



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2023), pp. 526-535

## CLASSIFICATION OF ADMINISTRATIVE ACTS

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Received 30.10.2023; accepted 24.11.2023

<https://doi.org/10.55516/ijlso.v3i1.160>

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#### **Abstract**

*The administrative act, a legal institution of rare preeminence in any legal system of the democratic world, represents a symbol of the structured activity of administration. It involves the manner of transposing the imperative, unequivocal, and unidirectional will of superordinate state structures into objective reality. This will enters specialized legal relations and is characterized by the exercise of public power.*

*The administrative act represents, in this manner, a representative and well-defined means of imposing the will of organized state structures at every level of society by transposing informed but conceptualized will into a materialized and easily perceptible resort.*

*As conceptualized in Romanian doctrine, the specific act of administrative law represents the primary and revealing form of public administration activity. It is the only legal act issued/adopted by authorities, institutions, or other public bodies that produces concrete effects concerning its recipients and beyond.*

*However, this distinct type of legal act is characterized by a series of distinctive features that individualize it within the framework of internal legal relations and reveal its specific aspects, as well as the effects emanating from its content.*

*Not all administrative acts have the same form, structure, effects, characteristics, purposes, and certainly, not all have the same impact on the individualized legal order at the level of society.*

*Therefore, in specialized doctrine followed by the practice of national courts, a series of distinct criteria have been imposed for crystallizing distinct typologies of administrative acts.*

**Keywords:** administrative act, classification, categories, relevance.

## INTRODUCTION

From the outset, it's important to note that in specialized literature, there is no unified vision regarding the criteria and defining elements for categorizing the administrative act, a natural situation considering the „*different conceptions of the content and scope of the administrative act, implicitly regarding public administration*” (Tofan, 2005, p.38 ).

However, a rigorous classification of the administrative act is an imperative, considering that the inherent legal effects of this legal act vary widely, depending functionally on the category of administrative act to which it is attached.

Through this endeavor, we aim to highlight the main typologies of administrative acts, which are essential both in doctrinal conception and especially in the practical activity of institutions.

### I. Section N<sup>o</sup>. 1

In French doctrine, it is considered that this „*classification of decisions can be carried out from two points of view: formal (emphasis is placed on the nature of the body making the decision and, moreover, on elements such as the procedure for drafting the decision: this is the distinction between different categories of decrees or orders), and material (emphasis is placed on the content of the decisions taken by the public authority: this is the distinction between regulatory decisions and non-regulatory decisions)*” (Ricci, 2021, p. 51).

Administrative acts are classified as follows (Barrientos, 2023, pp. 317-357):

#### **A. According to the category of the issuing body, we identify:**

- a) acts emanating from organs of state or central administration;
- b) acts emanating from the autonomous authorities of local public administration;
- c) acts emanating, based on authorizations given by the state or organs of state administration, from private individuals - administrative acts by delegation.

#### **B. According to the material competence of the issuing body, we recognize:**

- a) acts of general administration, which are adopted by state authorities and institutions with ubiquitous competence;
- b) acts of special administration, which are the prerogative of authorities of public administration with specific and particular competence;

#### **C. From the perspective of territorial competence, these acts are divided into:**

- a) acts of central bodies, with an area of imposition usually related to the entire country;

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b) acts of local bodies, issued by local authorities of public administration and which have a limited applicability to the territorial unit within the jurisdiction of the issuing authority.

However, as rightfully noted in doctrine, the scope of administrative acts does not always correspond to the competence area of the issuing administrative authority. In this sense, it has been rightly pointed out that *„individual acts apply only in strictly determined cases, while in connection with normative acts, it can be provided that these apply only in certain portions of territory, and not over the entire territory in which the issuing body is competent”* (Tofan, 2020, p.17; Brezoianu, 2004, p.73).

### **D. According to the purpose and extent of the effects, we distinguish:**

- a) normative acts;
- b) individual acts;
- c) acts with an internal character (which in turn can be normative or individual).

This criterion for distinguishing administrative acts finds its eloquent legal basis in the provisions of Article 2 paragraph 1 letter c) of Law no. 554/2004, which contains the legal definition of the administrative act<sup>1</sup> and structurally facilitates the semantic, and particularly the legal distinctions between the typology of legal cause, as well as between the effects of these two major categories of acts.

This criterion of categorization, first established in French doctrine, is widely embraced in the practice of national courts, especially in that of the Supreme Court, with an impressive succession of rulings reiterating this typology of differentiation between administrative acts<sup>2</sup>.

It has been stated that *„such qualification is based on defining normative acts as that category of legal acts containing a rule, namely an act of repeated*

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<sup>1</sup> As being *„the unilateral act with an individual or normative character issued by a public authority, under public authority, for the purpose of organizing the execution of the law or concretely executing the law, which creates, modifies, or extinguishes legal relationships”*.

<sup>2</sup> For instance, in a recent case, the Supreme Court established that *„according to the provisions of art. 2 para. (1) letter c) of Law no. 554/2004, amended and supplemented, the administrative act is the unilateral act with an individual or normative character issued by a public authority, under public authority, for the purpose of organizing the execution of the law or concretely executing the law, which creates, modifies, or extinguishes legal relationships. Administrative acts are classified according to the purpose for which they were adopted/issued and the extent of the legal effects produced. Regarding the first criterion, normative administrative acts are adopted/issued for the purpose of organizing the execution of the law, while individual administrative acts are issued for the concrete execution of the laws. Concerning the second criterion, normative administrative acts contain rules of a general nature, applicable to an undefined number of situations, producing erga omnes legal effects, whereas individual administrative acts produce effects on a single person or on a determined/determinable number of persons”* – High Court of Cassation and Justice, Administrative and Fiscal Division, Decision no. 3517/June 16, 2022, <https://www.scj.ro/>, in the form from January 14, 2023.

*applicability, upon undetermined legal subjects, and individual acts as that category of acts aiming to stabilize a precise legal situation in relation to a relatively restricted and determined number of legal subjects*<sup>3</sup>.

By the requirement of the purpose for which it is issued/adopted, the normative administrative act aims at organizing the execution of the law, effectively establishing those provisions of the law that institute a standardized conduct in a certain field of activity, and for whose actual entry into force the normative administrative act is issued, containing the rules for implementing the respective law or concretely individualizing a certain generic procedure of imposition of legal obligations among its recipients, undifferentiated by specific criteria (*Iakab, 2022, pp. 2-18*).

However, by the same criterion, based implicitly on the legal definition, the individual administrative act concretely implements the law or a normative administrative act with force, by extrapolating the generic legal effect of the normative act into the specifically stated and individualized situations through the content of the individual administrative act.

Considering the second dimension of the aforementioned classification criterion, that of the extent of effects, the normative act presents maximum generality, by establishing abstract provisions and impersonal situational typologies, giving rise to undifferentiated behavioral obligations among the categories of legal subjects targeted by the normative act (*Markova, 2023, pp. 151-162*).

Practically, the normative act creates an abstract typology of behavior, with erga omnes opposability, or regulates non-individualized legal situations, in their concrete content and effects, instituting generally obligatory norms for all its recipients, not individualized in any way by specific distinction criteria<sup>4</sup>.

According to the same criterion, the individual administrative act is intended to create, modify, or terminate specific rights and obligations for its recipients, constituting a narrow circle of precisely determined legal subjects, through precise identification elements, or for whom concrete determinability criteria are provided, no later than the date of execution of the administrative act in question<sup>5</sup>.

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<sup>3</sup> ÎCCJ, SCAF, Decizia nr. 3772/23 iunie 2022, <https://www.scj.ro>, in the version from 14.01.2023.

<sup>4</sup> In the view of the High Court, an administrative normative act is understood as an act that „includes regulations formulated abstractly, as principles with mandatory character for an undetermined number of persons or situations falling within the hypothesis of the norm it institutes. The criteria for establishing the scope of the recipients are determined, rather than each beneficiary individually” - HCCJ, RIL Decision No. 12/2021 of June 28, 2021.

<sup>5</sup> In the view of the High Court, „administrative acts with an individual character aim to establish legal relationships in a strictly determined situation and have effects either towards a single person or towards a determined or determinable number of persons” - HCCJ, SCAF, Decision No. 3772/June 23, 2022, <https://www.scj.ro>, in the form as of January 14, 2023.

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In conclusion, we define the unilateral normative administrative act as representing the legal act that organizes the execution of the law and legislates, in an abstract manner, generic legal situations and establishes rules of law applicable to all its recipients, who are not individualized in any way.

As has been aptly stated in French doctrine, „*the regulatory decision is an act of general and impersonal scope. It may concern a single person, but this person will not be taken ut singuli, it will be reduced to the category to which it belongs. The regulatory decision establishes the organization of a public service or intervenes in the execution of legislative requirements, or even other regulations; it is a measure taken without considering specific individuals (cf. concl. Rigaud on 19 November 1965, Husband Delattre-Floury)*” (Ricci, 2021, p.51).

The degree of generality of regulated situations and recipients of normative administrative acts may vary case by case (Brezoianu, 2004, p.71).

), possibly involving a broad circle of these legal subjects targeted by the legal act (for example, Romanian citizens in the country or those in the diaspora) or a more restricted category (for example, property associations in Sector 3 of the Municipality of Bucharest, to which certain rights are granted or a series of obligations are imposed), it being important that the established provisions are characterized by abstraction and conceptual organization and impose erga omnes obligations (Lewandowski, 2023, p. 49).

However, precisely this character of normative administrative acts may create, as we will see in the following lines, a series of real difficulties in identifying specific elements of differentiation from individual acts that institute rights and obligations for a determinable category of immediate recipients<sup>6</sup>.

The normative administrative act, as stated, encompasses general, impersonal, and obligatory regulations addressing an undetermined number of legal subjects, producing erga omnes effects, with only the criteria being determined to establish the sphere of recipients, not each beneficiary individually<sup>7</sup>.

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<sup>6</sup> So, it doesn't concern determined legal subjects.

<sup>7</sup> As decided, for instance, by the High Court through a decision of non-uniform practice, „*in the unified interpretation and application of the provisions of Article 31<sup>1</sup>, Article 32 paragraph (5) letter a), Article 39, 44, 45, Article 47 paragraph (1) and (2), Article 56 paragraph (1), (4), (6) and (7), and Article 64 paragraph (3) of Law no. 350/2001 on territorial planning and urbanism, with subsequent amendments and completions, related to Article 68 of Law no. 24/2000 on legislative technical norms for drafting normative acts, republished, with subsequent amendments and completions, the decision of the local council to approve a zoning plan represents an administrative act with normative character*” – ICCJ, RIL Decision no. 12/2021, published in the Official Gazette, Part I no. 933 from 30/09/2021.

## II. SECTION N<sup>o</sup>. 2

As correctly noted in the Romanian specialized literature, 'the norms contained in normative administrative acts are imperative, prohibitive, or permissive. Cases where an administrative act contains only norms of a certain kind are rare (*Iovănaș, 1997, p.21* ).

From the perspective of the effects produced, in European jurisprudence, other effects of normative administrative acts have been identified, distinguishing „until the end of 2002, the regulatory circular (EC 29 Jan. 1954, *Institution Notre-Dame du Kreisker, Lebon 64*), a true regulation subject to the legal regime of enforceable decisions, and the interpretative circular (EC 11 Apr. 1951, *National Federation of French Men's Clothing Producers, Lebon 184*), limited to commenting or interpreting a previous text, not subject to this regime. But by a decision dated December 18, 2002 (*Duvignères GAJA no. 103*), the Council of State abandoned the traditional distinction. It is now appropriate to oppose the imperative circular, which is questionable, to the one that is not, without any objection: 'The interpretation that [...] the administrative authority gives to the laws and regulations [...] cannot be contested in front of the judge, regarding the abuse of power when, being devoid of an imperative character, it cannot [...] cause any dissatisfaction; [...] on the other hand, the imperative provisions with a general character of a circular or instruction must be considered harmful, just like the refusal to repeal them" (*Maurin, 2018, p.68* ).

Normative administrative acts present significant particularities regarding legal avenues and the control procedure, whether it is control exercised through politico-administrative means<sup>8</sup> or through administrative litigation (*Turchak, 2022, p. 248*).

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<sup>8</sup> In this regard, in the practice of the constitutional court, it was established, for instance, that the Decision of the Romanian Parliament no. 5/2020 approving the state of alert and the measures instituted by Government Decision no. 394/2020 regarding the declaration of the state of alert and the measures applied during it to prevent and combat the effects of the COVID-19 pandemic is unconstitutional. Among other aspects, the Constitutional Court held that „unlike normative acts adopted through legislative delegation, regarding the government's decisions, the constitutional legislator did not establish any approval by Parliament, which is why the intervention of the latter authority in the sphere of the mentioned administrative acts constitutes a clear deviation from its constitutional prerogatives established by Article 61 paragraph (1) of the Constitution, in the sense of accumulating prerogatives of the executive power. Therefore, the "approval" or "modification" by Parliament of the measures adopted by the Government through decisions lacks constitutional basis and distorts the legal regime of Government decisions, as acts of law execution.' Based on the distinction between parliamentary control over the executive and judicial court control over public administration, regulated by Articles 21, 52, and 126 paragraph (6) of the Constitution, the Court noted that, precisely considering the legal nature of Government decisions, the constitutional legislator provided for the competence of judicial courts to control them. Consequently, 'the parliamentary control configured by the constitutional legislator cannot extend to the normative content of Government decisions, in the sense of approval, modification, or rejection. Such an intervention radically changes the meaning attributed by the constitutional

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Although its name may create semantic and legal classification confusions, we emphasize that the administrative act with normative character should not, in any way, be confused with the normative or legislative act, as it is known in specialized literature.

Thus, an act with a legislative character presents a legal force immediately inferior to the constitutional provisions<sup>9</sup> and establishes a general normative framework, thus shaping the internal legal order of the Romanian State, this being the exclusive prerogative of the primary legislator of the state, namely the Parliament, according to article 61 paragraph 1 of the Constitution, or that of the delegated or subsidiary legislator, namely the Government."

In this sense, the Constitutional Court stated that *„the emergency ordinance is not an administrative act; the objectors making a mistake regarding the legal nature of the emergency ordinance; both the jurisprudence of the Constitutional Court and legal doctrine concur regarding the legal nature of emergency ordinances. These, depending on their issuer, would be acts with an administrative character, but considering the subject matter in which they intervene, they are legislative acts. To support the above, the jurisprudence of the Constitutional Court held that emergency ordinances have the force of law and, therefore, can contain primary regulatory norms”*<sup>10</sup>.

Therefore, acts with a legislative or normative character consist exclusively of laws, strictly speaking, and government ordinances, simple or emergency, the legal regime of which is established by article 115 of the Constitution.

As it results from the logical-juridical, grammatical, and teleological interpretation of the provisions of article 146 letters a) and d) of the Constitution, correlated with the provisions of article 29 of Law no. 47/1992 regarding the organization and functioning of the Constitutional Court and with articles 1, 8, and 18 of Law no. 554/2004 on administrative litigation, laws and ordinances are exempt from the *„legality and opportunity”* control of administrative litigation courts, being subject, based on the principle of hierarchy and the force of normative acts, exclusively to the scrutiny of compliance with constitutional norms and principles, controlled in a unitary and full manner by the Constitutional Court.

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*legislator to the concept of parliamentary control, as well as the traditional legal nature of Government decisions, which take on features of administrative acts concerning relations with Parliament, with consequences in terms of access to justice for challenging them”* – Constitutional Court Decision no. 672/20.10.2021, published in the Official Gazette no. 1030 from 28.10.2021.

<sup>9</sup> Therefore, in the relevant practice of the Constitutional Court, these normative acts are referred to as *„infra-constitutional acts”* – see, for instance, Constitutional Court Decision no. 672 of October 20, 2021, published in the Official Gazette no. 1030 of October 28, 2021, or Constitutional Court Decision no. 738 of September 19, 2012, published in the Official Gazette no. 690 of October 8, 2012.

<sup>10</sup> Decizia CCR nr.919 din 6 iulie 2011, publicată în Monitorul Oficial nr. 504 din 15 iulie 2011.

In this regard, in American doctrine, it has been noted that „*challenging federal administrative rules and guidelines in general is not admissible (Rose-Ackerman 1995: 72–3). Rules governing status and private application exclude it. Individuals and groups outside cannot directly challenge government policies. Some commentators argue that the scope of judicial control over administrative action may (or should) expand with new developments in the 'doctrine of normative authorization,' which under certain circumstances allows challenging market regulation (Oster 2008: 1295–6). However, except for significant changes, judicial control of administrative action in Germany is entirely different from other considered countries, as it is simply not available in a wide range of cases (Rose-Ackerman 1995: 72-3, von Oertzen 1983: 269)*” (Rose-Ackerman, P. L. Lindseth, 2010, p.144-145.).

On the other hand, the administrative act with a normative character is issued/adopted by an administrative authority of the Romanian State, having a different form of expression and a different legal nature than the laws and government ordinances. It is issued based on legislative acts and in executing their provisions. From this perspective, we conclude that they have a legal force inferior to legislative acts, which is why in case law, they are considered as having an infralegal character<sup>11</sup>, preventing them from adding, modifying, or repealing a legal norm<sup>12</sup>.

Therefore, government ordinances, although adopted by an executive authority, are not administrative acts with a normative character but normative acts with the force of law. Even though the government can adopt these acts with legislative character, such as simple or emergency ordinances, the same authority, as a pillar of the Romanian Executive, is competent to adopt administrative acts with a normative character, namely Government Resolutions, by implementing the adopted ordinances in a concrete manner.

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<sup>11</sup> That's right, a legal force immediately inferior to laws enacted by Parliament and government ordinances.

<sup>12</sup> „*The legal force of Presidential decrees is immediately inferior to laws, meaning they cannot override, substitute, or add to the law, thus cannot contain primary regulatory norms. Considering that the legislative framework circumscribed by laws cannot be modified or completed by sub-legal acts, and the measures instituted during the state of emergency/alert were necessary even in the judicial field to prevent and combat the effects of the COVID-19 pandemic while aiming to protect the rights and legitimate interests of citizens and legal entities, the legislator assessed the need to transpose them into primary legislation*” - see Supreme Court Decision CDCD no. 59/2022, pronounced on October 17, 2022, published in the Official Gazette, Part I no. 1130 dated November 23, 2022.



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Hence, the distinction between legislative acts and administrative acts with a normative character is not necessarily at the level of the issuing authority but rather in terms of the object and legal effects of the adopted act<sup>13</sup>.

### CONCLUSIONS

*The administrative act presents multiple dimensions, revealing a complex structure and various classification methods, each with practical consequences, especially concerning its legal effects and the judicial control methods applied to it.*

*Depending on the type of the act, it can have diverse legal relevance. However, more crucial is the fact that based on the legal nature of the administrative act, it generates a range of highly diverse and potent legal effects. Considering the legal relationships produced, modified, or extended, it brings forth a varied and distinctly rooted manner of judicial control over their legality and appropriateness.*

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<sup>13</sup> Regarding emergency ordinances, it was established in constitutional court practice that „emergency ordinances are not administrative acts; the objectors misunderstood the legal nature of emergency ordinances. Both the jurisprudence of the Constitutional Court and legal doctrine are consistent regarding the legal nature of emergency ordinances. Depending on their issuer, they might be administrative acts, but considering the field they intervene in, they are legislative acts. Supporting this, the jurisprudence of the Constitutional Court stated that emergency ordinances have the force of law and, therefore, can contain primary regulatory norms” - CCR Decision no. 919/July 6, 2011, published in the Official Gazette no. 504 on July 15, 2011.

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