THE NEUTRAL CHARACTER OF THE SANCTION OF REVOKING AN ADMINISTRATIVE ACT

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Abstract

One of the multiple valences of the law state is translated into the fact that any administrative act issued or adopted by the state authorities must meet a series of characteristics that correspond to legal requirements, to be timely, to be issued for the purpose of achieving a public or private interest , but also to correspond entirely to the legal purpose on the basis of which it emanates.

Therefore, the primary role of state authorities and institutions is to fulfill the requirement of compliance with the law and all legal principles at the time of the adoption of such an act that modifies the internal legal order and to ensure that all legal principles are fulfilled in the case, avoiding in this way the production of a disruption of social relations through the elaboration of the act and to preserve the public interest of preserving the security of legal relations, as well as the private interest of avoiding concrete damage for the particular recipients of the administrative act.

In this sense, revoking the administrative act which presents elements of illegality or inexpedientness, legal or factual, stands out as a „sanitary" measure, being intended to eliminate from the administrative circuit any disruptive or damaging elements.

Given that the main role of the administrative authorities is to respect the law and protect the public interest, but in such a way that the private or moral interests of individuals are not harmed, it is natural to establish an effective and prompt legal remedy to eliminate any deviation from to the general principles of law or from the administrative acts with superior legal force, being thus removed from the legal order any inadequate administrative acts.

From this perspective, the revocation presents the mixed valences of a sanction and a public law remedy, involving the prompt intervention of the issuer or its hierarchically superior structure to abolish the act and to restore legality in administrative law relations.

However, in addition to this primary role of the revocation, we will identify in this article a series of other relevant values of this sanction, which outline its complex role, as a neutral remedy and rebalancing of legal relations, which outlines a significant aspect of general prevention in the operational mode of this remedy.

As we will reveal in the following, the revocation is intended to prevent the propagation of harmful effects in the internal legal order and at the same time to prevent the occurrence of specific legal damages to the recipients of the administrative act or other individuals affected by its issuance.

Thus, the revocation takes shape as an instrument to safeguard the static administrative circuit and as a damage prevention measure being from this perspective a sanction with an obviously neutral character, meaning that the revocation, mainly, does not itself represent the source of distinct damages, but only prevents or removes the already existing ones.

Keywords: *revocation, sanction, remedy, neutral, legal security.*

1. Introduction

The administrative act is characterized by a series of special legal features, which gives it the typology of a disproportionate legal act, being characterized by a reminiscence of state power, meaning that the administrative act carries the entire public authority in the context of which it was issued and imposes with binding force among its recipients, but also of all individuals whose situation is influenced by the act in question, regardless of their typology.

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Considering the legal regime in which it is issued, the administrative act produces a series of energy effects, being also accompanied by a series of attributes that dissociate it from any other legal act specific to Romanian law.

In this sense, in French legal literature it was noted that *„the administrative act has perpetual effects that do not expire due to prolonged non-use (CE 13 May 1949, Couvrat, D. 1950, 77, note M. Waline). They disappear only in case of decay, which can result from a limited life span in time, provided by the text itself or from the disappearance of the situations that an act thus devoid of any application was supposed to govern (EC March 12, 2014, Committee Harkis and Verité and M. X, no. 353066, Lebon T), in case of repeal (CRPA art. L. 243-1 and s.) or revocation (CRPA, art. L. 243-3 and s.) or annulment, following a court decision"*[1].

Thus, the administrative act benefits from a series of legal presumptions, arising from the public authority under whose auspices it was issued. These presumptions refer to the legality, authenticity and truthfulness of the administrative act, the three legal qualities, and a fourth one, inextricably linked to them, namely the ope legis execution of this legal act.

As it was correctly revealed, *„the administration takes over different categories of acts that are subject to a certain legal regime, dominated by the principle of legality. But some of them can have particularly serious consequences for their recipients and are therefore subject to enhanced protection rules"*[2].

Therefore, the administrative act is intended to settle a number of important aspects of the legal order, constituting the main way in which the state authorities discipline certain sectors of activity, establish generic obligations for the members of society, confer a certain social or personal status to certain recipients, individuals, gives rise to contractual obligations, etc.

Therefore, this type of legal act represents an indispensable tool for the relationship between the public administration authorities, regardless of the level on which they are located, therefore both at the central and local level, and the citizens they govern, establishing an elaborate framework and well-defined action from its recipients.

Through this type of act, the public interest for which the state authorities and institutions were established is also achieved, so that, since the general interest can only be one corresponding to the law and public morals, then the administrative act submits to the principle of legality .

Thus, it was noted that *„the regulatory power, like all the powers available to the administration, is completed, meaning that it exists only in the general interest: as much as a prerogative, it therefore constitutes a mission that the administration cannot dispense, and under certain assumptions, a task. It is the case for the adoption of the regulatory texts necessary for the implementation of a law or a decree. The administration is obliged to take them within a reasonable period so that the planned provisions do not remain a dead letter, and its responsibility can be engaged in case of prolonged inaction"*[3].

Therefore, the achievement of a legal effect and the enforcement of effects corresponding to the social order and the public interest, represents a series of inherent desires in the issuance of the administrative act[4].

Only if the act corresponds to the domestic and international normative framework, we can say that the desired discipline of legal relations between its recipients is achieved.

If the act does not correspond to normative acts with superior legal force or if it is issued in violation of the legal powers of the issuing authority, then the act itself constitutes a source of disruption of the legal order, in which case it is necessary to abolish its effects, case that is achieved through different alternative methods.

The control exercised by the courts represents the main way of regularizing the administrative act, a natural thing, since the courts have the primary role of imposing the valences of the principle of the rule of law, expressed through the characteristic of the supremacy of the law.

In this regard, it has been revealed in American doctrine that, as a matter of principle, *„the control of administrative action by law far exceeds the basic rationale for judicial review. For example, the law establishes lawyers to directly improve administration and establishes tribunals with expert members to resolve disputes with public authorities and auditors to improve economic efficiency in administration. (...s.n.) If courts leave behind the limited role this reasoning advocates, they may or may not make better decisions than administrators, but they will not enforce the rule of law. It is a challenge for judges to articulate a form of oversight of the*

[1] A. Maurin, *Droit administratif*, 11th ed., Sirey, Paris, 2018, p. 91.

[2] A. Legrand, C. Wiener, *Le droit public*, La documentation Française, Paris, 2017, p. 107.

[3] *Idem*, p. 108.

[4] L.-C. Spataru-Negură, *Protectia internationala a drepturilor omului. Caiet de seminar*, Hamangiu Publishing House, Bucharest, 2023.

administration that respects the rule of law. Because of the continuing struggle of judges to meet this challenge, judicial review is the best way to study administrative law"[5].

It has also been rightly pointed out that, mainly, *„the concept of public interest litigation can be justified on the grounds that as the power of the bureaucracy expands, it is inevitable that the power of the judiciary will expand accordingly. In this type of litigation, the plaintiff seeks to enforce or prevent a violation of general public law. Public interest litigation is thus of great social relevance for modern society"*[6].

Finally, about this main control of the courts of justice over the legality of the administrative act, the American doctrine highlighted the fact that *„the courts apply a basic notion of legality: the government action that affects citizens must be justified by reference to a certain law authorizing the specific act done, as in Entick v. Carrington (1765)"* [7].

However, resorting to the control exercised by the court is not the only way to regularize an administrative act and to prevent the irradiation in the legal order of some effects that are unequivocally contrary to the legal norms in force.

A much faster and simpler method of blocking the obviously illegal effects of the administrative act is represented by **the sanction of revoking it**.

2. Notion, Effects, Characteristics

Regarding this institution, in the specialized literature it was noted that this sanction specific to administrative law „refers to the abolition of the legal effects of the administrative act, through the manifestation of the will of the issuing body or the hierarchically superior one, as a result of illegality or even the lack of opportunity his. In a narrow sense, revocation refers to the retraction or withdrawal of the administrative act by the issuer"[8].

In another opinion, revocation „is a way of terminating the legal effects or, more concretely, a way of abolishing administrative acts. It is a perspective that derives from the dynamic approach to the administrative act, that is, that approach that follows the unfolding over time of the legal effects produced by that act. (...s.n.) Viewed from another point of view, the revocation can be perceived as a concrete legal operation, as an administrative act through which the Administration expresses its will to abolish another previous administrative act. It is a static perspective on the institution, which has aroused less interest in specialized literature"[9].

Finally, by revocation was designated „the legal operation by which the issuing body orders the withdrawal of its own act, either on its own initiative, or as a result of the provisions of the higher hierarchical body"[10].

In our opinion, the revocation can be viewed from two angles, that of the **legal regime**, from the perspective of which this institution presents itself as an administrative law **sanction**, which irremediably leads, from the perspective of the issuing authority, to the cessation of the effects of the unilateral administrative act with individual or normative character, as well as that of legal features, as well as the form that the act of revocation takes, this representing a genuine **administrative act**, in itself, which must meet all the requirements of legality and opportunity, like any administrative act in internal law.

Regarding the **sanction nature** of the revocation, we reveal the fact that it represents the emanation of a control act from the issuing authority of the administrative act that forms its object, and the functional analysis is structured on two distinct and interdependent levels.

The first is the level of **lawfulness** of the verified administrative act, which assumes the faithful correspondence of this administrative act with the acts having superior legal force, as well as the compliance by the issuer of the competence guidelines in issuing the primary administrative act.

The second verification plan aims at the **opportunity** of issuing/adopting the initial administrative act, by verifying, extrajudicially, the spectrum of legal, material, political and economic considerations in which the administrative act subject to verification is issued, in the sense that it must represents the result of an elaborate

[5] T. Endicott, *Administrative law*, 2nd ed., Oxford University Press, 2011, p. 67.

[6] M. P. Jain, S. N. Jain, *Principles of administrative law*, LexisNexis, New Delhi, 2011, p. 1734.

[7] H. Fenwick, G. Phillipson, *Constitutional & Administrative law*, 6th ed., Routledge-Cavendish, 2010, p. 10.

[8] E. Marin, *Legea contenciosului administrativ nr. 554/2004. Comentariu pe articole*, Hamangiu Publishing House, Bucharest, 2020, p. 13.

[9] I. Brad, *Caracteristicile juridice specifice ale actului administrativ de revocare*, in Iurisprudentia no. 2/2007, p. 1.

[10] P. Manta, *Suspendarea, revocarea şi anularea actelor administrative*, in Analele Universităţii „Constantin Brâncuşi" of Târgu Jiu, Seria Ştiinţe Juridice, no. 1/2011, p. 51.

process of analysis and synthesis of all the fair factors of its issuance, so that the expected effect by issuing the administrative act is achieved in optimal conditions of consumption of the material and human resources for the adoption of the act, as well as the production of the more opportune effects that the said act could produce.

In the event that the cumulative and indispensable meeting of all these congruent elements is not verified in practice, the sanction of revoking the administrative act becomes incident, as a way of removing it from the legal order, in order to prevent the production or perpetuation of the illegal or inappropriate effects of such a legal act.

Seen from the perspective of the **legal feature**, I have shown that the revocation represents a sui generis administrative act, which must not only take on the specific form of such an act, but must meet all its constituent elements, the most important of which is **that of being issued under public authority**.

Therefore, the revocation representing a genuine administrative act must, by way of consequence, comply with all the conditions of legality and opportunity for the issuance of such an act, including the competence to issue it[11], the condition of the written form, the regime of public authority, its sequence , the consultation procedure and adoption of the act, etc.

From the perspective of the issuing authority, as it results from the teleological analysis of the provisions of art. 7 of Law no. 554/2004, the revocation may constitute the exaltation of the issuing authority of the administrative act referred to by this extinguishing cause of legal effects, but also of the authority hierarchically superior to it.

The reason why the competence to issue the administrative act of revocation is conferred on the administrative authorities issuing or hierarchically superior to the first ones, so with the exclusion, at least in this phase, of the control of legality and expediency carried out by the court, is that of preventing the perpetuation of some obviously illegal legal effects and which are likely to prejudice the stability of administrative legal relations or a determined or determinable person, recipient of the document or a simple third party.

Therefore, viewed from this perspective, the revocation is presented as an eminently preventive and exclusive measure of illegal or immoral consequences of the administrative act referred to by it.

The revocation is intended to prevent the transfer of the rights and obligations established by the administrative act issued, in the extremely complex, but also sensitive, legal relations of administrative origin born from the activity of the public authorities of the Romanian state.

Thus, the revocation implies either the retroactive abolition of the harmful effects of the non-compliant administrative act, when the causes of the revocation are contemporaneous with the moment of issuing the act, or the termination for the future of the illegal or inappropriate effects of the administrative act, in the situation where the source of the revocation is concurrent or subsequent the intervention of this sanction.

Considering these requirements, the revocation is presented as a true „sanitary body" of the public administration system in Romania and as an effective remedy for the activity of drafting administrative acts.

Although, obviously, the act of revocation must be legal, in itself, an aspect that can be verified by way of an administrative litigation action, through which the interested personnel can request the competition of the court in the verification and control of the legality of such a legal remedy, however most of the time it is likely to prevent the transgression of the law, as well as the prevention of the unwanted legal effects of the administrative needle whose illegal effect is already definitively established.

By preventing the production of harmful effects and by the exercise by the issuing authority or by the superior one of a „quality" control of the issued primary administrative act, the revocation is presented as a genuine neutral legal act, being likely to restore legality, by regularizing the harmful effects of the verified administrative act.

The neutrality of the revocation is transposed into the restoration of the legal order violated by the administrative act targeted by this sanction, which reveals the beneficial and integrative role of the revocation sanction.

Obviously, if the revocation abandons its neutral role from the perspective of affecting the legal relationships outlined by the revoked act, then the act of revocation itself is susceptible to the sanction of annulment, available to the court, vested by way of administrative litigation.

Thus, it was held in French doctrine that „at the beginning of the 20th century, the Council of State accepted to control the facts whose existence was not contested and which were the basis of the decisions subject to its

[11] A. Maurin, *op. cit.*, 2018, p. 77.

censure (...s.n.) the annulment of a decisions to revoke the mayor of Hendaye from which he was accused of not having ensured the decency of a funeral procession, these facts being inaccurate"[12].

3. Conclusions

The revocation presents a supple, but emergent legal form, which is at the urging of the administrative authorities issuing the administrative act or those superior to them, by which a harmful and disruptive administrative act is removed from the internal legal framework, so that through revocation the illegal or inopportune acts are reformed and the normal legal order is preserved in any democratic state.

The value of the revocation sanction is given by its extrajudicial, useful and easy way of operation, as well as by its synergistic effect of preventing any prejudice to the social values protected by the normative acts in force.

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[12] A. Maurin, *op. cit.*, 2018, p. 247.