

CONSIDERATIONS REGARDING THE ANNULMENT OF ADMINISTRATIVE ACTS, BOTH IN ADMINISTRATIVE LITIGATION AND IN CRIMINAL LAW

Roxana IONESCU*,
Diana Anca ARTENE*

Abstract

The administrative act enjoys the presumption of legality, which in turn is based on the presumption of authenticity and veracity, being itself an enforceable title.

However, the principle of legality of administrative acts presupposes that both the administrative authorities do not violate the law and that all their decisions are based on the law. It also requires that the authorities effectively ensure that these requirements are met. The cancelling of administrative acts may be ordered by both the administrative court and the criminal court.

The administrative court examines whether there are grounds for illegality, while the criminal court examines whether an offense provided for by the criminal law has been committed.

Keywords: administrative acts, presumption of legality, the administrative court, the cancelling of administrative, the administrative authorities.

1. Introduction

In the sense of Law no. 554/2004 of the administrative contentious, the administrative act has the meaning of a unilateral act with individual or normative character, issued by a public authority in order to execute or organize the execution of the law, giving rise, modifying or extinguishing the legal relations. The central element of the legal regime of administrative acts is legality, understood as their compliance with the laws adopted by Parliament, as well as with administrative acts with a higher legal force, the principle of legality in the current constitutional system being one of the fundamental principles of public administration.

The administrative act enjoys the presumption of legality, which in turn is based on the presumption of authenticity and veracity, being itself an enforceable title.

At the time of issuance, it is presumed that it complies with all the substantive and formal conditions provided by law, the obligation to comply with it being detached from that of compliance with the law. However, this presumption has a relative character, the administrative acts being subject to the principal control of the legality of the courts (Denes, 2009)

The legality of the administrative act is assessed strictly against the content of the administrative act and not the way in which it is executed.

In conclusion, the elements regarding the execution of the administrative act exceed the scope of the administrative contentious. The alleged damage should be determined by the issuance of the administrative act in question and not by the manner of enforcement of its provisions.

“Art.8 of the law of administrative contentious, was an important step towards the procedural delimitation of the objective contentious from the subjective contentious,

* PhD, Associate Professor, Spiru Haret University

* PhD, Associate Professor, Spiru Haret University

clarifying some of the aspects regarding which the way in which art.1 regulates the subjects of notification of the court could produce confusions. In essence, by the norms contained in art.1 par. 1 and 2 and art. 8 par. 1 of the law of administrative contentious it offers to the subjects of private law a subjective administrative contentious mechanism, within which the legal sanction of annulment of an illegal administrative act can be applied only if the act in question has detrimental effects on the subjective right or legitimate interest asserted by the applicant.

According to art. 1 (1) - any person who considers himself injured in his right or in a legitimate interest, by a public authority, by an administrative act or by not resolving a request within the legal term, may address the contentious court competent administrative authorities. They can request for the annulment of the act, the recognition of the claimed right or the legitimate interest and the reparation of the damage caused to it. The legitimate interest can be both private and public.

Paragraph 1 of art. 8 states this regulation, in the sense that individuals and legal entities under private law may file claims invoking the defence of a legitimate public interest only in the subsidiary, insofar as the damage to the legitimate public interest legally arises from the encumbrance subjective law or legitimate private interest.

The legitimate private interest defined in art. 2 paragraph 1 letter p of law 554/2004 as the possibility to claim a certain conduct in consideration of the realization of a future foreseeable and foreseeable subjective right. In addition, the notion of legitimate public interest has a legal definition in art. 2 paragraph 1 letter r interest that concerns the rule of law and constitutional democracy, guaranteeing the fundamental rights, freedoms and duties of citizens, meeting community needs, realizing the competence of public authorities.

Also, art.8 paragraph 1 (2) expressly establishes for the actions based on the violation of a legitimate public interest, a derogation from the common law regime of the action in administrative contentious. That is deduced from art.1 paragraph 1 and art.8 paragraph 1, in the sense that the actions in this category may have as object only the annulment of the act or the obligation of the defendant authority to issue an act or another document. Moreover, it has to carry out a certain administrative operation, under penalty of delay or fine, provided by art.24 par.3 therefore, in the contentious objective, in annulment, no compensations requested." (Bogasiu, 2018 p.283-284).

A common problem in practice is the confusion between the legal effects of the annulment of an individual administrative act and the admission of the exception of illegality of such an act. "The effects of admitting the exception of illegality consist in not taking into account the individual administrative act on the occasion of resolving the dispute in which it was invoked. However, the administrative act, not annulled by direct action, is supposed to continue to produce legal effects, except for those that should have occurred in the legal situation brought before the court. Accepting this argument would mean that the individual act would be devoid of legal effect precisely in relation to the particular person to whom it is opposable. This person did not challenge by direct action, but in respect of which he will be able to apply to the court, at any time and possibly successively, by way of the exception of illegality, the removal of the legal effects produced by that act, which presumed to remain in force. The possibility of the repetitive deprivation of the legal effects of the individual administrative act is similar to the possibility of definitively annulling a final timetable, with regard to which the

European Court of Human Rights held in *Sovtransavto Holding v. Ukraine* that it is incompatible with the principle of security of legal relations. .6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms” (Birsan, Georgescu, 2006, pp.56-66).

The obligation of the defendant institution to pay compensation is an end of demand often encountered in practice and which poses real problems for practitioners.

The request for material and moral compensation is an accessory request to the main petition, which establishes whether an administrative act is harmful to the person claiming it. Only in the situation when the court establishes that the administrative act is illegal, the liability for damages can also occur.

In this regard, we also cite the case of *Plaumann v. The EEC Commission*, Case C- 25/62, settled by judgment of 15 July 1963, the Court of First Instance ruled that the action for damages sought in fact to remove the legal effects of the contested decision produced on the applicant. However, an administrative act still active is not liable to cause damage to the persons to whom addressed, and the latter cannot claim appropriate damages. Consequently, the Court could not remove the legal effects of such a decision, by resolving an action for damages, which is still active.

According to the provisions of art. 1357 of the Civil Code, in order to engage civil liability, the following conditions must be met cumulatively: the existence of an illicit deed, the existence of a prejudice, the existence of a causal link between the illicit deed and the damage, the existence of the guilt of the perpetrator.

The action to oblige the payment of compensations formulated pursuant to art. 19 of Law no. 554/2004 must be based on an illegal administrative act producing damages for the plaintiff. The non-existence of the illicit deed no longer requires the analysis of the other conditions for incurring liability, respectively the existence of a prejudice, the causal link and the guilt.

2. Crime is the most serious form of harm to society.

The criminal action cannot be solved before the court - as there are impediments among those provided by art in numerous situations. 16 C. pr. pen. In this situation in which the court is obliged to order the restoration of legality and the removal of prejudicial situations, such as those regarding the annulment of certain documents, such as administrative acts issued by public authorities. In such situations, the sanction applied to administrative acts issued by committing offenses is their annulment.

In practice, we often encounter cases in which the prescription of criminal liability lacks the object of the criminal action, but not the legal basis. Thus, the criminal act exists in its materiality, but the consequences of the crime must also be removed. For example, in order to issue building permits or a Detailed Urban Plan, offenses have been committed, the limitation period of which has been met.

In such situations, the legislator provided a special procedure, such as the one provided by art. 549/1 Code of criminal procedure generically called “The procedure of confiscation or abolition of a document in case of dismissal”.

We notice that the criminal legislator uses the name of annulment of a

document, without bringing any clarification regarding the legal nature of the act, thus leaving to the court the qualification of the document that is required to be annulled.

The doctrine (Trandafir, Kuglay, Toma Dauceanu, 2018) considers that in order to avoid confusions, between the notions of document versus legal act, annulment versus annulment, these notions should have the following meanings: inscribed, with the meaning of means of proof, *instrumentum probationis*, act, with the meaning of legal act, *negotium iuris*, annulment, for the measure applied to a document, annulment, for the sanction applied to legal acts.

"Proceeding at the trial of the prosecutor's proposal, the judge of the preliminary chamber may admit it, ordering the annulment of the document object of the procedure, lacking such legal effects, in whole or in part, with the consequence of ceasing the consequences of the operation or legal situation found by the annulled document, as the case. The annulment of the document may have other consequences depending on the nature and character of the revoked document. Thus, proceeding to the annulment of the document and leaving without effects the legal operation that finds it, the judge can analyse the cause of annulment of the document and in terms of material rules specific to the causes of ineffectiveness of legal acts, according to the field to which it belongs. For example, if he finds the falsity of signing a legal act, he may consider the lack of consent at the conclusion of the respective act, as a cause of nullity of the legal act with all the consequences deriving from it. In the case of the creation of the entire document for purposes contrary to the law, it may retain the fraud in law as a distinct cause of nullity of the legal act. The situation of the administrative or fiscal acts issued in violation of the law can be initiated by applying the sanctions specific to the causes of ineffectiveness of these legal acts" (Neagoe, Ghigheci, 2020).

3. Conclusion

In the trial phase, according to art. 25 para. (3) C. pr. pen, "The court, even if there is no constitution of a civil party, decides on the total or partial annulment of a document or on the restoration of the situation prior to the commission of the crime.

Administrative acts can be annulled both by the administrative contentious court when they perform their legality control, but also by the criminal court when the administrative acts represent the result of some crimes.

Criminal law protects values that also form the object of subjective civil rights, but also other values belonging to other branches of law such as constitutional, administrative, fiscal law, etc.

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