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Review paper

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SOME FEATURES OF AN ADMINISTRATIVE ACT

ABSTRACT

The purpose of this paper is to analyze some features of an administrative act. We have deliberately chosen the term "administrative act," and not some other term, in order to preserve the connection of the term in question exclusively to unilateral (individual) administrative acts. Within the context of Croatian administrative law, individual elements of an administrative act are analyzed. The paper further explores how administrative acts are understood in the legal systems of various European countries and identifies common characteristics across Europe. Finally, the paper addresses the issue of differing jurisdictions, noting that some acts may fall under distinct litigation frameworks.

Keywords: *administrative law, administrative act, judicial control*

1. INTRODUCTION

It is sometimes strange to what extent certain concepts take an important place in the general theory of administrative law, and which, at first glance seem clear, yet remain unclear and surrounded by ambiguities. This is also the case with the concept of an administrative act, a concept that is imprecise even though it is considered fundamental, with which theory has been dealing for a long time, failing to offer an unambiguous solution. In fact, although the answer may seem simple at first, if basic criteria are applied, it has very quickly proved complex through the evolution of public administration and the role of the judge who can be in charge of judicial review of an administrative act.

On the basis of normative and judicial duality, the attempt to shape the concept of an administrative act has always carried significant controversial implications. Legal texts often offer little clarity, leaving administrative judges to distinguish administrative acts from other types of acts, including those of a private law nature.

In Croatian administrative procedural law, the very concept of an administrative act is determined by Art. 2 of the General Administrative Procedure Act.¹ It defines the concept of an administrative matter and states that an administrative matter is considered to be any matter in which a public body in administrative proceedings decides on the rights, obligations or legal interests of a natural or legal person or other parties by directly applying laws, other regulations and general acts governing the relevant administrative area.² This provision is crucial for applying the General Administrative Procedure Act. In the present case, this presupposes that the competent public law Competent public authority as decided on an individual application by deciding on an administrative matter. The legal understanding of an administrative matter presupposes a decision on the right, obligation or legal interest of a party.³ It means that an administrative act can only

¹ General Administrative Procedure Act, Official Gazette, No. 47/09, 110/21.

² Only those bodies whose competence is at all stages of the administrative procedure may act in an administrative matter, primarily by complying with the rules of general administrative procedure contained in the General Administrative Procedure Act, as well as the rules of special administrative procedure. Public law bodies deal directly with administrative matters, applying substantive legal regulations to individual cases, and are obliged to perform each action during the procedure according to the given rules. Taking certain actions contrary to the rules of procedure would mean violating the fundamental principles of administrative procedure. In this way, the realization of substantive and legal regulations on the basis of which a specific administrative act was adopted would also be called into question. In order to avoid some of these negative consequences, which could create uncertainty in the legal order, legal rules are created that proceed according to certain, common principles concisely formulated within the framework of individual articles, without losing sight of their exceptional importance. This gives the administrative function a unique upgrade. Britvić Vetma. B.; Malenica, I., *The Principle of Legality in Croatian and Comparative Administrative Law*, Proceedings of the Faculty of Law of the University of Rijeka 44, No. 1, 2023, p. 91.

³ Although the law is below the Constitution in terms of legal force, it is still the most important source of law – which also applies to administrative procedural law. Law is the form in which, as a rule, the state expresses its will, creates general and specific rules and regulates social relations on its territory. In the broadest sense, the principle of legality in administrative proceedings boils down to the fact that state administration bodies, other state bodies, bodies of local and regional self-government units and legal persons with public authority, when directly resolving administrative matters, are guided in their activities by the law and other regulation based on the law. In doing so, they must ensure the objective and correct application of substantive regulations to a specific case, regardless of the administrative area of the substantive regulation in question.

"... There are special rules that prescribe the principle of legality, either for the activities of certain state administration bodies, or for the actions of the state administration in certain areas." Borković, I., *Administrative Law*, 7th ed., Zagreb, Official Gazette, 2002, pp. 232-233.

be adopted in administrative matters.⁴ However, the administrative matter is also defined by the General Administrative Procedure Act⁵ in a broader sense, and includes not only individual situations that the competent public law body resolves by adopting an administrative act, but also specific situations that are determined by a particular law as an administrative matter.⁶

In addition, it is important to mention the Administrative Disputes Act, which in Art. 3(1) prescribes that the subject matter of an administrative dispute is the assessment of the legality of an individual decision by which a body governed by public law has decided on the right, obligation or legal interest of a party in an administrative matter (administrative act) against which it is not permissible to declare a regular legal remedy.⁷ This is in accordance with the settings of administrative law that establish an administrative matter as a fundamental prerequisite of an administrative act. In the Republic of Croatia, administrative court practice always assesses whether a case qualifies as an administrative matter or not. Case law encounters great difficulties in determining whether an act

⁴ However, it seems that the legislator himself is aware of the imperfection of defining the concept of an administrative matter by a general definition, which, taking into account the diverse areas of activity of the administration, prescribed in the General Administrative Procedure Act that any matter that is defined by law as an administrative matter is considered an administrative matter. By doing so, he not only opened up the possibility, but in a way set himself the obligation to prescribe certain things in administrative matters by special laws in certain administrative areas, which would significantly specify the taxpayers and the decision-making process on the rights, obligations and legal interests of parties in special administrative areas. Đerđa, D., *General Administrative Procedure in the Republic of Croatia*, Zagreb, Inženjerski biro, 2010, p. 42.

⁵ The General Administrative Procedure Act, for the first time in the Republic of Croatia, normatively defines administrative matters, and this is indisputably one of the most important issues in the application of this Act. Until the adoption of the new General Administrative Procedure Act, no law in the Republic of Croatia contained this definition, but administrative and administrative jurisprudence remained, in each specific case, to successfully or less successfully decide whether it is an administrative matter or not. In the broadest sense, an administrative matter can be equated with a comprehensive administrative action, i.e. an individual situation of public interest in which the competent public law body, through the direct application of regulations from the relevant administrative area, influences the position of the party. On this Staničić, F.; Britvić Vetma, B.; Horvat, B., *Commentary on the Law on Administrative Disputes*, Zagreb, Narodne novine, 2017, p. 37.

⁶ In relation to the breadth of application of the General Administrative Procedure Act in administrative matters, we can determine the division into general administrative procedure (which is applied in all administrative matters) and special administrative procedure (which is applied in certain matters that are in turn determined as administrative by a special law).

⁷ Administrative Disputes Act, Official Gazette, No. 36/24.

has resolved an administrative matter and, in this regard, whether it can be subject to an administrative dispute. In their decisions, administrative courts usually give only brief explanation as to whether the act challenged by the lawsuit is an administrative act.⁸

Regarding the question of the legal nature of an act, it is essential to note that the name 'act' does not affect its legal nature. Neither the form in which an act was adopted nor the name it has is decisive for its essential nature. Therefore, the nature of an act will not be determined by its form or name, but by its content. , Regardless of the fact that the term "administrative act" has traditionally existed in the theory of Croatian administrative law, the term "administrative act" is not used for its legislative determination. The General Administrative Procedure Act prescribes that an administrative matter is resolved by a decision and that, in accordance with the law, an act resolving such a matter may bear a different name.

An administrative act stems from the development of an administrative dispute.⁹ Indeed, depending on whether the administrative judge has jurisdiction to review a particular decision, the depth and breadth of its limits are delineated.¹⁰ More precisely, the concept of an administrative act has undoubtedly been influenced by the concept of a court judgment, and in this sense we can conclude that an administrative act represents a special legal institute, which separates itself from its bearer and lives its own life.¹¹

⁸ Staničić, F.; Britvić Vetma, B.; Horvat, B., *op. cit.*, pp37-38.

⁹ An administrative act is a legal institute that was established at the beginning of the 19th century in France, following the model of a judicial act, and following the development of an administrative dispute.

¹⁰In this regard, it is certainly important to refer to the Rule of Law Checklist adopted by the Venice Commission, i.e. paragraphs no. 44, 45 and 46: "The State shall act in accordance with the law which shall authorize it to do so. The need to carry out administrative judicial control of acts and decisions of the executive power and other bodies providing a public service is universally recognized... One of the fundamental requirements of the rule of law is that the powers of public authorities are provided for by law. Where the rule of legality relates to the actions of civil servants, it requires them to be authorised to act, to act within the limits of the powers conferred on them and to comply with both procedural and substantive law. ... The term "law" here refers not only to the constitution, international law, legislation and regulations, but also, if necessary, to case law. Every law should be accessible and predictable." *The Rule of Law Checklist, Venice Commission of the Council of Europe*, https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf, 2 April, 2025.

¹¹ See about this in Medvedović, D., ed., *Chrestomathija administracijnog pravo*, Zagreb, Contemporary Public Administration, 2003.

Far from being a subject of theoretical study separate from practical consideration, on the contrary, this term traditionally encompasses a pragmatic approach that views it, almost systematically, as an act that is controlled in the Croatian legal system by an administrative judge and which therefore has precisely defined characteristics.

2. INDIVIDUAL CHARACTERISTICS OF AN ADMINISTRATIVE ACT IN CROATIAN ADMINISTRATIVE LAW

The concept of an administrative act is defined by a set of characteristics that distinguish it from other legal instruments. In connection with the concept of 'administrative act' in national administrative law, the following elements are most commonly emphasized: concreteness, authoritativeness and one-sidedness, legal action and legal binding.¹²

The administrative act is concrete. The concreteness of an administrative act presupposes that it determines a certain, concrete situation. A specific situation refers to a specific individual (an administrative act has the characteristics of individuality) or a specific group of persons (these are general administrative acts that do not refer to a specific person by name, but to a group of persons who can be identified on the basis of certain characteristics).¹³ An administrative act does not set legal rules, which have a subsidiary effect on legal relations, but directly and specifically regulates these relationships.¹⁴ The concreteness of an

¹² Professor Ivančević distinguished the essential from non-essential characteristics of an administrative act. He considered the following to be essential characteristics: (1) concreteness, (2) authoritativeness, (3) direct legal action and (4) the author of an administrative act. While he considered the irrelevant characteristics to be those that help in the identification of an administrative act, namely: 1. what is the significance of the presence of the will of its adopter in an administrative act, 2. what does its enforceability mean, and 3) whether it is accompanied by finality and to what extent does it have a specific meaning for the administrative act in a positive case. See Ivančević, V., *Institutions of Administrative Law*, Zagreb, Faculty of Law, Zagreb, 1983, pp. 234.

¹³ This means that concreteness goes in two directions. According to the case being decided (a specific administrative matter) and according to the entities whose rights and obligations are decided by administrative matters (specific addressees of the act). Borković, I., *Administrative Law*, 7th ed., Zagreb, Official Gazett, 2002, p. 36.

¹⁴ Medvedović, D., *op. cit.*, p. 6.

administrative act highlights its distinction from a legal norm, which is an abstract rule of conduct."¹⁵

The authoritativeness and unilaterality of an administrative act implies that with its help, as an unilateral act of a body with the authority of public authority, "rules of conduct" are "imposed" on the addressed subjects. An administrative act is an 'act of authority'¹⁶ and its obligation is unambiguous as long as it is not amended. Authoritativeness is often defined as the superiority of one subject over another subject.¹⁷ According to this understanding, the inequality between the parties in an administrative legal relationship is seen as a consequence of the need to protect the public interest. Unilaterality is understood as a characteristic by which a public body in an administrative law relationship independently adopts an administrative act and defines the rights and obligations of the other party in an administrative law relationship. However, it is certainly necessary to point out that authoritarianism and one-sidedness are not synonymous because there are also unilateral administrative acts that are not authoritative¹⁸ (subjects are in an equal relationship).¹⁹

Legal action as a characteristic of an administrative act is reflected in the possibility of concrete changes in specific legal relations. An administrative act produces direct legal action, it introduces changes in legal relations, i.e. changes, abolishes or establishes the rights and obligations of specific persons in specific legal situations. The legal effect of an administrative act is reflected in its obligation that arises when the administrative act begins to act. Administrative acts

¹⁵ More on this in Ivančević, V., *op. cit.*, pp. 234-237.

¹⁶ Professor Ivančević says that it is an act of authority (in French *acte d'autorité* or *acte de puissance publique*, in German most often *hoheitlicher*), understanding the unilaterally expressed will of its issuer sanctioned by the use of coercion in the event of involuntary execution of the addressee of the act. Ivančević, V., *op. cit.*, p. 237.

¹⁷ Authoritativeness is evident when it comes to acts that impose a certain obligation on a party.

¹⁸ The authoritativeness of an administrative act should not be extended to cases in which there is no authoritative decision-making.

¹⁹ The emphasis on the stronger will of the author of the administrative act sharply distinguishes it from civil legal transactions, in which the legal consequences are the result of the consent of the will of the subjects. In view of this, it is necessary to distinguish between administrative acts in which their adopter acts authoritatively and those by which administrative bodies conclude a civil law transaction with other entities. In the latter case, the coordination of subjects is imminent, because they are unanimous in their manifestation of will to act in equal positions, i.e. On an equal footing, unlike the situation that arises with an administrative act when the stronger will of its adopter comes to the fore. Borković, I., *op. cit.*, pp. 360-361.

have legal effect towards all parties in administrative proceedings. In connection with the commencement of legal action, an administrative act generally produces legal effects for the future, and in general retroactive (retroactive) action is not permitted. The termination of the legal effect of an administrative act marks the moment in time when the obligation of the administrative act ceases.

The legal binding nature of an administrative act presupposes the adoption of an administrative act on the basis of the law. Namely, an administrative act is adopted on the basis of the law, has a content and form determined by law, the procedure for adoption is prescribed by law and is subject to administrative court control.²⁰ Which presupposes one of the fundamental expressions of the principle of legality. Specifically, the principle of legality is a basic principle not only in administrative procedure, but it is also one of the fundamental constitutional principles that finds its expression in numerous legal provisions.²¹ Its role is to guarantee the "rule of

²⁰ The norms of substantive law determine the rights and obligations, while the norms of procedural law regulate the rules of conduct that are important in the process of applying substantive law.

Procedural and substantive law form a functional unity, because substantive law can be lawfully applied only in an appropriate legally regulated procedure. Đerđa, D., *op. cit.*, p. 13.

Substantive legal norms determine the basic rights and obligations of legal subjects, procedural legal norms determine the manner of their exercise, i.e. the rules of procedures for the application, exercise and protection of substantive legal norms. Substantive law, as a rule, is found in substantive laws that determine the rights and obligations of a party in an administrative area. Procedural law is found in procedural laws that regulate the manner and procedure of exercising and protecting certain rights determined by substantive laws. The relationship between substantive and procedural law is often compared to the relationship between content and form. At the same time, this does not mean that the rules of procedural law are less important, that they represent formalism, since the exercise and protection of substantive law is often impossible without a change in procedural law. When it comes to administrative law, the norms of administrative law can be divided into substantive and procedural norms. While the norms of substantive administrative law determine the rights and obligations in administrative matters, the norms of procedural law determine the manner and procedure of their exercise and their protection. Britvić Vetma, B.; Malenica, I., *op. cit.*, p.89.

²¹ "The need for the principle of legality is justified in theory by the following reasons: (1) political, because in this way the executive power is subordinated to the representative, legislative organs of state power which exist to express the will of the people; 2. technical, as this ensures the proper functioning of the entire executive apparatus, which could not be implemented without certain legal regulations; 3. psychological, because this ensures the legal security of citizens from the executive power, which would act according to its own will, and not according to pre-made regulations with which citizens can become familiar." Bačić, A, *Commentary on the Constitution of the Republic of Croatia*, Split, Faculty of Law in Split, 2002, p.40.

law" as a fundamental prerequisite for legal certainty and stability of the legal system, the process of democratization of social relations and the realization of the idea of equality of the rules of general administrative procedure. The constitutional and legal realization of the principle of legality in the Republic of Croatia is in Art. 5 (2) of the Constitution of the Republic of Croatia²², which states: Everyone is obliged to abide by the Constitution and the law and respect the legal order of the Republic of Croatia. The provision in question guarantees the possibility of exercising judicial protection against all acts that decide on rights and obligations, which is most often an administrative act adopted in administrative matters.²³

Concerning legal binding, a distinction should certainly be drawn between acts adopted on the basis of free (discretionary) assessment and those in which there is no such assessment. It should be noted that the principle of legality must also apply when an act is adopted on the basis of a discretionary assessment. Thus, public law bodies act in the same way with regard to the principle of legality, regardless of whether they apply a categorical or an alternative rule of law. The difference, however, arises in the dimension in which the breadth of legal binding is compared (acts adopted according to a free assessment and acts in which there is no such assessment). In the first case, only some parts of the acts are legally binding, while the method of deciding on the right and obligation is a matter of discretion. Since discretionary assessment is not carried out in the sphere of legality, but in the sphere of purposefulness, the part of the administrative act in which free assessment is contained escapes the control of legality, but remains in the domain of the control of opportunity, i.e. purposefulness. In the second case, all parts of the administrative act are legally binding, and are therefore subject to legality control. Generally, it can be said that the control of an act containing a discretionary assessment is more broadly possible through the institute of an appeal in administrative proceedings, where the second-instance body may also enter into the question of free assessment. On the other hand, the review of legality by means of an administrative dispute is limited solely to the question of legality. Accordingly, the solution according to free assessment should not be understood as a possibility for arbitrary and arbitrary resolution of an individual body. On the contrary, it represents just one aspect of the legal framework in which the principle of legality must be upheld—both in the application of procedural rules and in the application of substantive regulations authorizing such a decision, as well as in alignment with the purpose for which the authorization was granted. When

²² Constitution of the Republic of Croatia, Official Gazette, No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

²³ Britvić Vetma, B.; Malenica, I., *op. cit.*, p. 90.

deciding on an administrative matter at its discretion, the competent authority is obliged to provide the necessary information in the explanation.²⁴

In addition to previously mentioned characteristics of an administrative act, it is important to emphasize additional elements of an administrative act that arise from the General Administrative Procedure Act and the Administrative Disputes Act. The authoritativeness of an administrative act arises from the obligation of an administrative act. The parties are obliged to act in accordance with the administrative (content) act that imposes a certain obligation. Otherwise, public authorities have at their disposal coercive means of enforcement. However, when it comes to an act that recognizes a right to the parties, then the party independently decides whether to use a particular right or not. An administrative act is also binding on its adopter (a body governed by public law). The obligation of an administrative act is not only a consequence of authoritativeness, but also of the legal norm on the basis of which the administrative act was adopted.²⁵

Two particularly important elements of an administrative act are finality and enforceability. These are properties that usually occur at different points in time and that presuppose different legal effects.

Finality is a characteristic of an administrative act that implies that it cannot be challenged by ordinary legal remedies. The finality of an administrative act presupposes that an administrative act, as a rule, cannot be changed by the will of a party or a public law body. The basic purpose of *res judicata* is to achieve legal certainty. Positive administrative acts, i.e. acts by which a party has acquired a certain right or imposed a certain obligation, become final. Importantly, only the operative part of the administrative act becomes final. The General Administrative Procedure Act recognizes the concept of finality as a fundamental principle, which, at least explicitly, was not preserved by the earlier laws governing the general administrative procedure. Finality, in accordance with the General Administrative Procedure Act, is fundamentally an institute that prevents decision-making on a matter that has been finally decided in ordinary proceedings (*ne bis*

²⁴ This principle is extremely important for a party to the proceedings, as it appears at all stages of the administrative procedure. However, the possibility of its realization depends not only on itself, but also on the body conducting the procedure, as well as on the possibility of harmonizing their mutual interests. A party actively participates in administrative proceedings, acting in a certain way as an associate of public law bodies, thereby contributing to the protection of legality in general. In this interaction, the careless behavior of public law bodies in the procedure may be primarily to the detriment of the party, but also to the detriment of the procedure itself. Britvić Vetma, B.; Malenica, I., *op. cit.*, p. 91-92.

²⁵ Borković, *op. cit.*, p.382.

in idem) and that primarily protects parties who have acquired certain rights by administrative acts from amendments. In the Republic of Croatia, an administrative decision against which no appeal may be lodged and no administrative dispute may be initiated is considered final.²⁶

The enforceability of an administrative act presupposes that the content established, altered or determined by an administrative act is capable of being carried out in practice,²⁷ which is the result of the fact that in administrative matters there is often a public interest in ensuring that what has been legally determined is also effectively implemented. The Act on General Administrative Procedure in its fifth part addresses the issue of enforcement, beginning with the determination of the moment when the decision becomes enforceable²⁸ and determines the person of the enforcer.²⁹ Furthermore, it prescribes that enforcement is carried out both *ex officio* and at the proposal of a party,³⁰ after determining how enforcement is carried out for the purpose of realization of monetary or non-monetary obligations,³¹ it regulates in more detail the execution of monetary³² and non-monetary obligations.³³ The General Administrative Procedure Act prescribes that in a situation where the executor fails to act according to the enforcement decision, a decision shall be issued in writing and the content of the decision in question and the possibility of appeal against it shall be determined in more detail.³⁴ The General Administrative Procedure Act also allows the possibility for postponing enforcement,³⁵ timing of execution³⁶ and the forced execution of non-pecuniary obligations using a fine,³⁷ the execution of non-pecuniary obligations through third parties³⁸ and the execution of non-pecuniary obligations by direct coercion.³⁹ It prescribes in detail the principle of proportionality in the protection of the rights

²⁶ Šikić, M., *Finality, Finality and Enforceability in Administrative Procedure*, Proceedings of the Faculty of Law of the University of Rijeka 33, No. 1, 1991, pp. 208-209.

²⁷ The basic intention of the administrative act is that its decision be realized and implemented in life. See on this in Medvedović, D., *op.cit.*, p., 11.

²⁸ Art. 133 of the General Administrative Procedure Act, Official Gazette, No. 47/09, 110/21 (hereinafter referred to as the ZUP).

²⁹ Art. 134. ZUP.

³⁰ Art. 135. ZUP.

³¹ Art. 136 of the ZUP.

³² Art. 137. ZUP.

³³ Art. 138. ZUP.

³⁴ Art. 139. ZUP.

³⁵ Art. 140. ZUP.

³⁶ Art. 141. ZUP.

³⁷ Art. 142. ZUP.

³⁸ Art. 143 of the ZUP.

³⁹ Art. 144. ZUP.

of the parties and the public interest,⁴⁰ stipulates how enforcement must be carried out in a manner and by the means that are most lenient for the executor, and lead to the goal of enforcement (proportionality in enforcement). Finally, the General Administrative Procedure Act regulates the suspension of enforcement,⁴¹ the elimination of the consequences following the annulment or modification of the executed decision,⁴² enforcement for the purpose of securing claims⁴³ and urgent enforcement^{44, 45}.

However, we may ask ourselves how the concept of an administrative act is viewed in other European countries and whether it leads to a similar definition. What do we mean by the term „administrative act“ and do we employ the same methods to determine its framework?

3.UNDERSTANDING OF AN ADMINISTRATIVE ACT OUTSIDE THE NATIONAL FRAMEWORK

Examining administrative justice across Europe leads to a broader analysis of this concept, which represents the very core of its operation, trying to define an administrative act beyond the national understanding and aiming to approach its comprehensive definition. Firstly, we should provide certain clarifications related to the terminological framework of the research.

We must point out that we have adopted the term "administrative act", and not some other targeted terms such as administrative or individual decision,⁴⁶ in order to preserve the generality of the term regardless of the specific terminologies used in some countries,⁴⁷ and, of course, the terminology used in Croatian legal frameworks.⁴⁸

⁴⁰ Art. 145. ZUP.

⁴¹ Art. 146. ZUP.

⁴² Art. 147. ZUP.

⁴³ Art. 148. ZUP.

⁴⁴ Art. 149. ZUP.

⁴⁵ Šikić, M, *op. cit.*, p. 214.

⁴⁶ Looking at it comparatively, it seems that this term can be more directly reduced to the "individual administrative act" itself.

⁴⁷ A special approach from the proceedings retained in Germany, known *as infra*, also states that Section 35 of the Code of Civil Procedure. Article 10 of the Administrative Procedure Act defines an administrative act as any order, decision or other measure of public authority issued by the administrative authority and relating to the special situation of an individual.

⁴⁸ Various authors distinguish between an administrative act in the broad sense and an administrative act in the narrow sense. Professor Krbek also distinguishes between an

Administrative justice is understood here not only as a prerequisite in which administrative courts participate, but also, in a broader sense, as an entire judicial activity that includes resolving dispute between a private person and public administration, allowing to include regular general judges, who may or may not be specialized in resolving administrative matters.

Following the preceding discussion, we now turn to the methods that have enabled us to determine the meaning of the term administrative act.

At the European level, some doubt may be cast on the pertinence of the controversial definition of acts used in France. Moreover, in French administrative law, generally the term 'administrative act' actually contains multiple meanings because it encompasses unilateral administrative acts, general acts and administrative contracts. However, contracts concluded by the administration contain specific problems in Europe that are not known to unilateral administrative acts. In order to achieve coherence and in accordance with the classical approach, this paper takes into account unilateral (concrete) administrative acts under the term "administrative act".

The systematic link that exists between an administrative act and the special dispute settlement regime seems to be valid only in the 'French' schematised context, where the concept of an administrative act has the effect of applying administrative law,⁴⁹ which in turn implies the jurisdiction of the administrative

administrative act in the narrow sense and an administrative act in the broad sense. Thus, under the term administrative act in a broader sense, he considers different types of administrative acts, with the main common characteristic, that they are adopted by a body governed by public law. She believes that this comprehensive concept is easily misleading because it extends legal phenomena, which are only related to a certain type of such acts, to other acts adopted by a public body, or obscures the issues of certain types of such acts. The term administrative act is useful and usable only if it encompasses only certain characteristic phenomena that form a unity, and thus we arrive at a specific legal category. In this sense, a part of legal theory tries to come up with a specific concept of an administrative act – that would be the concept of an administrative act in a narrower, legal or technical sense. Medvedović, D., *op. cit.*, p.5.

⁴⁹ Treaty disputes have long been exclusively civil in nature throughout Europe, with the exception of France. A contract was considered a kind of act of private law: by concluding a contract, the management was placed on the same level as the partner. In France, the administrative dispute over treaties would also have been of a civil nature if it had not been for Napoleon's texts, according to which disputes over contracts were brought under the jurisdiction of the Council of State. Truth be told, this rule has been in force since the time of Louis XIV, who considered that companies, entrusted by his administration with material work such as the construction of roads or canals, should not have access to civil judges because he feared their independence. More on this: Bigot, Grégoire In: Britvić Vetma, B.,

court. However, many European countries are not subject to such an organization, i.e. they do not have a specific law that applies exclusively to acts issued by public law bodies, or there are no special administrative courts that have jurisdiction over them.⁵⁰

In reality, there is hardly any specific treatment applied to certain acts which does not indicate that they are administrative in nature. We will not list the specifics related to the administrative tradition and history of each country, but almost all European countries today recognize mechanisms of administrative dispute, in a manner that they establish separate administrative courts, that some judges within common law bodies specialize or that they establish a special procedure for disputes. Even in Denmark, a country where there are no specialised courts, although there is a specific dispute concerning certain administrative acts, by the *High Court* having direct jurisdiction to assess their legality. The different degrees of susceptibility of these acts to different rules than those applicable to legal persons are now generalized in such a way that we can determine its diversity.⁵¹ A comparative examination of administrative justice in Europe offers the opportunity to observe the strong connection between the concept of an administrative act and its dispute regime and to derive certain insights into its components across different countries. However, it can always be argued at the theoretical level that it is controversial to define a concept depending on the regime of the dispute, and not vice versa, so that this regime is only a logical consequence of the operation of that concept.

Disputes related to acts and actions of the administration in the exercise of the public authority prerogatives have their own peculiarities. They fall under the jurisdiction of either specialised bodies, specialised administrative courts within bodies of general jurisdiction, or courts at a special level of jurisdiction. In countries that have an independent administrative judiciary, such disputes fall within its jurisdiction (e.g. Germany, France, Greece, Italy). Outside these countries, disputes over the legality of administrative acts fall within the jurisdiction of the Supreme Court (e.g. in Denmark and Ireland). The same applies

Organization and Jurisdiction of Administrative Courts, Zbornik Pravnog fakulteta Sveučilište u Rijeka 33, No. 1, 2012, p.403

⁵⁰ Basically, we distinguish between two systems for resolving administrative disputes: Anglo-Saxon and French. We have the Anglo-Saxon system in: the United Kingdom, Ireland, Malta, Cyprus, etc. The system at the centre of which is the Council of State (French system) is: France, the Netherlands, Belgium, Italy and Greece. Administrative courts in the strict sense of the word, and this system includes, among others: Germany, Austria, Switzerland, the Republic of Croatia, Spain, Portugal, etc.

⁵¹ Auby, J.B., ed., *A propos de la notion d'exorbitance du droit administratif*, in *L'exorbitance du droit administratif en question(s)*, Paris, LGDJ, 2004, p.10.

to Cyprus, where the Supreme Court resolves all disputes about legality. However, the existence of specialised administrative courts does not preclude the possibility for courts of general jurisdiction to take over the resolution of disputes on the legality of administrative acts (jurisdiction of the criminal judge in France or of the specialised courts in Belgium). Portuguese law excludes from the jurisdiction of the administrative court acts which arise in the exercise of political and legislative tasks. In Belgium, the theory of state acts is not accepted. In Latvia, it has been defined that political decisions by the parliament, the president, the government and local councillors are not administrative acts and do not fall under the jurisdiction of the administrative courts in case of dispute. Denmark and Estonia do not recognize any exceptions to the admissibility of administrative actions. Dutch administrative law does not know the theory of State acts, which does not preclude some restrictions when it comes to a court action (e.g. against acts containing general binding regulations or a circular letter). In Germany, all acts, including those of a political nature, are subject to judicial review as soon as they are of such a nature as to undermine fundamental or subjective rights.⁵² For example, in the Czech Republic, acts of administrative authorities that do not constitute decisions, acts that precede a decision, acts that alter the course of proceedings before administrative authorities, acts whose adoption depends solely on an assessment of the state of health of persons or technical conditions, acts which do not confer or deprive a natural person of any qualification are exempt from judicial review. However, if the act endangers state or business secrets, the judge may decide on the act, but at a hearing excluded from the public. In Ireland, as a general rule, no administrative act is exempt from judicial review, but the legislator requires the courts to apply stricter conditions of admissibility when it comes to challenging the validity of decisions of authorities competent to deal with asylum applications and decisions on town planning matters. Austria has some peculiarities: jurisdiction to review the legality of administrative regulations is shared between the Administrative Court and the Constitutional Court. However, some political decisions of the administration cannot be challenged (e.g. administrative decisions on government draft laws). In some countries, the same judge is not competent for individual and general legislative acts (Greece). Court proceedings are initiated by filing an action against an administrative act, either express or implied, for failure to issue an act (Greece) or by submitting a request for the adoption of an act (Estonia). The examples mentioned illustrate the diversity of specialised bodies. Additionally, differences were found in the structure of the bodies responsible for conducting court proceedings against the

⁵² Berthier, L., *Regards européens sur l'idée qualité des décisions de la justice administrative*, Paris, RFDA, 2008.

administration.⁵³ However, this is not the only method of determination suitable for conducting a comparative analysis of an administrative act in Europe.

In the first place, an administrative act sometimes has a textual comprehensive definition. The example of Malta is convenient because it is one of the few countries that do not have specialization in dispute proceedings, and the administrative act is defined in Section 469A of the Organization and Civil Procedure Act,⁵⁴ which refers to judicial reviews which states that the term "administrative act" includes "any order, authorization, permission, order, decision or rejection of any application submitted by the applicant" but does not cover measures 'adopted for the organisation of the internal administration of that authority'.

Some guidance on the general definition of an administrative act can also be found in countries where there is a special dispute resolution regime, so the Netherlands sees a solution as ".⁵⁵

Furthermore, a number of legislative or constitutional texts which lay down the organisation of administrative courts, judicial proceedings or the organisation of public administration may indirectly contain elements that contribute to the definition of a concept, by containing, for example, a classification of administrative acts covering that concept.

However, these textual definitions are sometimes incomplete, abbreviated or simply non-existent, making it necessary to explore the dominant criteria for definition in judicial proceedings intended for an administrative act. It is understood that these two research methods of the components of the concept of an administrative act – the textual basis or the approach through dispute – certainly do not aim to exclude one another, but on the contrary, to complement each other.

In various European countries, we regularly find features characteristic of an administrative act, which together form a relatively homogeneous definition of the term. However, at the same time, the fate of a specific dispute for some of those acts remain uncertain, in the sense that responding to the general definition given

⁵³ More on this in Britvić Vetma, B., *op. cit.*, pp.397-406.

⁵⁴ Code of Organization and Civil Procedure, <https://legislation.mt/eli/cap/12/eng/pdf>, 31 March, 2025.

⁵⁵ See Art. 1.3. General Administrative Law Act., https://www.acm.nl/sites/default/files/old_publication/publicaties/15446_dutch-general-administrative-law-act.pdf, 04 April, 2025.

earlier, it is established that they are in fact excluded from the specific mechanisms related to administrative justice. Such an assertion could lead us to think that an administrative act knows its wider or narrower limits depending on the judicial system that regulates it, but then we would privilege an approach to the concept that results from excessive systematization.

3.1. Common elements of an administrative act in Europe

By relyin on textual and disputed indicators, structural elements common to all European countries can be identified and reveal a general unity in the understanding of the administrative act.d.

3.1.1. The importance and lack of a core benchmark

It is not surprising that the categorisation of an administrative act is determined primarily in accordance with the basic definition. An administrative act is, firstly, an act issued by a body governed by public law, which in most European countries has largely similar definition, but which in many respects is too ambiguous and therefore insufficient to confirm the administrative nature of the act, although being one of the decisive indicators.

In its most obvious meaning, the concept of a body governed by public law refers to public bodies that have administrative powers. Executive authorities, decentralized local governments and public institutions certainly fall under the realm of administrative authorities, although this description does not apply to legislative or judicial bodies. With regard to this question, the Austrian Federal Constitutional Law places particular emphasis on implementation of the formal separation between the administration and the courts,⁵⁶ and the bodies with jurisdiction may benefit from guarantees of independence and permanence. On the other hand, a body governed by public law is composed of bodies subject to instructions from several persons hierarchically appointed, which is the criterion providing an answer. At the same time, this framework leaves open certain questions related to the increasingly frequent actions of independent administrative bodies (regulatory agencies).

⁵⁶ See Art. 20 1 and 94. Federal Constitutional Law, https://constitutionnet.org/sites/default/files/Austria%20_FULL_%20Constitution.pdf, 28 March, 2025.

Concerning the participation of "private institutions" in the exercise of public service, this phenomenon has been observed in almost all European countries, clearly indicating a growing relaxation of the basic benchmark. Administrative power is understood as something encompassing both private persons and institutions that exercise the privileges of public authority in order to serve general interest. In this sense, the interference of private persons in activities that logically fall within the domain of bodies governed by public law, in all European countries, remains tied to the requirement of dependence on the administration. Moreover, the indirect attribution of an administrative act to a body governed by public law remains one of its essential definitional elements. However, this possibility that administrative acts may be issued by a body governed by public law emphasizes widely recognized importance of combining both the basic criterion and the substantive definition in identifying such acts.

3.1.2. Homogeneous material approach

If, in defining the concept of an administrative act, we begin with the assumption that a legal person performing public service tasks, in the material sense, falls under administrative authorities, then it is possible for public law bodies to issue certain acts on behalf of "private management" and without exercising privileges arising from public authority.

Under this assumption, the principle that such acts cannot be regarded as administrative acts is upheld in most European countries. In these cases, the body governed by public law operates as a private person and is therefore treated as such, meaning that the acts that it issues cannot use specific dispute resolution mechanisms. The administrative act is then characterised by features that allow us to distinguish it from other unilateral acts issued by the administration.

The second material element, in fact, must accompany the original one. It is very often found in court decisions, and yet it is very well-established principle – an administrative act is an act that affects the legal regulation and that refers to the rights and obligations of citizens and creates a certain legal effect in relation to them.⁵⁷

Between administrative acts and administrative acts, it is precisely the situation with the effects that the act can create on the legal situation of the parties.⁵⁸ Likewise, for example, Italy clearly points out that a distinction must be made

⁵⁷ Devolvé, P., *L'acte administratif*, Paris, Sirey, 1983, p.20.

⁵⁸ *Ibidem*, p.11.

between 'declarative' acts, which merely confirm *de facto* and *de jure* situations, and constituent acts which have legal consequences effects vis-à-vis third parties and thus avoid a dispute which is subject to ordinary courts.⁵⁹ In the same vein, a number of classifications of administrative acts propose to distinguish between 'internal acts' and 'external acts', and the administrative act should refer to the latter category. The term "internal act" designates, primarily, measures that serve to prepare an administrative act, but also⁶⁰ refer to the internal organization of the administration,⁶¹ that do not have any legal effect on citizens.

At the core of the administrative activity, the administrative act when defined in this way calls for the application of dispute resolution mechanisms characteristic of administrative justice.

However, this is where the equivalence ends and some particularities are revealed, i.e. measures that correspond to these general characteristics do not recognize special court proceedings. In practice, different European countries have adopted, different solutions to disputes, sometimes intended for general acts and so-called "governmental" acts, however it is not necessary to draw excessive conclusions from these differentiations with regarding the concept of an administrative act.

3.2. Unity of the concept compared to the variety of solutions in the dispute

Some acts are sometimes covered by a special approach to litigation, the impact of which should not, however, lead to a challenge to the one-size-fits-all assessment of the concept presented so far.

3.2.1. Different jurisdictions

Differential treatment of general acts in some European countries requires little attention and should not be overemphasized. In Europe, a general act is an impersonal measure of general scope issued by executive bodies⁶² and certainly

⁵⁹ Giovannnini Colombini, C. et al., *Le contrôle des décisions administratives en Italie*, Actualité Juridique Droit Administratif, No. 9, 1999, p 671.

⁶⁰ If we accept that almost half of these preparatory measures can be directly covered by the request to initiate proceedings, Hungary seems to be an exception here.

⁶¹ The concept of circular also exists in the Netherlands, V. art. 1.3. General Administrative Law Act. Art. Article 8.2 of the same law states that this type of act is not sensitive to legal remedies.

⁶² We will not consider here exceptional assumptions in which the regulatory power is empowered to independently enforce or amend existing laws on the basis of legislative

falls into the general definition of an administrative act, i.e. an administrative act in Croatian administrative law, and as such it seems that *a priori* it is subject to the same dispute resolution regime as other administrative acts, in particular, the one applicable to individual decisions. Also, it is necessary to recall that general legal acts, i.e. general legal norms, are abstract and general norms, and in theory they are considered law in the material sense. It is a legal regulation with the characteristics of an abstract and general setting of rules of conduct. An abstract rule of conduct implies vagueness and uncertainty, while generality means that such a legal regulation applies to everyone, both natural and legal persons.⁶³

Although in many European countries⁶⁴ these two types of acts are subject to the jurisdiction of administrative justice, this view is not shared by all countries. Namely, in Germany, Austria, the Netherlands, Poland, Slovenia and Sweden, countries with specialised administrative courts, they the control of a general act is not entrusted to an administrative judge, and thus they cannot be challenged before him. We cannot in any way draw the conclusion that these are indeed the aforementioned acts solely on the basis of the indirect attribution of an administrative act or a general act to a body governed by public law, although it is an essential element in their definition. However, the possibility of administrative acts and general acts to be issued by a body governed by public law emphasizes the importance of combining the basic criterion and the substantive definition, which is unanimously recognized today. In this sense, it is quite possible that public law bodies issue certain acts and then do not show the exercise of any privilege of public authority.

This distinction, referring to a general act, finds an explanation in the general scope and impersonality that this act has. Such a peculiarity actually distances it from an

powers limited in time and scope. The general act here is primarily taken as an executive legal norm.

⁶³ Ivančević, V., *op. cit.*, p. 31. By analyzing the practice of the High Administrative Court of the Republic of Croatia through rejected applications (for the assessment of the legality of general acts), one comes to the criteria that an act must meet in order to be a general act. These are: the author of the act, the lack of jurisdiction of the Constitutional Court of the Republic of Croatia for the assessment of legality, the content of the act, its entry into force and public announcement. Therefore, a general act is an act enacted by an authorized issuer, which has the content prescribed by law and independently regulates the matter, has been publicly published and has entered into force, and is not within the jurisdiction of the Constitutional Court of the Republic of Croatia. The absence of any of these characteristics leads to the lack of jurisdiction of the High Administrative Court of the Republic of Croatia and, consequently, its rejection of the request for review of the legality of the act.

⁶⁴ Such as France, Belgium, Italy or Great Britain.

individual administrative act and, due to its influence, brings it closer to the law,⁶⁵ which entails certain consequences in the system of administrative disputes where the basic subjectivization of administrative legal protection has been established.⁶⁶ The presumption can be found in Germany, a country where court proceedings before the administrative court are modeled on civil proceedings and are aimed at initiating proceedings between two parties.⁶⁷ Firstly, the situation where the citizens are opposite the administration should be defended. In this sense, in order to be in an equal position, the claimant needs to point out the violation of subjective public law in order to initiate a dispute before an administrative judge, which brings us back to the prohibition of challenging a general (administrative) act.

A discrepancy has been identified between the States that defend the relatively narrow concept of the procedure, in which the claimant must obligatorily demonstrate an interest that protects one of his subjective rights for his claim to be admissible. Some other countries, France or Belgium, have an objective and therefore broader definition of the procedure by which it is easy to assess the interest that motivates the applicant to act. Depending on the case, the administrative judiciary will thus be able to have jurisdiction directly over general acts or this supervision will "slip away" in favor of the Constitutional Court.⁶⁸

Regarding other States, they do not provide any specific approach with regard to those acts. That is the situation in Ireland, the Netherlands, the Czech Republic, Slovenia, Sweden, Germany,⁶⁹ Belgium⁷⁰ and, finally, Spain, a country in which

⁶⁵ In France, this position was defended by Léon Duguit, who is committed to the substantive classification of legal acts and who proposed to distinguish between "acts-rules", acts that aim to create general and impersonal legal situations, and subjective acts that in turn have the purpose of creating, modifying or annulling relationships or individual and subjective legal situations. Such a distinction enabled that author to approximate laws and general acts under the name of "acts-rules", and in this way he deprived the general act of the nature of an administrative act and in the material sense equated it with the law. See Duguit, L., *Treaty on Constitutional Law*, 3rd ed., Paris, Boccard, 1921, p.327.

⁶⁶ Rainer, A., *Le contrôle juridictionnel des décisions administratives en Allemagne*, *Actualité Juridique Droit Administratif*, No. 9, 1999, p. 658 .

⁶⁷ Fromont, M., *Droit administratif des États européens*, Paris, PUF, 2006, p.177.

⁶⁸ Fromont, M., *op. cit.*, p.157.

⁶⁹ Art. 20th century 3 of the Basic German Law actually subjects to the law and the Constitution everything that the executive power enacts, i.e. no act can escape judicial control. See Basic Law for the Federal Republic of Germany https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html, 28 March, 2025,.

⁷⁰ The Belgian Council of State has accepted jurisdiction over disputes concerning the annulment of an act brought against the royal decision appointing the provincial governor. Council of State of Belgium, *Vender oren c/ Etat Belge*, No 107561 of 10 June 2002

immunity from jurisdiction for certain acts was in force for a long time, before that specificity was abolished under the influence of the Law of 13 July 1998 defining the jurisdiction of an administrative judge when it comes to reviewing a number of elements relating to government acts.

Determining the gap maintained by such a theory about respect for the rule of law remains a recurring issue today, given that the compatibility of such a limitation of judicial review is often questioned with Art. 13 of the European Convention for the Protection of Human Rights,⁷¹ which stipulates that everyone whose rights and freedoms are recognized in this Convention has the right to effective legal remedies before domestic state authorities, even when the violation was committed by persons acting in an official capacity.⁷²

From this perspective, the categorization of these measures raises certain questions, i.e. it is permissible to ask whether these are administrative acts even when the administrative judiciary is not competent for them. In the context of that presumption, that title is often denied to them, while, on the other hand, that title does not give rise to any difficulties in States that do not have any distinction in that regard. However, such an approach betrays an overly mathematical view of the connection that unites the concept of an administrative act and administrative justice. Admittedly, the fact that an administrative act is generally subject to specific dispute resolution mechanisms makes it easier to determine it. However, controversial considerations surrounding it fail to preserve its own purpose, which can distort the concept.⁷³

4. CONCLUSION

It is recommended not to exaggerate the consequences arising from the disputed distinction between general and individual acts that we have observed in some countries. It is indisputable that even in countries where the classification of an administrative act is not contested, a general (administrative) act, due to its general scope, receives special treatment, particularly with respect to its form of

⁷¹ The Act on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 1, 4, 6, 7, and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette – International Treaties, No. 18/97 ('the ECHR').

⁷² Flauss, J.F., *Le droit à un recours effectif – L'article 13 de la Convention européenne des droits de l'homme*, RUDH, Vol. 3, No. 7-9, 1991, p. 331.

⁷³ Devolvé, P., *op. cit.*, p.20.

publication the procedure of its withdrawal and repeal, its interpretation, and the assessment of its legality.

Although these two views cannot be entirely separated, the considerations relating to the legal regime of a general act, stems from its specific scope and not to its nature as an administrative act, the same observation could be made with regard to the dispute settlement regime of those acts. The refusal of a direct remedy against general acts can be understood depending on a specific conception aimed at the individual protection of the rights of citizens, and not at the objective control of the administration.

In this sense, the impact of an individual administrative act looks like it is being assessed in relation to legal acts issued by private individuals,⁷⁴ because the effect of an individual act on the rights and obligations of an individual is considered a priority. Such an approach requires the applicant to demonstrate an infringement of one of his or her subjective rights for the appeal to be upheld, which seems difficult to demonstrate in the case of an act having *erga omnes scope*. In that regard, it may be considered that it is not only the direct challenge of a general act that compels the administrative judge to decline jurisdiction to adjudicate on the matter, but that the presumption lacks a sufficient interest of the applicant to act. The solution is, of course, linked to the act, but only in terms of its general scope, which is subject to restrictive conditions relating accessing a court. It may be considered that the disputed justification seeking the exclusion of a general act from the jurisdiction of administrative justice focuses primarily on the question of the interest which prompts the applicant to act, and not on the nature of the act itself.

Furthermore, the comparative approach allows us to establish the profound unity of the concept of an administrative act and to ask ourselves about the scope of the numerous controversial specificities that it can permeate and that can practice real limits. This "shift" between the concept and the case law may seem unusual to the general public, which is inclined to believe that the administrative judge has long since defined the boundaries of an administrative act. However, the main value of the comparative approach lies in the fact that, by questioning other legal systems,

⁷⁴ As Bertrand Seiller points out, private law does not entirely preclude proceedings under a unilateral act which often operates within private law groups (such as wills, recognition of an illegitimate child, revocation of a power of attorney, denunciation of a tenant, etc.). Melleray, B., ed., *L'exorbitance du droit administratif en question(s)*, Paris, LGDJ, 1999, p.107.

we reassess our own legal certainties and move beyond purely experiential conception of the administrative act.

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