REVOCATION OF ADMINISTRATIVE ACTS - THEORETICAL AND PRACTICAL CONSIDERATIONS

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Abstract

Revocation is a method of terminating the legal effects of an administrative act. Just like the general theory of law admits that any subject of law, author of a manifestation of will, is able to withdraw it, in the administrative law there is also possibility for the authority that issued the administrative act to abrogate its own act under certain circumstances. Thus, this study aims at making a presentation of the legal regime of the revocation of administrative acts, starting from aspects such as terminology, legal grounds, reasons, term, and ending with the analysis of the applicable legislation on revocation, particularly of the law on administrative disputes, and much more. Hence, revocability appears to be the fundamental principle of the legal regime of administrative acts, in close connection with the principle of stability of legal relationships.

Keywords: *administrative act, revocation, principle of stability of legal relationships, Constitutional Court, principle of legality*

Introduction

This study purposes to present the institution of revocation of administrative acts in the Romanian legal system, both as a theoretical and practical approach.

Before the actual analysis of the proposed subject, the first part of this study will provide an overview of the legislative framework that justifies the existence of this method of terminating the effects of an administrative act in the Romanian administrative law.

We begin treating this subject by quoting a fragment from the Constitution of Romania that sanctions, in its article 1 par. (5), the principle according to which "in Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory".

The principle of legality is sanctioned in any legal system, therefore the Romanian legislation is also generous from this point of view, thus establishing, according to the fragment quoted above from the fundamental law of the country, a general obligation imposed to all subjects of law, public authorities or not, to observe the law while conducting their activities.

The general principles of law, as the professor Nicolae Popa[1] used to say, are the substantiated regulations that channel the creation of law and its application.

The principle of legality[2], which is a constant of the modern system of administrative law, is currently the fundamental principle of organization and operation of the public administration in any democratic rule of law.

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[1] Nicolae Popa, *General Theory of Law*, 3rd edition, (Bucharest, C.H. Beck Publishing House, 2008), p.95.

[2] J. Scwarze, *Droit administratif européen*, (Editions Bruylant et Office des publications des Communautés européennes, vol.1), p.111, quoted by Dana Apostol Tofan in *European Administrative Institutions)*, (Bucharest, C.H. Beck Publishing House, 2006), p.34.

It is important to emphasize that, in the western political acceptation[3], the mandatory observance of the law refers equally to the individual and to the public authorities, including the State. In other words, all the authorities of the State must observe the law, just like any citizen.

The content[4] of legality includes three essential requirements, which correspond to three fundamental coordinates, namely: legality is the limit of the administrative action, legality is the foundation of the administrative action, and legality is the administration's obligation of acting so as to effectively observe the law.

From this[5] last requirement derive certain obligations devolving upon the administration, such as: the administration's obligation of advertising legality, of informing everybody about the rules of law, by means of publication or by any modern form of communication; in the event the administration itself impinged on legality, it must immediately put an end to the illegal situation that it created, either by abrogating the administrative act or by revoking it... etc.

An important complement of subjecting the administration[6] to the law was born, in time, from the development of certain principles of law, such as equality of citizens before the law, legal certainty, and protection of individual rights by independent courts of law.

The principle of legal certainty refers not only to the lawmaking operation that must observe certain strict rules[7], but it also refers to the "possibility offered to any citizen of evolving in a certain legal environment, protected from the vagueness and sudden changes that effect the legal standards"[8].

Section 1. General considerations; terminology used in case of a revocation of administrative acts

André de Laubadère defined the administration as being the "assembly of authorities, agencies and bodies having the duty, under the impulse of political power, of ensuring multiple interventions of the modern state"[9].

Since the process of issuing administrative acts may also contain errors, there must be a possibility of correcting them, which was indeed succeeded by introducing the principle of revocability of administrative acts in the activity of the public administration bodies.

Seeing that[10] the administrative authorities act under time pressure, the solution of social needs must be prompt.

Whereas the administrative act is the main legal form of action of the public administration, it goes without saying that the rules of the legal regime can only be established based on the rules underlying the organizational structure of the public administration. This way, we come to understand revocability of administrative acts as a rule (a principle) of the functional structure of the public administration.

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[3] Cristian Ionescu, *Comparative Constitutional Law*, (Bucharest, C.H. Beck Publishing House, 2008), p.36.
[4] Dana Apostol Tofan *op. cit*, p.36
[5] C.C. Manda, *Comparative Administrative Law. The Administrative Control in the European Judicial Context*, (Bucharest, Ed. Lumina Lex, 2005), p.54 et seq.
[6] Dana Apostol Tofan, *op. cit*, p.36.
[7] Law no. 24/2000 establishing the legislative technique rules for drafting pieces of legislation, published in the Official Gazette no. 139/2000, as subsequently amended by Law no. 60/2010, republished in the Official Gazette no. 260 / 21 April 2010.
[8] M. Heers, *La securité juridique en droit administratif français: vers une consécration du principe de confiance légitime?* (RFDA 1995), p.963, quoted by Ion Brad in *Revocation of Administrative Acts,* (Bucharest, Universul Juridic Publishing House, 2009), p. 123 et seq.
[9] André de Laubadere, *Traité de droit administratif*, 6ème édition, vol. I (Paris, L.G.D.J., 1973), p.11
[10] Ion Corbeanu, *Administrative Law)*, 2nd Edition revised and supplemented, (Bucharest, Lumina Lex Publishing House, 2010), p.107.

The administrative acts cause legal effects until they are rescinded, which is usually ordered by the issuing authority or by the higher authority in the hierarchy or by a court of law. As the public administration[11] is organized according to the principle of hierarchy, it also features the possibility of revoking administrative acts in order not to prejudice the system itself.

In terms of cessation of the legal effects of the administrative act, some authors[12] treat revocation jointly with rescission. Thus, it is said that: "in the legislation of our country, administrative acts are, as a general rule, *revocable, which means that they can be rescinded or revoked".*

Professor Antonie Iorgovan[13] believes that revocation is a particular case of nullity.

The author Dana Apostol Tofan[14] is also of the opinion that revocation is a particular case of nullity but also a rule, a fundamental principle of the legal regime of administrative acts.

On the contrary, other authors[15] definitely reject the assertion that revocation is a kind of rescission, believing that the two methods are different kinds of the abrogation of administrative acts, being seen as two independent methods.

In cases when the revocation was ordered by the issuing body, the term of *retraction* has been used, which is unanimously adopted by almost all the theoreticians of law.

Section 2. Legal grounds; reasons of revocation, time limit

Subsection 2.1. Legal grounds of revocation of administrative acts and time limit

This principle of revocability of administrative acts derives from the Constitution and from the Law nr. 554/2004 on administrative disputes[16]. Although the Constitution of Romania does not make express provisions in this respect, this principle results from several articles read together, i.e. 52, 21, 126, etc.

This survey does not aim to deal also with the categories of irrevocable administrative acts, as their number varies depending on the author who analyses them.

According to article 7 of the Law on administrative disputes, before approaching the competent administrative litigations court, the person who considers that its right or legitimate interest has been violated by an individual administrative act must ask the issuing public authority or the superior authority in the hierarchy, if applicable, within 30 days as of receiving the document, *to revoke it, in full or in particle*

Also, even the right of the public authority who issued the document to challenge it before the administrative litigations court in view of acknowledging its nullity, has been sanctioned in situations when *the document can no longer be revoked because it has entered the civil circuit and has caused legal effects*, according to article 1 par. (6) of the same law. The action must be brought within one year as of the issue date of the document.

It is worth mentioning that the one-year time limit for the legal action observes the principle of certainty of legal relationships that derives from the provisions of article 6 of the

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[11] Ion Corbeanu, *op.cit*. p.107.

[12] Dumitru Brezoianu. Mariana Oprican, *The Public Administration in Romania*, (Bucharest, C.H. Beck Publishing House, 2008), p. 90 et seq.

[13] Antonie Iorgovan, *Treatise of Administrative Law)*, vol. I, (Bucharest, Biblioteca Juridică Nemira, 1996) p. 332-333.

[14] Dana Apostol Tofan, *Administrative Law*, vol. II, (Bucharest, All Beck Publishing House, 2004), p.58.

[15] Ion Brad, *Revocation of Administrative Acts,* (Bucharest, Universul Juridic Publishing House, 2009), p.63.

[16] Law no. 554/2004 on administrative disputes, published in the Official Gazette no. 1154/2004 (with its last amendment by Law no. 202/2010 on certain measures for accelerating the solution of trials).

European Convention on Human Rights (Convention), ratified by Romania by Law no. 30 / 18 May 1994. This principle requires, among others, the observance of the finality of an act that has not been challenged in court within the time limit of a common law action in the field or, failing such time limit, within a reasonable time – before being construed as "final".

The possibility to challenge, without having to observe a time limit, a unilateral administrative act referring to an individual endangers the legal order, meaning that the legal relationships and the social ones ordered by the former ones may be changed at any time, thus affecting the social order itself. However, any social relationship and any legal relationship must dispose of a sufficient time limit in order to be, if necessary, sanctioned in justice, a time limit beyond which no changes are allowed, by checking the legality or other aspects characterizing that legal relationship.

It is also worth mentioning that the same considerations are valid also for the possibility of revoking the administrative act by its issuer, therefore this measure cannot be taken at any time, but within a time limit that observes the principle of certainty of legal relationships, a principle already detailed above.

Subsection 2.2. Reasons of revocation of the administrative act

If in the introductory part of this survey we mentioned "legality", another term is worth mentioning as well, namely "opportunity"[17], both terms being closely connected to the principle of revocability of administrative acts.

The opportunity[18] of the administrative act derives from the capacity of the issuing body of choosing, among several possible and equal solutions, the one that best suits the public interests that must be satisfied.

Thus, it indicates the quality of the administrative act of satisfying both the strict rigors of the law and an especially determined need, at a given time and place. Whereas legality evokes the fact that the act complies exactly with the law, opportunity is the conformity of the administrative act mainly with the spirit of the law, without identifying the two notions.

Hence, revocation intervenes for all reasons of illegality, but particularly for reasons regarding opportunity[19].

In terms of the moment they intervene after the issue of the administrative act, regardless of whether they are due to its illegality or to its inopportunity, the reasons of revocation can be anterior, simultaneous or subsequent to the issue of the administrative act, as follows:

1) anterior reasons, causing the legal effects of revocation to be *ex tunc*, for the past, as if the act had never existed;

2) simultaneous reasons, causing legal effects of the same nature (*ex tunc*);

3) reasons subsequent to the issue of the act, causing legal effects in the future (*ex nunc*), having as consequence the termination of the legal effects caused by that act upon its revocation.

Section 3. Examples of revocation, regulated in the Romanian legislation

In the following, we are going to make some references to the legislation with regard to revocation and we shall start by nominating those in the Constitution of Romania; however, there are many other examples besides the ones we shall mention here:

[17] In the doctrine, the term "opportunity" has also been analysed in connection with the excess of power.

[18] Verginia Vedinaş, *Administrative Law*, 4th Edition revised and updated (Universul Juridic Publishing House, 2009), p.91.

[19] Antonie Iorgovan, *op.cit*, p.334.

➢ Article 64 par. 2 regarding the internal organization of the Parliament: "Each Chamber shall elect its Standing Bureau. The President of the Chamber of Deputies and the President of the Senate shall be elected for the Chambers' term of office. The other members of the Standing Bureaus shall be elected at the opening of each session. The members of the Standing Bureaus *may be dismissed* before the expiry of the term of office."

➢ Article 85 par. 2 regarding the appointment of the Government: "(2) In the event of government reshuffle or vacancy of office, the President shall *dismiss* and appoint, on the proposal of the Prime Minister, some members of the Government."

➢ Article 107 par. 2 and 3 regarding the Prime Minister:

"(2) The President of Romania *cannot dismiss* the Prime Minister.

(3) If the Prime Minister finds himself in one of the situations stipulated under Article 106, *except for him being dismissed*, or if it is impossible for him to exercise his powers, the President of Romania shall designate another member of the Government as Acting Prime Minister, in order to carry out the powers of the Prime Minister, until a new Government is formed. The interim, during the Prime Minister's impossibility to exercise the powers of the said office, shall cease if the Prime Minister resumes his activity within the Government."

➢ Article 110 par. 2 regarding the end of the term of office of members of the Government: "(2) The Government shall be dismissed on the date the Parliament withdraws the confidence granted to it, or if the Prime Minister finds himself in one of the situations stipulated under article 106, *except for him being dismissed*, or in case of his impossibility to exercise his powers for more than 45 days. "

Other examples:

- *revocation* and abolishment of the patent of invention[20],
- *revocation* of the administration right[21]
- *dismissal* of the Ombudsman[22], as a result of violating the Constitution and the laws
- *revocation* of the right of abode[23]
- *revocation of the authorization for tax warehouse*[24]
- *revocation* of the right to hold weapons[25] etc.

By the examples given above, we tried to highlight that the term of "revocability" is expressly used in the Romanian legislation.

Section 4. Revocation of administrative acts reflected in the ECHR case law

As regards the projection of the principle of legality in the European legislation, we would like to mention that, at the European level, there is a right to good administration[26] in the operation of the public authorities.

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[20] (For details, refer to the procedure of revoking and abolishing the patent of invention in Cristian ŞTRENG*, Revocarea şi anularea brevetului de invenţie (Revocation and Abolishment of the Patent of Invention)*, (Bucharest, Revista Română de Proprietate industrială nr. 1/2008) p. 07-17, with elements of Romanian legislation and much more).
http://www.osim.ro/publicatii/rrpi/nr1_08/Revocarea%20si%20anularea%20BI.pdf.

[21] Law no. 213/1998 on public property and its legal regime, published in the Official Gazette no. 448/24 November 1998, updated.

[22] Law no. 35/1997 on the organization and operation of the institution of the Ombudsman, published in the Official Gazette no. 844/2004, updated.

[23] Government Emergency Ordinance (OUG) no. 194/2002 on the regime of aliens in Romania, published in the Official Gazette no. 955/2002.

[24] Law no. 571/2003 of the Internal Revenue Code, published in the Official Gazette no. 927/2003, updated

[25] Law no. 295/2004 on the regime of weapons and ammunition, published in the Official Gazette no. 583/2004, updated.

[26] For full details, refer to Elena Ştefan, *The European Ombudsman in the Light of the European Constitution),* RDP no.1/2006, (CH Beck Publishing House, Bucharest, 2006), p.106.

The right to good administration is set forth in the Charter of Fundamental Rights of the European Union[27], promulgated at the Summit of Nice of December 2000, as well as in the European Code of Good Administrative Behaviour[28], approved by the Parliament on 6 September 2001, and currently it serves as a guide and source of information[29] for the personnel of all the institutions and bodies of the Community.

Therefore, in the light of the recent evolutions within the Community, one can distinguish a special interest for the protection of rights, legitimate interests, and civic liberties, the leverages for their factual accomplishment having been created. We would also like to mention the procedure of the prior complaint which, besides the principle of legality and of stability of legal relationships, is an efficient means of fighting bad administration and was created in order to offer the interested parties the possibility of solving their complaint within a shorter period of time and more effectively, as the notified administrative body is able to revert to the act it has issued and to issue another one, accepted by the claimant.[30]

The author Ovidiu Podaru[31] analyses several decisions of the Strasbourg Court, connected to the principle of certainty of legal relationships, cases in which the solution of the Court was against Romania, and so does another author[32], as follows:

- case Păduraru[33] versus Romania
- case Brumărescu[34] versus Romania
- case Viaşu versus Romania, of 09 December 2008
- case Beian[35] versus Romania

After an analysis of these decisions is follows that legal certainty involves the same dimensions: clarity of the right and stability of the right. These decisions do not explicitly refer to the issues regarding the revocation of administrative acts.

The Constitutional Court of Romania has acknowledged the European trend of punishing the violation of this principle and, to that effect, we would like to mention two decisions:

1.) In its Decision no. 404 of 10 April 2008, it asserted that: "the principle of stability of legal relationships, although it is not expressly sanctioned by the Constitution of Romania, is inferred both from the provisions of article 1 par. (3), according to which Romania is a State of law, a democratic and social State, and from the preamble to the Convention on Human Rights, as interpreted by the European Court of Human Rights in its case law. "

2.) In its Decision no. 1352 of 10 December 2008, the Court decided that: "The European Court of Human Rights, by its decision given in the case of Brumărescu versus Romania, 1999,

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[27] Charter of Fundamental Rights, published in the Official Journal 2007 C 303.
See http://eur-lex.europa.eu/ro/treaties/dat/32007X1214/htm/C2007303RO.01000101.htm.
[28] Le Code européen de bonne conduite administrative, Office des publications officielles des Communautés européennes, L- 2985 Luxembourg 2002, ISBN 92-95010-42-6.
[29] For full details, refer to http://www.ombudsman.europa.eu/activities/home.faces.
[30] Iulia Rîciu, *Procedure of Administrative Disputes*, (Bucharest, Hamangiu Publishing House, 2009), p. 219.
[31] Ovidiu Podaru, *Administrative Law*, vol. 1, *The Administrative Act. (I) Guidelines for a Different Theory*, (Bucharest, Hamangiu Publishing House, 2010), p.300 et seq.
[32] Ion Brad, *op.cit.* p.160 et seq.
[33] Published in the Official Gazette, Part I, no. 514 of 14 June 2006.
[34] On this subject: Iuliana Rîciu, *Theoretical Examination of Judicial Practice regarding the Actions Brought before the Administrative Litigations Court by the Public Authority that issued the Illegal Administrative Act*, Bucharest, RDP no. 1/2008, p.131.
[35] Published in the Official Gazette, Part I, no. 616/21 August 2008.

ruled that: The right to a fair hearing by a court, guaranteed by article 6, 1st paragraph of the Convention, must be interpreted in the light of the preamble to the Convention, which asserts the supremacy of law as an item of the joint patrimony of the contracting states. One of the fundamental elements of the supremacy of law is the principle of certainty of legal relationships, which claims, among others, that the final solution given to any dispute must not be subject to a new judgment."

Conclusions

In this study, we have tried to highlight the fact that the activity of the public administration is based on an entire range of principles, that the revocability of administrative acts was born from the need of limiting the damages for the administration and from the need of not prejudicing the system itself.

Towards the end of the study, our analysis referred to the ECHR case law in the field, bringing to attention certain aspects connected to the principles of operation of the public administration and insisting on the fact that a sustainable administration relies on laws.

Unlike[36] other legal systems, the Romanian system contains an imbalance in this respect: the very short timeframe in which the administrative authorities may revoke their illegal acts clearly favours the principle of legal security as opposed to the principle of legality.

In conclusion[37], at the European level there is a concern for the revocation of administrative acts, considering the dynamics of the administrative phenomenon and the importance that the administrative appeal may have as a procedural means of prejudicial solution of administrative conflicts.

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[36] Ion Brad, *op. cit*. p.221.
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