

12 May 2015

Legal Bulletin



Energy

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The 30-day term for challenging ANRE President's orders and decisions has been declared unconstitutional

By Decision No. 136/10 March 2015, published in Official Gazette of Romania, Part I, on 8 May 2015 (“Decision 136/2015”), the Constitutional Court granted the plea of unconstitutionality (in Romanian, *excepție de neconstituționalitate*) of the provisions of Article 5 (7) of *Government Emergency Ordinance No. 33/2007 on the organization and functioning of the National Regulatory Authority for Energy* (“GEO 33/2007”). The legal provisions at issue provided that the orders and decisions issued by the National Regulatory Authority for Energy („ANRE”) can be challenged by way of administrative legal proceedings with the Bucharest Court of Appeal within 30 days (a) following their publication date in the Official Gazette of Romania - in the case of administrative acts having general applicability (in Romanian, *cu caracter normativ*), respectively (b) following the date on which such were communicated to the interested parties - in the case of acts having individual applicability.

With a view to issuing such decision, the Court ascertained that, by limiting the judicial control of the acts issued by the ANRE President to 30 days, the legal provisions at issue breach the constitutional principles set forth under Article 21 (the free access to justice and the right to a fair trial), Article 52 (the right of a person injured by a public authority) and Article 126 (6) (the judicial control of the public authorities' administrative acts) of the Romanian Constitution.

As concerns the effects of Decision 136/2015, according to *Law No. 47/1992 on the organization and operation of the Constitutional Court*, the decision is final and binding, and the provisions of Article 5 (7) of GEO 33/2007 shall cease to produce legal effects within 45 days following the publication of the decision in the Official Gazette if, during such term, the Parliament or the Government, as applicable, fails to make the unconstitutional provisions compliant with the Constitution. During such term, the provisions ascertained to be unconstitutional are automatically suspended.

Therefore, given the binding effect of the decisions issued by the Constitutional Court, as of the date of publication of Decision 136/2015 in the Official Gazette of Romania, the orders and decisions issued by the president of ANRE can be challenged by way of administrative proceedings according to the general rules set forth under Administrative Proceedings Law No. 554/2004 (“**Law 554/2004**”), respectively (a) in case of the administrative acts having general applicability (in Romanian, *cu caracter normativ*) - at any time, by way of an action and (b) in the case of administrative acts having individual applicability - (1) by way of an action, in observance of the mandatory preliminary procedure, and within the terms provided under Law 554/2004, and (2) by way of a plea, at any time.

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