

UNIVERSITY OF CRAIOVA
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DOCTORAL THESIS

**THE LEGALITY OF THE
NORMATIVE ADMINISTRATIVE
ACT IN THE RULE OF LAW**

- SUMMARY -

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The current legal reality shows an increased tendency of the Romanian administration to adopt normative administrative acts with the purpose of regulating various areas of local and national interest, such as the organization of certain institutions, the establishment of local taxes, fiscal competences or internal procedures, with the consequence of limiting some rights or protecting others.

This trend is determined, on one hand, by the slow and difficult process of adopting laws by the Parliament and, on the other hand, by the tendency of the administration to clarify, explain and interpret the gaps, misrepresentations or unclear and defective writing of the law, or to "adapt" the laws in their own interest.

The expansion of the public administration is also justified by the growth and diversity of public services. The Romanian state is a social one and is obliged to intervene to meet the individual or collective needs of individuals in order to protect them from social risks related to illness, poverty, unemployment or for the protection of minors or of disadvantaged persons.

From the perspective of the rule of law, the administration can only act to enforce the law or through the adoption of secondary enactment acts, respectively, only on the basis of express legislative competence and cannot act against the law.

The rule of law assumes that the normative administrative act is in compliance with the law and, consequently, the administrative normative act can only be adopted on the basis of a legal provision. Being subsequent to the law, it can only intervene if it organizes the application of a law. In contrast to the normative administrative act, the individual act executes the law in concrete, and is subsequent to the law in the same way but also to the normative administrative act, in the situation where the latter one authorizes it.

On the other hand, the administrative normative act cannot add legal norms contrary to the law, any administrative act that regulates the law primary and not subsidiary, must be removed from the legal order.

Public authorities can only interpret the law in the organization and execution of which administrative normative acts have been adopted, but this interpretation is neither authentic nor compulsory for the courts, which have jurisdictional control over these acts.

As a practitioner of law, I found that the nature and legal effects of the administrative normative act are not sufficiently understood (being confused in many cases with the individual administrative act), a situation that resulted in contradictory solutions. On the other hand, the lack of an Administrative Code has been compensated by a rich jurisprudence practice which has crystallized certain directions regarding the judicial control of such acts.

The scientific research aimed at treating as fully as possible and explaining the theoretical and practical aspects of the normative administrative act, so that the paper could become a useful tool for the experts in the field of administrative law.

The thesis was structured in 5 chapters with a total of 20 sections, ending with a final chapter Conclusions. The elaboration of the doctoral thesis took into consideration the doctrine, the jurisprudential practice and the legislation until the last modification of the Law no. 554/2004 of the administrative contentious, adopted by Law no. 212/25 July 2018.

Chapter 1. Introductory considerations

In the first chapter, the object of the doctoral research was the study of the role and the place of the normative administrative act in the hierarchy of normative acts, in order to achieve a more correct and complete definition of this legal institution.

The normative administrative act has a special statute in the normative hierarchy in the sense that it is the only source of normative law that expresses the manifestation of the will of the administration and can be subject to judicial censure of the courts.

The principle of legality by which the public administration is governed requires that it should be subject to the hierarchy of the legal norms. As a consequence, the administration cannot act arbitrarily, but according to certain rules expressly established by law, which regulate the administrative procedures to be followed, the material conditions of the administrative action and define the rights of the administered subjects.

The principle of the normative hierarchy requires that normative acts to comply with certain requirements imposed by the higher legal norm. They must meet certain formal criteria regarding the competence of the issuing public authority or the legal procedure that authorizes its adoption. After meeting these conditions, the act can be considered valid and it produces its mandatory effects.

On the other hand, normative acts must comply, with regard to their content, with the higher legal norm. This compliance report should not only concern the legal provision under which the act was adopted, but the entire legal system as a whole, including the supreme law, the Constitution. Therefore, even if the document is formally valid, its material content must be edited in such a way as to produce legal effects that do not violate the rule of law.

The validity and compliance of administrative norms with the higher legal norm must be viewed in two ways. In the legal order, there cannot be administrative acts legal in form, but which are contrary to the Constitution and to the legislative acts as material substance and neither administrative acts which are not in form, no matter how justified and well intentioned the regulations established by the public administration are.

From the perspective of the features I have presented, the normative administrative act is a legal act of the administration, adopted in a regime of public power, which contains normative provisions, with a repeatability character, being subject to the rules of advertising in order to be disseminated to the subjects of law.

I emphasized that the definition and delimitation of the normative administrative act from the individual one must not be made exclusively from the point of view of its effects but reported to the content of each act, to their legal substance which ultimately determines distinct legal effects. Different legal effects are the consequence of different provisions that are involved in elaborating such acts and not the other way round.

A normative administrative act has this character because the type of norms contained in the act establishes rules of conduct with continuous application, namely it contains general and abstract regulations, with compulsory character for an indeterminate number of legal subjects or situations.

The normative nature of the administrative act implies that it establishes rules of conduct for the recipients of the act, between them or between the relations of the recipients with and the society. It has an impersonal character, because it does not address to a particular subject or to certain, pre-established and identified as such individuals.

The administrative normative act imposes certain behaviors or establishes conducts, respectively imposes actions or inactions, conferring rights and obligations to the subjects of the administrative law relations.

The normative nature implies that such an act contains rules which establish the obligation to adopt certain conducts, to forbid certain ways of legal action or to allow certain behaviors of the subjects of law. The content of these types of norms are defining for the normative administrative act.

The normative provisions of the act require that it would be applied continuously during the period of activity, to the subjects and legal situations for which it was enacted. The normative administrative act contains a set of rules which establish certain rules which, like any normative act, create certain mechanisms, procedures which function regularly in relation to certain characteristics and parameters established by that act.

The rules we refer to are rules of conduct that impose or claim certain behaviors, action manners, moral standards, or legal attitudes in society.

Unlike the normative administrative act, the individual act does not have a repeatable character. Once completed, it is exhausted. For another concrete situation the entitled person must follow a new procedure. If this legal situation changes for the original recipient of the individual administrative act, it can no longer be executed. In exchange, in the case of the administrative normative act, regardless of specific circumstances or legal cases, it will apply to all persons falling under the norm.

On the other hand, the normative administrative act must not compulsory and necessarily be applied to several recipients in order to be characterized as normative. It should only be susceptible to be applied to indeterminable persons, meaning it should contain only the rule / mechanism of application. The application of the legal norm, so regulated, may be single or multiple.

The normative administrative act, no matter it will apply successively or in the same time to a recipient or to more than one, does not differ from the individual one by the number of persons or single or multiple legal situations to which it applies but by the nature of the rules it contains.

Unlike the individual administrative act which is brought to the knowledge of the subject or the subjects to whom it is intended, by direct communication, in the case of the normative act, that addresses to a generic and indeterminate number of persons, individual communication is not possible.

The obligation to carry out advertising formalities derives from the normative nature and is based on the fact that such an act cannot be communicated individually to each of the recipients in part, because, in the first place, the recipients are not known in concrete and in the case they could be determined such a communication would be technically impossible to be achieved due to their large number.

The normative administrative act is necessary to be disseminated by publishing in the Official Monitor of Romania or in official county monitors or in the Bucharest monitor, as the case may be, or by other advertising methods specific to each act, for example at the door of the public authority. As a consequence, the moment when the normative administrative act takes effect is that of the publication.

Also, since it creates rules of general and impersonal conduct applicable to undetermined subjects, rules that can be enforced, if necessary by the coercive force of the state, only the administrative normative act has the character of a source of law.

Due to the fact that such an act is adopted in the realization of the state power, it should not to be understood that it represents the exercise of a coercive force of the state, which intervenes only when the ex officio execution is not done voluntarily by the subjects of law. Its purpose is not to constrain, but to realize the competence and the tasks imposed to the public administration, by the execution of the law.

I have pointed out that the feature of public law act of the administrative act, in general, was forgotten by the legislator when adopting Law no. 554/2004, being subsequently added by Law no. 262/2007, which introduced as defining element of the administrative act, the issuing under public power regime.

Regarding this aspect, I stressed that all the legal conditions regulated for the enacting of the administrative act, the establishment of the excess power, the way of its temporary protection by way of institution of the suspension of the administrative act, lead to the conclusion that the public power regime of the administrative acts is not arbitrary, discretionary, but a legal one, which aims to protect social needs by the administration's specific means. Therefore, in relation to the current legislative framework, the public power regime of the administrative act brings to value the characteristic of public service of the administration.

We note that the central or local administration cannot regulate certain areas, constitutionally reserved to certain normative acts. The normative administrative act must obey the constitutional principle of legality, which dominates the rules of public law, so that the administration will have to avoid regulation where the field is expressly reserved for certain normative acts of superior legal force, as well as the excess power by acquiring competences that it does not have.

A normative administrative act must fulfil the following characteristics, namely to be in accordance with the Constitution and with the laws of the legislative body and not to contain provisions

which are contrary to them, to observe the principle of hierarchy of superior juridical norms in relation to the lower ones, to fall within the limits of territorial and materials competence of the issuing public authority and not to be issued by excessive power, not to primary regulate in areas where the regulation is provided for higher legal force normative acts and, last but not least, to be given in the form and with the procedure foreseen for each separate act.

In the Romanian legal order, the administrative normative act has a dual nature. Firstly, it is the legal instrument by which law enforcement is organized, a feature specific to the executive, the administration. On the other hand, if there is a special delegation from the legislative power, the administration may adopt acts with normative character which regulate social domains in a primary way.

Regarding this last aspect, in our opinion a mention should be made. The Government may adopt simple or emergency ordinances that may primary regulate a special relation. These acts, even if they were considered to be of an administrative nature, being issued by the central body of the executive power, are, from our point of view, assimilated from the point of view of the regulatory object and the legal effects, to legislative acts by constitutional provisions. Finally, the ordinances become law through Parliament's vote of approval.

By the other normative administrative acts issued by the Government or by other bodies of the public administration, central or local, the regulation in a social area is not made by these administrative bodies in a singular way, but next or in completion to the laws of the Parliament and, usually, in less important matters or in the interest of a local community is better appreciated by local elected representatives, based on the local administrative autonomy. Therefore, for less important social relations, which are not envisaged by the Parliament when adopting legislative acts, it is up to the administration to draft the necessary legal norms in accordance with the regulations established by law.

In the case of local public authorities, local autonomy implies functional independence from the central authorities, as well as some material independence that can be reflected in its own regulatory competence in express areas, independence that is strictly limited to the legal framework (e.g. local taxation, establishing the own budget of the administrative-territorial unit, contravention matters, urbanism).

We have therefore argued that we can define the administrative normative act as the act adopted by an administrative public authority which primarily regulates an area, together with or in addition to legislative acts, where there is a special delegation from the legislative power or which secondary regulates an area, in the case when it organizes the implementation of a legislative act.

Chapter 2. The legal regime of the normative administrative act

In this chapter I analyzed the legal regime of normative administrative acts in order to understand the peculiarities of such acts in the legal circuit, the understanding of the interdependence between the legality and the opportunity of such acts being relevant in the scientific research.

The administrative act should not only comply with the higher legislative act in the implementation or enforcement of which it has been adopted or issued, but the conformity must exist in relation to the entire legislation in force, including the Constitution.

The legality of the administrative act implies the fulfillment of certain legal conditions of which depends the valid enactment of the legal act and the generation of the legal effects that have been taken into account by the public authority. These elements of legality are diverse and concern the fulfillment of certain legal norms that involve either the substance aspects of the act, internal, or the external form of the act

The adoption of an administrative act with normative character implies firstly the verification by the public authority of the legal competence which was delegated to it. When adopting the act, it should be taken into account the role and place of the public institution in the general structure of the

administration. This positioning of the institution reflects the principle of the hierarchy of normative acts, which requires to the adopted act to be in conformity with all legal acts with superior legal force, from the Constitution and laws to administrative normative acts adopted by a higher administrative body.

The public administration must also observe the formal and procedural conditions, the formal conditions of the act regarding its external aspect. All these conditions of legality necessary for the valid adoption of the normative administrative act are merely the reflection of the principle of legality, which leads to and determines the activity of the public administration, so that they essentially pursue one single aspect, that the act complies with the legal norms in force which are enacted in this sense.

On the other hand, compliance with the conditions of legality does not exclude a certain amount of the opportunity the administration enjoys in fulfilling its competencies, tasks in which the administrative act has a dominant role.

I appreciated that we can see the opportunity as an attribute of the administration, as within the limits of the law as the legislative power has decided, to be able to choose between two or more ways of action, of legal behaviors that would result in the adoption of an administrative act in the forms and conditions of the law.

In our opinion the opportunity of the administrative act depends on the moment of its adoption, on the specific cases in which it must apply, on the cultural and social conditions in which the administrative act produces legal effects and on the compliance with the public interest guaranteed or protected by law. Opportunity is the power of the administration, the margin of freedom in which the authority must act. Through the solutions that it has to choose and which it considers most appropriate, it is necessary for the public administration to achieve the ultimate goal of the law, for which the administrative act was adopted or in the execution of which it was issued.

In other considerations, the opportunity is a feature that primarily puts a mark on the administrative acts of a normative nature, when the public authority, in the exercise of its discretion right or of the administrative initiative right, may decide to act in a certain manner in the legal conditions establishing that competence.

It should be emphasized that the opportunity is not absolute discretionary power, so that the conditions of legality that an administrative act must fulfill in order to be valid and produce legal effects, all these elements, conditions of legality, constrain the opportunity. The more they are, the more the freedom of movement, of legal appreciation of the administration, is smaller.

But public authority is not an amorphous organ, without will, which rigidly enforces the legal norms. In order to carry out a law, thereby understanding the morality of the community embodied in a rule of law, the administration must have its own will, one equally human in order to understand the purpose of the law.

Therefore, the administration must have some discretion power, a margin of interpretation of the legal realities it faces. It should not be taken to the extreme and for this, the limits of the exercise of the opportunity are established by legal norms.

In the administrative practice there are cases which allow the administration to revoke its own acts on grounds of inopportunity, by virtue of the principle of revocability of administrative acts. The public authority, through the bodies that issued the act or by virtue of hierarchical control, may, at a second assessment, to revoke, in principle, any administrative act in situations where there is no excess of power, situations which cannot be censored by the court.

In other words, there are cases in which the authority can revoke the act without allowing the legal situation which determined the revocation of the act to be subject to the control of the contentious judge and without it being the result of a liberty of assessment made with excess power. This situation is characteristic to administrative acts with normative character, both in terms of the right of initiative, but also referring to the content of the act.

With regard to individual administrative acts, we consider that the right of appreciation of the administration exists in a small to non-existent dose. This is because the choices of public authorities, when issuing individual administrative acts, are limited to certain canons, procedures that make the final legal act, the individual administrative act to be predictable to anticipate.

Even if the administration has the option of choosing between several administrative solutions, which involve the issuance of a certain administrative individual act with different content or even contrary, the right to appreciate, exercised by the authority, may be subject to censorship by the court.

We recall that the contentious court may cancel the administrative act and oblige the administrative authority to issue a new act under the conditions established by the judge, so that, also in the terms of the legal norm, it is admitted that the sanctioning decision can be reformed in such a way that it has a legal summary, implicitly a different sanctions and different legal effects. In this way, the court replaces the content of the act, as it resulted from the appreciation of the public authority, with a new act ordered by the court's decision, issued following the examination of the substance of the case, by using evidence and applying of the relevant legal provisions.

We note that, as regarding the individual administrative acts, the contentious judge has a wide power of appreciation, resulting from the fact that, in order to verify the grounds and legality of the act, it is given powers to verify not only the legal provisions applicable to the dispute, but also the factual circumstances which was considered by the public authority for the adoption of the act. When from the used evidence it is revealed another factual situation, the court is obliged to order consequently measures, to cancel the act and to order the public administration to issue another administrative act with a new content or partially different from the original one, thus modifying the decision of the authority according to factual or legal realities.

Regarding the administrative normative acts, in our opinion, they always contain an element of opportunity, whether we are talking about the margin of appreciation regarding the way in which certain attributions for different functions within public institutions are regulated, or about the initiative or the concrete way to establish certain procedures, regulations, instructions.

In the case of these acts, the right to appreciation is deduced from the very nature of the regulatory power, delegated to the administration by the legislative power, and implicitly by the free will that characterizes this constitutional function.

Regarding the binomial legality - opportunity and opportunity, element of legality of the administrative act or not, we hold that the administrative contentious judge has the power to censure the administrative acts in terms of opportunity, but this can only be done in cases in which only the law permits it, namely in situations where the non-opportunity results from a legal norm.

The jurisdictional control of administrative acts is not as extensive as the administrative one exercised by the authority, so that we can have cases in which the administration revokes its own acts and the court cannot cancel them, the most eloquent case being the one of the administrative acts with normative character.

We believe that the solution to this question of legality - opportunity should not be resolved by extending the control exercised by the contentious judge, but by constraining the discretion right of the administration through various legal norms which would sanction the abuse and limit the right of the authorities to revoke their own papers. The revocability of the administrative acts must have as a limit the security of legal relations and, from this perspective, the administration must not appreciate and re-appreciate perpetually legal situations by issuing administrative acts with different or contrary content.

Consequently, the future Administrative Code should regulate a specific procedure for revocation, which should also expressly mention a specific timeframe within which the right of revocation can be exercised.

On the other hand, by regulating excess of power, the legislator established a correlation between legality and opportunity. If legality implies acting within the framework of powers expressly provided for by law, the opportunity implies the discretion of the administration to act within these legal powers.

By defining the concept of excess of power, the controversy between legality versus opportunity has been clarified to a certain extent, the acts of the administration being able to be subject to censorship, besides the classical control of legality, which entails checking the compliance of the act with the legal provisions, also in the situation where the authority acted an excess of power in fulfilling the attributions, either by overcoming the regulatory sphere, or by violating the rights and freedoms of citizens.

Regarding the form and procedure of issuing a normative administrative act, I have distinguished between the external conditions of form of the document in a formal sense, as a written, visible form, and the internal conditions of the act, which refer to the conditions which should be fulfilled, mandatory procedures that should be followed in order for the adopted act to be valid.

With regard to the external form, administrative acts must, as a general rule, be recorded in writing, because they require an ex officio execution, the written form ensuring the efficiency of the transmission of the information to the recipients and the obligation to comply with the content of the act. The written form allows the verification of the legality of the act by the hierarchical administrative body or, in the case of a dispute, by the court and it makes proof of the material legal act and of the established provisions.

With reference to the normative administrative acts, we are considering the regulation from art. 4 of Law no. 24/2000, which legally enshrines the normative hierarchy rule, which refers both to the form of the acts, and also to their substance.

We noted that from a formal point of view a normative administrative act should include the higher legal normative acts which are the basis for the adoption, as well as the other applicable legal provisions. From the point of view of the substance of the act, the normative administrative act must be issued within the limits of the higher regulations under which it was adopted, but it must not contradict the other regulations with a higher legal force, whether they have a constitutional, legal or administrative nature.

A particular importance in the form of normative administrative acts is the motivation of the act, an expression of the rationale of the administration which determined the authority to adopt that decision, describing the legal grounds, as well as the factual ones. As to the reasoning, this, as an administrative operation, must be done at the same time with the act. A subsequent reasoning mentioned in the summary of the answering to the administrative complaint or in the summary of the response to the litigation before the court of contentious is not equivalent to a statement of reasons of the act.

We noted that if the reasoning of the administrative act in fact and in law fails to meet the requirements imposed by the principles of transparency and predictability of the administrative act, since these constitute genuine guarantees for the exercise of the injured parties' right of access to justice, the sanction for not justifying the administrative act may only be its cancellation.

The motivation of the normative administrative act is a general obligation of the public authority, applicable to any administrative act, being necessary to ensure the transparency for the recipient of the act. He will be able to verify whether or not the act is founded in his opinion and to comply, if he thinks it is correct, or to take it to court if he considers it harmful. The role of motivating the administrative act is, at the same time, to give the contentious court an effective tool for judicial control, thus having the opportunity to verify the factual and legal conditions that have been taken into account by the public institution which issued / adopted the act.

Specific to normative administrative acts as a previous procedure is the necessity to ensure the transparency of the administrative decision according to the provisions of Law no. 52/2003. Under the terms of this normative act, all public administration authorities are required, prior to the adoption of an

administrative act with a normative character, to publish on their own website an announcement regarding the intention to adopt the act.

The legal provisions which ensure the decisional transparency are not recommended. Public authorities need to modify their organizational structure to implement the law in order to allow both the transparency in the process of elaborating the normative acts and also the access of individuals to public hearings held within the authority.

From the point of view of the legal force and the effects produced by a normative administrative act, we noted that the normative administrative act is adopted in the realization of the public power characteristic of the issuing public authority.

The legal force of the administrative act is inferior to the legal force of a law, but in our opinion the legal effects which such an act produces cannot be regarded as inferior legal effects, but are full effects, which establish mandatory regulations to be brought to fulfilment by the concerned subjects, at the same extent as legislative acts.

The inferiority of the normative administrative act derives from the obligation to comply with all normative acts with superior juridical force and from the position in the structure of the state hierarchy of the authority that adopted the act. But once such a normative administrative act enters into force, we believe that it borrows from the legal force of the law it enforces, with similar consequent legal effects.

As an act of public law, the normative administrative act has a juridical force superior to the acts specific to the private law, characteristic which stands out by the feature of *ex officio* executory act.

The administrative act with normative character has a similar legal force with respect to the subjects of law to which it addresses to, the *infra-legal* nature of inferior legal force needing to be considered only in the context of the relations of the normative administrative act with the law and the legislative system as a whole.

The obligation to comply with the normative administrative act does not derive from the corrective force exercised by the public authority to carry out the act, but from the actual content of the normative administrative act, from the legitimacy of the norm at the level of the individuals. Constraint in the case of a sanction is not intended to satisfy any occult interest of the administration, but the interest of the persons who have delegated the authority to determine the manner of administration, an interest which is protected by the normative administrative act.

Relationships of administrative law result directly from the norm that constitutes the content of the administrative act, whether we are referring to compliance or conflict reports. If the legal compliance report involves adapting a certain conduct to the administrative norm, the conflict report assumes a relationship in which the sanction and the force of coercion of the authority are materialized. However, the abstract legal compliance report is the one that generates concrete rights or obligations for the subjects of the act.

In other terms, the normative administrative act produces legal effects different from the individual administrative acts issued on its basis, so that the interest of the complaint is different and the action contesting an administrative normative act must not be conditioned by submitting a request to bring to justice regarding the acts with individual character issued on its basis.

As far as the legal effects are concerned, unlike the individual administrative acts concerning concrete, well-defined legal situations, which concern unique subjects, the normative acts have a general, impersonal character.

Thus, I considered that individual acts are not repeatable. An individual administrative act that has been issued for a specific situation in consideration of a particular subject applies only to the given situation and exhausts its effects by simply executing the act. Instead, administrative acts with normative character produce successively and repeatedly their effects, even if the legal effects are applicable to the same subject of law and even if the concrete legal situation of the subject has changed.

The administrative normative act produces legal effects on a continuous basis over its period of activity, applying to all the receipts that are targeted by the act, throughout its entire existence. However, a subject of law must observe the content of the normative administrative act only in the situation in which it is in the legal hypothesis regulated by that act.

The subjects to which the administrative act with a normative character is addressed may be private individuals, or may be natural persons exercising certain attributions, prerogatives with which they have been legally invested or may even be different institutions and public administrations.

The administrative act requires an action, a will that bears a legal form, which ex officio or upon a complaint, comes to solve a state of uncertainty. Its effects are primarily direct aiming on the receipts of the acts that are currently asked to choose, having a choice in complying, in voluntarily executing the act or challenging the act, insofar as they are not satisfied with its content.

A normative administrative act produces its legal effects from the moment of the fulfilment of the advertising procedures, only for the future. As the favorable criminal or contravention law can be retroactive, and administrative normative acts can also regulate contraventions, there may be cases where such an act produces legal effects with regard to situations prior to its entry into force and thus having a retroactive character.

Regarding the final moment of the administrative normative act up to which the legal effects take place, we are considering the moment of revoking the act by the public institution / administrative authority which adopted it or cancellation of the act by the court. In principle, both situations, revocation and cancellation, produce legal consequences for the future. This means that both the revocation and the cancellation of the act ordered by the court have no retroactive effect, the legal effects and the situations produced during the period when the administrative normative act was in force remain valid.

In conclusion, the legal reports and the legal effects produced by the normative administrative act, during its execution until the date of annulment by a final court decision, remain in existence.

The provisions of art. 23 of Law no. 554/2004 on the administrative contentious, which regulates the obligation of publication, expressly, specifically stipulate that the decision of the court which totally or partially cancels an administrative normative act is generally binding and it also has power only for the future.

In interpreting these provisions, the High Court has determined that the final judgment of cancelling an administrative normative act has a legal status similar to the decisions of the Constitutional Court, which admits exceptions of unconstitutionality of some legal provisions, from the perspective of the effects which they produce, and which state that certain legal rules are unconstitutional.

We note that in the cases pending before the courts of justice for the cancellation of individual administrative acts issued on the basis of an administrative normative act, from the date of the final decision of the court for cancelling the normative administrative act, the final court decision which cancelled in whole or in part an administrative act with normative character produces effects also over the individual administrative acts issued on its basis.

In other words, that decision produces retroactive effects in all pending cases, the assessment of the pendant case being reported to the date of the final decision on the annulment of the normative administrative act.

With regard to the sanctions applicable to the normative administrative act, we considered the cancellation, which the court can order, as it represents a sanction that can only intervene if the administrative act causes a violation of a right or legitimate interest.

The nullity of the administrative act must be regarded, in comparison with the revocation which represents an administrative operation, as a judicial sanction, which involves checking the legality of the act in the light of the earlier or concomitant elements which were foreseen in the adoption of the act and which intervenes with the purpose to stop definitively its legal effects. It may be ordered only by the court of justice, in this respect being the provisions of the administrative contentious law, as opposed to

the revocation which is the responsibility of the issuing public authority or of the hierarchically superior one, as the case may be.

Because not all possible irregularities that can be found in the case of an administrative act have a sanction stipulated by the law or, even if provided, it is not specified or is not equal and, moreover, not all legal conditions of substance or of form of an administrative act have the same value, the nullity should not be classified according to any criteria.

Nullity should be considered as a unique sanction, which may intervene in different circumstances, but which must produce similar legal effects. A classification of nullity according to the nature of the interest protected by a legal norm does not have, otherwise, any practical relevance, being more important to analyse the substantive and formal conditions to be met when adopting the act.

We pointed out that in the matter of administrative contentious it is not necessary to distinguish between relative nullity and absolute nullity, which decides according to the particular or public protected interest. Under the current circumstances, where there is a legal void with regard to the legal regime of nullity in administrative matters, a clear distinction between absolute nullity and relative nullity must be made only if there is a legal provision to that effect

We considered that nullity in administrative matters should have a single legal regime and it should primarily depend on the damage done and not on the nature of interests protected by a legal provision.

Administrative law relations specific to public law are relations of power, of force, characterized by a position of inequality between the administration and the citizen. Only by accepting the theory of unique nullity, this report acquires a certain balance, so that the person can comply with the enacted norms, and the administration can provide to its actions predictability and legality.

Damage is an essential condition required by the law to promote an action in contentious, so that the complaining party is required, as a rule, to prove it. However, damage is presumed in case where the sanction of nullity is explicitly provided in the law, in which case we have an express nullity of law or, in case it is deduced from the way in which the legal provisions are elaborated imposing substantive or form conditions, in the absence of which the administrative act would not be valid.

Nullity operates “de plano” in the case of express nullity only in the situation in which it is concretely regulated or determined by law. It is presumed only in those situations arising from non-compliance with a legal provision. In the absence of such an express stipulation, the injured person must prove the nullity and, implicitly, the damage caused.

Regarding the legal regime of nullity in administrative law, we consider that it cannot be invoked by default, by the court in any case. Nullity must be invoked only by the interested party, being closely related to the damage caused. Nullity can be described either by preliminary complaint, or directly by the action promoted to the administrative contentious court. Therefore, it cannot be questioned by default by the court, but is limited to the subject of the petition for legal action and to the content of the preliminary complaint.

In legal situations where nullity is express, either by law or by virtue of the law, the injured party must not prove the damage. It is presumed by law. Violations of certain legal provisions establishing the nullity by default or other legal provisions governing certain substantive or form procedures necessary for the valid enactment of the act, presumed the damage. The complaining party only has to present it to the court both as a matter of fact and as a matter of law.

For the other cases where the nullity is determined either by the incorrect application of legal provisions having an incidence in cause, or when, actually, the administrative body held misconduct which were followed by unlawful administrative juridical acts, the injured party must prove the damage and the cause of nullity.

The court cannot invoke the nullity of the administrative act of its own motion. On one hand, the contentious court is limited to the object of the action, as defined by the claimant in the request to bring

to justice, and, as being a personal fact, the court cannot raise the matter of damage of its own motion. Certain nullities, even if acting in cause, are not visible in a simple analysis of the administrative act made by the judge, possibly unobserved procedures involving a factual investigation into the substance of the act.

However, we appreciate that the contentious judge may order the cancelation of an administrative act based on a different legal reason than that described by the complainant in the request to bring to justice, if the origins of the reasoning have their base in the factual and legal endorsements of the complainant's action.

In the case of the normative administrative act we cannot speak about the confirmation of the nullity, but rather of a case of restoration of the administrative act, because in the case of the restored normative act the effects occur only for the future, the new or modified legal act produces its effects from that moment on, while confirmation operates retroactively.

Therefore, in the case of regulatory administrative acts that are revocable at any time, nullity may be removed by a manifestation of will of the authority by which it may revoke or partially amend the act with respect to illegal texts, only for the future.

In any case, the nullity of the administrative act cannot be confirmed by the injured person concerned by the act. If he does not initiate the legal procedure to cancel the act, the inaction of the party does not turn the null act into a valid one but it represents only a waiver from the subject with regard to the legal action.

Regarding the revocation of the administrative act, we pointed out that this is the consequence of the principle of the revocation of administrative acts, being the specific attribute of the public authority that adopted the act. The revocation may be ordered by default by the public body which issued the act, as a consequence of the opportunity it enjoys in administrative matters or at the request of the injured party, following the preliminary complaint submitted by him.

The possibility of revoking the administrative acts derives from the role of the administration to implement and enforce the law, a role that requires a certain active attitude involved in the interpretation of legal provisions, interpretation which cannot be infallible in all cases. The right to issue or adopt administrative acts in its activity must also be accompanied by the possibility of revocation when errors are found in the process of adoption.

If not all the administrative acts have to be motivated, we consider that the revocation should be motivated in all cases, otherwise arbitrariness would replace the legality in the activity of the administration.

The revocation act should include the reasons for legality or opportunity considered by the public authority, as well as the legal consequences that will arise in relation to the nature of the act, if the revocation produces effects for the past or the effects are only for the future in the case of normative administrative acts.

We showed that, in our opinion, revocation is a species of nullity only if it is ordered for previous reasons or simultaneous with the adoption of the administrative act. It is only in this situation that the effects of revocation are similar to those of nullity, namely for the past.

Assuming that the revocation is based on public authority's assessment of opportunity, as is the case, as a rule, of normative administrative acts, the revocation produces effects only for the future, moving away from the classical sanction of the cancellation that occurs for elements of illegality. The revoked act for opportunity was legally adopted, but the socio-legal context imposed, in the opinion of the public institution, the revocation of the act.

Unlike the nullity that may be ordered by the court, revocation is in the exclusive competence of the administration and may also be ordered for legal situations, for which the courts of contentious cannot control the act from the juridical point of view. In other words, the courts cannot declare an act to be void for the same reasons that the administration considers them as inopportune.

On a different note, reassessing the conditions of legality, without the envisaged subjects to claim any damage, would create a doubt in the way the administration acted. Admitting such a situation would lead to the hypothesis that the administration could revoke and reintroduce an act to infinity, which would mean an abuse of law.

In the absence of a set of legally established revocation rules, it should be seen only as a situation of exception, which should, in principle, intervene for cases of opportunity. In the case of illegalities, the revocation should occur in response to the preliminary complaint, or, by default, as a result of the normal administration's activity to highlight the public interest. It must be carried out under the same conditions of substance and form that were provided by the law for the adoption of the administrative act, except for the case of the individual administrative act, which may also be revoked by the hierarchically superior body.

Therefore, we believe that it is necessary, in case of a legislative reform in administrative matters, to analyze the situations in which the revocation of the administrative act by the administration should or should not be accepted.

We stated that the revocation of administrative acts represent the principle in the case of normative administrative acts, whereas for individuals acts it must rather represent the exception, the authority having to find a balance between the legality after which it is ruled, the principle of the security of legal relations and the obligation to observe the rights acquired by individuals through the administrative acts in question.

Chapter 3. Controlling the legality of the normative administrative act by way of action

In this chapter, we dealt with the issue of judicial control by means of action of administrative normative acts before the courts of justice, by analyzing the relevant jurisprudential practice and the specialized doctrine in relation to the legal provisions in force in the area of administrative contentious.

The law of contentious regulates a full jurisdiction subjective contentious, in which the judge examines the compliance of the administrative act with the law, but also the existence of a damage to the claimant, in a right or in a legitimate interest, in the absence of damage, the sanction of annulment being unable to be applied.

The action in contentious administrative contesting a normative administrative act is an action in the realization of the right based on the assumption of the existence of a violation of a right or of a legitimate interest. It represents a personal action, which is based on a private interest, the legislator expressly regulating as a rule a subjective contentious. The action in contentious administrative is no different from the judicial contentious of common right, being a subjective contentious which has in the foreground the protection of a personal right or personal legitimate interest.

The subject of the action in administrative contentious is circumscribed by the existence of an injury, which can derive from a normative administrative act. Consequently, we noted that it is out of the question an action in contentious administrative aiming at the protection of a subjective right in the absence of an administrative act issued by a public authority.

Also, we noted that it is not admissible an action in determination, in the circumstances of art. 35 of the Civil Procedure Code. Recognition of the right, hypothesis of the provisions of art. 1 of the Law no. 554/2004 follows the solution for annulment of the act and is interdependent with the sanction of cancelling which the injured person seeks to obtain in court. The finding of a right, without cancelling the administrative act which violates that right, an act enjoying the presumption of legality and the benefit of ex officio enforcement, cannot be accepted.

We considered that a right or a legitimate injured interest cannot be genuinely recognized by a court of justice unless the administrative act is removed from the legal order by its annulment.

The law of contentious does not link the subject of the action to the recognition of a certain right, so that the harm caused by the administrative normative act may concern either the protection of a subjective right recognized by law, or the observance of the exercise of a right or a fundamental freedom of a constitutional source.

The interest in formulating the request to bring to justice which asks for the cancellation of a normative administrative act is related to the existence of a concrete injury. Only the injured person or a person capable of justifying a future injury may be subject to an active procedure in bringing an action against an administrative act of a normative nature.

In other words, the legal challenge of a normative administrative act must not be conditioned to the exercise of the right to action in respect of acts with individual nature issued on its basis.

As regards to the subsidiarity of the public interest invoked to the personal one, referring to the provisions of art. 8 par. 1¹ of Law no. 554/2004, we found that two conditions are required to invoke the public interest in promoting a legal action in contentious by a subject of private law.

With respect to these provisions, we maintain that a private or legal person, a subject falling within the scope of the normative administrative act, may bring an action in court, a request to bring to justice, based on the argument that a the public interest in breached by the contested act, but only when the criticisms regarding the violation of the public interest are subsidiary to those who regard the breach of a right or private interest of the claimant.

Therefore, in the current regulation of the contentious administrative, it is out of the question the possibility of promoting an action in contentious administrative based solely on the defense of a public interest , by the natural or legal persons injured by normative administrative acts, in case they cannot prove that they have suffered a personal injury through the administrative act.

The law requires, first of all, that the public interest should be subsidiary to the personal one. Accordingly, the applicant's action must be based, in the first place, on the description of the reasons which it seeks when triggering the mechanism.

The second condition that emerges from the legal text is that the arguments over the public interest should be deduced from the endorsements made in the petition which describe the personal injury, respectively the private interest. Therefore, the claimant cannot claim the existence of an injury to third parties, if the contested act does not primarily harm him. The law says that harm to public interest should logically result from the harm that occurs through the violation of the subjective right. In conclusion, public interest is conditioned and determined by personal interest.

In court proceedings brought against an administrative normative act, the court may order, as judicial solutions, the annulment in whole or in part of that administrative act.

In addition to applying the sanction of the annulment of the administrative act, which intervenes for cases of nullity of the administrative act, prior or concurrent with the moment of the adoption of the act, the court may order the public authority to issue certain legal acts of an administrative nature. Also, the contentious judge may order the public administrative authority to carry out a task which it has to perform according to its competencies, a task which falls under the generic category called administrative operation.

We appreciated, in relation to the provisions of art. 18 par. 1 of the Law no. 554/2004, that it is acceptable to assume the case in which the administrative contentious court can oblige the public authority to also issue a normative administrative act, not only an act with individual character.

Although a court order requiring the adoption of an administrative normative act where the obligation stems from the law, seems to be meaningless, we appreciated that the court order can be set under the sanction of penalty imposed on the obligated party, for each day of delay in favor of the claimant, the interest in promoting such an action is determined and actual.

The state of expectation or the express refusal of non-adopting an act, of non-exercising the established duties is similar to exercising a right of discretion by breach of the competences provided by the law, respectively with excess power.

If the public administration has delegated a regulatory right to enforce a law, the refusal to exercise that attribute can be considered to be done with excess power, even if the regulatory obligation is expressly recorded in a legal provision that was not enforced by the public authority.

On other note, a request to bring to justice, who has the purpose of obtaining from the court a decision which would keep the place of an administrative normative act, is inadmissible. Also, the contentious administrative judge cannot decide on issuing an administrative act with certain content. As such acts are characterized as having a high degree of opportunity, the public authority acts with a strong discretion character.

It should also be noted that the court cannot modify a normative administrative act, unless it gives a judgment which cancels in part such an act, with obviously results in the modification of the act.

The contentious judge cannot impose a solution requiring an administrative authority to issue an administrative act in breach of the substantive or procedural conditions established by law for its valid adoption, by circumventing the prior approval procedure of the draft Government Decision subject to approval.

We appreciated that the court may cancel an administrative act, oblige to carry out legal facts or legal acts, or order the payment of material or moral damages to the injured person.

However, the court cannot ascertain the existence of a state of fact or the existence of a right. The law of contentious allows the access to court of the injured persons in a right or legitimate interest. The existence of the injury is a substantive condition for the formulation of the action in administrative contentious. Removing it can only be done by way of action. Consequently, as an action for determination does not have the effect of eliminating the damage caused by an administrative act, nor its annulment, an action for a declaration of the existence of a right is inadmissible.

Regarding the hypothesis that a normative administrative act may constitute a suspensive condition of law enforcement, from the analysis of administrative practice and correlative jurisprudence, we found that the non-adoption of the Governmental Decision approving the methodological norms may constitute a case of temporary non-application of the law. In that case, it is necessary, on one hand, for the rules to play a decisive role in the individualization of the subjective right, and, on the other hand, for the approval of the administrative act to depend on a binding community notice, without which the publication and entry into force of the act would be impossible.

We conclude that, in connection to the solutions that may be decided by the administrative contentious court, besides the typical solutions for total or partial annulment of the administrative normative act, the judge of administrative contentious may order the obligation of a public authority to regulate such an act, if there is a legal provision that forces the administration to take such a measure, and the failure to perform this task was done with excess power. Such a request to justice can only have as its starting point the existence of harm in a subjective right or in a legitimate interest.

As the provisions from Art. 18 of the Administrative Contentious Law shall be completed with those of art. 8, which have as object the subject of the judicial action, the obligation to regulate cannot be ordered directly, but only to the extent that there is an unjustified refusal to solve a request from the authority.

In addition, as we have presented, from the jurisprudential practice we can take the conclusion that the court cannot oblige the public authority to issue the act, by circumventing the legal conditions requiring the fulfilment of certain mandatory procedures, notices, etc. necessary for the validity of the act.

Last but not least, it should be noted that the administrative contentious judge cannot substitute for the administration's will and legal conception in assessing the opportunity of the administrative act

or in determining the content of such an act, since it would constitute a violation of the principle of separation and balance of powers in state, enshrined by the provisions of art. 1 par. 4 of the Constitution.

In the judicial proceedings, we have shown that the interested party may request the court of contentious to approve temporary measures ordering the suspension of the administrative act, under certain conditions established by the law.

Regarding the assumption of the admissibility of the request to suspend the execution of an administrative act with a normative character and the effects of this solution towards the parties of the litigation, as well as towards third parties, in our opinion, being part of the process in which the suspension of the enforcement of the normative administrative act was decided, for the public authority, the court decision ordering the suspension is mandatory from the point of view of the power of *res judicata*. The authority, being obliged not to execute the act against the claimant, will not be able to issue acts of enforcement also against other legal subjects.

Suspension concerns all subjects to whom the act is intended, whether or not they have been party to the litigation in which the act was suspended.

We noted that, prior to the referral of the competent administrative contentious court, the claimant must address, in the first place, to the public authority that adopted the administrative act so that it can revoke the act in whole or in part.

Preliminary complaint is a mandatory procedure that seeks a quick way to establish legality, avoiding a lawsuit, in order to protect citizens' interests by obtaining the revocation of the act in a simplified administrative procedure, avoiding the costs of initiating a lawsuit.

Regarding the normative administrative acts, reported to the provisions of art. 7 par. 2, which states that there is no time limit in submitting a preliminary complaint, we considered that the approach should be less rigid and less formal. The legal text expressly provides, as to the time when the preliminary complaint should be filed, that it must be formulated before addressing the competent administrative contentious court.

In the case of a normative administrative act for which the public authority responded to a prior complaint addressed after the action was filed, its rejection would pointless extend the applicant's approach. A subsequent promoted action is admissible by *plano* from the perspective of carrying out the preliminary procedure.

The preliminary complaint has a non-evolutionary nature, the authority not being limited to the arguments described in the preliminary complaint, being able to favorably decide even over the complainant's demands, if this is the result of an internal administrative analysis.

On the other hand, the public authority may decide to revoke the act, but not for the arguments presented by the petitioner in the preliminary complaint, being able to adopt an administrative act that may produce legal effects which would further bring a higher degree of damage to the subject of law, or which would contain norms that imply the compliance with more generic conduct procedures or rules, more burdensome than the initial ones.

The preliminary complaint is not a judicial appeal to which the non *reformatio in pejus* principle would apply, but a mandatory administrative procedure in which internal or hierarchical administrative control is defining.

Regarding the deadline for filing the preliminary complaint, we note that, in the case of administrative acts with normative character, the action is *indefeasible*, and can be formulated at any time.

The term whenever used by the legislator in Article 10 par. 6 of the Contentious Law, must be understood by reference to the period of activity of the act, respectively the length of time when the normative administrative act is in force, provided that the act produces an injury, in the absence of which the action is of no interest.

Therefore, in principle, the normative administrative act can be challenged since its entry into force, the moment when the allegedly harmful effects on the injured person begin to occur and until the moment of revocation or repeal.

With regard to the unpublished administrative normative act, it did not enter into force, so that the period from which it can be challenged has not yet begun, any action for its annulment being prematurely introduced. The party concerned, to the extent that it justifies an injury, may, if necessary, file an action to claim on the non-existence of the administrative act.

Chapter 4. Control of the legality of the administrative act with normative character through the way of exception of the illegality

In analyzing this issue we started from the provisions of art. 126 of the Constitution of Romania, which guarantees the judicial control over the administrative acts adopted by the public authorities, through the administrative contentious procedure, without distinguishing between the means of procedure that can be used.

Thus, the legality of an administrative act can be investigated both by exercising a direct action at the court, namely by offensive way, but also by invoking an exception of illegality, namely defensive way.

Ab initio, it should be emphasized that, at the present stage of the legislation, the judicial control of administrative acts of a normative nature is exercised by the administrative contentious court only by way of action, being excluded the control of legality by way of exception.

However, the analyses of the control of legality of the normative administrative act by way of exception was useful, both in terms of establishing the applicable law and the legal effects of the exception in relation to the moment of adoption of the normative administrative act, but also to present, in retrospect, the opinions and controversies with regard to this issue, controversies that have been generated by incoherent and constantly changing legislation.

Law no. 554/2004 was the first normative act in the entire Romanian legislation which expressly regulated the exception of illegality. In its initial form, the object of the exception of illegality was both unilateral administrative acts of an individual character and also those with normative character.

From the perspective of legal effects, the exception of illegality leads to the removal of the administrative act from the trial, and the court will not consider such an act. The sanction of illegality is deduced from the comparison of the content of the act with legislative or normative legal acts with superior legal force, so it is not the consequence of any cause of illegality.

The sanction of illegality may intervene, as is clear from the jurisprudence, also in cases where the administrative authority has acted with excess of power, in the realization of its legal duties, both in the event that it has exceeded the scope of the regulatory competence, and also when the act determined a damage to certain rights or subjective legitimate interests.

The legal nature of the exception for verifying the legality of the administrative act, namely only a substantive exception, has determined its shortcoming and lack of efficiency in the judicial process. As any exception, its effects extend only to the process in which it was invoked and only between its parts, *inter partes litigantes*.

However, an administrative normative act does not address to only a determined subject but, by its very nature, it affects multiple subjects or generic and indefinite legal situations. Implicit, also the determination of the illegality of such an act cannot be partial, referring only to a certain subject and only in a particular dispute.

Consequently, it is not acceptable that, as a result of the admissibility of the exception of illegality, a normative administrative act is illegal only in respect to the parties of a particular litigious case, whereas for the other subjects it remains valid and produces legal effects.

If, in the case of an exception, the judge, finding unlawfulness, removes the effects of the act in question, by way of the action the judge declares the nullity and, in the view of determining the nullity, the administrative act is removed with retroactive effect for the individual ones and for the future, in principle, in the case of the ones with normative character.

Unlike the determination of illegality of the administrative act with normative character by way of exception, the control of legality by way of action is more efficient and it is a complete one. A normative administrative act cancelled by way of action may no longer produce effects for any of the subjects concerned or for the legal situations to which it was intended. As a consequence of this fact, the legislator also provided the obligation of publish the court decision which cancelled the normative administrative act in the Official Monitor of Romania.

We recall that in the current regulation of the Administrative Contentious Law, as established by the Law on the implementation of the new Civil Procedure Code no. 76/2012, administrative acts of a normative nature can no longer be censured by way of the exception of illegality.

The Romanian legislator distanced himself from the traditional Romanian doctrine and from the French native doctrine, which pointed out as the main or even singular object of the exception of illegality the normative administrative act. It has also distanced itself from the Community legislation according to which only (general) administrative acts with normative character may be the subject of the exception.

At the same time, although in its first regulation, the exception of illegality borrowed certain features specific to the exception of unconstitutionality, the exception has now been settled as a mere substantive defense, incident in the process.

Instead, it was preferable to challenge the administrative act of normative nature by way of action without a time limit. The solution is commendable, but it has some criticisms, which is why we supported the opinion to return to the original legislative solution in the sense of the possibility to challenge the administrative act with normative character also by way of exception.

Regarding administrative acts of a normative nature, we have two distinct periods in which the admissibility of the exception of illegality was regulated differently.

First, we have the period before Law no. 76/2012 when such an act could be the subject of the exception of illegality, either as a result of the judicial practice or the doctrine in the period preceding the Law no. 554/2004, either as a result of the application of the latter normative act as it was drafted in its original form, or as interpreted by the High Court of Cassation and Justice in the form presented after the amendments brought by Law no. 262/2007.

For administrative acts with normative character adopted after Law no. 76/2012, the party considered to be injured can obtain the control of legality only by way of action, control by way of exception being expressly excluded by law.

We also support the opinion according to which a temporal distinction should to be made depending on the date of adoption of normative administrative acts. If at present, in a process of any kind, it is challenged the lawfulness of an administrative act with normative character, issued prior to Law no. 554/2004, according to the principle *tempus regit actum* nothing prevents the court hearing the substance of the case to resolve an exception of illegality, as the judge of the main action, the legality of the act following to be verified in relation to the legal rules in force at the time of the issuing of the administrative act (as a further argument we indicated the practice of the High Court which considered as inadmissible the exceptions of illegality with regard to administrative acts adopted prior to Law No. 554/2004, and an action by direct way at present would be dismissed as being too late).

Also, we do not see any legal constraint by which the interested party can oppose the adverse party the exception of non-existence of the unpublished normative administrative act. The provisions of the Constitution from art. 108 par. 4 establishes in a normative way the sanction of the non-existence of acts of the executive power that are not published.

As the non-existent normative administrative act does not produce legal effects, it cannot raise the question of its legality with the rule of law and the legislative acts with higher juridical force. We believe that in the current constitutional and legal framework, the sanction of the non-existence of the act can be successfully promoted by way of exception, being different as a legal nature from the exception of illegality, which implies a legal act in force.

As an argument for the reintroduction of the exception of illegality of normative administrative acts, we note that the cancelation of the normative administrative act operates only for the future or in pending cases before the courts at the date of the final decision to cancel the act.

Also, the fact that in a case in which the court finds the illegality of the administrative normative act, but cannot invoke, by default, its exception of illegality, and is obliged to validate an illegal act, it is in contradiction with the principle regarding the role of the judge in learning the truth and examining the dispute fairly.

Regulating the exception of illegality in the case of normative administrative acts would be useful, as it would become the legal instrument that would lead to the removal of unlawful legal effects also for the past, in the situation where the party injured by an individual administrative act issued under the normative one, did not submit legal action before the justice prior to the date on which the court decision which annulled the normative administrative act has become final, so that its legal situation has become a *facta praeterita*.

In the event that another subject of law obtains in court the cancelation of the normative act, the court decision shall apply for the future according to art. 23 of Law no. 554/2004, which explicitly expresses the *ex nunc* effect of the final decision which cancelled an administrative act with a normative character, but, as we have shown in the pending cases, namely the cases pending in the courts of law contesting legal acts issued under of the normative administrative act.

If the claimant was not diligent and did not bring such an action for the annulment of the individual administrative act issued under the normative act prior to the moment when the decision annulling the normative administrative act became final, for him the effects of that act materialized in acts or administrative operations become *facta praeterita* and can no longer be removed *de plano* as a result of the annulment of the normative administrative act. The injured person will be required to limit his objections of nullity only to the individual administrative act.

From this perspective, for such legal situations, the institution of the exception of illegality would have constituted the legal instrument that would have led to the removal of the illegal juridical effects of the normative administrative act also for the past.

Chapter 5. The control of the constitutionality of the normative administrative act

Regarding the possibility of the constitutionality control over the normative administrative acts, we noted that in relation to the provisions of art. 1 of the Law no. 554/2004, there is no express regulation over the nature of the judicial control carried out by the contentious judge, without specifying whether he / she verifies the legality of the administrative act and / or its constitutionality.

The activity of the administrative contentious court is, first of all, to verify the legality of the administrative acts questioned by the injured parties, the control of legality having the reason that the public administration has that state activity of organizing the execution of the law or its concrete enforcement. Therefore, administrative justice jurisdictionally controls the way in which this administration complies with the law, exercising the powers of those public administrations within the limits of the law, in order to guarantee the rights and freedoms of individuals.

The judge specialized in administrative contentious, noticed with a dispute which questions the validity of an administrative act, will examine its legality by verifying the legal provisions under which it was issued and also the entire legislation specific to the field of interest in which that act was adopted.

On the other hand, the injured party can address the administrative contentious court, for the cancellation of the act, the recognition of the claimed right or of the legitimate interest, without distinguishing whether the caused injury was the consequence of a breaching a law or a constitutional provision. The law departs from the hypothesis of a person injured in a right, and this right can be either constitutional in the situation of fundamental rights, or a legal one.

From the analysis of constitutional provisions, as well as of Law no. 47/1992, we observe that only the laws and ordinances, simple or of emergency, can be subject to the exception of unconstitutionality as legal normative acts, which were firstly viewed from a formal point of view, respectively adopted by the issuing public authority, the Parliament, respectively the Government and promulgated by the President of Romania. The Constitutional Court has determined that only an act adopted by Parliament should be considered as law.

We note that the constitutional contentious exercised by way of the exception of unconstitutionality is limited to the laws adopted by the Parliament and the ordinances issued by virtue of the legislative delegation, so it is considered the narrow concept of the law.

Thus, administrative infralegal normative acts cannot be subject to the exception of unconstitutionality before the Constitutional Court.

Only the administrative contentious courts are competent to declare the illegality / unconstitutionality of certain administrative acts of with normative character, which are regarded primarily as their form.

If a public authority violates this formalism of the normative hierarchy and adopts normative acts within the sphere of competence of another authority, this malfunction must not be transferred to the area of bodies and procedures of constitutional / judicial control.

The Administrative Contentious Court has a plenitude of jurisdiction with regard to the control of administrative acts, an advantageous situation for the subjects of law since the access of the persons to the specialized court of constitutional litigation is not a direct one, but an indirect one by the exception of unconstitutionality, while the administrative acts with normative character, can be challenged, directly to the court and without a time limit, the action being infeasible.

In other words, in the reasoning of the courts we find more references to general principles of law or constitutional principles, which are secondary to support the main legal argument, judges being quite reluctant to argue their solution on constitutional provisions.

However, by legal regulation of excess power, in the case of harming the rights and freedoms, the path to direct constitutional control opens.

Regarding an administrative act with normative character we have shown that we can encounter situations in which it can be issued in compliance with the conditions of legality but in contradiction with the constitutional norms. If the verification of legality requires a comparison of the text of the normative administrative act with the legal provision, verifying the constitutionality involves a control of substance, if a certain right is respected and / or to what extent its exercise has been violated or limited.

We appreciated that constitutionality is, in essence, a dimension of the legality, and the direct application of the Constitution, namely the verification of its observance, opens for the administrative contentious judge the path towards the analysis of the opportunity of the administration's activity.

The verification of the observance of fundamental rights, freedoms and fundamental duties leads to a wider appreciation over the normative administrative act rather than the examination of its legality. Legality requires the analysis of formal procedures and conditions in relation to the law which protects that right. In exchange, the constitutional control of a normative administrative act from the perspective of the observance of a fundamental right goes beyond legality, going on to the analysis of the observance of the right in its content and substance.

Regarding the normative act that contains primary norms, we have shown that where the administrative authority has an express delegation, there are situations in which it is exceeded and it

derives from an illegal practice of the administration, especially of the local one, to take rights to regulate over the limit delegated by the legislative authority. On the other hand, there can be cases where the public authority has no express delegation of law-making competence and it takes itself such a right.

Regarding this situation, we have appreciated that the ordinary administrative contentious courts have the competence to verify the legality of the administrative act with a normative character, bringing firstly the issue of its validity from a formal point of view. In conclusion, if the administrative normative act regulates primarily, we consider that the ordinary courts have the competence to sanction the norm that was adopted by exceeding the regulatory limits, as established by the authorization act.

We can also encounter situations in which the normative administrative act takes the form of a legislative act. On this point, we noted that the law as a legal act adopted by Parliament in the exercise of its legislative function includes primary rules. The law does not include administrative rules or operations aimed at organizing or enforcing its own provisions or other legal provisions. They must be adopted exclusively by the administrative authority legally entitled to enforce that law.

Regarding this fact, we appreciated that the legislator authority, the Parliament, cannot take concrete administrative measures in a particular case, but can legislate the general, abstract conditions for a number of undetermined subjects in which administrative operations can take place. Each public authority is called upon to respond to concrete constitutional needs, only the compliance by each public authority of its own competences, and the competences of other authorities can lead to abiding the rule of law.

By regulating the excess power of the public administration, it is opened the path of the court to extend the range of judicial control, over the classic hypothesis of verifying the legality of the administrative normative act.

The administrative contentious judge will directly apply the constitutional provisions, if he finds that the public administration acted with excess of power. Both in case it finds that regulatory competence has been exceeded, thus breaching the principle of the normative hierarchy, and also if rights or subjective legitimate interests have been breached, it will be able to analyze the compatibility of the administrative normative act with the constitutional provision.

If the purpose of constitutional justice is to remove the norm that does not comply with the Constitution of the legal system, the purpose of administrative contentious justice is to protect the rights of persons injured by acts of administration, by interpreting the rule of law and sanctioning the excess of power of public authorities.

Control of the validity of the normative administrative act, in relation to the Constitution and other laws, shall be carried out either by the Constitutional Court or by the ordinary courts, depending on the form of the respective act. If it is adopted in the form of a law, the court of constitutional contentious is the only one able to appreciate the constitutionality of the act. In return, the courts of common law are the only ones in a position to assess whether the normative administrative act is directly in conflict with the Constitution, when it is enacted by an authority of the public administration.

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