



Door 2

## GENERAL THEORY OF UNILATERAL ADMINISTRATIVE ACT

The power of unilateral action is presented as the property of administrative action. If this power is a privilege of the administration, it does not mean that it can not be found in the private reports.

Georges DUPUIS stressed the idea that private law didn't disregard the unilateral act. However, this is not true. In private law, for example, decisions are made by parents towards their children in the context of family relations. Parents may unilaterally decide to change the legal status of children. It must be borne in mind that there is confusion between an administrative act and a unilateral act, but this is not necessarily the privilege of public law alone.

In order to improve the acceptance of decisions taken, in the interest of effective public action, there is an increasing tendency to seek the consent of the recipients through consultations, concertations, etc.

From a terminological point of view, the term "enforceable decision" should be clarified. Maurice HAURIOU considers that the administrative act and the enforceable decision are confused; moreover, *Conseil d'Etat* deteriorated by this term. In practice this is false.

### THE IDENTIFICATION OF UNILATERAL ADMINISTRATIVE ACT

The administrative act is the power of the administration to impose rights and obligations on subjects of law without their consent.

The unilateral act is a manifestation of will which can also maintain the legal order. For example, a person applying for a building permit and seeing him refuse is maintained in the legal situation that was his prior to the application.

This can also be a decision confirming an earlier standard, which doesn't alter the legal scheduling. The judge controls only acts which modify the legal order, the acts adversely affecting him.

There is no single criterion for isolating the unilateral administrative act. It is then necessary to examine an organic criterion (author of the act), a formal criterion (presentation of the act), and material criterion (implementation of an administrative power). In assessing the material criterion, we must examine public authority and public service criterion.

### THE CHARACTERISTICS OF UNILATERAL ADMINISTRATIVE ACT

The unilateral administrative act may be characterized by its author, its content or its form:

#### A- THE AUTHOR OF THE ACT

In principle the author of the administrative act is a public person but in a certain number of cases it can be a private person.

**1- Public persons:** If in principle the author of an administrative act is a public person for all the acts of all the public persons are not administrative acts. Thus, *Conseil d'Etat* excluded from the category "administrative act", legislative acts and judicial acts. Moreover, certain acts

of administrative authorities are not considered as an administrative act by the judge. These are acts of government and acts of private management.

**2- Private persons:** The situation here is exactly the opposite. Exceptionally their actions may be administrative. In the first instance, *Conseil d'Etat* recognized that persons who were neither public nor private could issue administrative acts insofar as they were entrusted with a public service mission. Subsequently, *Conseil d'Etat* admitted that the act of a private person carrying out a public service mission involving the prerogatives of a public authority is an administrative act. Finally, the act of a private person managing a public service of an industrial and commercial nature is an administrative act if it relates to the organization of the service (*CE 15 janvier 1968, époux Barbier*).

## B- THE CONTENT OF THE ACT

In principle, the administrative act is normative, but these standards can be general or individual.

**1- Regulatory acts:** Some acts are general and impersonal: they are regulatory acts. These acts specify, for example, the organization of services or set the statutory rules of a public function body. Since these rules are general and impersonal, the regulatory act has a multitude of unspecified recipients which may be the whole of the administered or only a category of them.

**2- Individual acts:** On the contrary, individual acts are addressed only to persons named by name. Whether it is one person or several. The typical example is the act of appointing an official, but it can also be an act granting an authorization or refusing it to that person.

## C- THE FORM OF THE ACT

The unilateral administrative act is characterized by its general form and by that of its various elements.

**1. Explicit and implicit decisions:** **Explicit** decisions are the most common acts, they express in writing the will of their author. This is the case of decrees, ministerial decrees or not, in short all formal acts, that is to say almost all the acts of the administration. Conversely, the administration's silence for two months amounts to an implicit decision of rejection. But, some implicit decisions can also have a positive effect which means accepting an application. This is the case for building permits.

**2. The elements of the act:** Administrative acts contain certain elements which play an important role: **the visas** (the texts by virtue of which the act is taken) and the reasons (the facts which justify the decision).

### THE LEGAL REGIME OF THE UNILATERAL ACT

Specific conditions are in place for its elaboration, entry into force, execution and disappearance in order to make it lawful.

#### A-ELABORATION

The author of the act; the administrative authority which draws up an act must also be responsible for its disappearance and modifications.

The person responsible for the act must impose his signature, he must be competent. Three cases of **incompetence** should be noted:

- **Rationae Materiae:** where an administration intervenes in a matter which doesn't concern it.
- **Rationae Loci:** where the administration deals with matters not covered by its territory.
- **Rationae Temporis:** when the authority took a decision when it was not yet competent.

\*\* **The limits:** Substitution or acting allows another authority to compensate for the absence or incapacity of the competent authority (the latter is not always in a position to exercise the act). Indeed, one authority may substitute for another.

Finally, a system of powers delegation is also possible if it is authorized by a text:

- Delegation of authority (legal transfer of competence);
- Delegation of signature (the delegate retains his attributions).

#### \* **The formalism of the act**

there are many formalities of the act; we are going to mention them as follow:

1. **The obligation to state reasons:** all decisions must have grounds, that is to say, the reasons for the facts and the rights of its elaboration, acts must now be motivated by adverse individual decisions and administrative decisions which derogate from regulations and laws.
2. **The respect for the adversarial process:** the addressee must be able to present his observations. In public function, the officer must be able to defend himself and must be informed. The citizens may be heard at their request by an official.
3. **Preliminary proceedings:** acts which can only be enacted after having followed a procedure (prior opinion of an advisory body or joint administrative committee). This procedure may remove some decision-making power because the authority must comply with the notice if it is mandatory (advisory opinions also exist).

#### B-ENTRY INTO FORCE

Unilateral acts enter to force generally after they must be a subject of notification, we are going to mention the deferent categories of acts and when they enter to force as follow:

- 1- **Regulatory acts:** These acts must have been publicized (decrees published in the official gazette ...).
- 2- **non-regulatory acts:** Individual acts shall be enforceable against their addressees only after they have been notified in a nominative manner to the latter. Notifications and publications are necessary to define the starting point for the appeal period in disputes.

#### C-EXECUTION/DISAPPEARANCE

We are going to see first the execution then the disappearance, as follow:

- 1- **The execution:** These acts are the subject of a presumption of legality. The recipients of the acts are supposed to obey these acts: it is the privilege of the public power of these acts or says "the prerogative privilege".

Therefore, recourse to the judge, at the request of the citizen, has important consequences; in effect this appeal has suspensory effect, except in exceptional cases.

The administration may also have the "enforcement" procedure if the addressee refuses to execute it. Possible procedure if provided by law, in case of emergency or impossibility of applying standard sanctions.

- 2- **The disappearance:** Their disappearance has effect only for the future or can put an end to the existence of the acts for the past of retroactively.

- **Repeal:** does not revoke the legal effects it may have had. For regulatory acts their abrogation is possible and even mandatory in certain cases. For individual acts which do not create rights: idem. For those creating rights, the release of force for the future is impossible.

- **Withdrawal:** the decision is deemed never to have existed. For non-creative acts, for individual decisions: withdrawal at any time. The regulations, withdrawn only for excess of power can only be abrogated. Acts creating a right: may only be withdrawn within the time limit for appeal. This is to protect the rights of the recipients of the act.

If the substantive conditions of an act have disappeared, *Conseil d'Etat* has recognized that the repeal of the act is mandatory.

#### ⊕ QUESTIONS:

- TRANSLATE THE UNDERLINED TERMS INTO ARABIC.
- GIVE AN ABSTRACT (IN ARABIC) TO THE TOPIC.