Jurnalul de Studii Juridice
ISSN: 1841-6195 | e-ISSN: 2067-8509
Covered in: CEEOL, CrossRef, CrossCheck, ICI Master Journal List - Index Copernicus, Ideas RePeC, EconPapers, Socionet, HeinOnline, EBSCO.

2023, Volume 18, Issue 1-2 (2023), pages: 16-27 | https://doi.org/10.18662/jls/18.1-2/118

Procatalepsis: Inter-Institutional Dialogue in Public Law – a Deaf Dialogue or a Legal and Efficient Communication? Case Study[1]

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Abstract: *Mutual respect and availability for dialogue are character traits that are so necessary nowadays, since as a rule the contemporary human being frequently manifests as a selfish being, focused only on personal well-being, on the cult of personality or on the distortion of reality, intolerant or indifferent to the sufferings of those who do not share his value system, without knowing the definition of empathy.*

The pending study aims to highlight the quality of the institutional dialogue, namely the manner in which a court decision is respected by a territorial administrative authority and the mayor, as well as to highlight the fact that in some cases, unfortunately, with the evasion of legal norms, some court decisions pronounced by the administrative litigation courts are framed, like a true work of art, a painting, not being enforced.

The title chosen for the study conjures an exercise in rhetoric, as "procatalepsis" represents a figure of speech in which the speaker raises an objection to his own argument and then immediately responds. By doing so, he hopes to strengthen his argument by addressing possible counterarguments before the audience can raise them. The etymology of the word reveals that it comes from the ancient Greek: προ- (pro-, "before") + κατάληψις (katálēpsis, "act of catching"), via the Latin "procatalepsis", which implies "anticipation and response to an objection".

Keywords: *inter-institutional dialogue, public law, compliance with court decisions, Law no. 15/2003 regarding the support given to young people for the construction of a personal property.*

How to cite: Dornean Păunescu, R. L. (2023). Procatalepsis: inter-institutional dialogue in public law – a deaf dialogue or a legal and efficient communication? Case study. *Jurnalul de Studii Juridice, 18*(1-2), 16-27. https://doi.org/10.18662/jls/18.1-2/118

[1] Study presented at the Biennial International Conference XIV Edition Timișoara, October 20-21, 2022, organized by the Faculty of Law of the West University of Timișoara.

1. PROLEGOMENE

Currently, the awareness and management of emotions from an early age(Llenas, 2019; Chicet-Macoveiciuc, 2020) make a lot of ink flow, which is why interdisciplinary research is necessary when we approach inter-institutional dialogue, as public authorities and institutions are made up of people, not robots, and technology and digitization are perceived to be beneficial.[2] (Harari, 2018, p.88-92; Fox Cabane, 2019, p.13-18; von Schonburg, 2019).

Legal issues are considered unemotional(Harari, 2016, p. p.96-105), but the pending research reveals, in a manner that does not claim to be exhaustive,

• THE VENERATION OF THE YOUNG TO THE EARTH (because "Ion" is still alive in the spirit of some of us),

• THE STRONG ENTHUSIASM perceived at the time of the adoption of a local council decision (HCL) approving the request to assign the land for free use, respectively

• THE MORAL EARTHQUAKE OR THE CRUSHING OF DREAMS, for some of the young people, on the date of the adoption of a new HCL approving their convocation, obliged to prove again all the initial conditions imposed by the law and the Regulation.

2. REGARDING THE FACTO STATE – STIGMATIZATION THROUGH DELAY

For a clear picture of the studied case, we briefly present the unique legal story of some young people who surrounded themselves with patience, from the moment of the adoption of Law no. 15/2003 on the support given to young people for the construction of a personal property[3] until now.

[2] According to the historian Yuval Noah Harari, people alienated from their bodies, senses, and physical environment are likely to feel alienated and disoriented. It lays out Mark Zuckerberg's opinion, which suggests that "the best solutions for improving discourse can come from getting to know each other as whole people, instead of just opinions - something Facebook may be the only platform to do. If we connect with people we have something in common with - sports teams, TV shows, interests - it's easier to have a dialogue about what we disagree with." Mark Zuckerberg, Building Global Community, Facebook, 16 February 2017. On the ability to be present, Olivia Fox Cabane introduces us in the charisma myth. Regarding common sense, politeness, kindness, courtesy, a noble aristocrat, Alexander von Schonburg explains the art of virtues.

[3] Republished in the Official Gazette of Romania, Part I no. 182 of March 13, 2014.

Thus, Law no. 15/2003 regulated *the regime of awarding, upon request, to young people aged between 18 and 35 years of land, from the lands located in the private domain of administrative-territorial units, for the construction of a personal home*.

According to art. 3 of the normative act, *young people who, on the date of submitting the application, are up to 35 years old and meet the following conditions, benefit from the provisions of the law, only once, and who:*

a) have reached the age of 18;

b) on the date of submission of the application, as well as on the date of its resolution, did not own or do not own a house or a plot of land intended for the construction of a privately owned house, both in the locality where the allocation of land for use is requested, and in other localities.

According to paragraph (2) of the same article, *the local councils can establish additional criteria than those provided for in paragraph. (1), in order to assign the available lands*.

In such a situation, after 13 years, on 15.11.2016 the Local Council of the Municipality of Timișoara adopted through HCL no. 193/2016 the Regulation for the establishment of the framework methodology for the distribution of lands assigned on the basis of Law 15/2003 and additional selection criteria and distribution of applicants for plots of land for housing construction.

Although the Nominal Table was published as early as March 2017, it was entered on the list of the ordinary meeting of the City Council only on 27.03.2019, in other words, two years later. The reasons for this unjustifiably long postponement were, on the one hand, the uncertainty of the local authority regarding the possibility of participation in the award of the people who work within the local institution, and on the other hand, the existence of two litigations filed against the Nominal Table before the Timiș Court, fact which led the Commission and implicitly UAT Timișoara to suspend the award procedure.

As a result, stigmatized by a long delay, in March 2019 the Local Council adopted HCL no. 127/27.03.2019 approving the Nominal Table.

In consideration of this local council decision, the interested persons were summoned during May 2019 to choose one of the available plots to be distributed. The list including the options of the beneficiaries of Law 15/2003 and, implicitly, the option of young people, was approved by HCL 301/14.06.2019 approving the request regarding the allocation of land for free use.

According to the Methodological Norm for the application of Law no. 15/2003 regarding the support granted to young people for the

construction of a personal property of 29.07.2003, more precisely art. 5 para. (2) *Implementation of the local council's decision to grant free use of the land for the construction of a house is done by the mayor, within 15 days from the date of approval by the local council, based on minutes*.

In the context of disregarding the imperative term of 15 days in which the Mayor is obliged to implement the said local council decision, several beneficiaries of Law no. 15/2003 started legal actions in administrative litigation in order to oblige the Mayor to fulfill the obligations established by law, the respective actions being settled favorably by the court.[4] (Oroveanu, 1998; Lazăr, 2004; Trăilescu, 2019; Iorgovan, 2005; Kelsen, 1934; Vedinaș, 2018; Dornean Păunescu, 2022).

3. THE RANGE OF ILLEGALITIES

The first court decision issued by the Timiș Court - the administrative and fiscal litigation section in such cases, on 14.10.2020 (final decision maintain by the Court of Appeal), presents the following device: *Admits the action in part. Obliges the defendants to apply HCLMT no.*

[4] Compliance with the principle of the hierarchy of legal rules and individual acts of the administration bodies produces the following consequences:
* the general rules of law established by the higher authorities must be respected by each administrative authority in issuing individual documents,
* according to the principle *tu patere legem quam facesti* ("*Respect the law you have made*."), each administrative authority is obliged to comply with its own regulations,
* in the hypothesis in which the subordinate administrative authority issues a rule of law legally, the hierarchically superior administrative authority cannot take a contrary individual decision,
*the administrative act must comply with the provisions that directly concern it (competence, form), and at the same time it must comply with the higher legal rules applicable in the same matter.
Regarding the etymology of the word contentious, it comes from the Latin "*contendo, contendis, contedere*" which means "to struggle, to struggle, to fight", as it evokes the idea of the existence of contradictory interests, a struggle "in a metaphorical sense, between two sides, one of which will emerge victorious".
The respective actions in the administrative litigation also included a petition regarding the granting of compensation, which was rejected by the courts with the leitmotif: the admission of the action represents sufficient satisfaction. For references regarding the notions of "damages", "damage" and "reparations", we have shown that, according to the courts of law, simple recognition of the claimed right is sufficient satisfaction. In the framework of that study, we proposed *de lege ferenda*, the harmonization of the entire normative architecture so that the injured person who suffered a material damage or a moral injury is legally and morally compensated, and the moral damages claimed through an action in the administrative litigation of assimilated administrative acts not to represent a veritable Fata Morgana.

301/14.06.2019 and at the end of the minutes awarding in favor of the plaintiffs the land represented by plot no. ... Rejects the rest of the action. With right of appeal within 15 days of communication. The request will be submitted to the Timiș Court.

Retaining the range of illegalities, the court of first instance observed the disregard of the 15-day term provided by art. 5 paragraph (2) of the Methodological Norm for the application of Law no. 15/2003, respectively the legal nature of this term, indicating that it is NOT a term of recommendation, but an imperative term, embracing the arguments of the plaintiffs in relation to the grammatical formulation chosen by the legislator respectively, "*implementation is done* [..]". In the same sense, it was considered that in the absence of highlighting the possibility of carrying out these steps within the term of 15 days, the implementation of the decision, the issuance of the minutes of awarding and the conclusion of the pawnbroker's contracts represent an imperative obligation. In addition, art. 154 para. 1 of the Emergency Ordinance no. 57/2019 on the Administrative Code provides that *the mayor is obliged to implement the decisions of the local council.*

On 04.06.2020 HCL no. 192 of 04.06.2020 was adopted regarding the approval of the model of the free use assignment contract and land assignment minutes, in order to implement the provisions of Law no. 15/2003.

Considering the favorable solution, the local deliberative authority staged a suspension of the entire procedure, meaning that on 28.10.2020, HCL no. 451/28.10.2020 regarding the suspension of the Local Council Decision no. 609/10.12.2019 for the amendment of the Local Council Decision no. 127/27.03.2019 regarding the approval of the nominal table ranked according to the score of land applicants according to Law no. 15/2003 and the allocation of validated plots according to the Decision of the Local Council of the Municipality of Timisoara no. 20 of 29.01.2019.

4. PLEA OF ILLEGALITY (Dornean Păunescu, 2015; Dornean Păunescu, 2017)

We specify the fact that against this HCL, several beneficiaries of Law no. 15/2003 filed an action in administrative litigation, with a view to its annulment, an action that was resolved in favor of the young people, respectively before the start of the annulment action, as the plea of illegality of the unilateral administrative act of an individual nature was invoked, related to a series of criticisms of illegality:

- the suspension decision does not specify the term for which it was suspended, or we cannot appreciate that the said administrative act was suspended *sine die*;

- it is not motivated in fact, completely lacking the considerations of the local public authority for which such a measure is imposed, of suspending the approval of the high-level nominal table;

- in addition to the motivation, other concurrent procedural formalities violated are: the quorum, the majority required for the adoption of the act;

- requesting the vote only by VOICE, without respecting the legal provisions and observing the VIDEO vote, in order to distinguish whether the voice belongs to those local councilors, by observing the identity of the local councillors.

Or, according to the Decision of the Local Council of the Municipality of Timişoara 91/25.03.2020 regarding the establishment of the procedure for holding the meetings of the Local Council of the Municipality of Timişoara, in exceptional situations, ascertained by the competent authorities, it is certified:

Art. 1: *In exceptional situations, ascertained by the competent authorities, such as epidemics, pandemics, extreme natural phenomena and other situations that make it impossible for the Local Councilors to be present at the headquarters of the City Hall of the Municipality of Timişoara, the meetings of the specialized Commissions as well as the plenary sessions of the Local Council of the Municipality Timişoara, will take place by electronic means, through an online videoconference platform.*

And according to dexonline, videoconference is a conference in which local councilors participate using VIDEO techniques, not VOICE.[5]

5. THE ACTION IN THE GRANT OF PENALTIES

After the pronouncement of the first final court decisions in such cases, the Mayor did not understand to amicably enforce those decisions even after a considerable period of several months, a fact that led to the start of new litigations aimed at awarding penalties, under the conditions of art. . 906 of the Code of Civil Procedure, respectively obliging the defendants to pay in favor of the creditors a penalty of 1.000 lei, established per day of delay, until the execution of the obligation provided for in the enforceable title, by final conclusion given with the summons of the parties.

[5] videoconference sf [At: MDA ms / P: ~de-o~ / Pl: ~țe / E: video2- + conference] Conference whose participants, located in different places, communicate using video techniques. https://dexonline.ro/definitie/videoconferin%C8%9B%C4%83

These actions remained without object as a result of the adoption of HCL 373/26.10.2021 regarding the modification of the nominal table ranked by score of land applicants according to Law no. 15/2003 approved by the Decision of the Local Council of the Municipality of Timisoara no. 127/27.03.2019, modified by the Decision of the Local Council of the Municipality of Timişoara no. 609/10.12.2019, HCL which led to the signing of the loan agreements and the minutes of handover and receipt of the lands assigned for free use.

6. A NEW PLEA OF ILLEGALITY

HCL no. 373/26.10.2021[6] represents a veritable meteoric appearance, given the fact that the following is negligibly approved:

Art. 2: The conclusion of free use contracts and minutes of allocation of plots according to the distribution approved in point 1 and the options of the approved beneficiaries, according to the Decision of the Local Council of the Municipality of Timisoara no. 301/14.06.2019.

Art.3: Approving the summons within 15 days of the applicants who are the subject of the award, with the necessary documents (authenticated declaration to a public notary that they did not own or do not own a house or a land intended for the construction of a house, personal property and proof of possession of a minimum amount of 40,000 lei or equivalent in foreign currency), in order to conclude the contract of free use and the protocol for the assignment of the land.

Art. 4: It is approved the speedy summoning of the applicants who are the subject of the assignment by final court decisions, in order to conclude the contract of free use and the minutes of the assignment of the land.

Eo ipso, in the pending litigations, a new plea of illegality was invoked.

[6] In this new HCL 373/26.10.2021, it was intended to introduce an amendment that again required young people to provide proof of age, namely that at the time of signing the loan agreement they are up to 35 years old. Did legal spontaneity lead to the non-introduction of the amendment according to which the young beneficiaries of Law 15/2003 must prove their age up to 35 years, in order to conclude the agreement and the minutes of possession? Or maybe the universal principle "*E pur si muove*" determined the interpretation according to which it is not the young people's fault that some of them became grandparents and did not sign the loan agreement. In this register we would like to mention that many young people still received notices that they are no longer up to 35 years old and will be removed from the Table, but this strategy was abandoned by the local authority.

7. CRITICISMS OF ILLEGALITY

Ab initio, we specified that the said decision violates the principle of the hierarchy of legal norms, explained in the framework of Kelsen's pyramid, since the conclusion of the minutes of the land assignment and the conclusion of the loan agreement could be achieved based on the final court decision for those young people who started actions in administrative litigation in front of the court, being illegal and unnecessary an approval of the speedy summons of those who have obtained favorable court decisions.

The local authority considered it legal to wait for an approval to summon the people who obtained favorable court decisions and not to immediately comply with these court decisions, which is against the principle of the separation of powers in the state, and the recognition of the judicial power by the citizens and legal entities under public law.

A new procatalepsis intervenes: what would have happened in the hypothesis that the local councilors would have voted against the approval of the conclusion of the contracts or the approval of the speedy summons of those who obtained the Mayor's obligation through a final court decision? I appreciated that we are in a genuine deaf interinstitutional dialogue, lacking in legal efficiency and the respect due to a final judicial decision pronounced by an administrative and fiscal litigation court.

Taking into account the provisions of art. 3 of the respective HCL, the young people who, after the adoption of the HCL approving the allocation of land for free use, purchased a building/land for investment purposes, or married people who owned land or were orphaned by a parent and owned thus a share of the parents' property (following the succession debate), invoked the plea of illegality of this new HCL 373/26.10.2021, admitted in the first instance, but rejected by the appeals court as there being no connection between the settlement of the merits of the case in which was invoked the plea of illegality and the administrative act that is the object of this exception.

The courts that accepted the plea of illegality noted that art. 3 violates the principle of earned rights, respectively disregards the principle of transparency and predictability of the law which stipulates that on the date of submission of the request, as well as on the date of its resolution, they did not own or do not own a home or a plot of land intended for the construction of a personal property, both in the locality in which the allocation of land for use is requested, as well as in other localities.

8. DATE OF CLAIM RESOLUTION

In order to convince the court, it was argued that the expression "resolution of the request" does not represent the conclusion of the free us agreement through which a local council decision is implemented, since the plaintiffs' request consisted in the "approval of the assignment for free use of a land" and not the approval of the conclusion of an agreement.

However, the request for approval of the assignment of land for free use has already been accepted by the Commission for the implementation of Law no. 15/2003 and validated by the HCL of land allocation from March 2019. In this case, the request was resolved, based on the fact that the HCL was adopted by which the right of the applicants is recognized, it entered the patrimony of the young people, following which the competent administrative authority will put in apply that HCL and conclude the loan agreement, respectively the handover-acceptance report.

In support of our interpretation, we saw that it is necessary, therefore, to make the proper distinction between:

*approval of a request by administrative act, respectively

*implementation/execution of the respective administrative act through SUBSEQUENT TECHNICAL-ADMINISTRATIVE OPERATIONS. (Trăilescu, 2018, p.53.)

9. ADVERSE JUDGMENTS

Initially, with regard to the interpretation of the expression "date of resolution of the request", the Court of Appeal had the following consideration:

"Regarding the fact of the acquisition of a land, it happened after the request was resolved, i.e. after the approval of the assignment of free use of the land, so it has no way of affecting the investigation of the fulfillment of the conditions imposed by Law no. 15/2003, research - analysis that had previously occurred."

However, later, another panel pronounces a contrary decision, with the following argument:

„Regarding the interpretation of the notion of „the date of resolution of the request", the Court does not share the opinion expressed by the respondent-claimant – as if it coincided with the date of award by administrative act adopted by the deliberative authority -, in this case by HCL no. 609/10.012.2019, since the date of resolution of the request can only be represented by the moment when the person who made the request based on Law 15/2003 effectively entered into possession of the land, by concluding the minutes of the assignment of the land doubled by the conclusion of the contract of commodat (free use)."

Related to these opposing assessments, how do you explain to non-jurists the interpretation given by the court according to which the "date of resolution of the request" is not the date on which a unilateral administrative act of an individual nature was adopted - which is a genuine manifestation of will that produces legal effects, but the date on which it is put into execution by the Mayor, in the pending case, the date of conclusion of the loan agreement and the minutes of possession - technical - administrative operations?

Should the court, in the process of drafting the court decision, also think about non-jurists, so that the text is not a wooden language for the latter?[7]

Returning to our research, it would seem that the court of law appreciates that an adopted individual administrative act does not confer rights on its recipient, these rights entering the recipient's patrimony only through the execution of the said act, respectively at the time of performing the technical-administrative operation.[8]

CONCLUSIONS

In conclusion, it is very possible that this study has raised more questions than found adequate answers to the acute crisis regarding the dialogue, sometimes deaf, between institutions, but we cherish the hope that the formation and chiselling of mutual respect and openness to dialogue between the authorities/ public institutions will crystallize the guiding ideas in the field of effective inter-institutional communication.

[7]*Exempli gratia*: the rejection of the res judicata authority exception - the exclusivity of the decision, although in the case the power of the res judicata was invoked - the binding nature of the decision, could be translated by the following non-legal dialogue:
- Hello! What beautiful apples you sell! Please give me 1kg!
- Hello! We have no pears for sale today!).

[8] Perhaps it is not an appropriate analogy, but in the Middle Ages it was necessary to consummate the marriage for this institution to confer full rights and obligations on the spouses, Henry VIII of England himself invoking the nullity of the marriage with Catherine of Aragon as a result of its non-consummation.

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