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Administrative Justice, Completely Withdrawn in the Republic of Moldova*

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Abstract

The administrative justice in the Republic of Moldova was established by Law no. 793/2000, of administrative contentious. However, the implementation of this important instrument which assures the legality in public administration met numerous obstacles, coming from all Governments which have held the power until now, regardless of their political color. The current Government, under the generous slogan about codification of Administrative Law, abolished the Law referred to above, therefore, definitively removed the words "administrative contentious" from the title of the legislation currently in force. This was done by adopting, on 19th of July 2018, of the Administrative Code of the Republic of Moldova, no. 116/2018, which shall enter into force on 1st of April 2019,[1] the date on which, according to the art. 257 (2): „is hereby abolished the Law no.793/2000 of Administrative Contentious and the Law no. 190/1994 regarding the petition". This provision suggests a single conclusion, the evident intention of the Legislature - to suppress the Administrative Justice. Coding is an effective method of systematization and simplification of the legislation, which is today very bushy, crowded and inconsequent. Coding the Administrative Law in a single Code, would suppose systematization, with abolishing later, a very large number of laws, governing: organization and functioning of the authorities of central and local public administration; administrative acts - the procedure for the preparation, adoption, execution and control of them; public function and the status of civil servants; Administrative Contentious, etc.

Keywords: *legal, administrative justice, the administrative code, the systematization, legislative inflation.*

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[1]http://parlament.md/SesiuniParlamentare/%C5%9Eedin%C5%A3eplenare/tabid/128/SittingId/3208/language/fr-FR/Default.aspx, viewed on October 1, 2018

Introduction

The administrative justice in the Republic of Moldova was established by the Law of administrative contentious no. 793/2000, in order to ensure the right of the person injured by a public authority provided in art. 53, par. (1) of the Constitution[2]. The said law enshrined, with the utmost clarity, the mechanism of achieving this fundamental right of citizens. However, a good legal practice and, an applicability to this legal institution, has not been carried out in our country during the 18 years since the adoption of the framework law.

On this topic, we have repeatedly expressed our opinion in several publications[3], mentioning the incorrect perception by the courts of the Republic of Moldova of administrative justice and the removal, consciously, from its essence and purpose: - to ensure legality in the administration and to protect any person injured by the abuse of public authorities. The result, however, was the opposite, so instead of ensuring enforcement of the Administrative Litigation Law, the legislator decided to repeal this law by adopting the Administrative Code of the Republic of Moldova, No. 116/2018, which will enter into force from 1 April 2019.[4] At the same time, in order to preserve the illusion of improving the normative framework in this area, the Code contains a special section, the Third Book, devoted to the *administrative litigation procedure*, and in the First Book, entitled *General Provisions*, establishes a series of definitions and principles relating to the activity of administrative litigation courts.

In order to see whether the abrogation of Law no. 793/2000, we will analyze the concept of the new model of administrative litigation, as set out in the Administrative Code (CA), and we will face the legislation that is still in force, with that which will apply after April 1, 2019 to see if there will be administrative justice or not in the Republic of Moldova.

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[2] "*The person injured in a right by a public authority, by an administrative act or through the failure to solve within a legal time a request, is entitled to obtain recognition of the claimed right, annulment of the act and reparation of the damage*", art. 53 par. (1), the Constitution of the Republic of Moldova, from 29.07.1994, Published: 12.08.1994, Official Gazette Nr. 1, Date of entry into force: 27.08.1994, www.lex.justice.md/document_rom.php?id=44B9F30E:7AC1773, viewed 20.10.2018

[3] To see, Maria ORLOV, *Administrative contentious course*, Tip. „Elena VI" SRL, Chisinau, 2009,- 158 p., ISBN 978-9975-106-32-0;, Maria ORLOV, *La codification du contentieux administratif*, Current Legal Journal, year XVI. Nr.1 (52), 2013, University Press « Petru Maior », Tirgu-Mures, 2013, p. 87-92, ISSN 1224-9173

[4]According to art. 257 par. (2), at the date of entry into force of the Administrative Code: "*is repealed the Law on administrative contentious no. 793/2000 and Law no. 190/1994 regarding the petition* ", the Administrative Code of the Republic of Moldova no. 116, of 19.07.2018, Published in Official Gazette of RM no. 309-320, from 17.08.2018, no. 466, https://www.monitorul.md/monitor/v-2061-v/http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3687/language/fr-FR/Default.aspx

Chapter I. How does our legislator define the administrative litigation

As mentioned above, the Administrative Litigation Law, no. 793/2000, was adopted in order to implement art. 53 paragraph (1) of the Constitution. And the legislator at that time was quite consistent, so he fully transposed this constitutional norm in article 1, entitled *the purpose of administrative litigation*, and in art. 2, par. 1, has defined the meaning of the term of litigation of administrative litigation. [5]

While, in the Administrative Code (AC), which will replace this law, they are not in any way (direct or indirect) some references to the provisions of art. 53, par. (1) of the Constitution. Instead, the terms of *administrative litigation, administrative activity, procedure of carrying out the administrative activity, judicial control over administrative activity* are used very arbitrarily and absolutely erroneously.

For example, if, in art. 1 AC is established that: "***The administrative law*** *... ensures the regulation of administrative relations in carrying out the administrative activity and the* ***judicial control*** *over it*", then, in art. 3 AC: "***The administrative law*** *is intended* ***to regulate the procedure*** *for the performance of administrative work and* ***judicial control*** *over it ...*". Although, for the most part, the text of these two norms is repeated (doubled), however, in the non-repeatable part, the legislator contradicts, causing confusion over the subject matter. That is, it is not clear what governs *the administrative legislation*? ***The administrative relations in carrying out*** *the administrative work and judicial control, or the procedure of carrying out the administrative activity ...?*

Another aberrant (confused) provision we also found in art. 2 of the AC, which states: "***The provisions of this Code determine*** *the legal status of participants in administrative relations ...* ***the attributions*** *of the administrative public authorities and of the* ***competent courts for the examination of administrative litigation*** *...*". Firstly, the administrative relations are too many and diverse that in this Code the *legal status of all the participants* can be established, such as: natural and legal persons, public authorities and their officials. Secondly, ***the tasks*** *of the administrative public authorities* are laid down in several framework laws on the

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[5] art.1, - *„The administrative litigation as a legal institution has the purpose of counteracting abuses and excesses of power of public authorities ... Any person who considers himself or herself to be harmed by a law recognized by law, by a public authority, by an administrative act or by failure to resolve the application within the legal time, may appeal to the competent administrative court in order to obtain the annulment of the act, the recognition of the claimed right and the repair of the damage caused. "*, art. 2, paragraph 1, - "*administrative litigation - a dispute pending by the competent administrative court of law, arising either from an administrative act or from the failure to resolve legally a request for recognition of a right recognized by law, in which at least one of the parties is a public authority or an official of that authority* ", the Law of administrative contentious, no. 793 of 10.02.2000, Published: 18.05.2000 in the Official Gazette No. 57-58, art. No: 375 Date of entry into force: 18.08.2000, http://lex.justice.md/md/311729/

establishment and functioning of these authorities. In its turn, the term of *administrative litigation* is used only once in AC, in the text set out above, and is subsequently replaced by that of - *action in administrative litigation*. Moreover, when drawing up these rules, it was disregarded that the *administrative litigation*, as is apparent from the provisions of art. 53, paragraph (1) of the Constitution, arises between *the public authority and the person injured in his right by that.* And, in order to definitively distort the essence of the administrative litigation, our legislator omitted, in the AC text, also the term of *a person injured in his right*, replacing with the *injured right*. Thus: "***The injured right** is **any right or freedom** established by law which **is affected by administrative activity***" (art. 17 AC).

In our opinion, *the injured right* is an abstract notion, while "*the person injured in his right by a public authority*" within the meaning of art. 53, paragraph (1) of the Constitution, is the passive (concrete) subject of administrative litigation, including, it is also a subject with the right to refer the court (plaintiff), that is to say, a party to the trial. Such replacement or omission of essential terms is detrimental to the institution of administrative justice. Because, in the absence of a person injured by a public authority, there is no administrative litigation.

Equally confusing are the provisions of art. 20 AC, which defines *the action in administrative litigation.* Thus, "*If **through an administrative activity is violated a legitimate right** or a freedom established by law, **this right may be claimed by an administrative litigation,** about which decide **the competent courts for the examination of the administrative litigation procedure,** according to this code*". This rule, absolutely dubious and legally aggravated, raises several questions. For example, if "*through an administrative activity is violated a legitimate right,*" then, we ask ourselves the question - **whose administrative work? whose legitimate right?** ; if, "*this right can be claimed through an administrative litigation,*" then, **by whom? who starts the action in administrative dispute?** ; if the courts are "*competent for the examination of the administrative litigation procedure,*" then which courts are competent to examine "**administrative dispute** "? However, the administrative litigation procedure and the administrative dispute are not the same!

From the above, we can conclude that, in the Administrative Code, the legislator ignores the provisions of art. 53, par. (1) of the Constitution, because he does not regulate the notion, essence and parts of administrative dispute. At the same time, it repeals the Law no. 793/2000 in which all these regulations exist and correspond to the respective constitutional provisions.

Another important element of administrative justice is the subject of the litigation, which is also the subject of the action in administrative litigation. As is apparent from the rule analyzed above, *a legitimate right* may be infringed by *administrative activity.* Consequently, the subject of the action in administrative litigation is the *administrative activity*. In art. 5 AC, *the administrative activity* is

defined as: "*all administrative acts ... of administrative contracts, of real acts ... of administrative operations carried out by public authorities under a regime of public authority,* ***through which the law is organized and directly is applicable the law".***

From the content of this rule, it is easy to see that even this time, the legislator has distanced himself considerably from constitutional provisions. Thus, if, art. 53 paragraph (1) of the Constitution clearly establishes the subject matter of the litigation, including the action in administrative litigation, these being also enshrined in art. 3 of the Law no.793 / 2000, [6] then, art. 5 AC establishes a much broader object, which, in addition to administrative acts, also includes "*administrative contracts, real acts and administrative operations*". Instead, it does not include *the refusal to settle an application*, although it is express, provided for by the constitutional rule mentioned above. We can not overlook the legal agramatism of this norm, which, in fact, persists throughout the text of AC, namely that by administrative activity (administrative acts ...) **is applied the law**. An assertion that contravenes the theory of administrative law, in which it is unanimously recognized that **public administration** has the function (role) of organizing execution and of **executing laws**, with the exception of judicial administrative acts. **The judicial power** is that **enforcing the law** in the pursuit of justice.

The string of comments and questions could continue if we were to look at each norm in part of this Code. We have summarized only a few of the rules of the first two chapters on general provisions and basic notions, which are essential to understanding whether, by abolishing the framework law on administrative litigation, the legislator offered us a new, improved version of this legal institution. Regrettably, we were not able to detach from this section of AC the most essential elements of a law: what legal relationships regulate and what is the purpose of the Administrative Code? The legislator regulates, in art. 3 AC, only "*the purpose of administrative law*", but not the purpose of the Administrative Code. Moreover, in art. 1, par. (2), it is established that the administrative legislation consists of: "*this code, other laws and other normative acts subordinated to the law*". It is clear from these provisions that art. 3 AC establishes the purpose of the entire administrative legislation, although each of the laws (normative acts) has its own purpose and strictly determined legal relations which it regulates.

Therefore, we can conclude that our legislator hastened to abrogate the Law of Administrative Litigation, no. 793/2000, in order to destroy this legal institution and to subordinate the public administration to the political power. As a consequence, the realization of the right of the injured person by a public

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[6] Art. 3, Administrative Litigation Law, no.793/2000 : *„The object of action in administrative litigation are* ***administrative, normative and individual acts****, by which is injured a right recognized by law of a person ... issued by the public authorities ... and failure to resolve a request within the legal timeframe regarding a right recognized by law*" http://lex.justice.md/md/311729/

authority to be reinstated and compensated in a fair trial of administrative justice will be restricted, in the spirit of the provisions of art. 53, par. (1) of the Constitution of the Republic of Moldova.

Chapter II. Principles enshrined in the Administrative Code

Apart from the 20 "definitions" on which we selectively abstained, the AC also contains 23 principles, of which: common principles for public authorities and courts, principles specific to the administrative procedure and principles specific to the administrative litigation procedure. We will only continue to abide by some of the common principles and the administrative proceedings procedure enshrined in the Administrative Code to see to what extent they will ensure the existence and functionality of administrative justice in the Republic of Moldova.

A) Common principles

Obviously, the first of the common principles stated in AC is the legality: "***The public authorities and the competent courts*** *must act in accordance with the law and other normative acts*" (art. 21). This general definition of legality, which consists of the obligation to observe the law, refers not only to ***public authorities and courts*** but to the entire society, to all natural and legal persons in the state. It does not, therefore, characterize, in any way, the lawfulness of the administration (in the administrative activity of public authorities) and nor legality in law. The phrase "***Public authorities and courts***" in the text of this rule is devoid of legal logic. Because through ***the competent courts*** are considered the courts for administrative litigation, and they are meant to verify (control, judge) the lawfulness of the administrative acts issued by the public authorities, that is, the courts are in the report of the public control authority by the administrative authorities that are subject to this control. In addition, the principle of legality for each of these two types of public authorities has a distinct meaning. Thus, the principle of legality in public administration is not expressly provided for in the legislation in force. However, it is deduced from the special legislation regulating the organization, functioning and administrative attributions of the public authorities and consists in the abusive observance of the law and other normative acts in the process of issuing the administrative acts and the provision of public services, in their competence. While the lawfulness in the work of the courts is already enshrined in the framework laws on the organization of the judiciary and the status of the judge. [7] The repetition of the principle of legality in the third

[7] "*The justice is carried out in strict accordance with the law*", art. 5, par. (1) of the Law on judicial organization, no. 514 from 06.07.1995, Published: 19.10.1995 in the Official Gazette Nr. 58, art. No.: 641, http://lex.justice.md ; "*The judge is the person invested in the constitution with duties of performing justice, which he executes under the law*", art. 1, par. (2), and, "*Judges are bound to be impartial; to ensure the protection of the rights and freedoms of persons ... to comply fully with the requirements of the law in the*

instance in the AC, and its conjugation to the principle of legality in public administration, has no legal value, and even more, no impact on improving the state of legality in the governance process in our country.

The article 22 AC enshrines a new and questionable principle, at least for administrative justice - *ex officio inquiry*. Thus, "*The public authorities and the competent courts of law* ***investigate the state of affairs ex officio*** *... The facts already known ..., the notorious facts ... do not need to be proven, until the contrary evidence ...*". If for the public authorities the ex officio investigation of the state of affairs of their own activity is reasonable, in the light of internal administrative control or hierarchical control, that principle is absurd *for the competent courts* in administrative disputes. Although *the competent courts* (as set out in AC) have the role of control over the administrative activity of public authorities, they only verify the legality of the activity in question, only by being informed about alleged illegality (harm of a legitimate right), and, not at all, on its own initiative.

The ex officio investigation, [8] by the *courts* of the state of *affairs*[9] from the administrative work of public authorities reminds us of the function of "*general supervision*" on public administration, carried out by the Prosecutor's Office during the Soviet period. Therefore, our legislator either does not realize the meaning of the terms used in the text of this legal norm, with the power of principle, or deliberately compromises administrative justice by including invented principles in the AC, or, taken in a distorted way from law courses or from civil or criminal justice.

Another common principle of *public authorities and courts* is that of *good faith*, formulated in art. 24 AC, as follows: "***The participants*** *in the administrative procedure and the administrative litigation procedure* ***must exercise their rights*** *... the obligations* ***in good faith,*** *...* ***The participant exercising his procedural rights*** *in an* ***abusive*** *manner and* ***failing to fulfill his procedural obligations with good faith responds according to the law*** *for material and moral damages caused*". From the text of this rule we observe that, this time, the legislator, either by mistake or intentionally, has re-enforced the obligation of good faith (under the sanction) to all participants in the *administrative litigation procedure*, including the injured party. In our opinion, the above provisions cause a manifest intimidation of the

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implementation of justice and to ensure the interpretation and uniform application of the legislation ... ", art. 15, par. (1) of the Law on the Status of Judges, no. 544 of 20.07.1995, republished the Official Gazette, 1998, no. 26-27, art. 170, www.lex.justice.md

[8] *ex officio* - "(which is) *in accordance with a provision given by an authority (and not at the request of one), fig. Automatically* ", - in the *Romanian Language Explanatory Dictionary* (DEX), 2nd Edition, Encyclopedic Universe, Bucharest, 1998, p. 714; Office (ex officio) - *Acceptance of a procedural act to be performed not at the request of the parties or other persons, but at the initiative of the criminal prosecution body or the court,* - Vitalie RUSU, Stela GAVAJUC, s.a., in the *Criminal Procedure Law Dictionary*, Ch.: Pontos, 2012 (Tipogr. "Advertising"), p. 163.

[9] *fact* - "*Happiness or real circumstance, thing actually done*", DEX, page 367

injured person by a public authority, to challenge the abuses of the administration, for fear of being accused, of itself, *of bad faith* and sanctioned (injured once more), according to of this rule. Moreover, this principle, in the form in which it is provided in AC, contravenes the Constitution, which, in art. 53, par. (1) obliges the courts to restore rights and to compensate any person injured by a public authority unconditionally.

The principle of *good faith*, indeed, is very important for the good work of the public administration, in the interest of all citizens. Because it requires public authorities to act professionally, honestly, to be consistent in their decisions and declarations, to honor the trust of the people, and to have the courage to recognize their own errors and imperfections. [10] This principle is rather a manifestation of the moral responsibility of public administration. For these reasons, it is difficult to enforce it in legal (mandatory) rules, and to ascertain the presence or absence of good faith of the natural or legal person, as well as to impose certain sanctions in such cases. Moreover, by being bound in good faith all "***Participants*** *in the administrative procedure and the administrative litigation procedure ...*", the legislator tries to exempt public authorities even from moral accountability to society, for poor governance and damaging fundamental rights of citizens. At the same time, it passes on this responsibility, and it is burdening the citizen simply with new forms of responsibility (for bad faith) in his dealings with the government. It intimidates people injured by a public authority, causing them uncertainty as to their right and the possibility of challenging administrative abuse.

As common principle is the *language of proceedings*. Thus: ***"The language of proceedings*** *before the public authorities and the competent courts* ***is that stipulated by the legislation"*** (art. 26 AC). As we can see, the legislator did not answer the question in the title of the article, which is the language of the proceedings?

The disputes, concerning the official language of our state, began immediately after the adoption of the Constitution (1994), which, in art. 13, establishes as the state language of the Republic of Moldova - *the Moldavian language*. The numerous findings and appeals made by the Academy of Sciences, linguists, civil society, and the opposition in the Parliament have not convinced our legislator to rectify this error, promoted by the Soviet regime, of naming the Romanian language spoken throughout the country as Moldavian language. Moreover, the current legislator, who adopted the Administrative Code, in four years of office, did not wish to execute the Constitutional Court's decision, [11]

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[10] See in this respect, Maria ORLOV, Stefan BELECCIU, *Administrative law*, Ch.: „Elena – V.I.", 2005, page 21, ISBN 9975-935-88-5

[11] The Constitutional Court Decision no. 36 of 05.12.2013 on the interpretation of art. 13 par. (1) of the Constitution in connection with the Preamble to the Constitution and Declaration of

which obliges Parliament to rectify art. 13 of the Constitution and to replace in this constitutional norm the phrase "*Moldavian language*" with that of "*Romanian language*". Instead, the legislator continues to amplify the errors and ambiguities, pretending that he does not know what the language of the case is, and lets us look for ourselves "***the one prescribed by law***".

The text of this rule, in art. 26 AC, demonstrates once again that our legislator is compiling new laws (norms of law) without taking into account the provisions already existing in the legislation in force. As an example, we can serve the provisions of art. 118 of the Constitution and art. 9 of the Law on Judicial Organization,[12] which enshrines both the language of procedure and the right to interpret the activity of the courts. And administrative courts are part of the judiciary. Therefore, there is the principle mentioned, regulated in other laws, although in an equally erroneous formulation, but which corresponds to the constitutional provisions in force.

Not less improper is the following common principle, regarding the application of the reasonable term. Thus: "*If* ***this Code*** *or other special laws* ***do not impose a certain deadline,*** *the public authorities and* ***the competent courts must act within a reasonable time***" (art. 27 AC). This notion of "*reasonable time*" is used in the judicial procedure in the reasoning that the courts apply the law to resolve the various legal situations in which there are two or more parties. The length of a judicial process is determined (influenced) by the party's (will) behavior when the law does not set certain procedural deadlines. Often, the parties are trying to delay the examination of the case by invoking legal grounds, such as: not attending a court hearing due to illness, being abroad; In these cases, it is very difficult for the court to judge whether the reasons are true, or it is a deliberate delay in the procedure. Therefore, in order to comply with the general principles of justice, and taking into account the circumstances of each case, the court uses this instrument as a "*reasonable procedural term*". In addition, there is a special

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Independence of the Republic of Moldova, Published: 27.12.2013 in the Official Gazette No. 304-310 art No. 51 Date of entry into force: 05.12.2013, www.lex.justice.md/md/350850

[12] Art. 118: *„ The judicial procedure is conducted in Moldavian language. Persons who do not have or do not speak the Moldavian language have the right to get acquainted with all documents and papers, to speak in court by interpreter. Under the terms of the law, the judicial procedure may also be carried out in an acceptable language for the majority of the persons participating in the trial ",* the Constitution of the Republic of Moldova; Art. 9: "*The judicial procedure is conducted in Moldavian language. Persons who do not have or do not speak the Moldavian language have the right to get acquainted with all documents and papers, to speak in court by interpreter. In the cases and in the manner provided by the law, the judicial procedure may also be carried out in another language, under the terms of the Law on the Functioning of Languages spoken on the territory of the Republic of Moldova. If the judicial procedure is carried out in another language, the judicial procedural documents are compulsorily drawn up in the Moldavian language* ", the Law on the judicial organization, no. 514 from 06.07.1995, Published: 19.10.1995 in the Official Gazette Nr. 58, art. No: 641, http://lex.justice.md

law,[13] which aims to: "*create in the Republic of Moldova an effective internal remedy to defend the right to a reasonable trial of the case and the right to execute the judgment within a reasonable time.*"

The administrative activity of the public authorities, however, is radically different from the activity of the courts. Administrative law regulates the powers of public authorities and the procedure for organizing the execution and enforcement of the law, including the provision of public services. These attributions are strictly determined, and the promptness of their execution depends on the standard of living of the population and the appreciation (note) given by the society of the respective government. Therefore, *the reasonable term* in the administrative procedure of public authorities is irrelevant, and sometimes it may even be harmful to good governance. Because the public authorities themselves can speculate on the notion of a *reasonable term* to delay, or to avoid the execution of the law and the programs (projects) assumed.

B) Principles specific to the administrative litigation procedure

In addition to the many common principles outlined above, the AC sets out some principles, which, in the opinion of the legislator, are specific to the administrative litigation procedure.

Thus, in art. 36 AC, is consecrated to the principle of *the rule of law*: - "***The competent court*** *to settle the administrative litigation* ***is bound to respect the principle of the rule of law,*** *according to which* ***the dignity of man, his rights and freedoms are considered supreme values and are guaranteed by the state...*** ". This rule gives an explanation, as scientific novelty, of the principle of the rule of law. In fact, the rule of law is a general principle of democracy and the rule of law enshrined in the Constitution,[14] which is usually addressed to all natural and legal persons in the state, as well as to all public authorities, not only to administrative courts.

As we can see, in art. 36 CA, an important provision of the Constitution was taken, only that, from another norm (art.1), other than that which directly refers to the administrative litigation (53) and which constitutes the main constitutional foundation of this legal institution. Thus, through passages, taken randomly from the fundamental law, the legislator tries to convince us that Law no. 793/2000

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[13] The Law no. 87 of 21.04.2011 on reparation by the State of the damage caused by the violation of the right to a reasonable time trial of the case or the right to execution within the time limit of the court decision, Published: 01.07.2011 in the Official Gazette No. 107-109 art. No: 282,, http://lex.justice.md

[14] Art. 1, par. (3): "*The Republic of Moldova is a democratic state in which the dignity of man, his rights and freedoms, the free development of human personality, justice and political pluralism are supreme values and are guaranteed*", the Constitution of the Republic of Moldova, 29.07. 1994, Published: 12.08.1994, Official Gazette No. 1, Date of entry into force: 27.08.1994, www.lex.justice.md, viewed 20.10.2018

will be replaced by a modernized version (unique in the World) of judicial control over the administrative activity of public authorities.

Another principle that the legislator strikes us is *the independence of the judges*, which states: "*When carrying out the judicial control over the administrative activity, the competent courts and competent judges are independent and are subject only to the law ...*" (art. 37 AC). We are again in the presence of repetitions and duplications of legislation because this principle is already enshrined in detail in both the Constitution and the framework law on the status of judges.[15]

In our opinion, the codification of law aims to simplify legislation through systematization, which excludes repeats and legislative blanks. Contrary to this hypothesis, in the Administrative Code we observe multiple duplications, even triple, of the notions and principles already existing in the legislation in force. With such improvisations of the legislator, the law of our country is more agglomerated, which hinders the realization of the democratic principles of good governance.

As examples can be, the following principles, taken from existing legislation or improvised by the legislator, such as: **Legal hearing and the right to a fair trial -** "*Before each court decision on the merits, to the participants in the trial are offered the opportunity to expose their point of view.* ***Hearing can be done verbally or in writing*** *... Everyone has the right to a fair trial, within a reasonable time ... with a quick ...* "(art. 38 AC); **Free access to justice -** "*Judicial control of administrative activity is guaranteed and can not be restricted. Any person claiming an injured right by a public authority ... may apply to the competent court*" (art. 39 AC);[16] **Right to defense -** "*The right to defense is guaranteed. Participants in the process are given the opportunity to participate in all stages of the process.* ***The court may order the appearance in person of the participants in the process****, even when they are represented.*"(art.40 AC);[17]

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[15] *„The judges of the courts are independent, impartial and unchangeable, according to the law* ", Art. 116, par. (1), the Constitution of the Republic of Moldova; "*The judges of the courts are independent, impartial and unchangeable and are subject only to the law. Judges make decisions in an independent and impartial manner and act without any restrictions, influences, pressures, threats or interventions, direct or indirect, from any authority, including the judiciary. The hierarchical organization of jurisdictions can not prejudice the individual independence of the judge* ", art. 1, par. (3) and (4), "*The independence of the judge shall be ensured by: a) the procedure for the performance of justice; b) the procedure for appointing, suspending, resigning and dismissing from office; c) declaring it inviolable; d) the secrecy of the deliberations and the prohibition to request disclosure; e) establishing responsibility for lack of respect for the judges, judges and for interference in the case ...* ", art. 17 of the Law on the status of judges, no. 544 of 20.07.1995, republished, Official Gazette, 1998, no. 26-27, art. 170, www.lex.justice.md

[16] The free access to justiceis enshrined in art. 20 of the Constitution of the Republic of Moldova: "*Everyone has the right to effective satisfaction from the competent courts of law against acts that violate his / her legitimate rights, liberties and interests. No law can hinder access to justice".*

[17] **Right to defense** - Art. 26 of the Constitution of the Republic of Moldova: *„The right of defense is guaranteed. Everyone has the right to react independently, by legitimate means, to the violation of his rights and freedoms. Throughout the trial, parties have the right to be assisted by a lawyer elected or*

Orality - "*The judicial debates in the cases of administrative litigation are verbal, **unless the law stipulates otherwise***" (art.41 AC); **Misdemeanor** - "*The evidence is administered directly by the competent court that resolves the litigation, unless the law provides otherwise*" (art.42 AC).

As we can see, these rules do not lay down clear rules, or principles (as guiding ideas) for the accomplishment of administrative justice. The necessity of these rules is also compromised by the syntagm, used very often throughout the text of the Administrative Code, ***unless the law provides otherwise***. What is the logic of adopting legal rules (rules of conduct) if the execution of which is, at the outset, questionable or conditional upon the existence of other rules that **otherwise regulate** the same legal report? It is also unclear what makes the "***personal appearance** of the participants in the trial*" where they are represented. Moreover, what link can be between *the right to defense,* announced in the title of art. 40 CA, and imposing *the personal appearance of the participants* in the trial, even when they are represented? In addition, this provision is contrary to the framework law on judicial organization, which gives parties the right to be represented throughout the judicial process,[18] without specifying certain situations when representation does not work because the participant must be present in person.

Conclusions

From the above mentioned, the administrative justice, in the spirit of art. 53, par. (1) of the Constitution of the Republic of Moldova and, in the unanimous sense recognized by all democratic states, will disappear from the legislation of our country, starting with April 1, 2019, with the entry into force of the Administrative Code, which repeals the Law of administrative contentious, no. 793/2000.

The replacement, in this Code, of the framework law (the substantive law) with chaotic rules, presumed *to be procedural*, but having nothing in common with the administrative litigation procedure, and the regulation of such a procedure, in the absence of substantive rules, denotes the obvious intention of our legislator to suppress *administrative justice*.

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appointed ex officio. The mixture in the activity of the persons who exercise the defense within the prescribed limits is punishable by law."

[18] **Legal assistance in the performance of justice**: "*Throughout the trial, the parties have the right to be represented or, where appropriate, assisted by an elected defense counsel or by a lawyer who grants state-guaranteed legal assistance. International legal assistance is requested or granted under the conditions provided by the law and the international conventions to which the Republic of Moldova is a party*"- art. 11 of the Law on Judicial Organization, no. 514 from 06.07.1995, Published: 19.10.1995 in the Official Gazette No. 58, art. No: 641, http://lex.justice.md

It is difficult at this time, to expose ourselves to the social impact of the new legislation on administrative litigation, but it will certainly be antidemocratic, antisocial and will seriously affect citizens' rights and freedoms, in particular the right to defend itself against the abuse of public authorities.

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