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The Legal Force and the Effects of Administrative Acts in Light of the New Regulation

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Abstract: The administrative act produces effects for a period of time until it is at an end – *tempus regit actum*. Publicity of acts constitutes a validity condition; no one could invoke the *nemo censetur legem* principle. Three main modalities entail the end of the effects: the act is at an end, falling into desuetude or repealed. There are also other cases, such as: a) repealing of the legal basis; b) ascertaining the unconstitutionality on the basis of article 147 par. (1) of the Constitution; c) adoption of a law for the rejection of an ordinance; d) issuance of a decision that declares unconstitutional the law for the approval of an ordinance; e) inexistence and caducity of an ordinance; f) repealing of the repealed norms of ordinances; g) annulment of a normative administrative act; h) promulgation of the law before the issuing of the decision by the Constitutional Court; i) ending the effects of a governmental decision, following the removing of a company from the companies registry; j) total replacement of the title and object of a regulation through the law for the approval of an ordinance. Accordingly, the cases of ending effects of administrative acts are wider than the three main modalities, as well as the institution of ending legal effects of normative acts is broader than the institution of repealing those acts.

Keywords: administrative act; legal effects; tempus regit actum; legislator; ending of legal effects

1. Introduction

The administrative acts, as any legal act, give rise to, modify or extinguish legal relations, so they produce legal effects with a certain force. In the literature of administrative law, in order to substantiate the special legal force of administrative acts as acts of authority and implicitly the obligation of their execution, the "presumption of legality underlying the entire edifice and the theory of administrative act" is used (Ionescu, 1970, pp. 252-253). As long as the administrative act exists, it is presumed that it was issued in compliance with all the substantive and formal conditions provided by law, whence the idea of its compliance appears to us detached from the idea of obeying the law. Hence, "theorizing in all contemporary Western doctrine the principle of legality" (Schwarze, 2009, vol. I, pp. 113-274).

However, the presumption of legality is associated with other presumptions: the presumption of authenticity (the act actually emanates from who is said to emanate) and the presumption of veracity (the act actually reflects what the issuing authority established), together forming the theoretical foundation of the effects in the regime of power of the administrative act, as well as of its obligation of execution.

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In the literature, a distinction is made between the obligation to execute, which concerns only the subjects holding rights and obligations, as an effect of issuing the act, and the obligation of observance or opposability, which extends to other subjects of law than those obliged to execute. It is argued that "the legal force of the administrative act is identical to other unilateral acts emanating from state bodies in the exercise of state power, but is inferior to the legal force of law" (Ionescu, 1970, p. 260).

The legal force of unilateral acts of power, including administrative acts, is superior to other legal acts, regardless of who they emanate from. The legal force of acts of power is therefore superior to acts of civil law, labor law, etc. No less, given the structure of the organization of the state administration, it is natural that there is a differentiation in terms of legal force between the various administrative acts. In principle, the legal force of an administrative act is given by the place occupied by the issuing body in the system of public administration organization, as well as by the nature of the respective body.

2. The Execution of Administrative Acts

One of the specific features of the administrative act, as a category of legal acts, is represented by their ex officio executory feature (*executio ex officio*), from the date of their legal adoption[1], respectively of their bringing to public knowledge[2]. This feature is characteristic to acts of power, including the administrative act, which means that the administrative act is in itself an enforceable title, so that it can proceed to enforcement directly on its basis, without the need for issuing another enforceable title. The literature (Ionescu apud Iorgovan, Vol II, 2002, p. 64) distinguishes between *the obligation to execute* (generally an obligation to do), which concerns only the subjects holding rights and obligations, as an effect of issuing the act, and *the obligation to comply* (in principle, an obligation not to do), which extends to other subjects of law than those obliged to be executed.

The rule of executory feature is **relevant** especially in the situations in which the administrative acts are not performed voluntarily by those obliged to execute the act and when coercion must be appealed. If in the first situation, the procedure is not detailed by law, having a simplified feature, often being sufficient to adopt or inform the administrative act, in other cases, it was found the existence of legal regulations on the procedure and methods of coercion, which have a more complex feature, considering (Santai, vol. II, 2002, p. 109), as a basic rule in the use of the constraint method, the obligatory feature of the prior warning or summons of the subject. Executory feature must be retained *ex officio* as a principle that includes some **exceptions**, arising from the legal provisions that provide for some administrative acts the rule that they acquire enforceability only after fulfilling certain conditions such as meeting deadlines, rejecting the appeal[3], approval, confirmation. It has been proposed in the literature (alexandru, 2005, p. 393) that if the administrative act is likely to result in the loss or restriction of a right, the imposition of an obligation or sanction or the causing of harm to the recipient or a third party, enforcement could be done after 15 days, from the notification, if it has not been attacked within this period. In this situation, *the administrative act should be suspended by law*, until all remedies have been solved.

[1] For arguments of the thesis according to which the act creates obligations from the moment of its adoption, in the sense you must bring it to the attention of those interested and it can only be revoked under legal conditions, see (Iovănaş, 1977, p. 266; Iorgovan, vol. II, p. 66; Nicola, 2005, p. 437)

[2] See (Alexandru, in Alexandru, Cărăuşan & Bucur, 2005, p. 392).

[3] Thus, in accordance with the provisions of art. 31 para. (1) of G.O. no. 2/2001 regarding the legal regime of contraventions, against the report of finding the contravention and of applying the sanction, which has the legal nature of an administrative act, a complaint can be made, within 15 days from the date of its handing or communication. The complaint suspends the execution.

Enforcement of the administrative acts is performed by the issuing authority or by the agents empowered in this respect and **the execution** is done by the legally obliged subjects of law, for whom the act is intended. For example, according to Government Emergency Ordinance no. 59/2019 on the Administrative Code, Government decisions and ordinances are signed by the Prime Minister, countersigned by ministers who have the obligation to implement them and are published in the Official Monitor of Romania, Part I, non-publication leading to non-existence of the decision or ordinance. Decisions of a military nature are communicated only to the institutions concerned (art. 38 para. 3).

3. The Legal Effects of Administrative Acts

As a kind of legal acts, the administrative acts are issued in order to produce legal effects, so to create the amendment or extinguishment of legal relationships. These are effects in terms of administrative law relations, mainly as legal relations within and for the achievement of the executive activity of the state, but also of some other legal relations: labor law, civil law, family law, etc.

3.1. The Moment from which the Administrative Acts Produce Legal Effects

In the specialized literature it is considered that the moment from which the administrative acts produce legal effects is the one of bringing to the knowledge of the content of the act following the publication of the normative acts, respectively, of the notification of the individual acts (Iorgovan, 2002, p.66; Petrescu, p. 318). In other words, it is about the entry into force of an administrative act, which has two main consequences: the production of legal effects and enforcement. The rule is of great practical importance because the existence or non-existence of the obligation to execute the administrative act and, implicitly, the possibility of its ex officio execution, depend on it.

At the same time, the doctrine appreciated that, for the issuing authority, the act creates obligations from **the moment of its adoption**, in the sense that it must bring it to the notice of the interested parties and can only revoke it under legal conditions (Iovănaş, 1977, pp. 249). These doctrinal rules found their constitutional support in art. 15 par. (2), art. 78 and art. 114 para. (4) of the fundamental law which, in its initial form since 1991, had the following wording: Art. 15 para. (2): "The law provides only for the future, except for the more favorable criminal law". Art. 78: "The law is published in the Official Monitor of Romania and enters into force on the date of publication or on the date provided in its text." Article 114 para. (4): "In exceptional cases, the Government may adopt emergency ordinances. They enter into force only after their submission to Parliament for approval ...". Therefore, with the value of principle, the 1991 Constitution established the rule of non-retroactivity of the law. The law enters into force, as a rule, on the date of publication in the Official Monitor of Romania, Part I and, by exception, on a later date expressly specified in its contents. These rules were applicable to all normative acts, including administrative ones. In the case of emergency ordinances, the fundamental law established an additional condition, namely their submission to Parliament for approval. However, the revision of the Romanian Constitution in 2003 brought substantial changes in terms of the entry into force of the law and administrative acts. The headquarters of the subject can be found in art. 15 para. (2), art. 78 and art. 115 para. (5) of the Romanian Constitution, republished, which have the following wording: art. 15 par. (2): "The law provides only for the future, except for the more favorable criminal or misdemeanor law"; art. 78: "The law is published in the Official Monitor of Romania and enters into force 3 days from the date of publication or at a later date provided in its text." Article 115 para. (5): "The emergency

ordinance enters into force only after its submission for debate in the emergency procedure to the Chamber competent to be notified and after its publication in the Official Monitor of Romania (...)"[1].

In view of the constitutional amendments regarding the entry into force of the law, various opinions have been expressed in the specialized doctrine regarding the entry into force of administrative acts (Popescu, 2004, pp. 23-40). The necessary clarifications were brought by the legislator through the amendments and completions of Law no. 24/2000 on the norms of legislative technique for the elaboration of normative acts[2], which constitute the common law in the matter, as well as in the G.E.O. no. 57/2019 on the Administrative Code, the newest regulation in the field of administrative law, which is a corollary of laws in this area. What must be remembered from the corroboration of these two normative acts is the fact **that no single rule can be retained regarding the date of entry into force of the various normative acts**. Corroborating the provisions of art. 11, art. 10 of Law no. 24/2000 republished with those of the Administrative Code (art. 38 par. 3, art. 196-199, art. 275), the following conclusions regarding the administrative acts could be deduced:

a) In order for them to enter into force, the laws and other normative acts adopted by the Parliament, the decisions and ordinances of the Government, the decisions of the Prime Minister, the normative acts of the autonomous administrative authorities, as well as the orders, instructions and other normative acts issued by the heads of the specialized central public administration bodies is published in the Official Monitor of Romania, Part I. (art. 11 paragraph 1 in conjunction with paragraph 3 of Law no. 24/2000);

This provision of Law no. 24/2000 is also found in art. 38, para. 3 of the Administrative Code, according to which the decisions and ordinances of the Government are signed by the Prime Minister, countersigned by the ministers who have the obligation to execute them and are published in the Official Monitor of Romania, Part I, non-publication leading to the non-existence of the decision or ordinance.

b) The following are not subject to the publication regime in the Official Monitor of Romania: classified decisions of the Prime Minister, according to the law; normative acts classified, according to the law, as well as those with individual featured, issued by the autonomous administrative authorities and by the specialized central public administration bodies (art. 11, par. 3 of Law no 24/2000).

c) Regarding the entry into force of the normative administrative acts adopted / issued by the local public administration authorities, the normative act that sheds light in this respect remains only the Administrative Code, which by art. 197 regulates *the notification and disclosure of administrative acts*.

In general, according to art. 196, par. 1 of the Administrative Code, in the exercise of their attributions, the local public administration authorities adopt or issue, as the case may be, normative or individual administrative acts, as follows: the local council and the county council adopt decisions; the mayor and the president of the county council issue dispositions. Therefore, the scope of acts of administrative authorities at local level includes **decisions**, in the case of **deliberative bodies**, and **provisions**, in the case of **executive bodies**. We point out the useful addition brought by the Code, which recognizes that, *in organizing the execution or concrete execution of the law, the deliberative and executive authorities*

[1] Comparing the two variants of the constitutional texts, the following innovative rules were deduced in the republished Constitution: a) from the principle of non-retroactivity of the law, within the exceptions, in addition to the criminal law, the more favorable contravention law was included; b) the law enters into force 3 days (the term is calculated in calendar days and not in days off, sn) from the publication in the Official Monitor of Romania, Part I or, at a later date specified in its content (provision identical to the from the old regulation); c) the emergency ordinances enter into force after the publication in the Official Monitor of Romania, Part I, with the precondition of being submitted for debate to the Chamber competent to be notified, the debate following the emergency procedure.

[2] Republished pursuant to art. II of Law no. 60/2010 on the approval of the Government Emergency Ordinance no. 61/2009 for the amendment and completion of Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts, published in the Official Gazette of Romania, Part I, no. 215 of April 6, 2010, giving the texts a new numbering.

adopt, issue or conclude, as appropriate, other legal acts by which they are born, amended or rights and obligations are extinguished (art. 196, par. 2). It is about concluding **employment contracts**, **private law contracts**, such as **sales, rental of goods from the private domain of the administrative-territorial unit**, or **administrative contracts**, which are in any case assimilated by the legislator to administrative acts.

Regarding the manner of communication and notification of these administrative acts, art. 197 of the Administrative Code stipulates that the general secretary of the administrative-territorial unit / subdivision communicates the administrative acts to the prefect within 10 working days from the date of adoption or issuance. The decisions of the local council are communicated to the mayor. The decisions and dispositions are brought to the public knowledge and are communicated, in accordance with the law, through the care of the general secretary of the administrative-territorial unit / subdivision. Decisions and provisions, financial documents and information, as well as other documents provided by law shall be published, for information, in electronic format and in the local official monitor which is organized according to the procedure provided in annex no. 1.

In particular, we distinguish the following rules regarding the entry into force of normative administrative acts of local public administration authorities:

a) the normative decisions of the local and county councils become binding from the date of their bringing to public knowledge, as provided by the provisions of art. 198 par. 1 of the Administrative Code.

It is necessary to specify according to which, the publication of these decisions is made by bringing them to public notice within 5 days from the date of the official communication to the prefect (art. 198 par. 2).

b) the normative dispositions issued by the mayors and, respectively, by the presidents of the county councils become executory on the date of their bringing to public knowledge (art. 198 par. 1 of the Administrative Code), maintaining the rule established by art. 50, para. (2) of the organic law of local public administration repealed by the Administrative Code;

c) normative orders issued by prefects become enforceable only after it has been made public, by publication according to law (art. 275, par. 4 by reference to art. 275 par. 3 of the Administrative Code).

With regard to individual administrative acts, the Administrative Code maintains the established rule according to which they take effect from the date of their communication to the persons to whom they are addressed, the communication of individual decisions and provisions being achieved within 5 days from the date official communication to the prefect (art. 199 par. 1 and 2).

It should be noted that, according to the new regulations on local public administration, the two types of administrative acts (normative and individual feature) are subject to the rules of publication / communication in Romanian and, where appropriate, in the language of the national minority concerned (art. 198, par. 3 and art. 199 par. 3 of the Code). Then, it is worth emphasizing that, although the administrative acts are provided for all four authorities - the local council, the mayor, the county council and the president of the county council -, **by art. 200 of the Code are excluded the latter acts from the prefect's control, a solution which , formally, with art. 123 para. 5 of the Constitution, but which we do not share.** There have been cases in which the former organic laws of local public administration took it long before the Constitution - and it is enough to refer to the procedure of giving public property for free use to public utility institutions, introduced in the constitution in 2003, but on which the legislation recognized long before. To this example can be added the recognition of the right

of national minorities to use their mother tongue in their relations with the local public administration long before, by the Revision Act, it was established in the Constitution in 2003.

Therefore, in principle, administrative acts produce effects for the future, they are active and not retroactive. There are some exceptions to this rule, respectively: administrative acts that produce retroactive effects, either due to their nature (eg declaratory administrative acts, revocation acts, interpretative normative acts, administrative acts of a judicial nature, administrative acts given in application of decisions either) or due to express provisions of the law.

The most important category of such acts is that of *declarative or recognizing administrative acts.* These acts establish (recognize) the existence of rights and obligations that arose through legal acts prior to their issuance and produce legal effects from the moment those legal acts occurred (e.g. civil status documents, birth, death, summons payment, administrative acts of approval, cancellation, confirmation, etc.). On the other hand, there are *administrative acts that are ultra-active,* producing effects even after their date of entry into force. Thus, in case a new act of contravention regulation it provides a more serious sanction, the contravention committed before it will be sanctioned based on the normative act in force at the date of its commission[1].

3.2. Extent of Legal Effects produced by Administrative Acts

The extent of the legal effects of administrative acts can be analyzed under three aspects, namely: the extent of space, the extent of persons and the extent of the legal effects of administrative acts.

3.2.1. Extent in Space of the Legal Effects of Administrative Acts

In space, the administrative acts produce legal effects determined by the **territorial competence** of the issuing body. Thus, the administrative acts issued/adopted by the central public administration authorities (the President of Romania, the Government, ministers, the leaders of the other central bodies, etc.) produce legal effects *on the entire territory of the country*. The administrative acts adopted / issued by local public administration authorities (local councils, mayors, county councils), prefects, county council presidents and heads of decentralized services of ministries and other central public administration bodies produce effects *within the administrative-territorial unit* in which they were elected or appointed, as appropriate.

There are **other criteria** for determining the territorial jurisdiction and the spatial effects of administrative acts, such as*: domicile* or *residence* of the phisical entity (for issuing or endorsing identity documents, etc.), *place of commission* (in contravention matters[2]), location of real estate (in the matter of real estate tax) etc. Also, in certain situations, the legal effects of administrative acts adopted by an administrative authority are imposed on other public administration bodies[3].

3.2.2. Extent of the Legal Effects of Administrative Acts on Persons

Administrative acts produce effects on the subjects of law to which they are addressed, respectively public and private authorities (natural or legal persons), without counting, in particular, the quality of these subjects. In all cases, at least one of the subjects of the administrative law report must be a qualified

[1] Art. 12 paragraph (2) of the Government Ordinance no. 2/2001.
[2] Art. 15 of the Government Ordinance no. 2/2001.
[3] According to art. 39 para. (2) of the Government Ordinance no. 2/2001, in order to execute the sanctions of the contravention fine, the competent bodies shall communicate ex officio to the financial body of the locality where the offender resides or has its headquarters, the report on the finding of the contravention. Execution will be made by the financial body (other than the sanctioning body) on the income or other assets of the offender, under the conditions provided by law.

subject, namely the issuing body of the legal act. Sometimes, the effects of administrative acts occur given the special quality of the passive subject of the legal relationship.

3.2.3. The Extent of the Legal Effects

Administrative acts shall take effect from the date of their entry into force *until the date of their entry into force*. With regard to *administrative acts of a normative nature*, we specify that, as a rule, they do not contain provisions regarding their expiry (except for temporary acts) because, at the time of their adoption / issuance, the date on which the state of affairs ceases cannot be known. or by law which determined the adoption of the respective act. *Temporary administrative acts* produce legal effects for the period provided in their content or until a material-legal fact is achieved (for example, the cessation of the event that justified their occurrence). *Individual administrative acts*, characterized by the fact that they are not of repeated applicability, are consumed with the occurrence of that fact.

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