

PAPERS ASSOCIATED TO THE ADMINISTRATIVE ACTS AND LEGAL UNILATERAL WILL IN THE FRAME OF THE ADMINISTRATIVE DECISIONAL MECHANISM

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Abstract

Administrative acts' related problems are widely analyzed in the specialty doctrine, in the context where this one represents the essential form of materializing the entire activity of the public administration. The administrative acts represent the unilateral manifestation of will through which the administrative authorities define their practical character, expressing in order to do that, in a regime of public power. Administrative acts' characteristics present those features which, by resulting out of the cumulative reunion of the essential elements and of the validity conditions, they differentiate these acts from other categories of legal acts. When we say characteristics of the administrative acts we understand those features which individualize these acts from other legal acts.

Keywords: administrative act, administrative law, legal effect, unilateral character.

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1. Preliminary considerations

The administrative acts represent the main legal form of the activity of the public administration authorities, starting with the executive power authorities: President, Government, and ministries, and ending with the public administration authorities and institutions functioning in public power regime.

The acts issued by these authorities in public power regime are generically called administrative acts². The administrative acts represent the unilateral manifestation of will through which the authorities of the public administration define their practical character, and they express themselves, in order to do that, in regime of public power.

Depending on the number of will manifestations, contained by them, and according to their legal regime, the public administration's acts can be classified in the following categories:

a) Unilateral legal acts:

1. Unilateral administrative acts issued in regime of public power (administrative acts of authority);

These can be classified in two subcategories:

- Individual administrative acts (or of individual character);
- Normative administrative acts (or of normative character).

2. Unilateral acts of common law.

b) Bilateral or of administration legal acts:

1. Public administrative acts (administrative contracts);
2. Private administrative acts (common law acts);³

Administrative acts' characteristics, they represent these features which, by resulting out of the cumulative reunion of the essential elements and of the validity conditions, they differentiate these acts from other legal acts categories⁴.

Gathering together the essential elements and complying with the validity conditions established by law, the administrative acts have the following characteristics: they are unilateral, legal, mandatory, and they are executor and opportune (up to date).

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² Anton Trăilescu „Drept administrativ”, 4th ed., Ed. C.H. Beck, Bucharest, 2010, p. 189.

³ *Idem.*, p. 190.

⁴ Antonie Iorgovan, *Tratat de drept administrativ*”, Vol. II, Ed. Nemira, Bucharest, 1996.

2. The unilateral nature of the administrative act

The Unilateral Character represents that quality of the law act according to which it is issued without the participation or the consent of the law subjects, to whom the act is destined, or concerning the rights and the obligations generated by it.

Unlike other law acts (the civil law acts, for instance), the unilateral character of the administrative acts it is determined by their issuing on the ground and for exercising the state power.

This unilateral character it is specific to all power acts, in the category of which fall also the administrative acts, together with the acts of the legislative power, of the justice courts, and of the prosecutor's office.

The unilateral character is defined by the fact that the unilateral manifestation of will takes place in the frame of the executive power, of organizing the enforcement of the law, and of concrete observing of the law, coming, for instance, from a public administration's body.

When an administrative act is issued ex officio by a state body, creating obligations on other subjects, public authorities, organizations, associations, or individuals, etc., the unilateral character of these acts it is as obvious as possible, fact that explains also the possibility of revoking the administrative law acts, even by the authority which has issued them.

Having situations as:

- performing a benefit or a payment by the other subject of the legal relationship, other than the issuing body,
- fulfilling of some obligation by the state body,
- respecting of some procedural formalities when issuing the administrative acts⁵,

we can affirm that the mode of issuing and of executing the administrative acts can lead to the interpretation that these situations give an unilateral character to these acts.

Sometime, the issuing of an administrative act is preceded, accompanied, or followed, by performing a benefit or a payment by the other subject of the legal relationship, other than the issuing body⁶. In this situation the amount paid it doesn't represent the equivalent of the state body's performance, in exchange of issuing the act, this representing actually the tax imposed by the law for issuing a license, an accord, a permit, etc.

In these conditions, the military ID's book it is issued to persons who have satisfied their service without one can say that satisfying the military service it represents satisfying an obligation of contractual nature, to which the issuing of the military ID's book would confer the bilateral character.

Likewise, the driving license it is released to the holder only after he has paid the legal taxes and the cost of the interim period; and the land owned by the state can be attributed in order to be used for building houses only after paying the fees established by the legal provisions.

In these cases, there is not about an onerous benefit providing, executed by the beneficiary of an administrative act in exchange of issuing the respective decision, so that this act to receive a bilateral character.

On a brief analysis, one can ascertain that there it would be an obvious disproportion between the paid amount of money and the administrative service provided, namely that what has been paid could seem too little or too much - according to the situation - related to the administrative service provided.

On the other hand, in the most cases, the respective amounts of money aren't even paid on the benefit of the state body, that is part of the legal relationship, these amounts being destined to the direct benefit of the state.

The unilateral character it is maintained also on the hypothesis that the administrative act establishes obligations in charge of the issuing body.

⁵ Gabriela Bogașiu, *Legea contenciosului administrativ, comentată și adnotată*, 4th ed., Ed. Universul Juridic, Bucharest, 2018.

⁶ The Romanian Constitution, 2003.

Thus, the military educational institutions are obliged to implement the provisions regarding the distribution of the graduates of the higher military education. These obligations do not occur consequently to an accord of will between administration and beneficiaries, obliging the administration, reciprocally, to the subjective right of the other part. On the opposite, the administrative obligations are generated by legal provisions which the administration must observe, and which confer rights to the administrated subjects. These rights do not occur either as a free appreciation of the administrative body, or – even less than that – by agreement of will, they deriving directly from the law.

The unilateral character of the administrative decision subsists also on the hypothesis that the administrative act is issued while respecting some procedural formalities, as for instance the applicant's request, the approval, or the agreement, required by law⁷.

Thus, the individuals who meet the legal requirements for being authorized, and they want to own firearms, they apply for authorization. In the case of the administrative acts issued on applicants' requests, these ones have the full right to use the received acts. The application manifesting the will of the applicant it is followed by the issuing of the legal act, but they do not constitute together such consent which to give birth to a contractual relationship. Some of these acts (for instance the permits) attribute to the applicant a general legal situation with rights and obligations which do not arise from that administrative act, but out of the law. This fact shows us that it isn't about an administrative contract⁸, where the rights and the obligations are generated by the agreement of will of the parts.

In the first place, the contract that imposes reciprocal obligations to the parts, it presupposes the existence of a legal relationship having a double object (on sale-purchase it consists of handing over the good and paying the agreed price; in case of an authorization, the object is exclusively constituted by ensuring the possibility that the beneficiary to undertake an activity or to provide the necessary conditions for satisfying some rights or interests).

Secondly, the cause of the administrative acts is unique, and not double (as in case of contracts, when the performance of each part of the legal relationship it constitutes the basis of a reciprocal performance of the other part), and it consists in ensuring the undertaking of an activity or of realizing some rights.

Thirdly, the mode the beneficiary manifests his will it has a secondary role, this will contributing to the issuing of the legal act on request, and the effects of this act take place only on the basis of the will of the issuing body, even if it is triggered by the application.

In some cases, the administrative acts, as for instance the authorization given for exercising a profession, it attributes a general legal situation to the applicant, in addition to which it creates also right and obligations having a determinant character (they establish the place, the object, and the conditions of exercising a profession, or attribute a parcel of land by delimitating the exact location, and by indicating the data of the beginning and of finishing the building, the builder, etc.).

In what regards the legal effects of the administrative acts we ascertain that, on one hand, they produce effects since the moment they are issued, and on the other hand, the refusal of the beneficiary of the act to exercise the attributed rights it is irrelevant to the existence of the act, because abolishing it must be the expression of the will of the state's body.

Similarly, neither renouncing to the benefit of an administrative act can influence the existence of that act the body having to intervene by abolishing that act, even if this action is determined by the refusal or by the renunciation of the beneficiary and it is provided as condition of annulling or of revoking.

On the other hand, even if in the case of the administrative acts issued on request we would; consider that the act of will it is their the essential element (of the application and of the administrative act) the effects should occur since the moment this agreement took place, and the annulling of the act would presuppose the same agreement which is characteristic also to

⁷ Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H. Beck, Bucharest, 2016, p. 69, 70.

⁸Anton Trăilescu, *op. cit.*, 2010, p. 220.

constituting the legal act. The administrative act is unilateral even if it has been issued in common by several administrative bodies, and we cannot consider that we have to do with a contract amongst the issuing bodies.

Really, the contract presupposes not only the existence of an agreement of will, but also different subject of law, distinct legal capacities, opposable rights and obligations amongst the parts. Or, in case of the acts issues in common, the right and the obligations seem to be opposable not amongst the bodies concerned, but towards the recipient subjects, to whom the act appears as a unilateral manifestation of will, even if it is issued from several law subjects⁹.

In some cases, issuing an administrative act it is submitted to some procedural requests, as there would be the approval or the agreement, but none of them, even if it is in concordance to the basic legal act they refer to, they don't oblige the administrative body to issue the act, but they represent validity conditions of the legal act. Once the administrative act issued, while observing these conditions, withdrawal the approval or the agreement it is irrelevant to the existence of the act.

The unilateral character is maintained even if the administrative act constitutes itself a precondition for the conclusion of a civil act (for instance the authorization of selling in case a sale-purchase contract concerning a building), or if, on the opposite, there results consequently to concluding such a contractual act (for instance, the disposition of assignment to the work place of the graduate, but after the conclusion and execution of the schooling contract). In these cases, the administrative body either it is part of the respective legal relationship, or that between it and the other contractual part are established, later, relationships of administrative law.

The unilateral character of the act determines, except some cases, also the revocable character of the administrative decisions. While in the civil law the majority of the unilateral acts are irrevocable, once they benefited of the acceptance of the parts, in the administrative law the acts are, in principle, revocable.

The unilateral character of the administrative decisions, unlike the unilateral character of some civil law acts, it doesn't request, on the purpose of perfecting the act, the existence of the consent of the other part.

3. Conclusions

The unilateral character of the administrative acts, doubled by their revocable character, likens and distinguished this category of act, to and from the decisions of a court. The court's decisions are unilateral, being issued on the basis of the state authority, but by adopting them, the court disqualifies itself from any right to return or withdraw the pronounced solution.

As conclusion to the presented situations, it is imposed the fact that the legal effects of the administrative acts are the result of unilateral manifestation of will of the state's body, the sole decisive element, and that the presence of preexisting conditions, concomitant, or ulterior to adopting the act, it ensures the issuing of the respective act.

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