

SOME REFLECTIONS ON THE REASON OF JUDICIAL REVIEW STIPULATED UNDER ART.21 PARA 2 IN THE CONTENTIOUS ADMINISTRATIVE LAW NB.554/2004

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Abstract

After Romania's accession to the European Union, the Romanian lawmaker attempted to implement efficient tools to concretely transpose the Priority Principle for the Application of European Law, for instance, into the national law. In this context, under Law nb. 262/2007 for amending the Contentious Administrative Law nb. 554/2004 a new review reason was introduced, a reason that is added to the review reasons provided by the Code of Civil Procedure. Because this legal text had sort of an unlucky drafting, being often criticized for being unconstitutional, it ended by being directly and totally abrogated, and, later on, on the same basis, be declared from the very beginning as partially unconstitutional, and then re-entered into force, the text still producing legal effects, through the first and third thesis in the initial drafting. The lawmaker was suggested that, while re-examining the text, to take into account the arguments provided by Decision nb.1.609 September 9 2010, regarding some shortcomings in drafting this legal norm.

In the present paper, we intend to evaluate these legal provisions and review the main aspects which generated and still generate conflicts in enforcing and interpreting it, underlining, where necessary, our own approach.

Keywords: *review, contentious administrative, European Union Law.*

1. Preliminaries

The review was elaborated by the Romanian lawmaker like an extraordinary retraction appeal.

As shown in the provisions of Art. 129 in the Romanian Constitution the appeal against legal decisions is available to the party if regulated by law and can be exercised according to law.

At the same time with the integration of Romania into the European Union¹ the problem arose, *inter alia*, of reflecting in the inner normative environment the Priority Principle and the compulsoriness of pertinent jurisdiction of the European Union.

In this context, even since the review of the Romanian Constitution² the problem arose of adapting the legal system to the European legal order just for ensuring the conjunction between the two normative environments.

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¹ The treaty of Romania accession to the European Union was approved by Romania by Law nb. 157/2005 published in the Gazette, Romania nb. 465 din June 1 2005.

In this respect, under Art.148, para2 and 4 in the Romanian Constitution, revised and republished in 2003, it was stipulated, as an effect to the accession to the European Union, the priority of constitutive treaties of EU and of the other union compulsory regulations against the contrary provisions of inner laws. Moreover, in order to grant this action of the constitutional rule, positive obligations were given to the major state actors, among which the judicial authority.

In the secondary legislation, besides the provisions of Art.4, para 3 in the Accession Treaty and Art.288 in the Treaty on the Functioning of EU (that regulates the judicial regime of union legislative acts), in the Contentious Administrative, Law nb. 554/2004³, they inserted in Art. 21, para2, like a change done by Law nb. 262/2007⁴, as a marginal name to the extraordinary appeal the provision according to which : *„It is a reason of review, that is added to those stipulated by the Code of Civil Procedure, the pronouncement of the final and irrevocable sentences by the infringement of the priority principle for community law, regulated by Art. 148, para(2), in conjunction with Art.20, para(2) in the Romanian Constitution, republished. The review request is brought in within 15 days from the communication, and is done, through derogation from the enshrined rule in Art.17, para(3), at the duly substantiated request of the interested party, within 15 days from the pronouncement. The revision request is solved in emergency in maximum 60 days from its registration.”*

Although in the meantime a new Code of Civil Procedure⁵ was adopted, the text of Art.21, para 2, Law nb. 554/2004 was kept, although it regulates a new review reason for judgements as it results explicitly from its very content. Not even Law nb. 76/2012 for enforcing the Code of Civil Procedure made changes to other texts in the Contentious Administrative Law.

If the recent lawmaker made no changes, it is worth mentioning that, at the same time with coming into force of Art.21, para 2 in Contentious Administrative Law nb. 554/2004 as amended by Law nb. 262/2007, its provisions were often considered unconstitutional.

Thus, in a first Decision,⁶ the Constitutional Court stated as unconstitutional the provision that includes thesis II of the text in Art. 21, para2, Law nb. 554/2004. More precisely, it stated that the text had a poor drafting, giving birth to confusions and uncertainties that might become genuine obstacles in effectively exercising the right of free access to justice.

After this decision and lacking a lawmaker's adequate reaction in agreement with the established constitutional requirements in Art.147 in the Constitution the problem was risen in the legal practice of settling the time when the review request must be brought in according to the reason stipulated by Art.21, para2 in Law nb. 554/2004.

² The Law of Review of the Romanian Constitution, nb. 429/2003 was published in the Gazette, Romania. 758 in October 29 2003.

³ Published in the Gazette of Romania nb. 1.154 in December 7 2004.

⁴ Published in the Gazette of Romania nb.510 in July 30, 2007.

⁵ Law nb.134/2010 regarding the Code of Civil Procedure published in the Official Monitor of Romania nb. 545 in August 3 2012.

⁶ Decision nb.1.609 of December 9 2010 published in the Official Monitor of Romania nb. 70 in January 27, 2011.

After many hesitations and worries, with varied judicial practice, the Supreme Court of Justice through its section plenary established⁷ that the regularity of the review request based on the provisions of Art.21, para(2), Law nb. 554/2004, will be verified within a month – stipulated by Art.324 pct.1 final thesis, applicable according to the remittance rule under Art. 28, Law nb. 554/2004 – from the datum at which the reviewer was informed in any way of the judgement he intends to review.

So, as we shall see below, Art.21, para 2 in Law nb. 554/2004 had a sinous path in the legislative environment, as the lawmaker, instead of adapting the legal text to the requirements evoked in the decision of the instance on a pre-quoted constitutional decision, through Law nb. 299/2011⁸ with unique article asked an express directly abrogation of Art. 21, para2 in Law nb. 554/2004⁹.

After the abrogation, Law nb. 299/2011¹⁰ was found to be unconstitutional¹¹ and was declared as a whole to be unconstitutional through Decision nb. 1039 in December 5 2012¹². Also by means of the same decision, the Constitutional Court stated , as an effect of coming again into force Art.21, para2 in Law nb. 554/2004, through interpretation, that the provisions in Art. 21, para2 the first thesis in the Contentious Administrative Law nb. 554/2004 are unconstitutional to the extent to

⁷ It is about the principle and unifying solution adopted by the judges of Contentious Administrative Section within the Supreme Court of Justice in the plenary meeting on February 7, 2011. (See the solution of the Supreme Instance on internet: <http://www.scj.ro/CMS/0/PublicMedia/GetIncludedFile?id=16778> pag. 47-48.)It is also worth mentioning that this administrative structure of the Spreme Court Makes a welcome application action of the provisions in Art. 33, para1 of the Regulation on the administrative organization and functioning of the HCCJ in order to interpret and apply the contentious administrative and fiscal countries, the Contentious Administrative and Fiscal Section of HCCJ is left to assume its formal and informal role of supreme administrative instance in Romania with all its consequences including the avatar of ensuring, even in this formula, but as part of the supreme instance, the aim of interpreting and unitary applying the legislation according to the requirements imposed by Art. 126, para3 in the Romanian Constitution and of Art. 18, para3 in Law nb. 304/2004 concerning judicial organization legislation. We could stop praising by saying that the structure lacks the authority and competence of unitary interpretation as it does not act on the consacrated paths of primary legislation but only on the basis of a mandate from a normative act secundum legem. We must add immediately and without being afraid of being mistaken that this secondary mechanism, more of an administrative nature, efficiently comepetes along the proposed direction, that of intpreting and unitary applying the right of the contentious administrative the more that, lacking a separation of the judicial jurisdiction as far as the matter of the administrative right is concerned, similar to the modern European.

⁸ Law nb. 299/2011 was published in the Official Monitor of Romania nb.. 916 December 22rd 2011.

⁹ In spite of the abrogation, if the applea was introduced before the abrogation affect it is still available and possible. In this respect the Court of Appeal Timișoara, the contentious administrative and fiscal section, decision nb. 1851 in October 6 2012, in Revista Buletinul Curților de Apel Contencios Administrativ Supliment nr. 4/2012.

¹⁰ In fact when adopting Law nb. 299/2011 the annihilation of restitution requests of pollution taxes were taken into account as an effect of solved causes *illo tempore* by the Court of Justice of EU in the already known cause: *Tatu* (C-402/209= și *Nisipeanu* (C-263/2010). Pentru unele detalii, a se vedea, Daniel Dascălu, *Tratat de contencios fiscal*, Hamangiu Publishing House, București, 2014, p. 712.

¹¹ Abrogation was previously admitted in Art. 21 para 2 in Law. Nb. See: Alexandru Dugneanu, Alexandru Iavorschi, *Opinie privind abrogarea alin. (2) al art. 21 din Legea contenciosului administrativ.Încălcarea principiului bicameralismului și lipsa avizului Consiliului Legislativ*, accesibil la adresa: <http://www.juridice.ro/182117/opinie-privind-abrogarea-alin-2->

¹² Published in The Official Monitor of Romania nb. 61 in January 29, 2013.

which they are interpreted as not being reviewed the final and irrevocable sentences pronounced in the recourse instance, with the infringement of the Priority Principle for the Application of European Union Law, when not evoking the substance of the cause.

Then, by means of two decisions in two files that had the same object and, consequently, the contentious constitutional rejected the exceptions which had become inadmissible;¹³ then, by means of other three decisions, the examination of unconstitutionality was taken into account regarding Law nb. 299/2011, being finally rejected also of having become inadmissible.¹⁴

At the moment, the analysis of Art. 21, para 2, Law nb. 554/2004 must take into account the fact that the text is in force the way it was amended through the two decisions¹⁵ of the Constitutional Court.

2. Admissibility Conditions of the Review Request

The review is an extraordinary appeal,¹⁶ because the reasons for being brought in a review request are but partly stipulated by the law. At the same time, the review is a retraction appeal, because the same instance is meant as that who solved the cause in fact, afterwards being asked to take again the decision challenged in court, on the basis of some new circumstances revealed through the review and which hadn't been taken into account by the instance whose decision was challenged.

By means of these short general reflections, we will review the admissibility conditions of the review that is the very subject of our paper.

To the extent to which these subjects are not further considerations under Art. 21 para 2, Law nb. 554/2004 introduces no derogation from the rule according to which a reviewer can be any party who was part of the trial where the judgement was appealed, no matter how the decision was pronounced, but on condition it justifies an interest.

As far as the object of the review is concerned, one should note that under Art.21, para 3, Law nb. 554/2004 it is limited and circumscribed only regarding final

¹³ Decisions nb. 61/2013 and 63/2013.

¹⁴ Decisions nb. 216/2013, 275/2013 and 417/2013.

¹⁵ We are thinking about decisions nb. 1609/2010 and 1039/2012.

¹⁶ The review provided by Art. 21 para 2 under Law nb. 554/2004, with ulterior changes and additions also is an extraordinary appeal, like that provided by Art. 322 C.pr.civ. (from 1865), only the reason why the request is demanded differs from that provided by the Code of Civil Procedure and is meant to ensure the respect of the rules of priority principle of community law against the innerrule by the contentious administrative instances; the principle is constitutionally approved under Art. 148 para 2 in the Romanian Constitution, republished. Consequently,, HCCJ,the Contentious Administrative and Fiscal Section, Decision nb. 343 in January 25 2012 is available on net: <http://legeaz.net/spete-contentios-inalta-curte-iccj-2012/decizia-343-2012> Also, it has been decided that: the review appeal by means of Art. 21 para (2) is a modality by means of which the Romanian lawmaker, in the content of the contentious administrative,, meant a procedural device that may verify the way in which national instances respect the priority principle of community law and, therefore, the protection of interests of those persons who could be hurt by the infringement of the community law. In this respect, see: C.A.Cluj, II nd.section of contentious administrative and fiscal, decision nb. 3147 April 7 2014, not published.

and irrevocable sentences¹⁷ pronounced by the infringement of the priority principle of community law.¹⁸

Moreover, it is worth noting that as opposed to the rule of review in common law, the special review under Art.21, para 2, Law nb.554/2004 is not relevant as far as admissibility is concerned if the sentence does not evoke the substance of the cause. And it is so, because the introductory part that regulated the review appeal includes rules common to all review cases stated by procedural common norms, a context that under Art.21, para2, Law nb. 554/2004 brought about the problem whether it is kept regarding the final and irrevocable sentences pronounced by the infringement of the Priority Principle for the Application of EU Law.¹⁹

Thus, through Decision nb. 1039/2012, the Constitutional Court stated with the value of a principle²⁰ that the regulation of the condition for evoking the substance, as an admissible condition of the review request of a particular sentence obstructs the free access to justice, granted by Art. 21 in the Constitution, regarding the fact that the man of justice is deprived of the benefit of applying the Priority Principle for European Law.

Moreover, starting from the followed issue by taking into account the established norm under Art. 21, para2 under Law nb. 554/2004, namely that of being a national remedy in the sense of an efficient second appeal; it might be endangered if it were excluded from the possibility of reviewing irrevocable sentences pronounced by the instances, by the infringement of the Priority Principle for Applying EU Law, in which the substance of the cause is not evoked. The national legislation must make available an efficient device in order to protect rights which devolve from the EU law, without imposing conditions for confirming and which obstruct the achievement of this aim.

Being like this, following this reason, the final sentences which do not evoke the substance of the lawsuit are also reviewed under Art.21, para 2 in Law nb. 554/2004.

Another aspect circumscribing this review reason consists in restricting the applicability of this appeal only regarding the sentences pronounced by contentious administrative instances and in this very matter.

¹⁷ New Code of Civil Procedure; see: Art. 634 . Also, Art. 8 under Law nb. 76/2012 stipulates that from the datum of coming into force, the content of normative acts at the judicial decision of being "final and irrevocable" or as it is "revocable" will be understood as being "final".

¹⁸ After the modifications in the Lisbon Treaty, it is unanimously accepted that the term "community" is no longer applied in EU. The best phrase is the EU Law or often union law is used, but the latter might generate confusion.

¹⁹ It was decided in a cause that the interpretation of the provisions under Art.322 para(1) Code of Civil Procedure in conjunction with the provisions under Art 21, para, (2) as a result of enforcing Art. 28, para (1) under the Contentious Administrative Law, it results that the object of review can be the decisions pronounced in (second) appeal when it evokes the substance, thus, the review request is not admissible. In this respect HCCJ – Contentious Administrative and Fiscal Section, decision nb. 3123 May 27 2011; when opposed, see: Art. 21 para 2 under Law nb. 554/2004; also see: Court of Appeal Cluj, trade section and contentious administrative and fiscal, decision nb. 3220 December 7 2010, published in *Buletinul Jurisprudenței pe anul 2010*, Universul Juridic Publishing House, București, pp. 692-695.

²⁰ This statutory is not new in case law of the contentious constitutional instance being first approached related to decisions meant to be reviewed when dealing with human rights (Art. 322 pct. 9 Code of Civil Procedure in 1865) the aspect was taken again by the lawmaker in Art. 509 para 2. See Decision nb. 233 February 15, 2011, published in the Official Monitor of Romania nb. 340 May 17, 2011.

We have in view the fact that the review reason was initiated by Law nb. 554/2004, as amended through Law nb. 262/2007, the reason being not overtaken as a review reason of common law by Law nb. 134/2004 regarding the Code of Civil Procedure. This means, the incidence sphere of review appeal on the reason provided by Art.21, para2 circumscribed the limited area provided by Law nb. 554/2004.²¹

An interesting aspect related to the applicability of the review in a limited area on the reason provided by Art.21, para 2 in Law nb. 554/2004 is approached in a case²² pending the Court of Justice of EU. Thus, the Sibiu Court in Romania warned the case law of contentious of EU with a preliminary bringing in worded in the review appeal²³ demanding that the European instance pronounce itself upon the following aspect:

„Art. 17, 20, 21 and 47 in the Charter of the European Union Fundamental Rights, Art.6 in the European Union Treaty, Art.110 in the Treaty on the Functioning of the European Union, the principle of legal security from the community law and case law CJEU, may be interpreted as opposing a regulation such as that provided by Art. 21, para2, Law nb. 544/2004 that foresee the possibility of reviewing the inner sentences exclusively pronounced in contentious administrative assuming the infringement of the Priority Principle in community law and do not allow the possibility of reviewing the inner sentences pronounced somewhere else (be they civil or criminal ones) assuming the infringement of the same principle ”

As the notification says, namely the closing in January 16 2014²⁴, it seems that the request brought in, although at first sight had an object compatible with the dispositions under Art. 8, para1, Law nb. 554/2004; it was meant to be solved as a civil cause and in the second appeal the plaintiff's right was admitted only related to the difference between the special tax as first registration and pollution tax regulated by OUG nb. 50/2008. From the notification as well that the review request was later named under Art.21, para 2, Law nb. 554/2004; therefore, the viewpoint of Court Sibiu is justified, the necessity of apprising the Court of Justice to decide if the appeal used could be extended to other possibilities as well. More precisely, the efficiency of the remedy could be arisen as stipulated in Art. 21, para 2, Law nb. 554/2004 if it weren't accepted as admissible in other matters (e.g. civil and criminal).²⁵

²¹ The analyzed legal text exclusively introduces in the Contentious Administrative Law a new review reason that is added to the ones provided by the Code of Civil Procedure.

²² Târșia case nb. C-69/14 (also see: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=151142&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=185171>).

²³ For details see: <http://www.juridice.ro/309985/trimitere-preliminara-formulata-de-o-instanta-din-romania-tribunalul-sibiu-c-6914-tarsia.html>

²⁴ For details see: <http://www.euroquod.ro/ue/files/pubs/tarsia.pdf> NIILLO JÄÄSKINEN ' conclusions should also be seen April 23 2015: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=163886>

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=163886&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=348604>.

²⁵ In the specialised Romanian literature it was shown that by regulating this new review reason the lawmaker moved towards the priority principle of the European Union Law, but „ but only half of it has been done and had in view its being applied”, opening the review appeal only as far as contentious administrative is concerned, a more general application being necessary. In this respect Gheorghe Buta, *Comentariu II la dec. Nr. 1921/2010 a Curții de Apel Cluj, s.com. de cont.adm. și fiscal* in *Revista Română de Jurisprudență* nr. 3-4/2010, pp. 66-68.

554/2004 is an incident on condition that in the sentence left irrevocable there was no analysis regarding the compatibility of the inner norm with the community law and with the case law developed on its basis or the analysis is incomplete, a situation in which the reviewer must point which are the new arguments which might justify the admission of a extraordinary appeal and rejection of the final sentence added to those already analyzed by the instance.³² If admission on the contrary would mean to infringe the judged work priority principle and that of legal relationship security born from this very sentence. Therefore, to the extent to which the review request brings similar arguments to those of the invoked defense analyzed by it, this time the appel is transformed from a retraction one in one of reformation, a fact that obviously is inadmissible.³³

As far as the datum of the review wording is concerned, we should underline from the very beginning the drafting malfunction especially in connection with the moment when the review was brought in. Starting from these premises, the contentious constitutional jurisdiction noted from the beginning that the thesis of the second legal norm is not constitutional.³⁴

The matter of when and how the datum of the review was established, have worried the instances since the beginning³⁵ and mostly after solving the exception by means of Decision nb. 1609/2010.³⁶

³² Andrei Axente Irinel, *Comentariu la decizia nr. 1921/2010 a Curții de Apel Cluj, secția comercială, de contencios administrativ și fiscal*, in *Revista Română de Jurisprudență* nr. 3-4/2010, pp. 60-65.

³³To the contrary, in a cause it was decided that the review is not admissible, but was admitted on the ground that the second appeal instance didn't analyze the provisions invoked by the plaintiff to keep in mind that Art.168, Directive 112 hadn't direct effect nor did it point to a sentence given by the European Court of Justice so as the aspect should result out of it. In this context, the review instance considered that, such an analysis missing, the direct effect of Art.168, cited Directive, cannot be excluded, moreover the second appeal instance had the obligation under Art.267 TFUE to apprise the European Court of Justice with a preliminary question regarding the interpretation and effects of Art.168 had they something unclear. Also see: *Curtea de Apel Timișoara, secția de contencios administrativ și fiscal, decizia nr. 1851 din 6 octombrie 2012*, in *Revista Buletinul Curților de Apel Contencios Administrativ Supliment* nr. 4/2012.

³⁴ The Constitutional Court, decision nb. 1609/2010 published in the Official Monitor of Romania, part I, nr. 70 January 27 2011. Although the text was found as having drafting malfunctions, still, surprisingly, it was not declared unconstitutional.

³⁵ Connected to the term the review was accepted in a cause, they stated that the period of three months is applied as provided by Art. 324, para3 the Code of Civil Procedure, 1865, and is flowing from the moment it was published in the European Union Official Journal, of the sentence pronounced in cause Tatu.CA Alba Iulia contentious administrative and fiscal section, decision nb. 1960 June 21 2011. To the contrary, in the practice C.A. Cluj, at least in the period when the causes Tatu and Nisipeanu were in discussion, it was underlined that the term for bringing in reviews is 1 month and is calculated from the moment it was published in the European Court Official Journal. See in this sens: CA Cluj, section II civil,

the administrative and fiscal, decision no. 114 of 30 November 2011, not published.

³⁶ In a cause, for instance, it was noted that: „lacking some special provisions, the provisions of common law are applied regulated by the review instances in the Code of Civil Procedure, namely the one month period provided by Art.324, para1, CCP. This period would be applied from the moment when the infringement of the priority principle of community law was discovered. But, the European Union Court of Justice has not answered yet. Also see: C.A. Cluj, Section II civil administrative and fiscal, decision no. 3147 of 7 April 2014, not published.

In a lawsuit, it was particularly stressed that *when the instance was apprised (28.07.2011), the provisions under Art.21, para(2), second thesis in Law nb. 554/2004 were already declared unconstitutional under the decision of the Constitutional Court nb. 1609/9.12.2010, so that, according to the provisions in Art. 147, para (1) in the Constitution, the period of 15 days provided by Art.21, para(2), could no longer be applied; nor could be applied the periods provided under Art.324 CCP, as a result that these are expressly regulated for each review reason; they are not to be found in the provisions under Art.322, CCP;³⁷ in which it is not to be found. Starting from this point, one could not reach the conclusion that the review request could practically be brought in at any time, and this fact is debatable having in view the preeminence of the security principle in juridical relationships in a rule of law state.³⁸*

Otherwise, the Supreme Court of Justice, by means of its section, plenary established that the review request done according to the provisions under Art. 21, para (2), Law nb. 554/2004, will be verified in relation to the general period of one month – provided by Art.324, p.1 final thesis CCP, applicable according to the remittance norm from Art.28, Law nb. 554/2004 - starting from the moment when the reviewer was informed of the sentence whose review he requires.³⁹

The question arose in a lawsuit⁴⁰ whether in the review reason provided by Art.21, para 2, Law nb. 554/2004 there actually is a refringement of the right to a fair trial, as provided by Art. 6, para1 in the Convention for the Defence of Human Rights and Fundamental Liberties⁴¹ in conjunction with the provisions under Art.6, para 2 in the European Union Treaty. The Court Cluj accepted the idea that the right to a fair trial provided by Art. 6 in the Convention is not part of the review reason expressly required under Art. 21, Law nb. 554/2004 because this special review case is about an irrevocable sentence made with the mistaken enforcement of the national law, in circumstances when it was contrary to some provisions of the community law, with prior enforcement. On the other hand, it was established that Art.6 in the Convention cannot be assimilated with a community norm, the European Convention being but a device of the European Council.

³⁷ Ploiești Court of Appeal, Section II, civil, administrative and fiscal decision no. 4046 of 13 September 2012, the magazine Administrative Courts of Appeal Bulletin Supplement no. 3/2012.

³⁸ For instance, in *Brumărescu vs. Romania* the European Court of Human Rights stated that one of the fundamental elements of law preeminence is the security principle of judicial relationships which imposes, inter alia, that a final decision to a litigation not to be discussed again. (The sentence was published in the Official Monitor nb. 414 August 31 2000). It is worth mentioning that (...) when the infringement of this principle is caused by the possibility of annulling, without a time limit, a final, obligatory and elaborated sentence, I consider that the infringement is actually a defeat of the „right to justice” granted by Art.6 in the Convention (For new details also see: R. Munteanu, *Drept european*, Oscar Print Publishing House, București, 1996, pp. 329-330.)

³⁹ It is about the unification of the adopted judicial practice by the judges of the contentious administrative and fiscal Section within the Supreme Court of Justice in the plenary meeting, February 7 2011. (Also see: <http://www.scj.ro/CMS/0/PublicMedia/GetIncludedFile?id=16778> pp. 47-48.)

⁴⁰ The Court Cluj, Commercial Section, Contentious administrative and fiscal, Decision nb. 2518 October 16 2009, in *Buletinul Jurisprudenței din anul 2009*, Universul Juridic Publishing House, București, pp. 318-324.

⁴¹ Law ratified in Romania by nb. 30/1994 published in the Official Monitor of Romania nb. 135, May 31 1994.

Related to this hypothesis, in the specialized literature it was argued whether on the basis of the review enshrined under Art. 21, para 2, Law nb. 554/2004 there could be said to be infringements of the human fundamental rights.⁴²

The authors underline that, at first sight, the answer might seem negative,⁴³ a tinting is imposed starting from the observation that, in the texts, community case law progressively ensured the efficient protection of rights; the community judge has turned the European Convention of Human Rights into a source of privileged inspiration.⁴⁴ In the context of Art.6, the EU Treaty that provides equal legal value of its rights with those in the Charter of EU Fundamental Rights it was concluded that in a review request there might be invoked infringements of fundamental rights. It was also argued that the EU law provisions which should be enforced with priority are those in Art. 2 and 6 in the EU Treaty and the Charter of Fundamental Rights.

We consider that the answer to this matter should start from the very reason of belonging to the provisions in Art. 21, para2, Law nb. 554/2004, namely that of being a remedy in the inner law for granting and efficiently enforcing of the Priority Principle for the Union Law vs. the inner law. Should we admit that the fundamental rights that circumscribed the Charter are part of the legal norms of EU which might be considered priority then we should also admit that they might be joined to the review reason enshrined under Art. 21, para2, Law nb. 554/2004.

3. Conclusions

As it was already observed from the analysis of the doctrine and law case, the review appeal on the reason provided under Art. 21, para 2, Law nb. 554/2004 is a lawmaker's inspired solution as it is meant to ensure, grant and transpose into the concrete one of the fundamental principles of the European Union Law upon the national law and, consequently, through this national mechanism a uniform enforcement of the law and, thus, the legal order of the European Union can be strengthened.

At the same time, the exclusive regulation of the review appel only concerning contentious administrative litigations and exclusively given to the competent contentious administrative instances has no reasonable justification the Priority Principle for the Application of European Law does not stand out against the material administrative law, but also against the other law branches to the extent to which the European Law converges with European treaties. From this viewpoint, even if CJUE has a case pending dealing with this aspect, it is desirable that the review request be

⁴² A. Roșu, S.P. Gavrilă, *Revizuirea hotărârii instanței de contencios administrativ conform art. 21 alin. (2) din Legea nr. 554/2004. Condiții de admisibilitate*, lucrare accesibilă la adresa: <http://www.conferences.univ-danubius.ro/index.php/EIRP/EIRP2011/paper/downloadSuppFile/326/80>.

⁴³ *Idem*. Two major arguments are taken into consideration: when an infringement takes place, the review of common law is taken into account as under Art. nb. 322 pct. 9 C.pr.civ. from 1865 or the present article. 509 pct. 10 C.pr.civ. (Law nb. 134/2010) and that initially the protection of human rights was not a concern of EU.

⁴⁴ The sentence pronounced in Renucci case, 2009 is usually quoted here, *Idem*.

also extended upon other branches as well. In this respect, even Art.509 in CCP could be amended with a new review reason that might have impact upon all aspects which call for conflict solution by means of the civil procedure norms.

At the same time, when such a regulation occurs, the text that is to be amended must be taken into account and be done according to the arguments and exigencies of a constitutional nature imposed by contentious constitutional through the two reference decisions analyzed in the present paper.

We also consider to be worth mentioning the fact that the lawmaker should be more concerned in order to make clear the legal nature and its effects of such an appeal, keeping in mind the aim it follows. We also have in view that this *sui generis* review reason can resize the aspects of the appeal and that the review appeal is likely to be seen as a reform appeal than a retraction one. And it is so, the legal practice hasn't placed itself on the position on which a review cannot deduct the circumstance under which through the appealed sentence the instance that pronounced it missing to mention the priority of the Union Law or didn't invoke *ex officio* a pertinent norm belonging to the EU Legislation. And, although the incompatibility between inner norms and those of EU was expressively evoked, the instance ignored the European norm thus infringing the Priority Principle for the Application of European Law.