder of subjective rights or a legitimate private interest, as well as any social entities that claim that the challenged administrative decision either harmed a legitimate public interest or the legitimate rights and interests of specific natural persons;

b) public authority – any government agency or local administrative authority acting as a public power for the satisfaction of a public interest; for the purposes hereof, private law entities recognized by law as being of public utility or authorized to provide a public service with the status of a public power shall be also deemed a public authority;

c) administrative decision – a unilateral decision issued for specific purposes or for regulatory purposes by a public authority with a view to enforcing or ensuring the

enforcement of the law, thereby generating, modifying or extinguishing legal relationships; for the purposes hereof, on a par with administrative decisions shall be those contracts entered into by public authorities and having for an object: to capitalize on public property items; to perform works of public interest; to provide public services; public procurement. Special laws may establish other categories of administrative contracts that come under the jurisdiction of Administrative Litigations courts;

d) administrative-jurisdictional decision – a decision returned by an administrative authority which, under organic law, has special administrative jurisdiction authority;

e) special administrative jurisdiction authority – activity carried out by an administrative authority which has, under special organic law in the matter, jurisdiction to settle a dispute through an administrative decision, in a procedure based on the principles of adversarial procedure, of securing the right to have a defense counsel and on independence of the administrative-jurisdictional activity;

f) administrative litigation – the resolution, by administrative litigation courts designated under the organic law of disputes where at least one of the parties is a public authority and the dispute arose from the issuance or rescinding, as the case may be, of an administrative decision, as defined herein, or from the failure on the part of such authority to resolve, within the legal timeframe, a petition related to a legitimate right or interest, or the unjustified refusal to do so;

g) Administrative Litigations Court (hereinafter referred to as the "Court") – the specialized section of the Supreme Court of Justice and Appeals, adjudicating on administrative and tax disputes, as well as the administrative and tax litigation sections of the Courts of Appeals, and the lower tax and Administrative Litigations Courts;

h) failure to resolve a petition within the legal timeframe – a public authority's failure of responding to a petitioner within thirty (30) days of submission date, unless the law provides otherwise;

i) unjustified refusal to respond to a petition – the explicit statement, by excess of power, of the will to not resolve a petition; it is assimilated to the unjustified refusal and failure to enforce an administrative decision resulting from a favorable resolution of a petition or, as the case may be, preliminary complaint;

j) preliminary complaint – a complaint whereby the issuing public authority or the next in rank authority is requested to review and administrative decision specific to a case or with a regulatory power, in the sense of having it rescinded or amended;

k) actions that regard the relationship with Parliament – decisions returned by a public authority, in the discharging of its responsibilities, as stipulated by the Constitution or an organic law, in political dealings with Parliament;

l) military command decision – an administrative decision regarding the strictly military aspects of activities in the armed forces and specific for the organization of the armed forces, which give commanders the right to give orders to subordinates with regard to the commandment of troops during times of peace or times of war, or with regard to the military service obligations;

m) public service – an activity organized or authorized by a public authority for the purpose of satisfying a legitimate public interest;

n) excess of power – the abusive exercise, by public administration bodies, of their latitude in violation of their jurisdictional limitations as under the law or in violation of citizens' fundamental rights and liberties;

o) aggrieved right – any fundamental right recognized by the Constitution of Romania or by law, which has been harmed through an administrative decision;

p) private legitimate interest – the possibility to require a certain conduct, in view of securing a subjective future and predictable right;

r) public legitimate interest – an interest related to the rule of law and the constitutional democracy, the guaranteeing of the citizens' fundamental rights, liberties and duties, the satisfaction of the requirements of a community, the establishing of the jurisdiction of public authorities;

r) stakeholders – non-governmental structures, trade unions, associations, foundations, and other similar entities, whose scope is to protect the rights of various categories of citizens, or, as the case may be, to ensure the adequate operation of the public administrative bodies;

ş) impending loss – a future but predictable loss or, as the case may be, the grave and predictable disturbance of the operation of a public authority or a public service;

t) well-grounded cases – circumstances related to the state of facts and law which are of a nature that will create serious doubt about the lawfulness of the administrative decision;

ţ) enforcement court – the court that tried the litigation case on its merits.

Paragraph (1) of Art. 2 was amended through item 3 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) The unjustified refusal to solve a petition regarding a legitimate right or interest or, as the case may be, the failure to respond to a petition within the legal timeframe shall be deemed similar to unilateral administrative decisions.

Art. 3 – Regulatory Authority

(1) The Prefect may directly challenge, before the Administrative Litigations Court, any decision of the local public administration bodies that the Prefect deems unlawful; such action shall be formulated within the timeframes referred to in Art. 11, para. (1), which starts counting from the moment the decision is communicated to the Prefect and within the conditions established herein this Law. Action filed by the Prefect shall be exempt from the stamp fee.

Paragraph (1) of Art. 3 was amended through item 4 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) The National Civil Servants Agency may contend, before the Administrative Litigations Court, any decision of the central or local public administration bodies that breach the legislation governing public offices, subject to the provisions hereof and of Law 188/1999, regarding the status of civil servants, as republished.

(3) Pending the resolution of the case, a decision challenged under paragraphs (1) and (2) shall be suspended as of right.

Art. 4 – Exception of Unlawfulness

(1) The lawfulness of a unilateral administrative decision that has a specific character may be looked at in court, by way of exception, ex officio or at the request of the interested party, irrespective of the date said decision was issued. In such cases, if the court finds that the resolution of the merits of the dispute depends on the challenged administrative decision, shall refer the case, by substantiated judgment, to the jurisdictional Administrative Litigations Court and shall suspend its proceedings in the case. A ruling of the Administrative Litigations Court to accept the referral is not subject to any appeal, and a ruling to deny the referral can only be appealed jointly with an appeal on the merits. The proceedings in the main action

shall not be suspended in the hypothesis where the court that was seised with the exception of unlawfulness is the same administrative litigations court that has jurisdiction to try the main action.

Paragraph (1) of Art. 4 was amended through item 5 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) The Administrative Litigations Court shall return a decision, by the emergency procedure, in a public hearing, calling before it the parties in dispute and the issuing authority. In case the exception of unlawfulness is raised about a unilateral administrative decision issued before the date of enactment of this Law, causes for unlawfulness shall be examined by having reference to applicable legal stipulations at the time the challenged administrative decision was issued.

Paragraph (2) of Art. 4 was amended through item 5 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(3) The decision of the Administrative Litigations Court may be appealed on law within 5 days of its being notified to the parties, and shall be adjudicated in emergency procedure and with precedence.

Paragraph (3) of Art. 4 was amended through item 5 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 5 – Undisputable Administrative Decisions; Litigation Limits

- (1) The following decisions may not be challenged in administrative litigation:
 - a) administrative decisions of public authorities, regarding their relations with Parliament;
 - b) command decisions of the military character.
- (2) Litigation procedures may not be instituted against administrative decisions for the amendment or rescinding of which the law provides a different legal procedure.
- (3) Administrative decisions issued for the declaration of the state of war, state of siege or state of emergency, or decisions regarding national defense and security, or those issued for the reinstatement of public order, or for the removal of consequences of natural calamities, epidemics or epizootics may be challenged only for excess of power.
- (4) Litigation cases under paragraph (3) do not qualify for the application of Arts. 14 and 21.

Art. 6 – Administrative Regulatory Decisions

- (1) Special administrative procedures are optional and free of charge.
- (2) Administrative decisions that are susceptible, under organic law, to make the object of a special administrative jurisdiction can be challenged in Administrative Litigations Court, in observance with the stipulations of Art. 7, para. (1), if the party chooses to waive the administrative-jurisdictional procedure.

Paragraph (2) of Art. 6 was amended through item 6 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(3) The administrative-jurisdictional decision which carries, under special organic law, an avenue of appeal before a different special administrative jurisdiction, can be challenged

directly before the Administrative Litigations Court within 15 days of notice if the party chooses to waive the administrative-jurisdictional procedure.

Paragraph (3) of Art. 6 was amended through item 6 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(4) If the party that has chosen the special administrative procedure or an avenue of appeal before a different administrative-jurisdictional body elects to waive the procedure during the trial of the case, such party shall notify its option to the administrative body to which it referred its case. The party shall file with the Administrative Litigations Court within 15 days of notice. In such situation the preliminary administrative procedure provided for at Art. 7 shall no longer apply.

Paragraph (4) of Art. 6 was amended through item 6 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

CHAPTER II

Resolution of Petitions for Litigation

Art. 7 – Preliminary Procedure

(1) Before approaching the jurisdictional Administrative Litigations Court, the person considering him/herself aggrieved with respect to a right or legitimate interest, by a specific administrative decision, shall request the issuing public authority, or the higher authority along the chain of command, within thirty (30) days of notice of such decision, to rescind all or part of such decision.

Paragraph (1) of Art. 7 was amended through item 7 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(1¹) In the case of a regulatory administrative decision, the preliminary complaint can be filed at any time.

Paragraph ((1¹)) of Art. 7 was inserted through item 8 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) The provisions of paragraph (1) above shall also apply to cases for which the law provides for an administrative-jurisdictional procedure but the party has not elected such procedure.

(3) Also entitled to file a preliminary complaint is any person aggrieved with respect to a right or legitimate interest by an specific administrative decision regarding a third party, as of the date the party took cognizance thereof by any means, within the six (6) months term referred to in paragraph (7).

(4) A preliminary complaint filed according to paragraph (1) above shall be settled within the term set forth in Art. 2 (1) (g).

(5) Litigation procedures initiated by the Prefect, the Ombudsman, the Public Ministry, the National Civil Servants Agency or litigation cases related to claims by persons aggrieved by orders or parts thereof, as well as litigation cases referred to in Art. 2 (2) and Art. 4 are not bound by law to pass through the preliminary procedure.

Paragraph (5) of Art. 7 was amended through item 9 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(6) A preliminary complaint against decisions related to administrative contracts shall be deemed equivalent to the procedure of mediation of commercial disputes, therefore the relevant provisions of the code of Civil Procedure shall apply accordingly. In such case the complaint should be filed within the 6 months specified at para. 7, which shall begin counting:

- a) as of the date the contract is concluded, in the case of disputes over its signing;
- b) as of the date the contract is amended or, as the case may be, as of the date of denial of the request for amendments made by one of the parties, in the case of disputes over the amending of the contract;
- c) as of the date contractual obligations were breached, in the case of disputes over the execution of the contract;
- d) as of the date the contract ceases to be valid or, as the case may be, the date of emergence of any other cause of termination, in the case of disputes over the termination of the contract;

e) as of the date one of the contractual stipulations is found to be subject to interpretation, in the case of disputes over the interpretation of the contract.

Paragraph (6) of Art. 7 was amended through item 9 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(7) In the case of unilateral administrative decisions, the preliminary complaint may be filed, if duly grounded, even after expiry of the deadline stipulated in paragraph (1), but no later than six (6) months of the date of issuance of the challenged decision. The six (6) months term is the negative prescription deadline.

*) NOTE BY C.T.C.E. S.A. Piatra-Neamț:

The Decision of the Constitutional Court 797 of 27 September 2007, published in the OFFICIAL JOURNAL 707 of 19 October 2007 sustained the exception of unconstitutionality of the provisions in Art. 7, para. (7) of Law 554 on Administrative Litigations. The Court found the text was unconstitutional because the 6-month deadline as of the date of issuance of the administrative decision applies to a preliminary complaint filed by the aggrieved person who suffered harm in one of their rights or in a legitimate interest, through a specific administrative decision addressed to a subject of law other than the addressee of the decision.

Rectification 797 of 27 September 2007, published in the OFFICIAL JOURNAL 751 of 6 November 2007, removes – at item 2 of its stipulations – the phrase “other than the addressee of the decision.” Consequently, the text of the Law (Art. 7, para. 7) is unconstitutional because the 6-month deadline as of the date of issuance of the administrative decision applies to a preliminary complaint filed by the aggrieved person who suffered harm in one of their rights or in a legitimate interest, through a specific administrative decision addressed to a subject of law other than the addressee of the decision.

Under Art. 147 of the Romanian Constitution as republished in the OFFICIAL JOURNAL 767 of 31 October 2003, the stipulations in applicable laws and orders, as well as those in various regulations, that are found to be unconstitutional shall cease to carry legal obligations within 45 days of the publication of the Constitutional Court’s ruling if, within that time-frame, Parliament or the Government, as the case may be, fail to amend the unconstitutional stipulations so as to bring them in agreement with the Constitution. For the duration of this time-frame the stipulations found to be unconstitutional shall be lawfully suspended.

Under those circumstances, the stipulations of Art. 7, para. 7 concerning the 6-month deadline as of the date of issuance of the administrative decision that applies to a preliminary complaint filed by the aggrieved person who suffered harm in one of their rights or in a legitimate interest, through a specific administrative decision addressed to a subject of law other than the addressee of the decision, were lawfully suspended in the period between 19 October 2007 and 03 December 2007, and ceased to carry legal obligations on the date of 04 December 2007 because the lawmaker failed take steps to correct the challenged text.

Art. 8 – The Object of the Action at Law

(1) A person aggrieved with respect to a right or a legitimate interest acknowledged by law, by a unilateral administrative decision, who is dissatisfied with the response received to his/her preliminary complaint, or who has received no response within the legal timeframe referred to in Art. 2, h), may take legal action before the jurisdictional Administrative Litigations Court, requesting the rescinding of all or part of the administrative decision in contention, reparations for the loss sustained and retributory damages. Such legal action

before an Administrative Litigations Court may be also taken by the party that feels aggrieved with respect to a legitimate right through the failure of the administration to provide resolution of his/her case within the legal deadline or through the unjustified refusal to have his/her petition resolved, as well as through the refusal to perform a certain administrative operation needed for the exercise or protection of a right or legitimate interest.

Paragraph (1) of Art. 8 was amended through item 10 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(1¹) Individuals and private legal entities can file motions claiming the defense of a public legitimate interest only as subsidiary to the main defense, insofar as the harm brought to the legitimate public interest logically devolves from the violation of the subjective right or the private legitimate interest.

Paragraph (1¹) of Art. 8 was inserted through item 11 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(1²) By exception from the stipulations in para. (1), action grounded on the violation of a legitimate public interest can only address the rescinding of the act or the compelling of the defendant authority to issue an act or another document, or perform another administrative operation, under penalty of delay fees or a fine, as under Art. 24, para. (2).

Paragraph (1²) of Art. 8 was inserted through item 11 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) An Administrative Litigations Court has jurisdiction for the resolution of disputes arising in the preliminary phases to the signing of an administrative contract, as well as any other disputes related to the signing, amending, interpretation and execution of such contract, as well as its termination.

Paragraph (2) of Art. 8 was amended through item 12 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(3) The settlement of disputes under paragraph (2) shall take into consideration the rule under which the principle of contractual freedom is subordinated to the principle of precedence of the public interest.

Paragraph (3) of Art. 8 was amended through item 12 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 9 – Actions at Law Against Government Orders

(1) A person whose right or legitimate interest has been harmed by a Government Order or parts thereof may take legal action before the Administrative Litigations Court, raising the exception of unconstitutionality, insofar as the main object of the action is not a finding on the unconstitutionality of the Order or a stipulation in the Order.

Paragraph (1) of Art. 9 was amended through the Single Article in LAW 100 of 09 May 2008, published in the OFFICIAL JOURNAL 375 of 16 May 2008.

(2) If the Administrative Litigations Court finds that the exception so raised meets the requirements of Art. 29 (1, 3) of Law 47/1992, regarding the organization and operation of the Constitutional Court, as republished, the Administrative Litigations Court, through substantiated judgment, shall refer the case to the Constitutional Court and suspend the adjudication on the merits of the case.

(3) After the Constitutional Court has returned its opinion, the Administrative Litigations Court shall reschedule the case on its docket and set a hearing date, with summons to the parties. If the challenged Order or part thereof was found unconstitutional, the Administrative Litigations Court shall try the case on the merits; in the contrary case the Court shall dismiss the case as inadmissible.

Paragraph (3) of Art. 9 was amended through item 13 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(4) When the decision of unconstitutionality is the effect of an exception raised in a different case, the action can be filed directly with the jurisdictional Administrative Litigations Court, within a maximum negative prescription deadline of one year, which starts counting as of the date the Constitutional Court's ruling is published in the Official Journal of Romania, Part I.

Paragraph (4) of Art. 9 was amended through item 13 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(5) The action stipulated in this Article can be a claim for compensation for damage caused through Government Orders, cancellation of administrative acts issued on the basis of such Orders and, as the case may be, compelling a given public authority to issue an administrative act or to perform a specific administrative operation.

Paragraph (5) of Art. 9 was inserted through item 14 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

*) NOTE BY C.T.C.E. S.A. Piatra-Neamț:

The Decision of the Constitutional Court 660 of 04 July 2007, published in the OFFICIAL JOURNAL 525 of 02 August 2007, sustained the exception of unconstitutionality of the provisions in Art. 9 of Law 554 on Administrative Litigations. The Court found the text was unconstitutional insofar as said provisions allow that the action filed with the Administrative Litigations Court mainly focus on the finding of unconstitutionality of an Order or a part thereof.

The Decision of the Constitutional Court 660 of 04 July 2007, published in the OFFICIAL JOURNAL 525 of 02 August 2007, in the formulation it has before Law 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Under Art. 147 of the Romanian Constitution as republished in the OFFICIAL JOURNAL 767 of 31 October 2003, the stipulations in applicable laws and orders, as well as those in various regulations, that are found to be unconstitutional shall cease to carry legal obligations within 45 days of the publication of the Constitutional Court's ruling if, within that time-frame, Parliament or the Government, as the case may be, fail to amend the unconstitutional stipulations so as to bring them in agreement with the Constitution. For the duration of this time-frame the stipulations found to be unconstitutional shall be lawfully suspended.

Under those circumstances, the stipulations of Art. 9 in its wording as it stood before the last amendments, were lawfully suspended in the period between 02 August 2007 and 16 September 2007, insofar as they could allow for action filed with the Administrative Litigations Court to mainly focus on a finding of unconstitutionality of an Order or part thereof, and ceased to carry legal obligations on the date of 17 September 2007 because the lawmaker failed take steps to correct the challenged text.

Art. 10 – The Jurisdictional Court

(1) Disputes regarding administrative decisions issued by the local and county public authorities, as well as disputes arising from tax, charges, dues, customs duty and such other accessory revenues to the budget in the worth of up to five 500,000 RON shall be settled, on the merits, by the administrative and tax courts, while disputes arising from administrative decisions issued by the central public authorities, as well as disputes arising from tax, charges, dues, customs duty and such other accessory revenues to the budget in excess of 500,000 RON shall be settled, on the merits, by the administrative and tax sections of the Courts of Appeals, unless otherwise provided by special law.

Paragraph (1) of Art. 10 was amended through item 18 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) The appeal on law against the judgments returned by the administrative and tax courts shall be tried by the administrative and tax sections of the Courts of Appeals, while the appeal on law against the sentences returned by the administrative and tax sections of the Courts of Appeals shall be tried by the administrative and tax section of the High Court of Review and Justice, unless otherwise provided by special organic law.

Paragraph (2) of Art. 10 was amended through item 15 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(3) The plaintiff may file his complaint with the court at his place of domicile or with the court at the defendant's place of domicile. If the plaintiff elects to file the complaint with the court at the defendant's place of domicile, he may not raise the exception of territorial non-jurisdiction.

Art. 11 – Legal Action Filing Terms

(1) Petitions requesting the rescinding of an individual administrative decision, of an administrative act or the recognition of the right claimed and the reparation of the loss sustained may be filed within 6 months of:

- a) the date of notice of the reply to the preliminary complaint;
- b) the date of notice of the unjustified refusal to settle the petition;
- c) the date of expiry of the legal timeframe for the resolution of the preliminary complaint, or the date when the legal deadline for settling the petition runs out;
- d) the date of expiry of the deadline stipulated in Art. 2, para. (1), h), calculated as of the date of notice of the administrative act issued for a favorable settlement of the petition or, as the case may be, of the preliminary complaint;
- e) the date of the minutes concluding the mediation procedure, in the case of administrative contracts.

Paragraph (1) of Art. 11 was amended through item 16 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) For well grounded reasons, if the decision under contention is a unilateral specific act, the petition may also be filed after expiry of the timeframe under paragraph (1), but no later than one (1) year from the date of notice of the challenged decision, the date of reception of said decision, the date of filing the petition or the date of signing of the mediation report, as the case may be.

Paragraph (2) of Art. 11 was amended through item 16 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2¹) In case of a suspension, under the special law, of the procedure to settle the preliminary complaint, the deadline stipulated at para. (1) starts counting after the resumption of the procedure, or as of the moment it is completed or as of the date of expiry of the legal deadline for settlement, as the case may be, if the deadline stipulated at Para. (2) has run out.

Paragraph (2¹) of Art. 11 was inserted through item 17 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(3) When the legal action is taken by the Prefect, the Ombudsman, the Public Ministry or the National Civil Servants Agency, the term starts counting from the date cognizance was taken of the existence of such unlawful decision, in which case the provisions of paragraph (2) shall apply accordingly.

(4) Orders or parts thereof deemed unconstitutional, as well as administrative documents of a regulatory nature that are deemed unlawful may be challenged any time.

(5) The deadline referred to in paragraph (1) sets the statute of limitations, while the deadline referred to in paragraph (2) forfeits the right.

Art. 12 – Petition-related Documents

The plaintiff must file legal action with the following documents in appendix: copy of the administrative decision challenged or the response by which the public authority notified the plaintiff of its refusal to solve his petition, as the case may be. If the plaintiff has received no response to his petition, he shall attach only the copy of his petition, bearing the date and number of registration with the public authority, and any other document testifying to compliance with the preliminary procedure, if such steps were mandatory. In the situation where the plaintiff files action against an authority that refuses to enforce the administrative act that was issued after a favorable settlement of petition or preliminary complaint, he/she shall also append a certified copy of that act.

Article 12 was amended through item 18 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 13 – Summons to the Parties; Communication of Information

(1) Upon receipt of the plaintiff's application, the court shall have the parties summoned. The court may also request the defendant public authority to provide the document in contention in the shortest possible time, alongside the entire sets of documents based on which the

document in contention was issued, as well as any other documentary material the court may deem useful for the resolution of the case.

Paragraph (1) of Art. 13 was amended through item 19 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) When the plaintiff is a third party for the purposes of Art. 1 (2), or when the legal action is taken by the Ombudsman or the Public Ministry, the court shall request the issuing public authority to communicate to it, in the shortest possible time, the document in contention, alongside with the entire sets of documents based on which the document in contention was issued, as well as any other documentary material the court may deem useful for the resolution of the case.

(3) The provisions of paragraphs (1) and (2) shall apply accordingly to legal actions taken against a public authority's refusal to resolve a petition related to a right acknowledge by law or to a legitimate interest.

Paragraph (3) of Art. 13 was amended through item 19 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(4) Should the public authority fail to forward to the court, within the term set by the court, the documents requested by the court, the head of such public authority shall be obligated, by court ruling, to pay a legal fine to the state budget, equivalent to 10% (ten per cent) of the gross minimal salary provided by law, for each day overdue for no reasonable cause.

Art. 14 – Stay of Execution

(1) For well grounded reasons and for the purpose of avoiding impending loss, the aggrieved person may, on the date of notifying the superior authority to the issuing public authority, subject to Art. 7, request the jurisdictional court to rule the stay of execution of the challenged unilateral administrative decision, pending a decision on the merits of the case is reached by the Court. In case the aggrieved person fails to file action for rescinding within 60 days the suspension shall end lawfully and without any formality.

(2) The court shall decide on the request for stay of execution, by an emergency procedure and with precedence, with summons to the parties.

(3) When a major national interest is at stake in the case, which may seriously affect the normal operation of a public administrative service, the request for stay of execution of the challenged regulatory administrative decision may also be filed by the Public Ministry, *ex officio* or upon notice, in which case the provisions of paragraph (2) shall apply accordingly.

(4) The ruling given in favor of the stay of execution shall be enforceable by virtue of law. It may be appealed on law within five (5) days of issuance. The appeal on law does not suspend the enforcement.

(5) In the hypothesis where a new administrative act is issued with the same contents as the one that was suspended by the Court, it shall be suspended by virtue of law. A preliminary complaint is not necessary in such case.

(6) Several successive motions for suspension cannot be filed on the same grounds.

(7) Enforced suspension of the administrative act results in the cessation of any form of enforcement until expiry of the duration of suspension.

Article 14 was amended through item 20 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 15 – Request for Stay by Way of Principal Action at Law

(1) A stay of execution of the challenged unilateral administrative decision may be requested by plaintiff on the grounds stipulated at Art. 14, as part of his petition to the Court for the rescinding of all or parts of the administrative decision in contention. In this case, the court may rule suspension of the challenged administrative decision, pending the final and binding resolution of the case. The request for stay of execution may be made in the petition to sue in the main action or through separate petition, pending the resolution of the merits of the case.

Paragraph (1) of Art. 15 was amended through item 21 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) The provisions of Art. 14, paragraphs (2) – (7), shall apply accordingly.

Paragraph (2) of Art. 15 was amended through item 21 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(3) The ruling given in response to the request for stay of execution is enforceable by virtue of law, and the appeal on law initiated according to Art. 14 (4) does not suspend execution.

(4) In the situation where the action on the merits is admitted, the stay ordered in the conditions of Art. 14 shall be lawfully extended until the final binding ruling in the case, even if the plaintiff did not move for the stay of the administrative act on the basis of para. (1).

Paragraph (4) of Art. 15 was inserted through item 22 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 16 – Actions Brought Against a Civil Servant

(1) Legal actions taken hereunder may also be brought against the individual who contributed to the drafting, issuing or signing the challenged administrative act or, as the case may be, who is responsible for the refusal to examine the petition related to a subjective right or a legitimate interest, if reparations are demanded for the loss sustained or for delay. If such action is admitted by court, the individual against whom charges are pressed as above may be obligated to pay reparations, jointly with the public authority concerned.

Paragraph (1) of Art. 16 was amended through item 23 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) An individual such as above may turn and sue their direct supervisor from whom the written order to draft or to not draft such act originated.

Art. 16¹ – Bringing other subjects of law into the case

The Administrative Litigations Court may bring the stakeholders into the case, on request, or can bring into discussion, ex officio, the need to bring those and other subjects of law into the case.

Paragraph (16¹) was inserted through item 24 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 17 – Examination of Petitions

- (1) Petitions filed with the court shall be tried in the emergency procedure, with precedence, in public hearings, as a rule, by a panel of judges provided by law.
- (2) Petitions filed hereunder shall be charged the tax stamp provided by Law 146/1997, regarding stamp taxes, as subsequently amended and supplemented, for claims that have no money equivalent, except for claims against administrative contracts, where the charge shall be *ad valorem*.
- (3) The rulings shall be written and substantiated within 30 days of pronouncement.

Paragraph (3) of Art. 17 was amended through item 25 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 18 – Solutions Available to the Court

- (1) The court examining a petition falling under the provisions of Art. 8 (1) may void all or part of the administrative act, or obligate the public authority to issue a new administrative act, issue a new document or perform a certain administrative operation.

Paragraph (1) of Art. 18 was amended through item 26 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

- (2) In addition to the cases falling under Art. 1 (6), the court also has jurisdiction to rule on the lawfulness of the administrative operations based on which the challenged act was issued.

Paragraph (2) of Art. 18 was amended through item 26 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

- (3) When the plaintiff's petition is favorably resolved upon, the court shall also decide on the reparations and retributory damages due to the plaintiff, if the plaintiff has so requested.
- (4) When the object of the litigation is an administrative contract, the court, depending on the facts of the case, may:
 - a) rule rescinding of all or part of such document;
 - b) obligate the public authority to enter into the contract to which the plaintiff is entitled;
 - c) compel one of the parties to fulfill a certain obligation;
 - d) express consent on behalf of one of the parties, when public interest so requires;
 - e) rule payment of reparations and retributory damages.
- (5) The solutions available as per paragraph (1) and paragraph (4) (b, c) may be applied under pain of penalties for each day overdue.

Paragraph (5) of Art. 18 was amended through item 26 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

- (6) In all situations the court can set, in its ruling, on request from the interested party, a deadline for execution as well as a fine as per Art. 24 (2).

Paragraph (6) of Art. 18 was amended through item 27 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 19 – The Statute of Limitations for Reparations

(1) If the aggrieved person files request for the rescinding of the administrative decision in contention, without demanding reparations, the time bar for claiming reparations shall run from the date when the plaintiff became aware or should have become aware of the extent of the loss or damage.

(2) The petitions shall be filed with the jurisdictional Administrative Litigations Courts, within the term of one (1) year provided by Art. 11 (2).

(2¹) The stipulations of paragraphs (1) and (2) are also applicable, as appropriate, to administrative contracts.

Paragraph (2¹) of Art. 19 was inserted through item 28 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(3) The petitions referred to in paragraph (2) shall be governed by the provisions hereof with respect to the adjudication procedure and the stamp taxes.

Art. 20 – The Appeal on law

(1) The ruling returned by the court of first instance may be challenged by appeal on law within fifteen (15) days of the date the ruling was communicated.

Paragraph (1) of Art. 20 was inserted through item 29 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(2) The appeal on law stays the execution [of the administrative decision in contention] and shall be adjudicated by emergency procedure.

(3) If the appeal on law is admitted, the appellate court that reviews or quashes the original sentence shall re-try the case on the merits, unless there are reasons for such court to quash and remand the case. When the ruling of the court of first instance was returned without a finding on the merits, the case may be remanded to that court only once.

Paragraph (3) of Art. 20 was inserted through item 29 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 21 – Extra-ordinary Appeals

(1) The avenues of appeals stipulated in the Civil Procedure Code can be exercised against final and binding rulings returned by the Administrative Litigations Courts.

(2) Additionally to the grounds for review stipulated in the Civil Procedure Code, another ground for review is the pronouncing of final, binding rulings in breach of the principle of precedence of the EU law, as regulated in Art. 148 (2), corroborated with Art. 20 (2) in the Romanian Constitution, as republished. The motion for review shall be filed within 15 days of communication, this being returned by exception from the rule set in Art. 17 (3), on the thoroughly substantiated request of the interested party, within 15 days of pronouncement. The motion for review shall be tried in emergency procedure and with precedence, within a maximum of 60 days of filing.

Art. 21 was amended through item 30 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

CHAPTER III

Enforcement Procedure

Art. 22 – Writs of Execution

Final and binding court rulings by which the legal actions taken hereunder are denied shall be deemed enforceable and can be executed under ordinary law.

Art. 22 was amended through item 31 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 23 – Public Notice Obligation

The final and binding court orders ruling the rescinding all or part of an administrative act of a regulatory nature are compulsory in a general manner and produce effects only for the future. Such orders shall be published in the OFFICIAL JOURNAL of Romania, Part I, or in the official journals of the counties or of the City of Bucharest, such public notices being exempt from publication charges.

Art. 23 was amended through item 32 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 24 – The Obligation to Do

If the plaintiff's petition has been admitted and the public authority is compelled to enter into, replace or amend the challenged administrative act, or issue a new certificate, or perform other administrative operations, the final and binding court order shall be executed within the term set thereunder, or, failing such term, within thirty (30) days of the date on which the order was pronounced binding.

(2) Failure to abide by such term shall be liable for a fine for the head of the public authority or for the individual so fined, in an amount equal to 20% of the gross minimal salary at national level for each day overdue, and shall generate indemnities for delay, due to the plaintiff.

(3) Failure to execute the final and binding orders ruled by an Administrative Litigations Court within 30 days after penalties as per paragraph (2) above are instituted constitutes a criminal violation and is punishable by imprisonment of no less than 6 months and no more than 3 years or by fines in the range of RON 2,500 to RON 10,000.

Art. 24 was amended through item 33 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 25 – Enforcement Court

(1) The punishments and reparations due under Art. 24 (2) shall apply and be granted by the enforcement court, at the plaintiff's request. The decision shall be made in chambers, by the emergency procedure, with the summoning of the parties.

(2) A request as per paragraph (1) above shall be stamp tax exempt.

(3) The order issued by the enforcement court may be challenged by appeal on law within five 5 of communication.

Paragraph (3) of Art. 25 was inserted through item 34 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

(4) The provisions of paragraphs (1) to (3) shall also apply, accordingly, to the enforcement of orders issued by Administrative Litigations Courts for the settlement of the disputes having for an object administrative contracts.

Art. 26 – Third Party Liability

The manager of the public authority may file against the individuals responsible for the failure to execute the order, according to civil law. If the individuals liable for the failure to execute are dignitaries or civil servants, the special regulations shall be applicable.

Art. 26 was amended through item 35 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

CHAPTER IV

Transitory and Final Provisions

Art. 27 – Trial of Cases on the Docket at the Date Hereof

Cases currently on the dockets of courts at the effective date of this Law shall continue to be tried according to the legislation in force at the date they were initiated.

Art. 28 – Complementary Provisions of the Civil Law

(1) The provisions hereof shall be complemented with the provisions of the Civil Procedure Code to the extent that they are not incompatible with the specific nature of the authority relationships between public authorities, on the one hand, and the persons aggrieved in their legitimate rights or interest, on the other. The compatibility of certain provisions of the Civil Procedure Code with the cases tried hereunder shall be decided by the court when trying a case.

(2) The Administrative Litigations Court may not suspend trial of the case when a prosecution has started for a criminal violation related the challenged administrative act if the plaintiff – aggrieved party – insists that the trial continue.

(3) Action filed by public-law persons and by any public authority in defense of a public interest, as well as those filed against regulatory administrative acts, cannot be withdrawn, with the exception of the situation where they are filed also in order to defend the rights or legitimate interests available to private individuals or private legal entities.

Art. 28 was amended through item 36 of Art. I in LAW 262 of 19 July 2007, published in the OFFICIAL JOURNAL 510 of 30 July 2007.

Art. 29 – Terminological Correlation

Art. 29. – Any time a special law enacted prior to this Law makes reference to the Litigation Law 29/1990, or, in broad terms, to an Administrative Litigations Court, such reference shall be deemed to have been made to the provisions hereof.

Transitory Provisions

Art. 30. – Pending the establishment of the administrative and tax courts, disputes with public authorities shall be resolved by the administrative litigation sections of the courts of law.

Effective Date

Art. 31. - (1) This Law shall come into force thirty (30) days from its publication in *the* Official Journal of Romania, Part I.

(2) As of the same date, Law 29/1990 of Administrative Litigations, published in Official Journal of Romania, Part I, No. 122 of 8 November 1990, as subsequently amended, and any other provisions contrary hereto shall be repealed.

This Law was passed by the Parliament of Romania in observance of the provisions of Arts. 75 and 76 (1), of the Constitution of Romania, republished.

VALER DORNEANU

SPEAKER OF THE CHAMBER OF DEPUTIES

DORU IOAN TARACILA

For: THE PRESIDENT OF THE SENATE

Bucharest, 2 December 2004.

No. 554.