SUMMARY

on the PhD/doctorate thesis entitled:

"ADMINISTRATIVE JURISDICTIONS IN FINANCIAL MATTERS"

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The question of administrative special jurisdiction has always awoke extensive doctrinal debates in the judicial literature; in our opinion the discussions were determined by the insufficient and dense settlement of the *materiae* (subject). However, we cannot say that the administrative jurisdiction enjoys a solid analysis within the Romanian doctrine.

The lack of an extensive analysis seems to be determined by the narrow segment of disputes referred to as by the insufficient information of the individuals regarding the advantages it presents.

As we shall prove in the content of the present work, the problem that appears regarding the administrative jurisdiction refers to the need and advantages they have in accomplishing the justice, and also in the individual subjective motivation to abandon, before the court, the traditional way of dispute resolution.

The history of the administrative jurisdiction requires some explanations. After 1948, by adopting the 1965 Constitution and Law no. 1 / 1967 the judgment of the complaints of those injured in their rights by illegal administrative acts was entrusted to the common law courts.

Nevertheless, the law contained a large number of administrative acts banned from the legality control and having a lower application field.

Among the administrative provisions for the legality control was also provided a jurisdictional procedure other than the judicial procedure regulated by the Law no. 1/1967 and there were also the legal-administrative jurisdiction provisions. Therefore, the administrative acts having judicial nature, as a principle, were exempt from the control of the judicial courts and thus the definition of the administrative-jurisdictional act of that period made no reference to the fact that it would be an act having the force of res judicata.

Law no. 29/1990 on administrative contentious matters brings within the Romanian law, for the first time, an element of novelty, the appeal against administrative-jurisdictional acts, as further procedure following the administrative appeal proceedings after exhaustion of judicial appeal addressed to the administrative department of the Supreme Court of Justice.

Later, under the amendments brought to Law no. 59/1993, the decision given by the administrative authority could be appealed to the administrative contentious department of the Court of Appeal, except the administrative-jurisdictional acts of the Court of Auditors, in the panel of five accounts advisers, and also the judicial section of the Court of Auditors, which could be appealed at the administrative contentious department of the Supreme Court of Justice.

Law no. 429/2003 for the revision of the Constitution of Romania enshrines the term "administrative special jurisdiction" in Art. 21 paragraph 4, according to the mentioned article "administrative special jurisdiction is optional and free of charge."

Some doctrinal opinions have considered changes brought to the paragraph. 4 Art. 21 as unnecessary and that the content of the constitutional

text would not justify a settlement with such a judicial force encoding itself at the basic law, a pre-existing matter of fact in the objective law, or that the text would be applicable only when it comes to defending their rights, freedoms or legitimate interests, or achieving the right of access to a court and for all other situations, namely when they are not a procedure prior to court proceedings, there is no constitutional compliance, thus it is according to constitutional rules that the legislator provides administrative jurisdiction, with or without charge.

Under the auspices of 1991 Constitution judicial proceedings before the Court of Auditors had to be followed compulsory, following that the administrative-jurisdictional acts issued by this institution may be appealed in court. The amendments brought to the Constitution from 2003 opened the way to the Court of Auditors – before the review of the Constitution being the main administrative authority in Romania having jurisdictional powers in financial matters - to lose its judicial duties, and the disputes arising from the work of the Court were transferred to contentious administrative and tax courts, respectively to the administrative and fiscal divisions of the Court of Appeal and High Court of Cassation and Justice.

The Court of Auditors was considered, as a single opinion, the only judicial body with administrative-jurisdictional powers, a view which I contested, at least regarding the presence in the Romanian law of organisms with such powers, explicitly assigned by organic laws, both before and after the amendment of the Constitution.

In this regard the Constitutional Court has repeatedly held that the imposition of an administrative and judicial proceeding does not offend the principle of free access to justice provided within the Art. 21 of the Constitution how long every decision given by the administrative jurisdiction body may be addressed to a court of appeal.

Presently, the Court of Auditors has no judicial powers, but it still has a controlling role regarding the formation, administration and use methods of the state's financial resources and of those belonging to the public sector, which requires a determination of administrative bodies with jurisdictional powers and in the same time of an analysis of their current situation, following legislative changes occurring in the meantime.

Another issue that causes real difficulties, both in government and business in the jurisdiction, is still represented by the lack of an administrative code and of a code of administrative procedure as far as we already have special laws: the Tax code and the Fiscal Procedure Code, which should complement the general provisions of both the administrative code, which do not exist yet. We consider vital coding the administrative work, as one of the remedies that are necessary for the proper functioning of public administration in Romania.

Returning to the question of our work, we considered necessary a comprehensive analysis of the activity of the bodies with administrative-jurisdictional functions in Romanian law and comparative law, against the lack of general works on this theme in our doctrine. There are though articles in revues - some outdated in terms of legislative changes since the revision of Basic Law - which, however, don't cover the requirements of a thorough analysis of the administrative-jurisdictional phenomenon.

The appearance in the Romanian judicial field of a new entity with administrative and jurisdictional powers, this time in the procurement, called the National Council Claims Settlement - body, in our opinion, with administrative and judicial activity on financial matters, reveals a clear difference between it and the rest of the bodies which have, according to the law, judicial powers. The problem arises in the context of most occurrences, in the context of previous legislation revising the Constitution, fact which requires

the intervention of legislator to update their work, according to the constitutional vision of the legislature after 2003.

Another topical issue that we discussed it in further work makes reference to the concept of "stability" of the administrative-judicial act, with which we cannot agree, to the detriment of res judicata, that these acts have in a present legislative approach, through the work of the National Board of Claims Settlement. However, even now, in the presence of judicial review, to the administrative and judicial act as such a feature is not fully recognized.

Not without interest is the analysis of “quasi-contentious appeal” which I approached widely throughout this work.

Considering an extensive analysis in the field of comparative law, regarding the administrative jurisdiction in financial matters in countries such as Belgium, Austria and Italy we pointed out the need to create financial tribunals in the Romanian judicial system. We consider as necessary setting up administrative and fiscal courts in Romania as specialized courts for tax disputes, on the background of increasing disputes between tax authorities and taxpayers. This requires training for specialized judges in tax matters, following that the "tax courts" have an office of accounting expertise with the role of consulting with the magistrate in specific problems of this subject.

Performing the administrative control of the public authorities varies from state to state, the administrative jurisdiction models presented by us have specific features which distinguish them from the systems of jurisdictional control of specific administrative acts of other systems of law, but also presenting similar features. Thus, Italy along with Sweden, Germany, Belgium and France are among countries which have opted in what concerns the administrative control for a system composed of administrative and judicial authorities, with clearly defined powers toward the courts of common law.

Unlike the above states, Denmark has established a unitary system of the court jurisdiction in civil, criminal and administrative matters. The choice of the Dutch legislator is also a specific one, opting for the establishment of specialized administrative courts.

Similarly, the duty of the administrative-jurisdictional authorities, qualified in carrying out the inspection of the administrative acts and of the decisions taken by them, have also significant variations from one state to another. Thus, in some states the administrative-jurisdictional control of the administrative acts may have as result only the cancelation of the disputed act and not the obligation of the issuing authority of the illegal act to pay material damages, while in others there are both the possibility of compensation for material damage caused by adoption of an unlawful administrative act and the replacement of the contested administrative act.

In our opinion a needed analysis should approach the possible effects to the EU Treaties by the Treaty of Lisbon, the effects are found in public procurement. We evaluated the extent to which strengthening subsidiary principle and local autonomy, the increased importance given to social issues and environmental issues, and provisions included in the Protocol on services of general economic interest are likely to produce changes in the analyzed field.

The Treaty of Lisbon (hereinafter called Treaty) does not refer explicitly on public procurement, but some of its provisions may have implications in the mentioned field. We shall examine to what extent procurement is influenced by the changes brought by the Treaty in what concerns the principle of strengthening the local autonomy, providing services of general interest, including social and environmental considerations in the award of public contracts and on other issues.

As a conclusion, this work desires to be an analysis and a pleading for the administrative jurisdiction, based on the concept of Professor Ioan Alexandru in the "Treaty of public administration", published in 2008 at Universul Juridic Editions, which states: "Government actions often trigger resentment, infringe the interests and give birth to complaints. They come especially from individuals who are in contact with the public administration/government….To prevent explosions, the system of the public administration must be provided with safety valves. The institution of the administrative appeal should be allowed, jurisdictions should be established and various administrative contentious should be organized".