

**ESSEY REGARDING THE CONTENTIOUS ADMINISTRATIVE
INSTITUTION IN THE PERIOD 1864-1866**

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Abstract

The jurisdictional function, from the point of view of the litigations that are the object of the trial, is structured in two parts: common law contentious and contentious administrative. Contentious administrative consists of all those litigations that appear between individuals and the Public Administration within the activity of organizing and exercising the public services and where there are put to trial public law juridical situations.

In Romania, the contentious administrative appeared relatively late, following a historical evolution found in direct connection to the needs specific to the country. In this work it is presented the first period registered in the evolution of the Contentious Administrative institution, respectively the one of the period 1864-1866, a period characterized by the existence of an administrative court of law represented by the State Council. More exactly, there are presented: the way this Council was organised, its responsibilities based on the law, and finally, its abolition, mentioning also some of the reasons which led to it.

Keywords: contentious administrative, competencies, legislation

The Contentious Administrative institution is in close connection to the State's juridical activity. It is based, as in any developed state, on two fundamental principles: the principle of complying with the rights legally obtained and the principle of state being obliged to guarantee the execution of court's decisions. When these principles are not complied with, the Contentious Administrative institution becomes in a large measure useless and needless in state's mechanism.

From the point of view of the litigations that are the object of the trial, the jurisdictional function is split in two parts:

1. Common law contentious, which consists of the entirety of the litigations of proper judicial authorities' competency.
2. Contentious administrative, consisting of all litigations of administrative nature, of the competency of common law courts or some special, administrative courts, according to the law systems of different states.

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From the organic and formal point of view, the contentious administrative is considered as consisting of all those litigations that enter in the competency the courts or administrative justice (Ducrocq, 1897).

From the practical point of view, the contentious administrative can be defined either from the point of view of the persons between whom the litigation takes place, or from the point of view of the nature of the legal regulations applicable in the proper case and in solving the litigation.

Accordingly, from the first point of view, to contentious administrative belong all litigations appearing between citizens as individuals and the administration, as litigating parties. From the second point of view, it is considered that belong to the contentious all litigations that have as object rules and principles of administrative or public law.

Practically, the contentious administrative can be defined as being made up of all litigations appearing between the individuals and the Public Administration in the activity of public services' organization and operation and in which there are put to trial rules, principles and legal situations that belong to the public law.

In Romania, the Contentious Administrative is the effect of an historical evolution found in interdependency with the needs specific to our country. Within the juridical organization in our country, the Contentious Administrative institution appeared relatively late and namely after the Paris Convention of 7th August 1858, which, for the first time, established the principle of separation of powers within the state; more exactly, under the aegis of this convention, near the end of the rule of Cuza Vodă, it was registered a reform activity in the area of administrative justice. Then it was set up a State Council (of French influence), with responsibilities of a consultative body near the Government and of contentious administrative.

The evolution of the contentious administrative in our country may be divided in several stages. Out of these stages, will be presented subsequently, the ones which, in our opinion, are the most important, as follows:

1. The period 1864-1866, characterized by the existence of an Administrative Court represented by the State Council.
2. The period of 1866-1905, characterized by the abolition of the above-mentioned State Council and by attributing the contentious administrative to the ordinary courts, according to common law.
3. The period starting with the year 1905, up to at least 1936, characterized by maintaining the contentious administrative responsibilities in favour of ordinary courts and by issuing a more extensive contentious, granted to some certain bodies of the

judiciary power, based on special laws and constitutional provisions.

In this journey of ours through the history of the Romanian Contentious Administrative institution, we will limit ourselves to the first period, the one of the years 1864-1866, following that, in other future studies, to continue with the next periods of evolution.

Accordingly, in our study, we analysed how the State Council was organised, its responsibilities in general, as well as its responsibilities as a Contentious Administrative court, the decisions ruled in that quality and their power and, finally, the abolition of the State Council.

I. State Council's Organization

In the year 1864, on 11th of February, the State Council was set up near the Government, as a body with consultative role.

This body consisted of 9 members, a vice-president and a president. The president of the State Council was the Lord himself, who also appointed the members. At the same time, he also revoked them, based on a "journal" of the Cabinet Office.

The members' appointment was made from among the specialists (preferably) from different branches of public administration.

Along the permanent members of the State Council, other 9 auditors were appointed, which had as responsibilities the study of the cases and from whom the next future members could be selected, later on.

II. State Council's Responsibilities

State Council's Responsibilities were distributed, we can say, in three categories, some regarding the legislative domain, some the administrative domain and others related to Contentious Administrative.

In the legislative area, the State Council was preparing, or at least it was necessary to be consulted regarding all law proposals, except for the ones regarding the budget and other aspects related to the social life (art.3 from the Law of 11th February 1864 for setting up the State Council).

In the administrative area, the State Council had the quality of a consultative body regarding the regulation projects (according to art. 44-48 of the same law). Actually, even the State Council could have issued those projects. In the area, the Council had to be consulted regarding also many aspects with administrative character. This Council acted also as disciplinary court for judging the public servants, proposing penalties of that nature.

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In contentious administrative matters, the State Council had two types of responsibilities (according to art. 49-57 of the above mentioned law), namely:

1. It had competencies in solving the complaints formulated against:
 - ministry's decisions given with surplus of power and breaching the regulations and the legislation;
 - the decisions or acts of execution given by prefects and other administrative agents, given with legislation breach;
 - the decisions given by the commissions of public works.Also, the Council had also the responsibilities to examine and decide on the complaints formulated by individual citizens for protecting their interests in certain cases expressly provided by the law, in case their requests were not solved within 15 days from their submission.
2. The second type of responsibilities refers to judging all litigations trusted to it by law, according to art. 49 from the Law of its incorporation, meaning it had the quality of "assignment judge", based on the provisions of art. 27 from the Law regarding „regulating the rural property" of 15th August 1864. Through the provisions of this art. 27, it was provided that this State Council „decides in last instance on the recourse against the decisions of the county councils or permanent committees", which were bodies of applying the land reform.
3. The third category of responsibilities of the State Council in what concerns the Contentious Administrative dealt with the interpreting of some decrees, regulations or ordinances in administrative area, at the direct request of individuals, acts through which the interests of some persons could be harmed.

The value of the decisions taken by the State Council was a very important one, given also by its double competency, respectively one received through its organic law, and one conferred by certain special laws.

When the Council was judging those cases given to it by a special law, its decisions were final (having the quality of first and last instance), and when it fulfilled the responsibilities received through its organic law, its decisions had only a consultative character. Accordingly, in this second case, its decisions did not confine going through the judicial procedure in front of the ordinary courts, except for certain cases legally mentioned, or when the parties mentioned in writing their contentment regarding its decisions. At the same time, its decisions were not truly court decisions, but only agreements, the final decision belonging to the Government to which the agreement was submitted for confirmation.

Actually, the State Council was not a court in the exact meaning of the term, neither through its set up, nor through its competencies. It

actually had an intermediary role between the consultative administration and administrative courts.

In as far as its legislative responsibilities are concerned, although art. 1 from its constitutive Law provided that the State Council has no legislative responsibilities, it seems that it had more important tasks in this area. Based on art.18 of the Developing Statute of the Paris Convention of 2nd May 1864, which represented our Constitution up to the year 1866 (when, on the 1st of July, the Constitution of our state entered into force), “the decrees which will be given by the Lord, until a new meeting was convened, according to the proposal of the Cabinet Office and of the heard State Council, will have the power of law”. According to this law text, Vodă Cuza promulgated through the decrees-laws, all laws important for the Romanian State’s development, such as: the Civil Code, The Code of Civil Procedure, the law of public instruction, the communal law, the county law, and the land law. Consequently, the State Council fulfilled also real legislative responsibilities.

III. State Council’s abolition

The existence of the State Council was extremely short, operating only for two years, after which it was abolished through the Constitution of 1866. In art. 131, the Constitution provided that: „The State Council will stop its existence once the law meant to provide for the authority called to replace it is voted”. Such a law was voted later on, few days after the Constitution was promulgated, respectively on 9th July 1866. Moreso, through the Constitution of Romania of 1884, it was provided in art. 130 para. 1 that: „ It will not be allowed for the State Council to be set up with contentious administrative responsibilities”.

During that short period of operation, the State Council had not so much activity in what concerns the Contentious Administrative. During that period, there had been registered around 300 recourses on land domain and only about 20 trials in contentious administrative domain. Out of the above, only 4 had been allowed, the balance being solved by declining the competence.

It can be seen a fierceness, an opposition against the State Council, having in view the provisions of those two successive fundamental laws, which practically prohibited setting up again a jurisdictional body in administrative area, which was different from the power of the court, oppositions for which the specialists found many reasons.

One of the reasons was considered to be the antipathy which the ones who elaborated the Constitution of 1866 had towards this institution, claiming that it was too dependent on the Government, supporting its

dictatorial politics in the period 1864-1866 when, practically, this Council had replaced the Parliament for law issuance.¹

Due to the above, it was considered that it did not prove an independence and impartiality in judging the trials, like it was done by the common judicial bodies.

Another motivation consisted in the opinion at international level, in all those countries where such a State Council existed, that that body served to the dictatorial politics, that way detaining the natural functioning of the legislative (parliamentary) power. This opinion had led to the abolition of the administrative courts in those states, an example to this extent being represented by Italy where, in 1865, the contentious administrative was trusted to the power of the court.

The abolition of the State Council in our country had as effect depriving the citizens of the possibility to be able to address to a judge specialised in his/her conflicts with the administration bodies and the inexistence of a specialised and authorized body to repress the abuses and the arbitrary from the administration.

Through Law of 9th July 1866, the contentious competency of the State Council was included among the ordinary courts responsibilities, and afterwards was organized according to the ordinary rules.

Bibliography

1. Ducrocq, M. (1897) *Cours de droit administratif*, tom. II, Paris: Ernest Thorin
2. Iorgulescu, M. (1928) *The contentious of authority administrative acts*, Bucharest: Editura Cultura națională
3. Negulescu, P. (1925) *Treaty of administrative law*, vol. I, Bucharest: editura Tipografiile Române Unite
4. Teodorescu, A. (1929) *Treaty of administrative law*, IIIrd edition, vol. I, Bucharest: editura Institutul de arte grafice ed.Marvan
5. Teodorescu, A. (1935) *Treaty of administrative law*, IIIrd edition, vol. II, Bucharest: editura Institutul de arte grafice ed.Marvan

¹ Teodorescu A., *Treaty of Administrative Law*, volume II, page 231, 1935, Bucharest