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SOME CONSIDERATIONS REGARDING THE APPLICATION FOR DAMAGES FORMED UNDER ART. 19 OF LAW NO. 554/2004

Liana-Teodora PASCARIU[1]

Abstract

Considering the specific nature of the claims in the matter of the administrative litigation, an action aimed at damages can only be considered as an accessory request for an action regarding the legality of an administrative act, whether it is typical or assimilated, in this respect the provisions of art. 8 paragraph (1) in conjunction with art. 18 paragraphs (1) and (3) of Law no. 554/2004, as the High Court rules in a case having as its object a negative conflict of jurisdiction [1].

The present article analyzes the hypothesis of the refusal of the local public authority to issue a document necessary to complete the file for obtaining the subsidies from APIA, in the light of obtaining compensation from the public authority that refused to issue the act. The interest here is the need to formulate the main action, the possibility of claiming damages separately, the competent court, the analysis of the application formulation term, the analysis of the cumulative conditions required for admitting the action.

Keywords:

Administrative litigation; claim for damages; term; conditions.

JEL Classification: K15, K23

I. INTRODUCTION. MATTER DEDUCED FROM THE JUDGEMENT

In the present case, the claimed damages represent the different types of subsidies that the applicant, a user in various forms of agricultural land, would have received from the Agency for Payment and Intervention for Agriculture, if the defendant had issued the certificate attesting the land

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surface used by the territorial administrative unit, based on data from the Agricultural Register of 2014.

In order to submit the single annual payment request to the Agency for Payment and Intervention for Agriculture - County Center, according to the Order of the Ministry of Agriculture and Rural Development no. 619/6 from April 2015, as amended by Order no. 1468 / 09.06.2015 [2], the defendant was asked several times to issue the certificate with the used agricultural land surface registered in the agricultural register 2014, respectively according to art. 5 paragraph 2 lit. b section (iii) and letter d from the above order.

In motivating the applications the applicant prevailed over the provisions of art.5 paragraph 2 letter b of the Order, according to which the documents that prove the agricultural land available to the farmer are:

(i) for the land at the disposal of the farmer in his property, copies are presented according to the original of the title of property or other documents that prove the right of property.

(ii) for the land available to the farmer in forms other than the farmer's property, the applicant presents the centralizing table comprising the contracts provided by the Civil Code, such as: lease agreement, concession contract, rental contracts, and the like.

(iii) for the land used by the farmer at his disposal in forms other than those provided for in points (i) and (ii), the applicant presents only the certificate provided in letter a) or d) issued by the town hall in whose jurisdiction the land in question is located, this category of land being registered in Chapter III, row 08 "in other forms" of the agricultural register 2015 - 2019 and this is the document on which it is shown that the land is at the farmer's disposal.

Not all owners of agricultural land - natural persons hold property titles issued according to the laws of the land fund, nor certificates of heirs according to their authors, so that from 2015 no lease agreements or other contracts can be concluded according to the new civil code, the proof of the use of the land being made only on the basis of the registration in the agricultural register for 2014.

The mayor's office of the administrative-territorial unit unjustifiably refused after 2014 to issue the certificate requested according to art. 5 paragraph 2 letter b point (iii) letter d) from this order, on the grounds that the applicant does not have lease agreements for the entire land area he used.

The procedure provided by Order no. 619/2015 effectively implies the online completion of the surface declaration, the farmer then submitting to APIA a set of documents provided in art. 5 of the Order, in the absence

of which the subsidies cannot be granted. Each year the surface declaration was completed and all the conditions for obtaining the subsidies were fulfilled, the only document missing being the surface certificate.

In the certificate form, the agricultural area used is shown under the heading "in other forms", given the incidence of the provisions of Article 5 paragraph 2) of the Order MADR no.6191 / 06.04.2015, according to which:

Starting with the year of application 2015 *the documents that prove the legal use of the land and which are presented to APIA, in accordance with the provisions of art. 8 paragraph(1) letter n) of the ordinance, are those regarding:*

a) the farm in which the agricultural activity is carried out: the certificate is completed according to the framework model provided in annex no. 1 and is accompanied by a copy according to the original of the sheets in which *the data of chapter 11b, chapter 111 and chapter XV of the Agricultural Register 2015-2019 or* ***of the agricultural register in electronic format, certified according to the original by the issuer,*** *and*

b) the land at the disposal of the farmer:

(i) for the land at the disposal of the farmer in his property, copies are presented according to the original of the title of property or of other documents proving the right of property on the land. If the farmer as a natural person does not hold the title of property, ***he can present in his place the certificate issued by the town hall in whose jurisdiction the land in question is located****, in accordance with the data entered in the agricultural register, provided in letter a), and a declaration on the farmer's own responsibility, stating the reason for the lack of title of the property. The declaration on its own responsibility is given in front of the secretary of the administrative-territorial unit or* ***in front of the public notary****.*

(ii) for the land available to the farmer in forms other than ***the farmer's property, it presents the centralizing table, comprising the contracts provided by Law no. 287/2009****regarding the republished Civil Code, as subsequently amended, hereinafter referred to as the new Civil Code, such as: the lease agreement, the concession contract,* ***the joint venture agreement, the lease agreement, the loan agreement, as well as the concession contract / lease*** *concluded with the State Property Agency, as the case may be;*

(iii) for the land used by the farmer at his disposal in the forms ***provided in points (i) and (ii), it presents only the certificate provided in letter. a) or d)*** *issued by the town hall in whose jurisdiction the land in question is located, this category of land being registered at the head, III. row 08 "in other forms" of the Agricultural Register 2015 - 2019, and this is the document on which it is shown that the land is at the farmer's disposal;*

c) definite identification of the agricultural plots used: all applicants submit the centralizing table provided in annex no. 1 ^ 1, drawn up and signed by the farmer and endorsed by the town hall on which the land is located. For the situation provided in letter b) point (III) the centralizing table is completed with the corresponding data from the certificate;

d) by derogation from the letter a) for the year of application 2015, the farm in which the agricultural activity is carried out: the certificate issued by the town hall on which the land in question is located, ***using the data on the used agricultural land, registered in the Agricultural Register 2014, according*** *to the framework model provided in annex no. , 1, in case the agricultural register is not available 2015 - 2019. "*

Considering that in the agricultural register for the period 2010-2014 of the defendant TAU, the applicant appears with a certain area of land, registered under the heading "in other forms", and at the level of the respective City or Town Hall the agricultural register for the period 2015-2019 was not opened either in scripted format, nor in electronic format, it had to apply the provisions of art. 5 paragraph (2) letter d) from the aforementioned order, and to issue to the applicant the required certificate, according to the entries in the agricultural register 2010-2014, the mention of the certificate being those corresponding to the provisions of art.5 paragraph 2) letter b) letter III) of the same normative act.

II. MAIN CLAIM AND DAMAGES CLAIM ANALYSIS. CONDITIONS

Given this normative context and in the absence of the elaboration of the agricultural register for the period 2015-2019, the defendant had the obligation to issue this certificate every year, without being left at his discretion the possibility of carrying out checks regarding compliance with the legal provisions for 2015, 2016 and the following until 2019, with the consequence of changing the legal basis under which the registration of the way of use by the farmer of the land area entered in the agricultural register 2010 ~ 2014 operated.

In practice, the main issues that could be discussed would be the following: which would be the head of claim; if a claim regarding the obligation to issue the document is compulsory; in what time frame such action must be formulated; how the cumulative conditions required by law for awarding compensation are demonstrated.

Regarding the material and territorial competence of solving the action with the object described above, we consider that there would be no special problems, the provisions of art. 10 paragraph (1) and (3) of Law no.

554/2004, as amended by Law no. 212/2018 [3], according to which *the litigations regarding the administrative acts issued or concluded by the local and county public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories up to 3,000,000 lei are settled in fund by the administrative-fiscal tribunals, and those regarding the administrative acts issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories more than 3,000,000 lei are settled in fund by the administrative and fiscal litigation sections of the courts of appeal, unless it is otherwise provided by special organic law. The claimant, a natural or legal person under private law, is addressed exclusively to the court from his domicile or office. The applicant's public authority, public institution or assimilated to them is addressed exclusively to the court at the defendant's domicile or office.*

Regarding the main claim of the application, we believe that an obligation to do (to issue the certificate) would be devoid of interest. The defendant explicitly expressed, on several occasions, with excessive power, the will not to resolve the applicant's request, although he had this legal obligation according to the one mentioned above, within the meaning of the provisions of art.1 paragraph 1 referred to in art.2 paragraph 1 letter i) of Law 554/2004.A favorable decision in the sense of being obliged to issue the document would be devoid of interest, because the period of filing the missing document before the APIA would be far exceeded. Rather, the applicant could rely on the provisions of art.1 in conjunction with art. 8 of Law no. 554/2004: *any person who considers himself injured in his right or in a legitimate interest, by a public authority, by an administrative act or by not resolving within the legal term of an application, can address the court of appeal administrative powers, for…. the recognition of the claimed right or the legitimate interest and the reparation of the damage caused to it; the person injured in a right recognized by law or in a legitimate interest…. dissatisfied with the response received to the previous complaint or who did not receive any response within the time limit set in art. 2 paragraph (1) letter h), it can refer the competent administrative litigation court, in order to request ……., the reparation of the caused damage and, possibly, reparations for moral damages. It can also be addressed to the administrative litigation court and the one considered to be injured in its right or legitimate interest by not resolving in due time or by the unjustified refusal to solve a request, as well as by the refusal to carry out a certain administrative operation for the exercise or protection of the right or legitimate interest.*

In this context, the main request may take the form of the request to establish that the applicant was entitled to issue annual certificates, and the secondary request may regard the claim for damages consisting of not receiving the subsidies as a result of the injury caused by the refusal to issue the certificates.

One of the issues to be analyzed is the moment from which the limitation period for introducing the claim for damages begins to run, a subject that has been the object of several jurisprudential orientations. According to a majority orientation, the time from which the limitation period for the introduction of the claim for damages begins to run is that of the definitive decision to annul the injurious administrative act.

Moreover, in the analysis of a request to release a question of law regarding this moment [4], the High Court emphasized that some jurisprudential solutions have already been outlined, the practice being non-unitary because three different solutions have been generated from the part of the courts, which appreciated, in part, that the moment from which the limitation period begins to run for the introduction of the claim for damages is, as we have shown above, that of the definitive stay of the decision to annul the injurious administrative act or the date of communication of the injurious act. In the present case, we are not in the presence of an injurious act, but of an injurious refusal, for which we agree to a third interpretation, according to which the moment of knowing the extent of the damage constitutes a factual circumstance which is not directly related to the communication of the illegal administrative act, nor of the moment of the definitive decision to cancel it [5].

We appreciate that the extent of the damage, being the APIA subsidies, can be quantified from the moment the Agency pays the farmers advance for the single payment schemes on the surface. Annually, APIA finalizes approximately in the same period, in October, at national level, the administrative control of the applications for subsidies, submitted by farmers, processes all the documents, establishes the final eligible area for payment for all the schemes that make up the subsidy and enables and then operates the first payments. Only at this point does the farmer know the extent of the injury. *Per a contrario*, taking into account another starting point in calculating the prescription would disregard the specificity of this type of compensation.

It was also shown in the mentioned case-law that, unlike the rule established by art. 8 of Law no. 554/2004 according to which the claim for damages is formulated with the main action in the annulment of the administrative act, the regulation of art. 19 of the same law is the exception; by sending that art. 19 paragraph (2) it does so, deficiently, at art. 11 paragraph (2), it establishes a term identical in duration with the one of decay regulated by the latter text, but different as legal nature and when it begins to run against it, the term regulated by art. 19 paragraph (2) being a limitation period, not a termination, and the moment from which it begins to run is the time when the injured person knew or had to know the extent

of the damage; or, from this point of view, the knowledge of the extent of the damage constitutes a factual circumstance which is not directly related to the annulment of the administrative act or to the definitive decision of annulment, an aspect that we consider to be retained in the analyzed case.

In practice, it has been shown that the annulment of the administrative act does not automatically imply the obligation of the court to award compensation for the material and moral damages requested [6]. On the other hand, it has been consistently shown that in the matter of the administrative litigation the claim for compensation in the repair of the damage is subordinated to the annulment of the administrative act [7]. In the above case, the damages should be subordinated to the analysis of the claim on the right to issue annual certificates.

With regard to the compensations due as a result of the damage caused, as the High Court of Cassation and Justice has ruled, the admission of a compensation claim for the damage produced by issuing an illegal administrative act, formulated under art. 19 of Law 554/2004, is conditioned by the cumulative fulfillment of the following conditions:

- The existence of an illegal administrative act canceled by the court, respectively the obligation to issue an administrative act, the recognition of the right to issue the certificate, in our case;
- Causing a damage;
- Proving the causal link between the illegal administrative act and the damage suffered by the applicant.

III. CONCLUSIONS

What needs to be proven is the failure to obtain the financial support exclusively as a result of the defendant's conduct, which refused to issue the only missing document for obtaining different types of subsidies. In the absence of proving the causal link between the issuance of the act found illegal and the production of the alleged prejudice, the patrimonial liability of the defendant public authority cannot be committed, as has been pointed out in the case law [8].

The liability based on art. 19 of Law no. 554/2004 is a special hypothesis of tort liability, which presents some particularities but which are involved in the presence of the same general conditions of the criminal liability provided by the new Civil Code. The damage is recoverable only if it is the result of a violation of a subjective right or a legitimate interest of the applicant, the

wrongful and prejudicial act being in this case an inaction, the unjustified refusal to solve the request for issuing a certificate, respectively the refusal to carry out a certain administrative operation necessary for the exercise or protection of the right or legitimate interest. In order to incur liability in this case, the causal link must be direct and appreciated by the court in particular, in relation to the contribution made to the injury.

REFERENCES

[1] The High Court of Cassation and Justice, Decision no. 1008/2018 on a negative conflict of jurisdiction. Available from: http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=143309, 2018
[2] Ministry of Agriculture and Rural Development, Order no. 1468 / 09.06.2015, published in the Official Monitor no. 411/2015
[3] Romanian Parliament, Law no. 554/2004, as amended by Law no. 212/2018, published in the Official Monitor no. 658/2018
[4] The High Court of Cassation and Justice, Decision no. 61/2018 for a preliminary ruling on a question of law, http://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&emi=240&tip=17&rep=0, 2018
[5] The High Court of Cassation and Justice, Decision no. 4728/2011, https://legeaz.net/monitorul-oficial-905-2018/contencios-termen-prescriptie-despagubiri, 2011
[6] The High Court of Cassation and Justice, Decision no. 1115/2007, https://www.hamangiu.ro/upload/cuprins_extras/contencios-administrativ_extras.pdf., 2007
[7] The High Court of Cassation and Justice, Minute of the meeting of the representatives of the Superior Council of Magistracy with the presidents of the administrative and fiscal contentious sections, Suceava, http://www.inm-lex.ro/fisiere/d_758/Minuta%20intalnire%20contencios%20administrativ%20Suceava,%20octombrie%202014.pdf., 2014
[8] The High Court of Cassation and Justice, Decision no. 5036/2010, https://legeaz.net/spete-contencios-inalta-curte-iccj-2010/decizia-5036-2010, 2010