The Term of Subjective Right in the Romanian Public Law Doctrine

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The coming into effect as of the end of 2004 of new regulations in the field of administrative contentious represented the introduction of a new approach over such institution (a genuine modification of the "text philosophy", as expressed by the law's initiator); however, in the same time this moment also generated some - we might say - virulent criticism. The said criticism mainly referred to the somehow "revolutionary" solution used by the organic law giver, namely of introducing in the legal regulations an article comprising juridical definitions of various terms used throughout the law. In the present study, we shall attempt to shape one of the law's key terms, which is the subjective right term; a future research is to further detail a term closely connected to such, which is the notion of legal interest. Aware of the difficulty of our pursuit herein, given the vivid debates arising in time in most law areas between the two terms (hence exceeding the limits of administrative law), we shall limit our attempt to describing the juridical views regarding such, without claiming to draw out a definition exceeding any criticism. To the possible extent, we shall seek for answers to various questions arising herein.

Key words: subjective right, personal interests, regulations, fundamental rights.

I. The Debate over the Subjective Right Term in the Public Law Specialists Papers

In view of the regulation development we must mention that for the first time the Law regarding the setting out of the State Council in 1864 provided the condition for damaging simple interests of individuals, including against the ministers' decisions ruled upon excess of power. The subsequent provisions of 1905, 1910, 1912, then art. 107 from 1923's Constitution and art. 1 from the Administrative Contentious Law of 1925 constantly referred to the breached rights. The same regulation means has been also maintained by art. 35 of the 1965 Constitution, as well as by law no. 1 of 1967 regarding the tribunals' judging the claims of those whose rights were damaged by means of unlawfully administrative deeds. In its turn, Law no. 29 of 1990 used the expression of "legal right", whilst art. 21 of the Constitution provided the principle regulating that "any individual can take legal action before the courts in pursuit of having his legal rights, freedoms and interests protected". The current law actually continues the constitutional grounds of the administrative contentious institution, provided by art. 52 paragraph 1, which is developed accordingly [1].

a. The general law theory papers provide a listing of the theories drafted in time in respect with the subjective right term[2].

Thus, both the grounds for such term and its structure have been largely debated, first starting from identifying the grounds of subjective right with the juridical will, however then the conclusion being drawn that "there can not be taken into discussion only the will as representing grounds for the subjective right, but the will filtered by the pursuit for a justice ideal, by a rational juridical awareness[3]".

Another grounds for the subjective right has been represented by the very notion of interest, asserting that the subjective right is actually a legally protected interest, as without interest no right can be conceived (there cannot exist juridical institutions and relations without a purpose, hence with no interest). This means that under such view there are being referred the interests for which the law has been implemented, in order to transform them into legatine interests, by providing the party holding that interest with the means of addressing to the court, in order to gain value from such. The criticism against such theory has been represented mainly by two ideas: on one hand, there has been demonstrated that there exists right outside law, and even unsanctioned[4] rights, and on the other hand, there has been claimed that not always it is that interest represents grounds for law.

Some theories[5] focused their research over law on the very notion of subjective right, demonstrating that the objective right can only ascertain the parties' rights, whilst others even denied

the existence of subjective right, claiming that such only exists as behavior rule, as superior rule developing from the idea of social solidarity and generating over-lawfulness. Another opinion deems that the terms of "subjective right" and "objective right" (assembly of rights and obligations comprised in the juridical norms) overlap, namely that there is no grounds for operating a distinction between such.

We find it relevant to mention the definition of subjective right, as drawn by the said authors, namely "**the individual juridical ability of an individual compared to another individual within a said juridical rapport**".

b.1. The interwar administrative law doctrine represented a history of the administrative contentious institution in our country.

In respect with the matter under discussion hereunder, professor **Anibal Teodorescu**[6] limited its analysis to stating that "the individual whose rights are damaged by means of an authority (or management) administrative deed performed upon breach of laws or regulations, or who might be damaged by the bad will of the administrative bodies in settling the claim regarding a right, can complaint before administrative contentious in order to have his right recognized. The contentious is twice competent: it can judge the unlawfulness of the deed, by annulling if the case, and it can also judge the claim for damages", whilst in the section discussing the Romanian administrative law liability, he briefly undertakes the condition of an individual's right being damaged.

Thus, regarding this condition the conception is undertaken according to which the subjective right is grounded on an interest which is stipulated and protected by the positive law, also stating that the "**claimant individual must be damaged in one of his rights, and not in a simple interest which has not yet been transformed into a right**, namely which is not stipulated and protected yet by positive law, no matter how respectable and worthy that right is. Damaging simple interests of individuals cannot lead to obtaining material compensations, even if the deed is clearly unlawful".

b.2. In the chapter regarding administrative deed theory of his treaty[7], professor **Paul Negulescu** also undertook the matter of the distinction between right and interest, although there is admitted that in practice the issue of such distinction is a very delicate one. Grounded on a brief demonstration according to which the entire human activity, hence including juridical rapports, are grounded on the need of fulfilling various interests, there has been set out that the law giver interferes and provides which of these various interests must be accomplished and which not. Thus, the law giver assesses, appreciates the interests and admits some of them, which it deems as necessary for the purpose of individual

development and social life enforcement.

Grounded on such logical direction, the conclusion is reached that **an interest which is ascertained by the law giver represents a right**, whilst an interest which is not admitted by the law giver cannot be accomplished upon help from state's bodies and agents, given the fact that an interest which is ascertained must be fulfilled, whilst in case others object to such or infringe or obstruct the fulfillment of the right, then the state's bodies interfere and compel to the observing of such right.

Practical examples provided by the quoted author support the theory according to which the ground for subjective right is represented by an interest. As already mentioned, the actual means for transforming the interest into a right is to include such interest in a legal text. As in the paper of professor Teodorescu, it is also stated that the protection granted by administrative contentious also covers the category of potential rights, without providing however a definition of the last mentioned notion. Administration is compelled to observe all rights (classified into political and civil rights, the last mentioned category being divided in its turn into public rights, family rights and patrimony related rights), however such is not bound by simple interests, which can be accomplished with no liability being employed in charge of the administration.

b.3. The most valuable paper in the area under discussion, remaining entirely actual is the monographic paper of professor **Constantin Rarincescu**[8]. In the first chapter of the paper, dedicated to general principles, the notion of subjective right is also undertaken, admitting that such term plays an important role in the field of administrative contentious, as damaging such rights would represent the grounds on which most times positive law of various states is based, upon allocating attributions in this area to diverse jurisdictions.

As others authors in the field of administrative law, professor Rarincescu undertakes the idea according to which "to the extent in which the individual's legitimate interest becomes a power of claiming that someone should perform or restrain from performing an action, such becomes in other words subjective right". Also, it is underlined that only to the extent in which the objective law rules not only admit such powers and interests, but also guarantee and protect them before third parties, only then one can talk from the positive law stand point of the existence of subjective rights in favor of those owners.

In order to refer to a **subjective right** it is necessary for the following prerequisites to be complied with[9]: **a)** a juridical obligation must exist in charge of the passive subject, such that the last mentioned one to satisfy the claim of the right's owner; **b)** such obligation should be provided by the juridical order for the purpose of specific individual interests,

and not in view of general and anonymous interests. It is only upon such conditions that the owner of certain specific interests can own a subjective right.

It is further mentioned that in the field of public law it is difficult to establish the area of subjective rights, because most times the obligations imposed both to the individuals and to the state are aimed to fulfill general interests. Therefore, the existence of a subjective right in favor of an individual is a matter of the obligation being imposed or not for the purpose of purely general or specific interests[10].

The definition provided by professor Rarincescu in respect with subjective right is as it follows: "**the power of claiming to someone for a certain thing, action or restraining from action, such power being admitted and guaranteed by the juridical order, by providing the possibility of using when necessary a legal action**[11]". It is specified that such power, which occurs whenever an individual commences rapports with others, implies the existence of an active subject of such rapport, who is the individual owning the right, and of one or more passive subjects, who are the individuals compelled by the juridical order to fulfill the claim[12].

Although in that period the Court of Cassation had reached an extremely large interpretation of the subjective right notion, stating that such concept covers including potential rights, as well as direct and personal interests, the above mentioned author found it relevant to emphasize that, although it is intended for the unlawfulness to be repressed to the highest extent, there cannot be claimed that simple direct and personal interests which are not however protected by law can represent grounds for administrative contentious legal actions.

c. Given the fact that the coming into effect of the Decree no. 128 of 1948 represented the elimination of administrative for a long period of time (namely until the coming into force of the 1965 Constitution and subsequently of Law no. 1 of 1967), the doctrine related debates on such subject have been reinitiated mostly in respect with the court practice grounded on Law no. 1 of 1967 regarding the tribunals' judging the claims of those whose rights had been breached by means of unlawful administrative deeds. Although after 1990 it has been emphasized[13] that the institution of administrative contentious had played solely a propagandistic role, being purely formal, with no relevance in defending the citizens' rights and in fighting against the abuses from administrative authorities, during that period scientific interest existed in respect with the functioning of such institution, and such interests could not avoid the term of right mentioned by means of the said means of attack[14].

According to the traditional view, Mircea Anghene mentions that "the existence of a subjective right involves

an obligation established by law in charge of the state's administration to observe certain interests – guaranteed by law – which can be customized in the case of citizens as individuals or constituted into a legal entity[15]". It results that any time by means of unlawful administrative deed there were breached not subjective rights of the citizens, but simple interests of such, they could use the administrative recourse procedure (pardoning or hierarchical) in order to fulfill their own or common interests[16].

The opinion above has also been supported by **Ion Deleanu**, mentioning that "it is not enough for the actions and unlawful exception stipulated by Law no. 1 of 1967 to be admissible in order for the claimant to give prove of his own interest having been directly damaged by an administrative deed, but it is also necessary for such interest to be proven to have been protected by law, either by that it was admitted the interested party's power of carrying out a particular activity, or that other law subjects were requested to perform or restrain themselves from performing a certain action[17]".

In a paper of reference in the administrative law juridical doctrine[18] there is stated that "the best evidence that interest represents an indispensable element of subjective right is the fact that according to a generally admitted civil proceedings rule «if an interest does not exist, then an action does not exist either». If this is the case, it means that the possibility of using the state's constraining force, representing one of the subjective law features, is granted only in the case where an interest exists, which thus becomes the very basis on which the will related element inherent to such law is grounded".

However, we remain skeptic in respect to the last mentioned opinion, taking into account the fact that the civil proceedings papers[19] mention the condition for a subjective right to be ascertained upon the moment of filing legal action as a condition different from that of supporting an interest (purpose) of taking such action. It is not less true that the interest placed by most authors at the basis of a subjective law is indeed the very purpose pursued by the law subject, however we find it relevant to mention that this is the case of interest regarded in its material (substance related) meaning, and not in its procedural meaning.

Professor **Tudor Draganu** also stated that "**not any interest can represent the grounds of a subjective right, but only those that can be individualized in the person of one or more identified subjects, and which can generate direct profit to such[20]**". Also, such interest must be protected by law. A difference between the two notions is stated as it follows: "only the subjective right occurs and exists as an element of a juridical rapport in which an obligation of the passive subject is corresponding to such right. On the contrary, the interest, even protected by

law, does not occur within a juridical rapport and hence it is not attached to any obligation of a passive subject[21]".

The subjective right is defined as "the power guaranteed by law to the will of the active subject in the juridical rapport, grounded on which such is entitled, in order to gain value from a direct personal interest, to perform a certain behavior and to claim for a certain behavior from the passive subject of the juridical rapport, which if needed can be imposed by the state's compelling force[22]". It does not represent a subjective right a simple personal vocation, or a simple interest, irrespective if such is a material or procedural legitimate one. This should regard the existence of an aptitude, of a legally guaranteed possibility for the law subject also facing the correlative obligation of the state's administration[23].

d.1. Attempting to operate a distinction between the terms of subjective right and interest, we find it useful to refer to another paper of the reputed professor Draganu, noticing for starters that it is even more difficult in the field of administrative law compared to the civil procedural one to find distinctive criteria between the two notions, and that is because "in the rapports between public bodies and individuals or legal entities, the hypothesis in which simple interests, either personal or general, or in the same time personal and general, are protected by legal actions, have a more wide application range than the private law rapports, and the constitution of popular actions is more frequent[24]".

Thus, regarding the above mentioned distinction there are described three opinions:

a) The subjective right is seemingly characterized by the fact that it is used by the owner according to his will. On the contrary, if the protection of an interest is ensured by the state's bodies independent of the beneficiary's will, then such situation is that of a simple interest provided by law;

b) In order to make a distinction between the subjective right and the personal interests protected by law, one should start from the idea that whilst subjective rights are protected by law upon possibility for their owner to use the state's constraining force in order to reinforce the breached legality, such possibility is not a feature of the simple personal interest protected by law;

c) Whereas the subjective right is characterized by the fact that it ensures its owner with the possibility of claiming for the passive subject to perform or restraint from performing an action, the interest protected by law only provides the possibility of addressing to the state's bodies, in order for such to take protective measures expressly stipulated by law and not arising from the owner's possibility of claiming a certain action or inaction.

Keeping in mind as pertinent only the last mentioned opinion, there is also stated that the conditions for subjective right existence stipulated by

professor Rarincescu in his paper in 1936 are maintained as actual.

It is ascertained that subjective right is formed of will and interest, therefore the interest is nothing else but an element of the subjective law. It has been also considered that not any interest can represent grounds for a subjective right, but only that which can be individualized in the person of one or more identified subjects and which can generate a direct profit to such[25].

Also, it can be noticed that the owner of a subjective right is authorized by law[26] to perform certain activities or to restrain himself from fulfilling such, with no need for a prior court decision ruling in favor of such action or inaction, whereas an interest protected by law does not provide its owner with the possibility, guaranteed by law by means of the state's potential enforcing of its constraining force, of performing certain activities or of restraining from such (this possibility can only be obtained consequently to legal action). Such ascertaining is grounded on the observation according to which only subjective right arises and exists as an element of a judicial rapport, in which to such right an obligation of the passive subject; on the contrary, the interest even if protected by law does not rise within a juridical rapport and thus no obligation of a passive subject is corresponding to such[27].

It is also mentioned that "the distinction between the subjective rights and the interests protected by law does not face any obstacles impossible to overcome if the idea is used that the simple fact that the law ascertains as a right of a person the power granted to such of claiming that another person should perform or restrain itself from performing a certain action, can lead, in case of such obligation not being fulfilled, to the enforcing of a sanction engaging the state's constraining force, that is of compensatory or repressive measures which are generally applicable in case of infringement of legally provided rights (damages, assets restitutions, payment of certain amounts of money), with no need for the law to stipulate in the case of each right a particular legal action ensuring the capitalization of the right. On the contrary, **in the case of interests protected by law, such must not only enunciate the interest, but also to stipulate that the beneficiary benefits of a certain legal action in order to accomplish its purpose**[28]".

In public law there are frequent the cases where by law there are provided actions for protecting simple interests, either personal or general. Any time the law uses such regulations in order for the court to be compelled grounded on the free access to justice to settle the content litigation, it is not enough for the claimant to assert by his action that he has been damaged in one of its legitimate interests, but he will also need to prove that in order for such interest to be protected, the law has already provided a legal action[29].

d.2. The more recent papers admit the importance of the subjective right and legitimate interest notions, mentioning that such have been regarded either as opposing or as correlated, and also establishing that the regulation of administrative contentious actions regarding one or/and both such notions describe the area and coverage of the administrative contentious in a legal system[30]. Moreover, there has been demonstrated even that a legal action against an administrative deed grounded on the idea of a legally admitted right having been breached secondarily represents an action grounded on the idea of a legitimate interest having been infringed, even if such is not expressly stipulated by the legal action.

There has also been noticed that t**he subjective right notion must not be regarded in view of a single actual juridical rapport, but in view of the complex of juridical rapports, starting with the constitutional law in which the claimant and the other parties in litigation are domiciled**[31]. In the same time, the need has been proclaimed of **a value related sorting of the subjective rights**, on the first level being placed the fundamental rights stipulated in the Constitution, followed by those provided in main laws, ordinary laws and ordinances, in accordance with the juridical power of the act invoked as normative juridical support for the breached subjective right[32].

In respect with the notion of fundamental rights, there has been ascertained that such equally evoke objective guarantees and subjective rights, opposable to the state's power and protecting the individual including throughout his relation with the other collectivity members in which he lives. The fact that such rights are provided on a constitutional level ensures the most efficient juridical guarantee, as such benefit both of the supremacy mechanisms of the constitutional norms and of the juridical mechanisms specific to subjective rights[33]. As a simple conclusion that can be drawn from the above mentioned, we can say that there also exist fundamental rights which are not provided on a constitutional level[34], however with no effect of such situation over the possibility of capitalizing both categories of fundamental rights (thus not only those stipulated by the fundamental law) by means of administrative contentious.

Also in respect with the fundamental rights there has been ascertained correctly that such are subjective rights; the difference compared to the assembly of subjective rights resides in their quality of being rights which are essential for citizens, of impact for their juridical status[35], as well as in their being recorded in special acts, such as rights declarations, fundamental laws.

We can notice that the **constitutional law authors took into account the analysis of the fundamental rights notion in its strict sense** (rights stipulated by supreme juridical force acts), whilst the administrative law

authors refer to a much wider sense; thus, it is mentioned as normative grounds for the breached subjective right not only the fundamental law, but also the law and the normative acts having the same juridical nature as the law (Government ordinances).

d.3. A valuable monographic paper dedicated to the subjective right notion[36], grounded on the idea that the interest represents grounds for the subjective right, it is stipulated that "not any interest represents a structural element of the subjective right, but only that which, arising from the society's general values expressed for the scope of the law, comes into effect grounded on a legal subject and is protected by law. The interest must be personal, direct, born and actual, legitimate and legally protected. Thus, the interest must belong to the subjective right's owner, it must be individualized and actualized, it must be part of a subjective right and it must go in line with the moral norms and social cohabitation rules".

Given the fact that sometimes the inters, even protected, does not represent - together with will - the grounds for a subjective right the issue might arise of how we make the distinction between a "simple interest" protected by law and that interest representing part of a subjective right. Two criteria have been suggested:

a) subjective right, as element of a juridical rapport, implies the obligation for the passive subject to perform an action or to restrain from such, whilst the interest grants its owner only the possibility of taking action before the state's bodies in order for the last mentioned ones to take the legally provided measures needed in order to protect the interest;

b) the owner of the subjective right is authorized by law to perform certain activities or to restrain itself from such, regardless whether an actual juridical rapport exists or not. After arguing that both criteria mentioned above can be subjected to criticism, professor **Deleanu** mentioned the following distinction criteria: "**there cannot be obtained value from an interest without the help from the state's bodies in charge with taking protection measures stipulated by law. In order to obtain value from a subjective right there is not necessarily needed such help**[37]".

In respect with the subjective right the following definition is of relevancy: "**the prerogative granted by law grounded on which the right's owner can or must undertake a certain behavior or must request for others to undertake actions in line with its right, otherwise being subjected to the legally provided sanction, in order to obtain value from a personal interest, which is direct, born and actual, legitimate and legally protected, in view with the common interest and with the social cohabitation norms**". There has been demonstrated[38] that the above definition

could be argued against by the following shortage: the subjective right is partially defined by obligation, debt, when mentioned that the subjective right represents a prerogative which is admitted by the objective right grounded on which the right's owner "must undertake a certain behavior"; this way, the difference between subjective right and obligation would disappear.

We tend to claim the contrary, and that is because among the prerogatives provided by law for the owner of a subjective right there are not included a) the possibilities (free will, if we may say so) of such to take action in a certain manner, but also b) the genuine obligations of acting. It is enough to mention that the owner of a land for instance has also the propter rem obligation of seeding that land and of ensuring soil protection[39] (art. 74 of Law no. 18 of 1991).

We find it essential to undertake thus the definition above, which brings into value the most important elements of the various theories expressed on the notion of objective right and which we have tried to present in a natural, logical order.

II. Conclusions. Suggestions

a) A first question raised hereby efers to the appropriateness of finding in the administrative contentious main law of certain definitions of used terms, particularly of those of "subjective right" and "legitimate interest".

Of course that even the brief doctrine debates described in the present paper regarding the juridical sense (meaning) of such notions prove that this sort of undertaking is not an easy one for the law giver, however we find it relevant to remind the quite recent observations of professor Draganu, namely: "the assessment freedom of the public bodies is most times a consequence of the fact that, in the regulations it adopts, the law also uses so-called «rubber-paragraphs», undetermined or value related concepts[40]". Moreover, it is further stated that "law present the tendency of giving up to precise and rigorously shaped rules for the purpose of hiding in general undefined clauses, of a very elastic content and of a very lowly specified meaning[41]".

Such reasons cause us to support the solution – no matter how difficult it is – of comprising in laws definitions of terms which are essential for the purpose of such being applied by all public bodies. As already noticed, by the fact that the source of fundamental rights which can be breached by administrative deeds – such source can be the Constitution or the law (as juridical act issued by the Parliament), including the Government ordinances – the dispute has been eliminated regarding the area of subjective rights deemed as fundamental.

Notwithstanding how "vague", "confuse", "difficult to establish" there are notions such as subjective right or

legitimate interest, we find it important, in the current stage in our society's development, to define them, moreover given the well known important role of the two notions in respect with the citizens' protection against various abuses.

b) Regarding the opportunity for legislative dedication of a "actio popularis" – in which the claimant is not forced to give evidence not even of a general interest having been damaged, but it is enough to demonstrate that the said act has been issued upon breach of objective legal order – there should be noticed for starters that the action grounded according to Law no. 554/2004 of administrative contentious on the breach of a public legitimate interest is very close to a genuine popular action (it is requested, however, to give evidence of a public legitimate interest being infringed).

There should also be said that the appropriateness of such legislative solution has been viewed as positive in some public law areas, where the public interest must prevail compared to the individual one.

We find it that such is one of the objectives of the administrative contentious institution, namely the protection of public interest including, and hence of individual interests including. In such cases where a public interest is threatened the action cannot be left only up to a potentially damaged individual, but it should be opened to everybody.

c) In respect with the effects of admitting a legal action upon administrative contentious, it is our opinion that given the foreseen amendment of the main law in this field there should be given up the actual solution, generating the same effects over both forms of contentious, namely subjective and objective: the annulment of the attacked administrative deed and the obtaining of compensations for the caused damage.

It is precisely because a difference of juridical regime exists between the notions of subjective right and legitimate interest – on which the two contentious forms are grounded – why it is our opinion that such difference is manifested including in respect with the effects of admitting the two sorts of actions. Otherwise, we could not grasp the reason for the law giver's using two notions instead of a single one: subjective right, including in its content the legitimate interest.

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[1] **Dana Apostol Tofan** – *"Administrative contentious institution in view of the new law in this area"*, in Romanian Law Studies no. 1-2/2005, page 59

[2] See N. Popa - *"General law theory"*, Actami Publishing House, Bucharest, 1999, page 315-319, **M. Djuvara - "General law theory (Law Encyclopedia). Rational law, sources and positive law"**, All Publishing House, Bucharest, 1995, page 128-133, page 229-239

[3] Paper quoted above, page 230

[4] Paper quoted above, page 231

[5]See **N. Popa** - quoted paper, page 318

[6] **A. Teodorescu** – "*Administrative Law Treaty*", „Eminescu" Graphic Arts Institute S.A., Bucharest, 1929, page 391

[7] **P. Negulescu** – *"Administrative Law Treaty"*, G.A.M., Bucharest, 1925, page 431-440

[8] **C. Rarincescu** – *"Romanian Administrative Contentious"*, 2nd Edition, „Universala" Alacalay & Co. Publishing House, Bucharest, 1936

[9]Paper quoted above, page 67. See also **J. Vermeulen**, *"Administrative law course"*, Cultura Poporului Publishing House, Bucharest, 1939, page 209

[10] **C. Rarincescu** - *"Contentious… "*, as quoted above, page 63-65

[11] Paper quoted above, page 226

[12]Same idea, however nuanced, is also mentioned by Dana Apostol Tofan, "Discretionary power and excessive power of public bodies", All Beck Publishing House, Bucharest, 1999, page 52-53, stating that "any right of a party implies a symmetrical obligation in charge of the other. When the law intends to provide a right, it can admit its existence in favor of the beneficiary, imposing a task in charge of the administration. On the contrary, when no right is admitted and no stipulated obligation, there exists freedom of action and, thus, discretionary power compared to which there only remains a simple interest"

[13] **A. Iorgovan** – "*Administrative Law Treaty"* (Romanian: „Tratat de drept administrativ"), volume 2, 4th edition, All Beck Publishing House, Bucharest, 2005, page 514

[14] See for instance: **M. Lepadatescu** - *"Tribunals' judging claims of those damaged in their rights by unlawful administrative deeds - a new juridical guarantee of full performance of citizens' rights"*, Romanian Law Magazine no. 8 of 1967, page 12-28 **M. Anghene** - *"Court control over the administrative deeds lawfulness"*, Romanian Law Magazine no. 6 of 1968, page 78-79, **I. Deleanu** - *"Regarding the conditions for admitting court control over the lawfulness of administrative deeds"*, Romanian Law Magazine no. 8 of 1973, page 40-45

[15] **M. Anghene** - *"Court control…"* as quoted above, page 82

[16] Paper quoted above, page 82

[17] **I. Deleanu** - *"Regarding the conditions for admitting…"*, as quoted above, page 43

[18] **T. Draganu** - *"Administrative acts and like deeds subjected to the courts' control as per Law no. 1 of 1967"*, Dacia Publishing House, Cluj-Napoca, 1970, page 168-192

[19] See **V.M. Ciobanu** - *"Theoretical and practical treaty of civil proceedings"*, volume 1 (General theory), National Publishing House, Bucharest, 1996, page 267-293, I. Les - "Civil proceedings code. Article comments", All Beck Publishing House, Bucharest, 2005, page 135-141, I. Deleanu - "Civil proceedings treaty", volume 1, All Beck Publishing House, Bucharest, 2005, page 159-163, page 548 (footnote 5), page 551 (footnote 1), D.C. Dragos - "Implications of revising the Constitution in respect with administrative contentious: discussions on the significance of the legitimate interest term", Pandectele Romane, Supplement 2004 in honorem Ion Deleanu, page 70, stipulating that "the French doctrine operates a distinction between the interest of performing an action (of standing before the court) and the damaging of a subjective right. Whilst the first condition refers to the admissibility of the jurisdictional recourse, of any type, the second one refers to the moment of the litigation being judged on the grounds"

[20] **T. Draganu** - *"Administrative acts and like deeds…"*, as quoted above, page 176

[21] Paper quoted above, page 182. Also regarding the juridical rapport term it must be mentioned the subjective right concept in the private law papers, stipulating that the juridical rapport is comprised of correlative rights and obligations. See T. Ionascu, E. Barasch, A. Ionascu, S. Bradeanu, M. Eliescu, V. Economu, Yolanda Eminescu, Maria Eremia, Eleonora Roman, I. Rucareanu, V. D. Zlatescu, "Civil law treaty", volume 1 (General part), Academiei Publishing House, RSR, Bucharest, 1967, page 181-191, where there are mentioned as structural elements for the subjective right both the will and the interest, underlining that the interest is the essential element, fundamental or primordial in the structure of subjective right. The nature of the interest - as structural primordial element of subjective right - is reflected in the provisions of Decree no. 31 of 1954, stipulating under art. 1 that "the civil subjective rights of the private individuals are admitted for the purpose of fulfilling the personal, material and cultural interests of such, in accordance with the common interest". In order to undertake such notion in the private law, there should also be seen O. Ionescu - "La notion de droit subjectif dans le droit privé", Bruylant Publishing House, Bruxelles, 1978, Ghe. Beleiu - "Romanian civil law. Introduction in civil law. Subjects of civil law", "Sansa" Publishing and Press House, Bucharest, 1993, page 73-74, T. Pop - "Civil law treaty", volume 1, Academiei Publishing House, Bucharest, 1989, G. Boroi - "Civil law. General part. Persons", All Beck Publishing House, Bucharest, 2001, page 56-57

[22] **T. Draganu** - *"Administrative acts and like deeds…"*, as quoted above, page 184, where it is mentioned that the damaging of a subjective right must not be confounded with causing a loss. Also see A. Iorgovan, I. Moraru, D. Mustatea - "Lawfulness of administrative deeds", Politica Publishing House, Bucharest, 1985, page 208-209

[23] **A. Iorgovan, I. Moraru, D. Mustatea** - *"Lawfulness of administrative deeds"*, as quoted above, page 209. However, in the paper „Le contentieux administratif en tant qu'instrument de protection de citoyen", Revue internationale de droit comparé 2/1993, page 367, the authors Sofia Popescu and Dana Apostol raised the matter of the possibility of understanding the subjective right term mentioned by Law 29 of 1990 in a strict sense (only those certain and definite rights) or in a more large sense (including in the subjective right area the legitimate direct and personal interests, as well as potential rights regarding the possible or future occurrence of a deed)

[24] **T. Draganu** - *"Free access to justice"*, Lumina Lex Publishing House, Bucharest, 2003, page 158

[25] **D. C. Dragos** - *"Administrative contentious procedure"* , All Beck Publishing House, Bucharest, 2002, page 517

[26] In an opinion it is claimed that "the area of legitimate interest is not equivalent with that of legally provided interest, but it is much larger. The word legitimate has the following synonymous: grounded, serious, just, rational. Therefore, an interest can be legitimate, although it is not expressly provided by law; however it comes in line with the social principles and moral values". See also A. Trailescu - "Observations regarding the need for a more clear limitation of nullities in administrative law", The Law no. 12 of 2001, page 85

[27] **T. Draganu** - *"Administrative acts and like deed…"*, as quoted above, quoted by author D. C. Dragos - "Administrative contentious…", as quoted above, page 517

[28] **T. Draganu** - "*Free access…"*, as quoted above, page 164

[29] Paper quoted above, page 168

[30] **D. C. Dragos** - *"Implications of revising the Constitution"*, as quoted above, page 69. In regards to correlating the two notions, see A. Iorgovan - "New law of administrative contentious", Roata Publishing House, Bucharest, 2004, page 294, mentioning that "the constituent law giver has connected such, they are condemned to be defined by means of correlation, exactly in order to mark what makes them alike (they represent the constitutional grounds for the legal action), and what makes them different (the actual right is a reality, whilst the virtual right or the legitimate interest is another reality)".

[31] **A. Iorgovan** author quote by Dana Apostol Tofan in *"Administrative Law"*, volume 2, All Beck Publishing House, Bucharest, 2004, page 305

[32] **A. Iorgovan** author quote by Dana Apostol Tofan in *"Administrative Law"*, volume 2, All Beck Publishing House, Bucharest, 2004, page 305. See also D**ana Apostol Tofan** - *"Administrative contentious institution…"*, as quoted above, page 58-61

[33] **I. Muraru, Elena Simina Tanasescu** - *"Constitutional law and public institutions"*, volume 1, 11th edition, All Beck Publishing House, Bucharest, 2003, page 138

[34] Actually, the very text of art. 2 par 1 letter n) from Law no. 554 of 2004 it is stipulated in regards to the damaged right that it refers to "any fundamental right provided by Constitution or by law"

[35] **Muraru, Elena Simina Tanasescu** - "**Constitutional law...**", as quoted above, 2003, page 139

[36] **I. Deleanu** - *"Subjective rights and legal abuse"*, Dacia Publishing Houe, Cluj-Napoca, 1988, page 42

[37] Paper quoted above, page 43

[38] **Ghe. Beleiu** - *"Romanian civil law"*, 1993, as quoted above, page 74

[39] See, for other examples of propter rem obligations (real obligations) G. Boroi, L. Stanciulescu - "Civil law. Selective course for bachelor degree exam. Multiple choice tests", Hamangiu Publishing House, Bucharest, 2006, page 16

[40] **T. Draganu** - *"Free access…"*, as quoted above, page 175

[41] **J. W. Hedemann**, "*Die Flucgt in die Generalklausen Hefahr für Recht und Staat"*, Tübingen, 1933, author quote **T. Drăganu** – *„Liberul acces ..."*, as quoted above, page 175

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