



Supreme Court of Justice decides on grounds for contesting a tax administrative act

by Mihail Macovei, Avocat (Attorney at law RO)

The Romanian Law No. 554/2004 on Administrative Procedure (hereinafter referred to as the Administrative Procedure Law APL) regulates the appeal against administrative acts, decisions and resolutions issued by Romanian authorities, including the Central Tax Administration ANAF.

According to Art. 7 of the APL, in the case of a challenge, it is necessary to carry out the so-called administrative preliminary procedure; this means that the person who feels that his or her right or legitimate interest has been violated by an individual administrative act addressed to him or her must go through an opposition procedure (rum. *plângere prealabilă*) with the issuing authority or, if applicable, with the hierarchically superior authority, before recourse to the competent administrative court and within 30 days of receipt of the administrative act. If the person is not satisfied with the issued appeal decision, he/she is entitled to file a lawsuit with the competent administrative court within 6 months.

Inconsistent practice of the Romanian administrative courts to date

One of the most important questions that has been raised in the context of challenges to administrative acts is whether the grounds of the court action must be limited to the grounds raised in the opposition proceedings or whether other grounds, that were not raised in the opposition proceedings, may be raised before the Court. This issue has been treated differently by the Romanian courts so far.

More precisely, a first opinion expressed in practice was that both the opposition and the court action against the decision on opposition must contain the same grounds.

Thus, it was considered that the administrative court would not be able to conduct a true legality review of the challenged administrative acts if it allowed the applicant to change the original grounds and challenge the response to the opposition on the basis of other factual or legal arguments that were not the subject of the authority's review during the opposition proceedings.

A second opinion held that by filing an action to challenge the decision on opposition and the corresponding administrative act, new grounds of illegality can be asserted that were not asserted during the opposition proceedings. Thus, it was argued that the right to an effective remedy as well as access to justice must be ensured, and thus the aggrieved party should be able to rely both on the originally stated grounds of illegality and on new legal arguments that were not taken into account when the opposition was formulated because, for example, they arose at a later stage. The limitation to the grounds initially presented in the opposition proceedings, without offering the opportunity to submit to the Court's review of the legality the grounds subsequently presented, constitutes a violation of the right to free access to justice and to a fair trial.

Judgment of the Supreme Court of Justice (SCJ) of Romania

In this context, the Supreme Court of Justice of Romania, in a judgment that became final at the end of June 2023 and was published in the Official Gazette of Romania, ruled that the grounds of illegality invoked before the court are not limited to those invoked in the opposition. The judgment is binding for the Romanian courts as well as for the state authorities (especially the tax authorities) from the date of the above-mentioned publication in the Official Gazette; from now on the jurisdiction in this matter should be uniform.

In essence, the judges explained that the rules of the Tax Procedure Code apply only to the opposition procedure and, therefore, do not apply to the court action for annulment. Should the legislator want to extend the applicability of certain regulations to the court action for annulment, then this must be expressly provided for in the law. Thus, the general provisions of Art. 8, para. 1 APL apply also to the challenge of tax administrative acts, which provide that the grounds in the statement of claim before the court are not limited to the grounds asserted in the opposition proceedings.

Conclusion

The judgement No. 20/ 2023 of the SCJ thus provides clarity and eliminates the inconsistent previous court practice with regard to the contestation of administrative acts; it is particularly important in the case of contestation against tax administrative acts, as it is binding for all Romanian courts as well as for the tax authorities.

Contact and further information:



STALFORT Legal. Tax. Audit.
Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro