

THE EFFECTIVENESS AND EFFICIENCY OF INTERNAL ADMINISTRATIVE APPEALS IN ROMANIA. GOOD LEGISLATIVE INTENTIONS BUT NO RESULTS?

Gabriela BUCĂTARIU¹
Octavian MOLDOVAN²

Abstract

Introduction

The aim of this paper is to evaluate the effectiveness and efficiency of the internal administrative appeal in fiscal matters in Romania, in comparison to the more time and resource consuming court actions against an administrative decision which imposes fiscal obligations. The internal administrative appeal (or the preliminary administrative procedure) is mandatory in the case of fiscal administrative acts in order to pursue future court actions, but despite the good intentions the legislative power had when instituting this procedure its effectiveness and efficiency are often called into question.

Methodology

After describing the procedure by which an administrative act can be appealed administratively, a document analysis was conducted in order to extract useful data from the reports and documents issued by the National Agency for Fiscal Administration (NAFA) on the efficiency and effectiveness of this procedure. Furthermore, the data regarding the results of the internal administrative procedure is further compared to the results of the judicial procedure (regarding the number of admitted legal actions – annulled fiscal obligations).

Results

The results show that (in the 2013-2017 period) the internal administrative procedure was both inefficient and ineffective (on average, less than 7% of fiscal contestations were solved/settled in favor of the appellant), time consuming (although they should be settled in 45 days, the answer is provided after 70 days) and is often seen as a mere stepping stone required to pursue legal/court actions (without having any possibility to provide a satisfactory solution and thus lessen the workload of the court). Surprisingly, the courts seem to act as a more favorable/efficient mean as more than half of the legal actions brought against the fiscal administrative acts were settled in favor of the taxpayer (fiscal obligations were annulled).

Discussion

The effectiveness of the preliminary administrative procedure in fiscal matters was also analyzed from multiple perspectives, pertaining to the actors that have a direct or indirect legitimate interest in this procedure: (1) the courts (which should/could benefit from a reduced workload if the procedure would be effective), (2) taxpayers that make administrative appeals (which could have a feasible alternative to the time and resource consuming judicial means), and (3) fiscal bodies that issued the fiscal administrative acts or which must offer an answer to the appeal. The fact that this procedure is mandatory (before the judicial one) and not an alternative mean of dispute resolution seems to significantly impede its efficiency and effectiveness; as such, acting as a preliminary condition rather than an alternative, it becomes harder to present arguments in favor of this procedure.

Points for practitioners

Since the paper scrutinizes the efficiency and effectiveness of the internal administrative appeal, the results of the research could be of interest for national and international decision makers in order to re-design this procedure to achieve its intended goals. Furthermore, our work also brings into discussion the ‘legalistic culture’ of the Romanian PA system as this procedure was designed according to Rule of Law and Good Governance principle, but little attention was paid to its effectiveness, efficiency and utility.

Keywords: Romania, internal administrative appeal, judicial procedure, public finance administration, effectiveness and efficiency.

¹ Partner, “Lăpușan & Partners” Law Firm, Cluj-Napoca, Romania. E-mail: gabriela.bucataru@lapusan.law.

² Assistant Professor, Department of Public Administration and Management, Faculty of Political, Administrative and Communication Sciences, “Babeș-Bolyai University”, Cluj-Napoca, Romania. Tel.: 0040-744-891.466. E-mail: octavian.moldovan@fspac.ro.