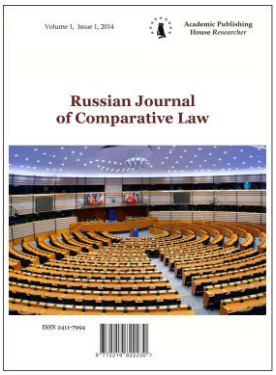

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The New Spanish Act on the Common Administrative Procedure of the Public Administrations

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Abstract

The article examines the Spanish legal system that has been originated in the previous autocratic regime, related to the Common Administrative Procedure. The Government has been reducing until the body top in which ends the State Administration, consequently, conceiving it as a mere appendage or extension of it, which would share their administrative nature. The article 97 of the Constitution definitely discards this conception and retrieves the political scope of the function of governing, inspired by the principle of democratic legitimacy. These traits define the Government and the Administration as constitutionally different public institutions and establishing the subordination of the Administration to the political direction of the precise Government. It must be noted now that the framework governing the legal regime of public administrations is the subject of an express policy adaptation, which configures with consistency and harmony constitutional principles. The Constitution guarantees the subjection of Public Administrations to the principle of legality, both with regard to the rules governing its organization and the legal regime, the administrative procedure and the accountability system. On the other hand, the Local Administration has a legal regime is established in the same article 149.1.18. The Constitution has a specific regulation in the current "Ley de Bases" that does not offer any difficulty of adaptation to the objectives of this Act and which does not require specific modifications.

Keywords: Common Administrative Procedure, Public Administrations, Public Sector, Autonomous Communities, citizens, stakeholders, Public Services, sustainable economy, General Electronic Access Point, Local Entities.

Introduction

On October 1, 2015 the Act 39/2015 of the Common Administrative Procedure of the Public Administrations [1] was adopted. The Act entered into force, with the exception indicated, the 2nd of October 2016.

This Act derogates: Arts. 4 to 7 of the Act 2/2011, March 4 [2]; Royal Decree 772/1999, May 7 [3]; Royal Decree 1398 / 1993, August 4 [4]; Royal Decree 429/1993, March 26 [5].

It derogated as indicated: certain provisions of the Royal Decree 1671 / 2009, November 6 [6]; Act 11/2007, June 22 [7]; Act 30/1992, November 26 [8].

Moreover, the Act: a) modified: Arts. 64, 69, 70, 72, 73, 85, 103 and 117 of Act 36/2011, October 10 [9]; Art. 3 of Act 59/2003, December 19 [10]; b) quoted: Act 2/2012, April 27 [11]; Act 47/2003, November 26 [12].

Materials and methods

The main sources for writing this article became the official documents of Spain, materials of the journal publications and archives, as well as the State Official Newsletter, where all laws are published as soon as they enter into force.

This article has been analyzed using Methods of interpretation of the law, which are the means available for the interpreter to establish the possible meanings and scope of interpreted law. These methods are commonly accepted by doctrine and sometimes expressly enshrined by the own legal systems. These elements are the grammatical, the historical, the logical, the systematic and the teleological element. The grammar element is the one that allows you to set your senses and scope of law making use of the tenor of the words of the law, namely the meaning of the terms and phrases that the legislator used to express and communicate its thinking. This interpretive method is based on the assumption that the will and intention of the legislator is steeped in the law. The historical element allows interpreting the legislated right referring this to the history of the legal text, which is interpreted. This history is reflected in each of the stories or stages of the process of formation of the law. The logical element consists of establishing the sense or scope of a law, relying on the intellectual analysis of the connections that have similar laws or with other laws related to the same subject. The systematic element makes possible to interpret the law according to the connections with the whole legal system of which it forms part, including the general principles of law. The teleological element, finally, is the one that allows establishing the meaning or scope of a legal precept according to the purpose.

Discussion

The legal sphere of rights of citizens against the actions of the public Administrations is protected through a range of instruments, both reactive in nature, notably the system of administrative appeals or the control carried out by courts and judges, as a preventative through the administrative procedure, which is the clear expression of that the Public Administration acts with full submission to the law and the right, as stated in the article 103 of the Constitution [13].

The report developed by the Commission for the Reform of Public Administration [14] in June 2013 stars from the belief that a competitive economy requires efficient, transparent and agile Public Administrations.

Along these same lines, the national Program of reforms in Spain for 2014 expressly includes the adoption of new administrative measures as one of the ways to impulse rationalizing the performance of the institutions and bodies of the Executive power, improving efficiency in the use of public resources and increasing their productivity.

The defects that have traditionally been attributed to the Spanish Administrations are due to several causes, but the existing system is no stranger to them, since the regulatory framework in which public performance has developed, has led to duplication and inefficiencies, with administrative procedures too complex, which, on occasions, have created problems of legal uncertainty. To overcome these deficiencies is required a comprehensive and structural reform that allows ordering and clarifying how the Administrations are organized and related both externally, with citizens and businesses, as internally with other Administrations and State institutions.

In relation to this context, a reform of public law articulated is proposed in two fundamental axes: relations "ad extra" and "ad intra" of Public Administrations. In order to do so, two new laws are simultaneously promoted that will constitute the pillars on which will settle the Spanish Administrative Law: the Act of Common Administrative Procedure of the Public Administrations and the Act on Legal Regime of the Public Sector [15].

This law is the first of these two axes, establishing a complete and systematic regulation of "ad extra" relations between Administrations and citizens, both in relation to the exercise of the right to independence and in whose virtue enacting administrative acts that directly affect the sphere of legal stakeholders, and as regards the exercise of regulatory powers and legislative initiative. It is thus brought together in a single legislative body the regulation of 'ad extra' relations carried out by the Administrations with citizens as administrative law of reference that must be

complemented by provisions in the budget legislation with respect to the actions of Public Administrations, especially provisions emphasizing the Organic Act 2/2012, April 27, Budgetary Stability and Financial Sustainability [16]; Act 47/2003, November 26 [17] and the Act of General State Budget [18].

The Constitution includes in its title IV, under the header «of the Government and the Administration», the characteristics that differentiate the Government of the Nation from the Administration, by defining the former as an eminently political body that retains the function of governing, the exercise of the regulatory power and the direction of the Administration and establishing the subordination of this to the Government.

In the mentioned constitutional title, article 103 establishes the principles that should govern the performance of the Public Administrations, including effectiveness and legality, when imposing the full submission of the administrative activity to the law and the right. The materialization of these principles is produced in the procedure, that consists of several formal channels, which must ensure the appropriate balance between the efficiency of the administrative performance and the essential safeguarding of the rights of citizens and enterprises, which must be exercised in basic conditions of equality in any part of the territory, regardless of the Administration that their holders are related to.

These "ad extra" actions of the Administrations have a special mention in article 105 of the Constitution, which establishes that the Law shall regulate the audience of citizens, directly or through organizations and associations recognized by the Law, in the procedure of administrative provisions that affect them, as well as the procedure through which the administrative acts must occur ensuring, when appropriate, the audience to stakeholders.

It should be highlighted that article 149.1.18.ª of the Spanish Constitution attributed to the State, among other aspects, the competence for regulating the common administrative procedure, without prejudice to specialties deriving from the organisation of the Autonomous Communities, as well as the accountability of all the Public Administrations.

Regarding to the constitutional framework, the present Law regulates rights and minimum guarantees which correspond to all citizens with respect to the administrative activity, both in its aspect of the exercise of the right to independence, as well as the regulatory power and legislative initiative.

In what refers to the administrative procedure, understood as the ordered set of procedures and actions carried out formally, according to the runway legally foreseen, to issue an administrative act or express the will of the Administration, with this new regulation, State and regional competences do not run out for establishing "ratione materiae" specialties, or to achieve certain ends, as the body competent to resolve, but that its character arise from its application to all Public Administrations and with respect to all its activities. Thus the Constitutional Court has come recognizing it in its jurisprudence, when considering regulating the common administrative procedure by the State does not preclude that Autonomous Communities dictate procedural rules necessary for the implementation of its substantive law, as long as they respect the rules which integrate the concept of Common Administrative Procedure with basic character.

Several are the relevant legislative backgrounds in this matter. The legislator has made to evolve the concept of administrative procedure by adapting the way of performance of the Administrations to the historical context and to the social reality of each moment. Aside from the known as Azcarate Act, on October 19, 1889, the first comprehensive regulation of the administrative procedure in our legal system is contained in the Act of Administrative Procedure of July 17, 1958.

The 1978 Constitution shines a new concept of Administration, expressly and fully subject to the Law and to the Right, as democratic expression of the popular will, when putting it to the target service of general interests under the direction of the Government, responding politically by its management. In this sense, the Act 30/1992, November 26, of Legal Regime of Public Administrations and Common Administrative Procedure [19], marked a key milestone in the evolution of administrative Law of the new constitutional framework. Therefore, it incorporated significant advances in the relations of the Administrations with the stakeholders by improving the operation of those and, above all, through a greater guarantee of the rights of citizens against the power of independence of the Administration, whose closing element is located in the judicial review of its actions of article 106 of the basic text.

The Act 4/1999, January 13, amending the Law 30/1992, November 26, of Legal Regime of Public Administrations and Common Administrative Procedure, reformulated various substantial aspects of the administrative procedure, such as the administrative silence, the system of review of administrative acts or the regime of liability of the administrations, which allowed to increase legal certainty for stakeholders.

The development of information and communication technologies has also been affecting deeply to the shape and content of managing relations with citizens and businesses.

Even though the Act 30/1992, November 26, was already aware of the impact of new technologies on the administrative relations, it was the Act 11/2007, June 22, electronic access of citizens to Public Services [20], which gave them a letter of legal nature, when establishing the right of citizens to interact electronically with Public Administrations as well as the obligation of these to provide the means and necessary systems in order to use this right. However, in the current environment, electronic processing is not yet a special form of management procedures but that should constitute the usual performance of Administrations. Because a paperless Administration based on a fully electronic operation not only better serves the principles of effectiveness and efficiency, to save costs to citizens and businesses, but it also strengthens guarantees of stakeholders. Indeed, the record of documents and actions in an electronic file eases compliance with obligations of transparency, as it allows to offer timely, flexible and up-to-date information to stakeholders.

On the other hand, the regulation of this matter came to suffer from a problem of regulatory dispersion and overlap of different legal regimes do not always consistent among themselves, what shows the successive adoption of standards with emphasis on the matter, which include: Act 17/2009, of November 23, of free access to the service activities and its exercise [21]; Act 2/2011, March 4, of Sustainable Economy [22]; Act 19/2013, December 9, of transparency, access to public information and good government, or Act 20/1013, December 9, of guarantee of the unity of market [23].

Given this legislative stage, it is key to have a new Law that systematizes all the regulation relating to the administrative procedure, which clarifies and integrates the content of the cited Act 30/1992, November 26 and Act 11/2007, June 22, and deepens in the streamlining of procedures with a full electronic operation. All this will revert on better enforcement of the constitutional principles of effectiveness and legal security that should govern the actions of public authorities.

The Act 2015 is divided into 133 articles, distributed in seven titles, five additional provisions, five transitional provisions, a repealing provision and seven final provisions.

The preliminary title, of general provisions, deals with the subjective and objective scope of the law. Among its main innovations, it should be noted, the inclusion in the object of the Act, with basic character of the principles that inform the exercise of legislative initiative and the regulatory power of Governments. The implementation of provisions under this law is expexted to all subjects included in the concept of the Public Sector, although Public Law Corporations are governed by their specific rules in the exercise of public functions, which have been allocated to them, and additionally by this Law.

Moreover, it emphasizes the forecast that only by Act may be established procedures other than those referred to in this standard, or additional being able to specify by regulation certain specialties of the procedure concerning the identification of the competent organs, deadlines, forms of initiation and completion, publication and reports to gather. This provision does not affect the additional or different procedures already collected in the special laws in force, nor to the realization that, in regulations, occurred from the competent bodies, the terms of the particular procedure by reason of the matter, forms of initiation and termination, the publication of acts or reports to collect, which will keep its effects. Thus, among other cases, it should be signalized the entry into force of annex 2 to which refers the additional provision twenty ninth of the Act 14/2000, December 29, of fiscal, administrative and social order measures [24], which establishes a series of procedures that are excepted from the general rule of positive administrative silence.

The title I, to those interested in the procedure, regulates among other issues, the specialties of the capacity to act in the field of administrative Law, making it extended, for the very first time, to affected groups, unions and unincorporated entities and independent or autonomous assets when the Law declares it explicitly. In terms of representation, new media are included to prove it in the exclusive field of Public Administrations, such as seizure "apud acta", face-to-face or

electronic, or the accreditation of its electronic registration of powers of Attorney of Public Administration or competent body. Also, it is the obligation of each Public Administration of having an electronic register of seizures, and existing the possibility for the territorial Administrations of adhering to the State, in application of the principle of efficiency, recognized in article 7 of the Act 2/2012, April 27, of Budgetary Stability and Financial Sustainability.

On the other hand, this title dedicates part of its articles to one of the most important innovations of the Law: the separation between identification and electronic signature and the simplification of the media to prove one or the other, so that, in general, it is required only the first one, and the second one shall be required when the will and consent of the person concerned must be accredited. It is set, as a basic rule, a minimum set of categories of means of identification and signature to be used by all Administrations. In particular, will be accepted as a signature systems: systems of electronic signature recognized or qualified and advanced based on qualified electronic signature, electronic certificates that include both electronic certificates of legal person and the entity without legal personality; systems of electronic seal recognized or qualified and advanced electronic label based on certificates qualified electronic seal; as well as any other system that Public Administrations consider valid, under the terms and conditions established. Be used as identification systems any of supported signature, as well as concerted key infrastructure systems and any other that establish the Public Administrations.

Not only identification systems but also signature systems provided in this Law are fully consistent with the provisions in the Regulation (EU) No. 910/2014 of the European Parliament and of the Council, July 23, 2014 of electronic identification and trust services for e-business in the internal market [25]. It should be recalled the obligation of member States of supporting systems of electronic identification notified to the European Commission by other member States, as well as signature and seal electronic systems based on qualified electronic certificates issued by service providers listed in the trusted lists of other member States of the European Union, in the terms provided in such Community legislation.

The title II, of the activity of the Public Administrations, is divided into two chapters. Chapter I, of general rules of performance, identifies as a novelty the subjects bound to interact electronically with the Public Administrations.

Likewise, the cited chapter stipulates the obligation of all Public Administrations of having a general electronic record, or, of adhering to the State General Administration. These records will be assisted in turn by the current network of offices in the field, which will be known as assistance offices in the field of records, which allows stakeholders to submit their applications on paper, which will be converted to electronic format.

In relation to archives, there will be introduced a new obligation of each Public Administration of keeping an unique electronic archive of documents corresponding to completed procedures, as well as the obligation that these records must be stored in a format that t guarantees the authenticity, integrity and preservation of the document.

In this regard, it should be noted that the creation of this single electronic file will be compatible with various systems and networks files in the terms provided in the legislation in force, and shall respect the sharing of responsibilities for the custody or corresponding transfer. Also, the single electronic file will be compatible with the continuity of the National Historical Archive in accordance with the provisions of Act 16/1985, June 25, of the Spanish Historical Heritage and its implementing regulations.

Equally, the regime of validity and effectiveness of copies, where it clarifies and simplifies the current regime, is regulated in chapter I. The necessary requirements for an authentic copy are defined, the characteristics that must comply with the documents issued by Public Administrations to be considered valid, as well as what stakeholders should contribute to the procedure establishing the obligation of Public Administrations of not requiring documents already provided by stakeholders, developed by Public Administrations or original documents, subject to the exceptions referred to in the Law. Therefore, the person concerned may submit copies of documents, whether they are scanned by the person concerned or presented on paper.

Also, it stresses the obligation of the Public Administrations of having a record or other equivalent system that allows record the civil servants in charge of the realization of authentic copies, which ensures that they have been issued properly.

The chapter II, of terms and deadlines, establishes the rules for its computation, enlargement or the emergency processing. As main novelty is the introduction of the computation of time limits for hours and the declaration of Saturdays as non-working days, thus unifying the computation of time limits in the judiciary and the administrative scope.

The title III, of the administrative acts, is divided into three chapters and focuses on the regulation of administrative acts, their effectiveness and the rules on invalidity and violability requirements, keeping the vast majority the general rules already established by Act 30/1992, November 26.

A special mention deserve the novelties introduced in the field of electronic communications, which will be preferential and will take place in the electronic headquarter or in the enabled email address, as appropriate. Likewise, it is increased the legal security for stakeholders by establishing new measures that ensure knowledge of the availability of the notifications as: sending notification alerts, whenever this is possible, to electronic devices and/or the email address the person concerned have been communicated, as well as access to its notifications through the access General Electronic Access Point of the Administration that will function as a gateway.

The title IV, of provisions on Common Administrative Procedure, is divided into seven chapters and among its main innovations highlights that previous special procedures on sanctioning and liability that the Act 30/1992, November 26, regulated in separate titles, has now been integrated as specialties of the Common Administrative Procedure. This approach responds to one of the objectives pursued by this Law, simplification of administrative procedures and their integration as specialties in the Common Administrative Procedure, thus contributing to increase legal security. In accordance with the systematic followed, the general principles of sanctioning and liability of Public Administrations, insofar as they relate to more organic than procedural aspects, are regulated in the Act of Legal Regime of the Public Sector.

This title also incorporates widespread and mandatory use of electronic media to the phases of initiation, planning, instruction and completion of the procedure. Likewise, it joins the regulation of the administrative file by setting its electronic format and the documents that must integrate it.

As a novelty within this title, it is added a new chapter relative to the simplified procedure of the common administrative procedure, which states its objective scope of application, the deadline for a resolution, which will be thirty days, and its procedures. If in a procedure would be necessary to perform any other additional transactions, then the ordinary processing must be followed. Also, when in a transacted procedure in a simplified way the issuance of the opinion of the State Council or equivalent advisory body was mandatory, for a greater guarantee of stakeholders, the procedure will be continued but following the ordinary procedure, not the abbreviated, and it may be, in this case, performs other procedures not provided in the case of simplified procedure, like tests at the request of the interested parties. All this without prejudice to the possibility of urgent transaction contemplated in the Law 30/1992, November 26.

The title V, of the review of administrative acts, maintains the same ways foreseen in Act 30/1992, November 26, remaining therefore “revisión de oficio” and the typology of existing administrative resources to date (alzada, potestativo de reposición y extraordinario de revisión).

According to the volition of removing procedures, that far from constituting an advantage for the stakeholders, it was a burden which made difficult the exercise of rights, the Law does not already accept the previous claims in civil and labor proceedings, due to limited utility that have demonstrated to date and that, in this way, shall be deleted.

The title VI, of legislative initiative and regulatory authority of the Public Administrations, collects the principles that must adjust its exercise the holder Administration, making effective constitutional rights in this area.

Along with some improvements in the existing regulation on hierarchy, advertising rules and principles of good regulation, several new features are included to increase the participation of citizens in the process of developing standards, notably, the need to obtain, prior to the development of the standard, the perception of citizens and businesses about the problems that are intended to solve with the initiative , the necessity and opportunity of its approval, the objectives of the rule and regulatory and non regulatory possible solutions.

On the other hand, in the interests of greater legal certainty, and predictability of the system, it is committed to improve the normative planning ex-ante. For this reason, all Administrations

will disclose an Annual Regulatory Plan, which will include all the proposals with range of law or regulation expected to be high for approval the following year. At the same time, it strengthens the evaluation ex post, due to the fact that put together with the duty to review continuously the adaptation of the legislation to the principles of good regulation, it is imposed the obligation of evaluating periodically the application of the rules in force, in order to check if they have fulfilled the objectives pursued and whether the cost and charges arising from them was justified and properly valued.

As regards additional, transitional, repealing and final provisions, it should be referred to the concerning the accession by the Autonomous Communities and Local Entities to records and systems established by the State General Administration State in application of the principle of efficiency recognized in the Act 2/2012, April 27.

Finally, the Act contains transitional law provisions applicable to the proceedings underway, to its entry into force, to archives and records and to the General Electronic Access Point, as well as which enabled the development of provisions in the Law.

Results

During more than twenty years of validity of Act 30/1992, November 26, in the sinus of the European Commission and the Organization for Cooperation and Economic Development it has advanced in the improvement of the normative production ('Better regulation' and 'Smart regulation'). The various international reports on the subject define smart regulation as a legal framework of quality, allowing an objective regulatory compliance while providing appropriate incentives to boost economic activity, allowing to simplify and reduce administrative burdens. To do this, it is essential an adequate analysis of impact of standards, both ex-ante as ex post, as well as the participation of citizens and enterprises in policy making processes, because on them rests the enforcement of laws. In the last decade, Act 17/2009, November 23, and Act 2/2011, March 4, they assumed a step forward in the implementation of the principles of good regulation, especially as regards the exercise of economic activities. Already in this legislature, Act 20/2013, December 9, has given important additional steps, making available to citizens the legal relevance of the standard-setting procedure information.

However, it is necessary to count with a new regulation that, ending with the existing normative dispersion, strengthens citizen participation, legal certainty and the revision of the regulation. With these objectives, databases have been established for the first time in a law, pursuant to which has to develop legislative initiatives and regulatory authority of the Public Administrations in order to ensure their exercise in accordance with the principles of good regulation, ensure appropriate audience and participation of citizens in the development of standards and achieving predictability and public evaluation of the system, as a necessary corollary of the constitutional right to legal security. This novelty becomes especially crucial in a territorially decentralized State in which coexist three levels of territorial Administration that projected their regulatory activity on subjective and geographical spaces often coincidental. With this regulation, are followed the recommendations contained in this matter, developed by the Organization for Cooperation and Economic Development (OECD) in its report issued in 2014: «Spain: From Administrative Reform to Continuous Improvement».

Conclusion

Also it highlights the provision on the specialties which establish series of actions and procedures that shall be governed by its specific and supplementary legislation as provided in this Law, which includes tributes and review application in tax and customs matters, the management, inspection, settlement, fundraising, challenge and review in the field of Social Security and unemployment, where are included, among others, acts of recognition and membership of the Social Security and the economic contributions for dismissals involving workers of fifty or more years in companies with profits, as well as the actions and procedures in taxes and customs, in social order, in traffic and road safety and in the field of immigration.

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Новый испанский закон об общих административных процедурах в публичном управлении

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Аннотация. В статье рассматривается испанская правовая система, созданная в период Франко, относительно Общей административной процедуры. В статье 97 Конституции, безусловно, отбрасывает эту концепцию и извлекает политическую сферу функции самоуправления, построенного по принципу демократической легитимности. Эти черты определяют правительства и администрации, как конституционно различных общественных институтов и установления подчинения администрации политическим

руководством точного правительства. Следует отметить, что в настоящее время база, регулирующая правовой режим государственных администраций является предметом специального приспособления политики, которая настраивает с последовательности и гармоничности конституционных принципов. Конституция гарантирует подчинение общественных администраций на принцип законности, как в отношении правил, регулирующих ее организации и правового режима, административную процедуру и систему отчетности. С другой стороны, местная администрация имеет правовой режим устанавливается в той же статье 149.1.18. Конституция имеет определенную регулирование в нынешних «Ley де Основ», что не предлагают каких-либо трудностей адаптации к целям настоящего Закона и которые не требуют конкретных модификаций.

Ключевые слова: общая административная процедура, государственные органы, автономные Сообщества, граждане, заинтересованные стороны, публичные услуги, общие электронные точки доступа, муниципальные организации