ON THE RECOGNITION OF FOREIGN ADMINISTRATIVE ACTS IN GREECE

ALEXANDRA E. DOUGA*

1. THE CONCEPT OF ADMINISTRATIVE ACT AND ITS CLASSIFICATION AS "FOREIGN"

a. The concept of Greek administrative acts

Under Greek law administrative procedure encompasses all actions of the administrative organs or individuals, which are necessary for an administrative act to be issued. Article 26 of the Greek Constitution[1] incorporates the doctrine of separation of powers. State authority is divided into the three traditional powers: *(a)* the legislative power, which is exercised by the Parliament, *(b)* the executive power, which is exercised by the President of the Republic and mainly the Government, and *(c)* the judicial power, which is exercised by the courts. Administrative organs are state organs which exercise public power and do not belong to the legislative or judicial power. According to the Greek Constitution administrative organs are the President of the Republic, the Government, the Prime Minister, the ministers and the deputy ministers; all other organs in hierarchical relation with or under the administrative supervision of the above-mentioned organs, directly referred in the Constitution, are also administrative organs.

* Research Associate, Hellenic Institute of International and Foreign Law; Attorney at Law, Athens Bar Association.

[1] The current Constitution came into force on 11 June 1975 and established Greece as a presidential parliamentary republic. It was revised in 1986 and 2001.

The Administrative Procedure Code[2], which regulates most of the issues relating to the issuance process and the validity of administrative acts, does not contain a definition of the term. Nevertheless, the administrative act is the most prominent and frequently used form of action to regulate single, individual cases, deriving from the very important competence of the State to take unilateral decisions, imposing obligations upon its addressees without any consent from them to be required. However, the term does not only include decisions by an administrative authority addressed to a particular individual, but also statutory instruments or by-laws addressed to an uncertain number of individuals, containing legal rules[3]. More precisely, according to *Professor Spiliotopoulos*, a legal act is the act of any organ which produces a regulation that alters the legal status either of the persons to whom the act is addressed or of the organ itself[4]. In the specific field of administrative law, administrative acts are considered those issued by the central or local government, or other self-governing authority[5] which establish unilaterally legal norms. A wide definition of the term could cover every unilateral and precise decision of an administrative authority and delimit the administrative act from consensual, *i.e.* contractual activities. Thus, basic elements of the concept of administrative act are the unilateral establishment of a legal norm and its issuing by an administrative authority.

One of the main divisions of administrative acts is between regulatory, by which impersonal legal norms are established, and individual, by which individual norms are introduced. In both cases, the norms established may be of general or special character. A distinction should also be made between administrative acts and acts of state, *i.e.* acts of the Government which define and direct the country's general policy and are of guiding character, lacking direct enforceability. The decisions taken in this respect, although coming from a State authority, do not seem to have the nature of an administrative act.

---

[2] Administrative Procedure Code (*Κώδικας Διοικητικής Διαδικασίας – Kodikas Diikitikis Diadikasias*), law 2690/1999 (Government Gazette no A 45/1999), as amended.

[3] P. Dagtoglou, Constitutional and Administrative Law *in* K. Kerameus & Ph. Kozyris (eds), *Introduction to Greek Law* (3rd edn, The Netherlands 2007) 23-64, 50.

[4] E. Spiliotopoulos, *Greek administrative law* (Athens/Brussels 2004) 5.

[5] Council of State applies organic rather than functional criteria in the assessment of administrative acts.

b. Enforceability of Greek administrative acts

The main characteristics of administrative acts are presumption of legality and enforceability. Presumption of legality permits to every individual administrative act to produce all its legal effects regardless of possible legal defects, until its annulment, revocation or abolishment. The presumption of legality stems from the public character of the administrative organs and their unilateral competence to establish legal norms, *i.e.* to exercise public authority[6]. The principle of presumption of legality does not fully apply to regulatory acts. As long as such an act is in force, its legality and validity can always be incidentally reviewed by courts, even when remedies against it are no longer available.

Regulations introduced by administrative acts are mandatory with no need of further formalities; therefore administrative acts are immediately and directly enforceable with no requirement of former procedure or prior judicial decision: they automatically produce effects in the legal order[7]. Enforceability is the consequence of the unilateral establishment of legal norms. In order to secure enforceability, sanctions are threatened in case of no compliance. Such sanctions are established by general or special provisions and can be of penal, disciplinary, administrative or civil character. Furthermore, individual administrative acts imposing pecuniary obligations on their addressees are enforceable instruments *per se* without the issuing of a writ of execution. Thus, enforcement measures against the property of the debtor in accordance with general or special procedural rules can be immediately taken.

The direct enforceability of administrative acts has a further consequence: the exercise of administrative coercion. Administrative organs enjoy the competence to resort to unilateral material actions in order to make individuals comply with the content of an administrative act. Administrative coercion, as a last resort measure, must be exercised only in case of refusal or failure of the addressee to conform and only if this is allowed by specific legal provisions and there is an urgent need for the execution of the act. The illegal exercise of administrative coercion creates a right to damages for the prejudiced addressee and may even lead to the criminal liability of the civil servant who performed the action of coercion.

---

[6] A. Tachos, *Greek administrative law* (*Ελληνικό Διοικητικό Δίκαιο – Elliniko Diikitiko Dikaio*) (9th edn, Athens/Thessaloniki 2008) 642 [in Greek].

[7] Cf Art. 30 ACP according to which "[w]hen the term "administrative act' is mentioned in the Code, it means the enforceable administrative act".

The suspension of enforcement of an administrative act, when an application for annulment or other recourses against it have been filed, is not mandatory but it lies within the discretionary power of the court.

c. Effectiveness of Greek administrative acts

The requirements that an administrative act must fulfil in order to be effective are mainly provided by the Administrative Procedure Code (hereinafter APC). According to Article 16 APC, administrative acts shall be issued in written form and only in exceptional cases can they be verbal. The document of an administrative act shall indicate the issuing authority and the issuance date and contain the signature of the competent administrative organ. There shall also be mentioned whether the administrative act can be challenged by a special or quasi-judicial administrative appeal and, if so, the scrutinising authority, the deadline and the consequences if the interested party fails to file such appeal. The reasoning of administrative acts[8] shall be clear, specific and adequate and in principle able to be concluded by the data contained in the file of the particular case, unless other provisions explicitly require that it be included in the document of the administrative act[9]. Promulgation of regulatory administrative acts shall be effected by their publication in the Government Gazette, unless otherwise provided. By contrast, the promulgation of individual administrative acts is effected in principle by their signing and dating. It is provided, however, that they shall be notified to the interested party. Article 20 governs issues concerning the prior submission of opinions and proposals by administrative organs other than the issuing one, when this is required for the promulgation of administrative acts[10].

Formal force of administrative acts begins as of their issuance, regardless of whether they are regulatory or individual. The acts which require notification commence from their service to the addressee.

---

[8] Regulatory administrative acts do not need reasoning, unless this is explicitly required by the delegating statutory provision. See E. Spiliotopoulos, *Handbook of Administrative Law 1* (*Εγχειρίδιο Διοικητικού Δικαίου – Encheiridio Diikitikou Dikaiou*) (14th edn, Athens 2011) 175 [in Greek], with reference to case-law.

[9] Art. 17 APC.

[10] V. Koumpli, On the Codification of Administrative Procedure in Greece, *RHDI* 2012, 511-530.

d. Differentiation of nationals from foreign administrative acts

As already mentioned above, from the standpoint of Greek doctrine and jurisprudence an administrative act is the declaration of will of an administrative authority by which a legal norm is unilaterally established. The administrative act can only be an act of a public organ, since only public organs have the power to unilaterally introduce legal norms. Public power is exercised through administrative acts by the administrative organs which form the executive power[11]. Furthermore, according to the principle of territoriality applying to the exercise of sovereign power of the State, Greek laws can create competences and delegate them only to Greek administrative authorities, and not to foreign authorities or organs[12]. Thus national administrative acts are those issued by Greek administrative organs, this definition also complying with the organic criterion adopted by the Council of State[13]. The organic criterion is also directly provided by the Administrative Procedural Code which states that its provisions apply to the state and the local government as well as to legal entities governed by public law, excluding from its scope legal entities that belong to the public sector but are governed by private law. In contrast, foreign administrative act is the one issued by an administrative authority of a foreign state. Of course, the concept of administrative authority will be assessed according to the law of the issuing State. If in the issuing State functional criteria are used in order to define administrative organs, then the same criteria must be followed by the national legal system. The relationships of administrative organs, when they belong to two or more states, are examined in the framework of international administrative law.

The main consequence of defining an administrative act as foreign relates to its enforceability. As already mentioned above (under 1b), one of the main characteristics of Greek administrative act is that they are immediately enforceable, with no need of any kind of prior authorisation. By contrast, foreign administrative acts are not directly enforceable in Greece but must first be recognised through regulatory or administrative acts. By contrast, the administrative act of a member-state of the European Union

---

11 Spiliotopoulos, *supra* note 4, 75.

12 Tachos, *supra* note 6, 185 with relevant jurisprudence.

13 Cf. P. Lazaratos, *The transnational administrative act in European administrative law* (*Η διακρατική διοικητική πράξη στο ευρωπαϊκό διοικητικό δίκαιο – I diakratiki diikitiki praxis to europaiko kinotiko dikaio*) (Athens-Komotini 2004) 102 [in Greek].

is in principle binding for the administrative and judicial authorities of the other member-states without prior recognition. This recognition is deemed to have already been effected either directly, through European Union rules, either indirectly, by the harmonisation of Greek legislation to the European Union law. These latter acts are characterised as transnational administrative acts[14].

International administrative acts, by contrast to national and foreign acts which are issued by the administrative authorities of a single state, are issued by international organisations in the form of international conventions. Thus administrative international law encompasses the study of international community and the relative rules, which do not pertain to a certain national order but to the international one[15]. Supranational and global administrative acts are respectively provided by supranational or global authorities, if there exist any, in the framework of their competence.

2. Procedure for the adoption of administrative acts

a. Prior hearing of the interested party

In Greece general administrative procedure for adopting administrative acts is governed by Administrative Procedural Code (hereinafter APC). Art. 6 APC, in conformity with Art. 20 § 2 of Greek Constitution, pro-

---

[14] A. Tachos, *Commentary of the Administrative Procedure Code (Law 2690/1999, as amended)* (*Ερμηνεία Κώδικα Διοικητικής Διαδικασίας – Erminia Kodika Diikitikis Diadikasias*) (3rd edn, Athens-Thessaloniki 2006) Art. 30 no. 9 [in Greek]. The theory of transnational administrative act has been mainly developed in Germany by the following authors: V. Nessler, Der transnationale Verwaltugsakt – Zur Dogmatik eines neuen Rechtsinstituts *NVwZ* 1995, 863-866; J. Becker, Der transnationale Verwaltungsakt *DVBI* 2001, 855-866; M. Ruffert, Der transnational Verwaltungsakt*, DV* 2001, 453-485. In Greece see on the same topic Lazaratos, *supra* note 13, *passim*; *idem,* Matters of judicial protection in transnational legal relationship in European administrative law (*Ζητήματα δικαστικής προστασίας σε διακρατική έννομη σχέση στο ευρωπαϊκό διοικητικό δίκαιο – Zitimata dikastikis prostasias se diakratiki ennomi shesi sto europaiko diikitiko dikaio*) (Athens 2004) *passim* [in Greek]; A. Gerontas, *The transterritorial administrative act, DD (Dioikitiki Diki - Administrative Process*) (2004) 281-305 [in Greek]; *idem, The 'Europeanisation' of National Administrative Law and Court Procedure* (*Ο «εξευρωπαϊσμός» του εθνικού διοικητικού και δικονομικού δικαίου – Ο exeuropaismos tou ethnikou diikitikou kai dikonomikou dikaiou*) (Athens-Thessaloniki 2009) 113-120 [in Greek].

[15] G. Biscottini, *L'efficacité des actes administratifs étrangers, RCADI* 1961, 634- 695, 640.

vides that before any action or measure against the rights or interests of a specific person are taken, the administrative authorities are obliged to invite the interested party to express his opinion, in writing or orally, on the relevant issues. The summons to the hearing must be in writing, stating the place, day and time of the hearing and determining the subject of the measure or the action. The invitation is notified to the interested party at least five days before the hearing date. The interested party is entitled to be informed of the relevant evidence and proceed to counter-evidence. The observance of the said procedure, as well as the consideration of the views of the interested party, should be ascertained by the reasoning of the administrative act. The adopted measure should be taken within a reasonable period of time from the date of the hearing of the interested party. If it is necessary to immediately adopt an unfavourable measure in order to prevent a risk or due to imperative public interest, it is exceptionally possible to take measures without previous hearing of the interested party. If, however, it is possible for the situation which has already been regulated to change, the administrative authority, within fifteen days, summons the interested party to express his views in accordance with the previous paragraphs. The administration may redress the situation which was created to the detriment of the individual, and may take new measures. If the said time limit elapses and no action is taken, the measure ceases to be in force *ipso jure* without any further action.

ACP does not envisage the intervention of foreign public administrations or third parties in the process of issuing an administrative act. Art. 2 ACP establishes the principle of the *ipso iure* action of the Public Administration, meaning that public authorities have both the right and the obligation to act, regardless of the filing or not of petitions by interested parties. Nevertheless, a petition of the interested party for the issuance of an administrative act is required when so stipulated by specific provisions[16]. Indeed, in some cases, according to the norms which determine the competence of the administrative authority and the process of its actions, the submission by the individual of a petition is a prerequisite for the issuing of an administrative act. The declaration of the will of the individual is not considered as an element of the administrative act but rather a condition for its issuing. The non-filing of a petition of the individual, when its submission is required, is a defect of the administrative act and a ground for revocation or annulment.

[16] Art. 3 APC.

b. Taking of evidence

ACP contains no provisions regulating the evidence procedure, apart from Art. 17, which provides that when the administrative act is issued *ex officio*, evidence is collected at the initiative of the competent organ for the issuance thereof. When the interested party requests the issuance of an administrative act, he is obliged to submit the supporting documents specified by the relevant provisions, unless such documents are already available to the administrative authority which is competent for the issuance of the act. This lack of a general regulatory frame has led to the adoption of special provisions governing specific cases and to the implementation of general principles deriving from civil and criminal procedural law, unless directly forbidden by law. Evidence refers only to facts which substantially affect the reasoning of the administrative act. In other words, the reasoning of the administrative acts, including those which impose penalties, presupposes the process of taking evidence.

The following principles govern the administrative evidence procedure: a) the principle of *ex officio* collecting of evidence, b) the principle of the direct taking of evidence by the competent organ for the issuance of the administrative act, c) the principle of freely choosing and evaluating the means of evidence, unless otherwise stipulated by law, d) the principle of equality of the means of evidence, e) the principle of information of the addressee for all administrative facts of the case, f) the principle of community of the means of evidence, when there exist many addressees involved in the case.

International taking of evidence is not contemplated by any provisions regulating evidence procedure in the administrative field, broadly speaking. As far as adopting an EU procedure for the taking of evidence in other countries, I think that it would be a helpful step towards facilitating and accelerating administrative procedures and, of course, safeguarding the rights of the individuals. It could also serve as a model, for jurisdictions like Greece, which do not posses a coherent set of provisions on the taking of evidence in the administrative sector, to adopt such national rules.

3. The service of administrative acts

a. Service in Greece

As already mentioned above (*supra*, under 1c), individual administrative acts shall be notified to the interested party. Service is not consid-

ered as a constitutive element of the administrative act: an administrative act is valid, even if service has never been dully performed. Nevertheless, time-limits for lodging appeals against individual administrative acts do not commence until valid service is effected. ACP does not contain provisions regulating service but only provides that service is made by any suitable means[17]. It is accepted that the service provisions of the Code of Civil Procedure[18] (Arts 122 et seq.) and of the Code of Administrative Courts Procedure[19] (Arts 47 et seq) also apply to the service of administrative acts, in the absence of special regulations[20]. In general, service must take place in such a way that the act reaches the interested party and that it is proved by a document drawn up by a public or other competent organ. Service can be performed whenever and wherever the addressee of the act is located by the competent for the service person. According to the Code of Civil Procedure[21] service is primarily effected by bailiffs, but it can alternatively be effected by organs of the police. The Code of Administrative Courts Procedure in Art. 48 provides that State and public law entities perform service through bailiffs or civil servants; alternatively police organs can be used. When service is effected for the court, court's clerks, bailiffs or civil servants perform the necessary actions. Nevertheless, service by post, through registered letter, e-mail or facsimile is also valid, unless the contrary is stipulated by specific provisions.

b. Service abroad

Under Greek law there are no special provisions regulating service of administrative acts abroad. Service of an administrative act in a foreign country would be necessary, when the addressee of the act has his habitual residence abroad. In general, individual administrative acts that are subject to service abroad are those, the addressees of which permanently reside in a foreign country. The requirements which apply for legal service in Greece should *mutatis mutandis* apply to the service abroad. Service needs to be complete: it must include all the features of the act as to its

---

17 Art. 19 ACP.

18 Code of Civil Procedure (*Κώδικας Πολιτικής Δικονομίας - Kodikas Politikis Dikonomias*), necessity law 44/1967, in force 16 September 1968, as repeatedly amended.

19 Code of Administrative Courts Procedure (*Κώδικας Διοικητικής Δικονομίας – Kodikas Dioikitikis Dikonomias*), law 2717/1999 (Government Gazette no A 97/1999), as amended.

20 Tachos, *supra* note 14, Art. 19 no. 1.

21 Art. 122.

substantive part as well as the reasoning and its enactment. In order for the service to be valid, documents should be translated into the language of the addressee, unless service is accepted in the original language. Service could be performed by any suitable means, including post, e-mail or fax. Nevertheless, in order to ensure performance of service and the rights of the individuals, central authorities responsible for the effectuation of service could be designated, like the ones existing in the framework of international conventions. Alternatively, provisions on service abroad of judicial documents could also relatively apply.

Service abroad of judicial documents in administrative matters is regulated by Art. 54 of the Code of Administrative Courts Procedure (hereinafter CACP). According to this Article, which could possibly apply to administrative acts as well, if the residence and work address of the person whom the service concerns, of his legal representative and of his judicial representative, is according to their declaration located abroad, service is effected through delivery to the Minister of Foreign Affairs or to an authorised civil servant, who is obliged to deliver the documents without delay to the addressee, with submission of written proof to the Court' Secretary. If the addressee has appointed an authorised service receiver (*αντίκλητος–antiklitos*)[22], the documents will be legally served to him. Translation of the documents to the language of the addressee is not necessary[23].

One could also resort to an analogous application of the provisions of the Code of Civil Procedure governing service abroad[24], of the Hague Convention on the service abroad of judicial and extrajudicial documents in civil and commercial matters of 15 November 1965[25] and of course of EU Service Regulation[26]. Greece is a signatory member of the European Convention on the Service Abroad of Documents relating to Administra-

---

[22] The appointment and the powers of the authorized service receiver are regulated by Arts 58-59 CACP.

[23] P. Marinakis (ed.), *Administrative Procedural Law* (*Διοικητικό Δικονομικό Δίκαιο – Dioikitiko Dikonomiko Dikaio*) (5th edn, Athens 2005), Commentary of Art. 54 [in Greek].

[24] According to Art. 134 CCP if the service addressee resides abroad, service is effected to the Public Prosecutor who should without delay deliver the documents to the Minister of Foreign Affairs; the Minister is responsible to forward them to the service addressee. Service according to this provision is not often since Greece has ratified the Hague Service Convention and of course since EU Service Regulation came in force (see *supra* notes 25 and 26).

[25] Greece has ratified this Convention by law 1334/1983 (Government Gazette A no. 31)

[26] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial docu-

tive Matters of 24 November 1977 but has not ratified it. Taking into consideration that in Greece service of administrative acts in general is almost unregulated, the means of service provided by the 1977 European Convention are a decisive step towards the right direction. Nevertheless, since the translation of the documents in a language that the interested party can understand is not guaranteed by the Convention, a modification rendering such a translation mandatory could be envisaged. If, however, a common regulatory framework was deemed necessary at a European level, which is quite doubtful for the time being, it would be easier for the European Union to either ratify the existing Convention, or broaden the scope of application of EU Service Regulation, rather than to introduce completely new legislation.

4. Recognition and execution of administrative acts

In Greece validity, efficacy and enforceability of foreign administrative acts are not governed by any general law and no competent authorities for recognition and execution of administrative acts in other countries, or for handling requests from other countries exist. Such lack of legislative regulation may be due to the fact that administrative acts are a pure manifestation of sovereign authority, solely serving the scopes of each establishing state, thus not generally susceptible to extraterritorial execution[27]. It should be stressed that these characteristics refer to foreign administrative acts in a strict sense and not to transnational administrative acts in the framework of a union of states, like the European Union, as we will *infra* (under 5) see. An international instrument towards this direction could be envisaged, like the ones already existing for recognition and enforcement of judicial decisions in civil matters, taking into account the particularities of administrative acts, starting from their dual character: every administrative act is at the same time a manifestation of the administrative public authority and a source of obligations for that same authority.

Provisions for recognition and enforcement of judicial decisions in civil matters at national and European level could serve as model for an international convention or for regulation at national level. Under Greek law recognition and enforcement of foreign judgments are governed by the Code of Civil Procedure. Foreign judgments may be either only recognized,

---

ments in civil or commercial matters (service of documents), and repealing Council Regulation (EC) Nº 1348/2000.

[27] Biscottini, *supra* note 15, 642.

that is given *res judicata* effect in domestic proceedings, or also rendered directly enforceable by being invested with a local *exequatur*. No reciprocity is required and recognition and enforcement take place without re-examination of the merits. Article 323 CCP enunciates five requirements for the recognition of the judgments of a foreign civil court rendered in contentious proceedings. First, the court must have had international jurisdiction according to Greek law, which is tested under the rules regulating the jurisdiction of the Greek courts themselves. Second, the judgment must have the claimed *res judicata* effect under the law of the country of origin. Third, the losing party must have been given an opportunity to defend not less favourable than that available to nationals of the country of origin. Fourth, the judgment must not be inconsistent with a Greek judgment on the same matter binding the same parties. Fifth, the judgment should not be contrary to morality and generally to Greek public policy. While recognition is often sufficient for declaratory or constitutive foreign judgments, when they order the payment of money or the doing of an act, their enforceability must also be obtained. For an *exequatur* to be obtained, it must be shown that the foreign document is judicially enforceable under the law of the country of origin and not contrary to morality or generally to Greek public policy. In addition, the recognition requirements of Art. 323 CCP must be met[28]. Greece is of course subject to Regulation 44/2001[29] which prevails *pro tanto* over any inconsistent domestic law as concerns judgments from Member States. The provisions of the Regulation are generally similar to those under Greek law except that it is not necessary that the court of rendition had international jurisdiction under the Greek rules.

The authority of judgments or orders rendered *ex parte* (voluntary or non-contentious jurisdiction) is recognized more easily: it is sufficient that the foreign court had jurisdiction under the applicable substantive law and that the decision is not contrary to morality and generally to Greek public policy. However, the court also must have chosen the applicable law consistently with the Greek conflict rules (Art. 780 CCP). Under this specific procedure foreign administrative decisions pronouncing divorce by con-

---

[28] Ph. Kozyris, Conflict of Laws, International Jurisdiction, and Recognition and Enforcement of Judgments and Awards *in* K. Kerameus/Ph. Kozyris, *Introduction to Greek Law* (3rd edn, Alphen aan den Rijn 2008) 379-408, 399-401.

[29] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

sensus or decisions regarding change of name are recognised in Greece[30]. The above mentioned criteria could be generally used in recognition and enforcement of foreign administrative acts, with the exception of applicable law. Indeed, it would be very difficult, if not impossible, for an administrative authority not to apply its national law. Furthermore, I am of the opinion that lack of international competence should be a ground for refusal of recognition only when, according to domestic legislation of the receiving state, its organs have exclusive jurisdiction to regulate the matter in question.

The general requirements for an administrative act to be effective in Greece have already been analysed *supra* under 1c. As far as form is concerned, first of all the administrative act must be in writing. By way of exception, an administrative act may be oral if it is proved that a declaration of the will of the administrative organ has really been made and that this declaration is necessary for the achievement of the objective pursued. Furthermore, tacit administrative acts are provided for by express provisions: a) tacit expression of the will of the administrative organ deriving from the elapse of a peremptory time-limit without action being taken; b) tacit refusal which is presumed from the omission of due legal action. The document of the administrative act must be dated and bear the signature of the issuing organ. In the case of collective authorities' acts, the signature of the chairman and the secretary suffice. Acts which are issued by virtue of joint competence which is exercised simultaneously must bear the signatures of all the competent organs who act jointly. If the provisions stipulate counter-signing by another organ, this is necessary for the act to exist. The text which does not have the necessary signatures does not constitute an administrative act, but only a draft of it. Furthermore, every regulatory administrative act and individual acts of general content must be published in the Government Gazette. Publication of individual administrative acts is necessary only when it is stipulated by relevant provisions. The publication of an administrative act is a necessary element of the existence of the statement of the will of the administrative organ and a constituent element of the act. In this case, without and until publication there is no administrative act, but a non-existent act[31]. An administrative decision is deemed to be authentic until its formal validity is challenged

[30] See for example One Member First Instance Court of Thessalonica 11953/2011, recognizing a decision of the Russian Civil Status Registry pronouncing divorce.

[31] Spiliotopoulos, *supra* note 4, 107-110.

before a court. Such a challenge, if successful, will negate the act's probative force and deprive it of his executory force.

The material requirements needed for a foreign administrative act to be effective in Greece are not stipulated by law. The above mentioned criteria regarding recognition of judicial decisions could serve as a model in order to set out rules for recognition of foreign administrative acts. It would be also useful to consider the reasons for adopting recognition principles favourable to this scope. Indeed, recognition is a means of avoiding situations where authorities in several states address the same legal issue. The founding idea of recognition is not to assess foreign decisions once more in the host state. Furthermore, the authorities of the issuing state have thorough knowledge of the national legal order under which the decision was issued. Finally, in many cases possible errors of the issuing authority could be addressed through appeal or other procedures in the issuing state. Thus, the main rule when assessing foreign decisions in order to recognise them would be not to refuse recognition[32].

While examining the recognition criteria under the above set framework, first of all international competence should be considered. Indeed recognition should be refused, if the issuing state lacks jurisdiction to issue such administrative act. However, there seem to be few limits to the jurisdiction of states to issue administrative acts, so maybe the only factor which makes sense in this field is refusing recognition if the host state has exclusive jurisdiction to regulate the matter in question. Such an example could be decisions on citizenship. International competence could also be of relevance regarding the international status of the entity issuing the administrative act. If that state is not recognised by the government of the host state, it could be questioned whether the decision should be recognised[33].

Public order should also be a factor to be considered in the process of recognition of foreign administrative acts. As already stated above (under 2a), under Greek law prior hearing of the interested party is provided before any action or measure against his rights or interests are taken by the administrative authorities. Thus, recognition of a foreign administrative act issued by a state, which does not in its legislation provide such rights of defence of the addresses, may be denied. Of course, it should be stressed that the range of implementation of the general rule on prior hear-

---

[32] H. Wenander, Recognition of Foreign Administrative Decisions. Balancing International Cooperation, National Self-Determination, and Individual Rights*, ZaöRV* 2011, 755-758, 773-774.

[33] Wenander, *ibid.,* 778.

ing of the interested party, as it is delineated by the case law of the Council of State, should *mutatis mutandis* apply. In addition, recognition can be refused where a foreign burdensome decision violates the fundamental rights of an individual in some respect. This could be the case if the foreign administrative procedure does not meet the procedural requirements of the European Convention on Human Rights[34].

Other factors connected to the applicable law should not constitute grounds for refusal of recognition of a foreign administrative act. Thus, an allegedly erroneous application of the domestic law of the issuing state should not lead to the denial of recognition. It is not the task of the host state to control that the legal rules of the issuing state are applied correctly. The issuing authority must be deemed to have greater knowledge of the legal system of the issuing state than the host state. Of course, when reasons of abuse of right of the administrative act are invoked or when disproportionality between penalty and infringement arises, then recognition should be refused due to public order reasons.

It should be noted that according to Art. 25 para. 1 of the Greek Constitution the rights of the human being as an individual and as a member of the society and the principle of the welfare rule of law are guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. These rights also apply to relations between private persons to which they are appropriate. Restrictions of any kind which, according to the Constitution, may be imposed upon these rights should be provided either directly by the Constitution or by law when it is provided by the Constitution, and should respect the principle of proportionality. In the field of administrative law the principle of proportionality is included in the principles of reasonable administration, that is, the sound judgment which must in general govern the administrative authorities in the exercise of their competences aiming at the service of public interest and the smooth operation of the Administration. At the same time the principle of proportionality is a factor delineating the limits of discretion of the administrative authorities, the infringement of which constitutes ground for annulment of the administrative act[35]. The principle of proportionality is also applied by the courts in cases of expropriation. Art. 17 para. 2 of the Greek Constitution provides that no one shall be deprived of his property except for public benefit which must be dully proven. Courts are examining the principle of proportionality while checking in each case

---

[34] Wenander, *ibid.,* 776.

[35] Spiliotopoulos, *supra* note 4, 351-353.

the constitutionality of the restriction of the individual right of property with concrete reference to the reasoning of the administrative act[36]. The principles deriving from this case-law could be by analogy implemented regarding foreign administrative acts imposing penalties.

The above-mentioned criteria regarding recognition could also apply to enforcement of foreign administrative acts, a procedure not regulated under Greek law. In that case, the initiative to enforce a foreign administrative decision should probably pertain to the foreign public authority: public authorities are concerned to impose decisions burdensome for the individuals such as decisions on expulsion or of claims concerning administrative levies. From the moment a foreign administrative act is recognised from the host state, enforcement procedure should be governed by the *lex fori,* and enforcement measures of the host state should be used. Of course, some implications could arise, if for example the executing state does not admit the principle of the liability of legal persons in matters of administrative penalties, which is not the case for Greece. Under these circumstances, enforcement of the foreign administrative act, in my opinion, could not be sought.

Since enforcement of foreign administrative acts is not regulated under Greek law, competent authorities for the execution of such acts do not exist. If the recognition and enforcement of foreign administrative judicial decisions on matters regarding personal status can serve as a model, then a court authority would be the most eligible one, in order to guarantee the interests of every party concerned. Of course, in the above mentioned case, civil courts have jurisdiction for recognition and enforcement under civil procedure rules, but it would be preferable in the case of foreign administrative acts the jurisdiction to be switched to administrative authorities.

To sum up, it seems that no decisive steps have been made by the Greek legislator to adapt a coherent framework for recognition and enforcement of foreign administrative acts. Since it seems that this is a common European trend, it would be maybe better some common recognition and enforcement criteria and procedures to be adopted at European level, in order to have unified solutions which would facilitate the process under question.

---

[36] K. Choromidis, *Expropriation* (*Η αναγκαστική απαλλοτρίωση – I anagkastiki apallotriosi*) (4th edn, Thessalonica 2007) 303-307 [in Greek].

5. EU's role towards the recognition and execution of foreign administrative acts

a. European transnational administrative acts

The European Union is a composite legal order founded upon a complex system of cooperation between governmental, judicial and administrative bodies aimed at reaching the objectives set out in the Treaties. European integration has among its many consequences the horizontal opening up of national legal systems. Thus, in a growing number of areas, EU law enables administrative decisions adopted by any Member State to display effects amongst any other Member States. Such acts, *i.e.* acts of one state which, according to a European secondary legal norm, produce juridical effects in one or more than one of the other Member States, called transnational European administrative acts, are common in the fields in which the EU has an exclusive or a strong competence (like customs or the internal market) but also in those in which Member States still retain an important role.

As already stressed out, traditionally only few administrative acts are issued by a state with a view to being enforced by another state. These acts, mainly related to the personal status, need to be recognised by the competent authorities of the state on which they are to be enforced, through an exequatur mechanism. Indeed, in the context of international administrative law, the principles of sovereignty and non-intervention, expressing the interest of national self-discrimination, mean that one's state's decisions lack legal effects in another state. So, for foreign administrative decisions to have legal effects in certain state, that state has to attribute such effects to them through its own legal rules. Nevertheless, the *exequatur* mechanism only permits to address the issue at a very limited pace. Of course some international conventions have been developed in order to smooth the recognition step in some fields, like the European Convention on the Service abroad of Documents relating to Administrative Matters, or to cancel the recognition step, like the European Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988[37].

Inside the European Union the situation is radically different, since European integration requires administrative transnationality, founded on administrative cooperation and on recognition duties. The principle of

[37] Greece has ratified the Convention by law 4153/2013 (Government Gazette A no. 116) on 29.5.2013, in force since 1.9.2013.

sincere cooperation expressed in Art. 4(3) of the Treaty on the European Union provides a base for solidarity between the Member States, requesting cooperation of different kinds. The principle of sincere cooperation has important implications concerning administrative cooperation. First, Member States shall rely on mutual trust in harmonised areas of law. Second, the solidarity of the Member States requires them to maintain quality in decisions with relevance to other Member States. Third, the principle of sincere cooperation entails obligations to establish direct and efficient contacts and to exchange information when needed. Moreover, certain duties to recognise foreign administrative acts derive from the founding treaties, the general principles flowing from those treaties and of course from secondary law. The most important principles in this context are the principle of equal treatment and the principle of mutual recognition[38]. Especially this last principle, based only on minimum approximation, has been considered as the key pillar of the construction of the internal market through secondary legislation. The application of the principle of mutual recognition[39], first adopted in the internal market, has been extended to the area of freedom, security and justice and in particular to judicial cooperation in criminal matters. Examples of the mutual recognition principle are Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedure between Member States 202/584/JHA[40], Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications[41] and Directive 2006/126/EC on driving licences[42]. This principle, as already stated, presupposes a high level of legal harmonisation between national legal orders and leads to authorisations with automatic transnational effects, allowing the beneficiaries to exercise a fundamental freedom outside their home country without the host administrations having to give their consent. The transnational effect is particularly incisive in the host country, which is bound to respect the measure. This country must allow the private party to carry out the activities authorised by the act. It cannot review the legitimacy or appropriateness of the act itself, nor can it demand that the private party concerned obtain a new authorisation. Of course in many areas authorisations subject

38 Wenander, *supra* note 32, 767-773.

39 On the principle of mutual recognition see quite recently M. Möstl, Preconditions and Limits of Mutual Recognition*, CML* 2010, 405-436 with extended bibliography on the subject.

40 O.J. 2002, L 190/1.

41 O.J. 2005. L 255/22

42 O.J. 2006, L 403/18.

to recognition still exist, nevertheless taking under consideration the rulings of the Court of Justice of European Union on mutual recognition. Thus, an authorisation issued in one Member State produces its effects in another Member State only if the second one allows it. This process of recognition emphasises the importance of the role of the host administrations, which in the majority of cases must ensure that the first act is adapted to their own legal system.

Based on what has been exposed until now, two models of transnational acts can be so far identified. In the first, the administrative act permits the exercise of a private activity across the whole internal market, without the host States being entitled to demand new authorisations; in the second, the host administration is allowed to exercise powers of authorisation in relation to a subject, but these they are limited by the obligation to respect the principles of proportionality, as they are not allowed to repeat the same checks or verifications carried out in the first Member State when the results of these are available to them[43].

To sum up, inside the European Union significant steps have been made, through transnational acts, towards an automatic recognition and enforcement of administrative acts[44]. Nevertheless, EU's paradigm can hardly serve as a general model of recognition and enforcement of foreign administrative acts, since a high level of integration between administrations is necessary and, of course, the very important role of the Court of Justice of European Union towards this direction cannot be disregarded.

b. Mutual recognition of financial penalties

Council Framework Decision 2005/214/JHA of 24 February 2005, amended by Council Framework Decision 2009/299/JHA of 26 February 2009, was the result of an initiative of the United Kingdom, the French Republic and the Kingdom of Sweden, extending the principle of mutual recognition to financial penalties imposed by the judicial and administrative authorities of another Member State. According to the principle of mutual recognition of decisions, the competent authorities must recognise decisions relating to financial penalties transmitted by another Member State without any further formality.

---

[43] L. de Lucia, Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts*, Review of European Administrative Law* 2012, 17-45, 21.

[44] L. de Lucia, *idem,* uses the term "inter-administrative ties".

These penalties are imposed in the case of infringements that cover actions such as participation in a criminal organisation, terrorism, trafficking in human beings, trafficking in arms, swindling, trafficking in stolen vehicles, rape, etc. The framework decision also covers financial penalties for road traffic offences. Decisions imposing a financial penalty can relate to both natural and legal persons.

The penalties must be imposed by the judicial or administrative authorities of the Member States. The decision imposing a financial penalty must be final, i.e. there is no longer any possibility to appeal the decision.

The decision imposing a financial penalty is transmitted from the issuing state, i.e. the Member State that delivered the decision, to the executing state, i.e. the Member State that executes the decision in its territory. To this effect, the framework decision provides a certificate in its annex that must accompany the decision, translated into the official language of the executing state. The decision is transmitted to the competent authorities of the Member State where the natural or legal person has property or income, is normally resident or, in the case of a legal person, has its registered seat.

The state to which the decision was transmitted can refuse to execute the decision if the certificate provided for by this framework decision is not produced, is incomplete or manifestly does not correspond to the decision. Execution can also be refused for a number of other reasons, for example if it is established that the decision has been delivered in respect of the same acts in the executing state or in any state other than the issuing or executing state and, in the latter case, has been executed, or the decision relates to an act that is neither listed as an infringement in the framework decision nor constitutes an offence under the national law of the executing state, or the execution of the decision is statute-barred according to the law of the executing state and relates to acts that fall within the jurisdiction of that state under its own law, or there is immunity under the law of the executing state, which makes it impossible to execute the decision, or the decision has been imposed on a person who could not have been held criminally liable under the law of the executing state due to his age.

The framework decision provides that the execution of the decision is governed by the law of the executing state. The latter can also decide to reduce the amount of the financial penalty in accordance with the amount provided for by national law, on condition that the acts had not been committed in the territory of the issuing state. A financial penalty imposed on a company will be enforced even if the executing state does not recognise the principle of criminal liability of legal persons. It can impose imprison-

ment or other penalties provided for by national law in the event of non-recovery of the financial penalty. Amnesty, pardon and review of sentence can be granted by both the issuing state and the executing state. Monies obtained from the enforcement of decisions will accrue to the executing state, unless otherwise agreed by the respective Member States.

Greece has not yet transposed Council Framework Decision 2005/214/JHA of 24 February 2005 to its internal legal order, although the deadline for its transposition in the Member States was 22.3.2007.

6. International conventions

a. International conventions on the recognition and execution of administrative acts

Greece has ratified the following international conventions: a) European Convention on Extradition of 13 December 1957 b) European Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988[45]. Greece has signed but not ratified the European Convention on the Academic Recognition of University Qualifications of 14 December 1959 and the European Convention on the Service abroad of Documents relating to Administrative Matters. Greece has neither signed nor ratified the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters of 15 March 1978 or the Council of Europe Convention on Access to Official Documents of 18.6.2009. Greece has also signed but not ratified the following Conventions of the International Commission on Civil Status: a) Convention on the Exemption from Legalisation of Certain Records and Documents, of 15 September 1977, and b) Convention on the International Exchange of Information relating to Civil Status of 12 September 1997.

b. Legalisation of foreign public documents

For a foreign public document to be accepted by Greek public services, its prior certification is required, according to the legalisation requirements in the given case. Certification also precedes official translation by the Ministry of Foreign Affairs' Translation Service, which task is of course to validly translate public and private documents. More specifically:

---

[45] See *supra* note 37.

1. If the foreign public document has been issued by an authority from a country that is party to the Hague Apostille Convention, it must bear the Apostille. Indeed, Greece has ratified[46] the Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents, concluded on 5 October 1961 (The Apostille Convention). The Apostille Convention facilitates the circulation of public documents executed in one State and to be produced in another State by replacing the formalities of a full legalisation process with the issuance of an Apostille. The Convention applies only to public documents. These are documents emanating from an authority or official connected with a court or tribunal of the State (including documents issued by an administrative, constitutional or ecclesiastical court or tribunal), administrative documents, notarial acts and official certificates. The main examples of public documents for which Apostilles are issued in practice include birth, marriage and death certificates, extracts from commercial registers and other registers, patents, court rulings, notarial acts etc. Apostilles may also be issued for a certified copy of a public document. On the other hand, the Convention neither applies to documents executed by diplomatic or consular agents nor to administrative documents dealing directly with commercial or customs operations. Apostilles may only be issued by a Competent Authority designated by the State from which the public document emanates. The designated competent authorities for Greece are the Prefect for all documents issued by the services of the Prefectural Administration, and the Secretary General of the Region for a) all documents issued by the public services of the County or the Prefecture, which do not fall under the competence of the Prefectural Administration, b) all documents issued by the legal entities of public law, c) all documents issued by first degree local government organisations, and d) all documents issued by the Registry Offices; responsible authority for judicial documents is the First Instance Court of the region where the issuing authority is seated. Greece does not have an electronic-Apostille procedure. The only effect of an Apostille is to certify the authenticity of the signature, the capacity in which the person signing the document has acted, and where appropriate, the identity of the seal or stamp which the document bears. The Apostille does not relate to the content of the underlying document itself.

2. If the foreign public document comes from an authority of a country that has ratified the Convention, but against which Greece has raised

---

[46] Greece has ratified the Convention by law 1497/1984 (Government Gazette A no. 188) on 27.11.1984.

objections (Albania, Georgia, Kyrgyzstan, Mongolia, Peru and Uzbekistan), the document is certified only by the Greek consular authority in the document's country of origin.

3. If the foreign public document comes from an authority of a country that is not a party to the Apostille Convention or it is expressly exempted from the field of application of the Convention (*i.e.* documents issued by Diplomatic or Consular agents, administrative documents directly concerning a commercial or customs act), it requires consular certification if it is to be accepted by Greek public services. Consular certification can be carried out by the closest Greek Consular Authority in the country of the document's origin, provided it has first been certified by the Ministry of Foreign Affairs of the country of origin. Alternatively, the foreign public document can be certified by the Greek competent certification authority, which is the Certification Department of the Service Center for Citizens and Greeks Living Abroad (KEPPA), established within the Ministry of Foreign Affairs, or alternatively the Certification Office established within the Thessalonica International Relations Service, provided that, following its certification by the Ministry of Foreign Affairs of the country of origin, it is certified by the Consular authority of that country in Greece. Documents issued by a Diplomatic or Consular Mission accredited in Greece, within the framework of their consular duties, must be certified by the above mentioned relevant Greek competent certification authorities, except in cases where the document is exempt from the certification requirement due to bilateral or multilateral contractual obligations of Greece, like the ones arising from the European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers of 7 June 1968[47].

7. Doctrinal treatment of the subject of foreign administrative acts

In Greece the subject of recognition and enforcement of foreign administrative acts has barely been dealt with. As already mentioned above, under note 14, the influence of the law of the European Union and the emergence of the transnational administrative act have been the subject of a few monographs. Their writers, *i.e.*, P. Lazaratos and A. Gerontas are professors of administrative law. Of course, concepts such as the principles

[47] Greece has ratified the Convention by law 844/1978 (Government Gazette A no. 227) on 21.12.1978.

of mutual recognition and equal treatment in the framework of European Union have explicitly been treated by professors and scholars of European Union Law. Finally, a relatively recent and in connection with the subject work is E. Bakirtzi – I. Tsifopolou, Register's Acts with a Foreign Element in Administrative and Judicial Practice (*Ληξιαρχικές πράξεις με στοιχείο αλλοδαπότητας κατά τη διοικητική και δικαστική πρακτική – Lixiarhikes praxeis me stihio allodapotitas kata ti diikitiki kai dikastiki praktiki*) (Athens-Thessalonica, 2009).