

LEGAL AND TAX ALERT, 30 July 2018

The modification of the Contentious Administrative Law no. 554/2004 and of other normative acts

The Law no. 218/2018 on the amendment and supplementation of the Contentious Administrative Law no. 554/2004 and of other normative acts (the “**Amendment Law**”) was published on the 30th of July 2018 in the Official Gazette of Romania¹. The Amendment Law mainly sets forth modifications to the Contentious Administrative Law no.554/2004 (the „**Contentious Administrative Law**”) and subsequently to other normative acts, such as Law no.207/2015 on the Fiscal Procedure Code (the “**Fiscal Procedure Code**”) and Law no. 101/2016 on remedies and appeals concerning the award of public procurement contracts, sectorial contracts and of works concession contracts and service concession contracts, and for the organization and functioning of the National Council for Solving Complaints (“**Law no. 101/2016**”).

The Modification Law will enter into force within 3 days from its publication in the Official Gazette, namely on 2 August 2018.

1. The main amendments to the Contentious Administrative Law

(i) Relating to the preliminary complaint made by an aggrieved party against an individual administrative act which was addressed to another private entity or individual, the filing term shortens from 6 months to 30 days, which shall be calculated from the moment when the injured party became aware of the content of the respective act. By way of exception and only for solid reasons, the preliminary complaint could also be made after the legal deadline of 30 days, but only within a period of 6 months starting from the moment when the aggrieved person become aware of the content of the respective act.

(ii) The preliminary complaint is no longer mandatory as regards claims made against administrative acts which cannot be revoked as they have already entered the civil circuit and have produced legal effects.

(iii) When filing a claim before the administrative courts, the reasons invoked in a request for annulment of the administrative act are not limited to those invoked by the preliminary complaint.

(iv) Litigations that derive from the execution of administrative contracts will no longer fall under the jurisdiction of administrative courts, but under the jurisdiction of common law courts. Nevertheless, the administrative courts will continue to have jurisdiction for the litigations deriving from preliminary phases of the conclusion of administrative contracts, as well as the litigations arising from the conclusion of administrative contracts, including the ones involving the annulment of such contracts.

¹ Official Gazette of Romania, Part 1, no. 658/30.07.2018

(v) The threshold value which determines the competence of the tribunal / court of appeals was raised from RON 1,000,000 to RON 3,000,000.

(vi) The alternative territorial competence of the courts, which allowed the choice of either the court at the domicile of the plaintiff or that of the defendant, was abolished. The actions initiated by private individuals or entities, as well as those initiated by public authorities or institutions, will be filed exclusively before the court from the plaintiff's domicile.

(vii) The issuing public authority is obligated to hand over to the court the complete documentation on the attacked administrative act is based. Previously, such obligation only existed if imposed by the court of law.

(viii) In case of claims that cannot be settled without the participation of a third party, and the parties in the trial do not request the introduction of the respective third party in the process, the court will dismiss the claim without analyzing the merits of the case.

(ix) The appeal filtering procedure carried out by the Supreme Court will no longer apply to administrative litigations.

(x) The period for introducing a request for the revision of a final judgment will increase from 15 days to 1 month, and shall run from the day of communication of the decision.

(xi) As regards the claims for enforcement of court decisions, neither the regularization procedure nor the procedure of communicating the statement of defense / reply to the statement of defense will be applicable any longer. The statement of defense must be submitted to court at least 3 days prior to the court hearing, and the plaintiff will acknowledge the statement of defense from the case file at the court. The court decisions made under this procedure may only be contested by way of an appeal in cassation, within 5 days counted from the communication of the judgment; under the prior legal provisions, such legal decisions could only be contested by the ordinary stage of appeal.

2. The main amendment to the Fiscal Procedure Code

The threshold value which determines the jurisdiction of the fiscal authorities which solve complaints was raised from RON 1,000,000 to RON 3,000,000 RON.

3. The main amendments to Law no.101/2016

(i) Litigations that derive from the execution of the administrative contracts will no longer fall under the jurisdiction of administrative courts, but under the jurisdiction of the common law courts from the headquarters of the contracting authority. Nevertheless, the administrative courts will continue to have jurisdiction over the litigations for compensation of the damages caused within the awarding procedure, as well as the litigations concerning the nullity or the annulment of the contract.

ii) The aforementioned litigations may also be introduced before the court where the conclusion of the contract was accomplished, on the condition that the contracting authority had a working unit in the respective place.

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