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**FUNDAMENTAL PRINCIPLES GOVERNING THE ADOPTION
OF ADMINISTRATIVE ACTS: A GUARANTEE OF THE LEGALITY
AND EFFICIENCY OF ADMINISTRATIVE ACTIVITY**

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Abstract

This article examines the fundamental principles governing the three-phase process of the administrative act – drafting, adoption/issuance, and application – from the perspective of administrative law doctrine in the Republic of Moldova and Romania. The study systematically analyses, for each phase, the principles that confer legitimacy, legality, and efficiency: legality, competence, and expediency in the drafting phase; motivation, proportionality, the right to a hearing, transparency, and equality in the adoption phase; mandatory force, communication/publication, revocability, and judicial review of legality in the application phase. The central conclusion is that compliance with these principles is not a discretionary option for the administration, but a legal obligation guaranteeing individual rights and the proper functioning of the rule of law.

Keywords: administrative act, principles of administrative law, legality, competence, proportionality, motivation, expediency, administrative procedure, judicial review.

**PRINCIPIILE FUNDAMENTALE CARE GUVERNEAZĂ ADOPTAREA ACTELOR
ADMINISTRATIVE: GARANȚIE A LEGALITĂȚII ȘI EFICIENȚEI
ACTIVITĂȚII ADMINISTRATIVE**

Abstract

Prezentul articol examinează principiile fundamentale care guvernează procesul trifazic al actului administrativ – elaborare, adoptare/emitere, aplicare – din perspectiva doctrinei juridice din Republica Moldova și România. Pornind de la funcțiile principiilor în dreptul administrativ, studiul analizează sistematic, pentru fiecare fază a actului administrativ, principiile care îi conferă legitimitate, legalitate și eficiență: legalitatea, competența și oportunitatea în faza de elaborare; motivarea, proporționalitatea, dreptul la apărare, transparența și egalitatea în faza de adoptare; obligativitatea, comunicarea/publicitatea, revocabilitatea și controlul legalității în faza de aplicare. Concluzia centrală este că respectarea acestor principii nu constituie o opțiune discreționară a administrației, ci o obligație juridică ce garantează drepturile persoanelor și buna funcționare a statului de drept.

Cuvinte-cheie: act administrativ, principii de drept administrativ, legalitate, competență, proporționalitate, motivare, oportunitate, procedură administrativă, control jurisdicțional.

Introduction. Principles of law represent, in the classical view of the general theory of law, “the general ideas, guiding postulates or directive precepts underlying the entire legal system of a country, orienting legal regulations and the application of law” [1, p.25]. They do not constitute mere theoretical recommendations, but rather ideas endowed with their own normative force, which guide, supplement, and correct the application of legal norms, conferring coherence and predictability upon the legal system.

The practical importance of principles is analyzed by professor N. Popa in two essential dimensions: on the one hand, principles “ensure the unitary construction of the legal system” [2, p.23], constituting a primary technical instrument in the legislative drafting process; on the other hand, they acquire a cognitive dimension, contributing decisively to the understanding and correct application of legal norms in concrete cases [3, p.151].

Administrative law, as a fundamental branch of public law, presents a remarkable particularity in this respect: as emphasized in legal doctrine, it lacks a unitary codification and is characterized by significant legislative dynamism. Precisely for this reason, principles occupy a particularly important place in administrative law – they ensure the continuity and coherence of the system where written norms are absent or insufficient. As highlighted in the specialized literature, “due to the mobility, multiplicity and fragmentation of legislative provisions in administrative matters, the need arose to move from the mere knowledge of legal texts to the study of principles”.

The present study aims to systematically analyze the fundamental principles governing the administrative act in the three phases of its existence: drafting, adoption/issuance, and implementation. Elements of comparative law are organically integrated into the analysis of each principle in order to reveal the convergences and particularities of the two legal systems.

Discussions and results obtained. I. Principles of Administrative Law: General Considerations. 1.1. The Concept and Functions of Principles in Administrative Law. The term principle derives from the Latin principium, meaning beginning or origin, designating, in the legal sense, a fundamental element of the legal system. In the opinion of professor Gh. Boboș, “by principle of law we understand both a foundation of the legal system and a means of coordinating legal norms around guiding ideas” [4, p.186]. Starting from this definition, principles appear not as isolated norms, but as structuring ideas that confer unity and direction upon the entire legal edifice.

The general theory of law has identified three levels of generalization of legal principles [5, p.35-51]:

1. Principles of the entire legal system – applicable to all branches of law;
2. Principles of branches of law – specific to administrative, civil, criminal law, etc.;
3. Principles of legal institutions – applicable to specific institutions such as the administrative act or administrative litigation. The principles examined in the present study belong predominantly to the second and third levels.

With regard to their functions, the principles of administrative law fulfill three essential roles. First, the law-creating function: they guide the legislator in drafting legal norms, ensuring the internal coherence of the normative system. Second, the interpretative function: in the presence of ambiguous or contradictory norms, principles provide the criterion for the correct interpretation of legislative intent. Third, the integrative function: in the case of legislative gaps – frequent in administrative law – principles allow for application by analogy and the completion of the normative system.

A distinction must be made between “principles expressly contained in a normative act and those inferred from several normative acts through generalization” [6, p.125]. This

distinction is essential in administrative law, where numerous principles — such as the revocability of administrative acts — are not explicitly codified, but are deduced from the entirety of regulations in the field. Both in the Republic of Moldova and in Romania, these principles of jurisprudential and doctrinal origin have gradually acquired the force of positive legal rules.

1.2. Categories of Principles Applicable to the Administrative Act. The analysis of the principles governing the administrative act requires a systematic classification intended to reveal their diversity and complementarity. Based on the criterion of their legal nature, doctrine distinguishes three major categories:

Substantiale principles — concern the content of the administrative act and the substantive conditions of its validity. This category includes: the principle of legality, the principle of proportionality, the principle of equality and non-discrimination, and the principle of good faith. These principles determine what an administrative act may or may not contain, establishing the substantive limits of administrative discretionary power [7, p.9].

Procedural principles — concern the manner in which the administrative act is drafted and adopted. This category includes: the principle of competence, the principle of reasoning, the principle of the right to defense, and the principle of transparency. These principles determine how the administration must act, regardless of the content of the act it intends to issue [8, p.87].

Principles of efficiency — concern the results of administrative activity, ensuring that issued acts are not only lawful but also capable of producing the intended effects in the public interest. This category includes: the principle of expediency, the principle of efficiency, and the principle of effectiveness. The particularity of these principles lies in the fact that they are not subject to judicial review of legality, but rather form the object of internal administrative control [9, p.151-154].

This tripartite classification — adopted and adapted from French, German, and European doctrine — is today accepted both in the doctrine of the Republic of Moldova [10, p.134] and in Romanian doctrine and constitutes the framework of reference for the following analysis.

II. Fundamental Principles in the Phase of Drafting the Administrative Act. 2.1. The Principle of Legality: Foundation of Drafting the Administrative Act. The principle of legality represents the backbone of the entire administrative activity. It requires that every administrative act have a legal basis, comply with the normative hierarchy, and not contradict higher-ranking legal norms. As professor Maria Orlov points out, the principle of legality means that “public authorities, including administrative authorities, in their activity must be guided by the provisions of the law and may issue legal acts only in accordance with and on the basis of the law” [7, p.10].

Doctrine distinguishes two dimensions of the principle of legality in the drafting of the administrative act. The substantive dimension requires that the content of the act comply with legal provisions and superior normative acts, viewed through the prism of the trichotomous structure of the legal norm — hypothesis, disposition, and sanction. The administrative body is obliged to issue the act when the factual conditions provided by law are fulfilled and to refrain from doing so when they are absent [11, p.32-35].

The formal dimension — consecrated by Professor Antonie Iorgovan as “legality from the perspective of the authority from which the act emanates” — requires that every general or individual measure emanate from the legally competent authority. This dimension organically intersects with the principle of competence, which it foreshadows [9, p.48].

An essential characteristic of the principle of legality is the non-retroactivity of administrative acts. As a general rule, administrative acts produce effects only for the future – *ex nunc* – from the date of their entry into force. Exceptions are admitted only in cases expressly provided by law or when they are favorable to the individual [8], p.90. Non-retroactivity protects the legal certainty of the addressees of administrative acts and prevents abuse of power through regulations with retroactive effects.

Both in the Republic of Moldova and in Romania, the principle of legality is constitutionally enshrined and constitutes the basis of any administrative litigation action. The particularity of the Moldovan system, emphasized by professor Cobăneanu, lies in the fact that “the application of the principle of legality encounters difficulties related to insufficient knowledge of the legislation in force and the slow overcoming of the difficulties in its application” – a reality that makes the principle all the more important to invoke and strengthen [10, p.140].

2.2. The Principle of Competence: A Condition for the Validity of the Act

Competence represents the totality of powers conferred by law upon administrative authorities, constituting both a right and an obligation of the issuing authority. Unlike capacity in private law, administrative competence is inalienable and permanent: it is not exhausted through exercise, cannot be transferred without legal basis, and depends not on the will of the authority, but on the will of the legislator.

Three forms of administrative competence may be distinguished, each determining a dimension of the validity of the act: material competence (*ratione materiae*) – the sphere of powers defined according to the object of activity; territorial competence (*ratione loci*) – the geographical limits within which the authority may act; personal competence (*ratione personae*) – powers linked to the office held. Failure to comply with any of these forms entails the nullity of the act.

Exceeding competence – known in doctrine as abuse of power – constitutes one of the most frequent grounds for annulment of administrative acts through administrative litigation. In the administrative practice of the Republic of Moldova, abuse of power manifests itself both through usurpation of competence – when an authority issues acts exceeding its legal powers – and through misuse of power – when the act is issued within the formal limits of competence, but for a purpose other than that provided by law.

Professor Lucia Catană adds, from the perspective of Romanian law, that an authority may not evade the obligation to issue an administrative act when the legal conditions are met: the unjustified refusal to resolve a request concerning a right recognized by law constitutes in itself an illegality, liable to challenge before the administrative courts [12, p.116].

2.3. The Principle of Expediency in the Initiation Phase. The principle of expediency concerns not the legality of the act, but the quality of the choice made by the administration in exercising its discretionary power: the choice of the moment, means, and optimal manner of intervention. Professor Ilie Iovănaș defines expediency as “the fulfillment of legal duties and powers within an optimal time frame, with minimal expenditure of material and spiritual resources, but with maximum efficiency, as well as the selection of the most appropriate means for achieving the purpose of the law” [13, p.9].

The relationship between legality and expediency is one of complementarity, not of alternativity. Doctrine unanimously emphasizes that “an inexpedient administrative act may be lawful, whereas an unlawful act can never be justified as expedient, because illegality, in a state governed by the rule of law, can never be expedient” [7, p.12]. In other words, expediency operates exclusively within the framework of legality – the adminis-

tration may choose between several lawful solutions, but may not invoke expediency to justify an unlawful solution.

Expediency may be assessed according to several convergent criteria [9, p.55]:

- a) The most appropriate moment for adopting the act, depending on the factual and normative context;
- b) The place and concrete conditions for applying the act;
- c) The material and legal means involved in the administrative measure;
- d) Compliance with the purpose of the law, which constitutes the upper limit of administrative discretion.

It is precisely this last criterion that organically links expediency to the principle of legality, preventing discretion from turning into arbitrariness.

III. Fundamental Principles in the Phase of Adoption/Issuance of the Administrative Act. 3.1. The Principle of Reasoning of the Administrative Act. Reasoning represents “the administrative operation through which the factual and legal considerations justifying the issuance or adoption of an administrative act are set forth” [9, p.62]. It is not a mere formality, but rather the instrument through which the addressee of the act may verify compliance with legality and may decide, with full knowledge of the facts, whether or not to exercise the available remedies.

The content of the reasoning comprises two inseparable components. Factual reasoning involves the description of the factual situation that led to the issuance of the act – indicating the evidence and documents taken into consideration – while legal reasoning involves identifying the specific legal basis, namely the legal norm authorizing the issuance of the act and determining its content. The reasoning shall be communicated to the applicant, either in full or in summary form, upon request or ex officio, under the conditions established by law [10, p.146].

Professor Ovidiu Podaru emphasizes that reasoning cannot be purely formal or stereotypical; it must reflect a genuine analysis of the factual situation and of the applicable legal basis. Formal reasoning devoid of substance is equivalent to a lack of reasoning and entails the nullity of the act [14, p.43]. This requirement of substantive – not merely formal – reasoning constitutes one of the most significant advances of contemporary administrative law compared to classical conceptions.

The absence or insufficiency of reasoning produces serious legal consequences: the act may be annulled through administrative litigation, and the issuing authority may be obliged to issue a new act, lawfully reasoned. Professor Sergiu Cobăneanu specifies that, in light of the legislation of the Republic of Moldova, any administrative decision capable of affecting the rights or legitimate interests of a private person “must be adequately, clearly and consistently reasoned”, while also indicating the available remedies [7, p.14].

3.2. The Principle of Proportionality. The principle of proportionality requires that the means employed by the administration in adopting an act be appropriate, necessary, and proportionate to the pursued objective, without imposing excessive burdens upon the addressees. It establishes a fair balance between the public interest – which the administrative act is intended to serve – and the private rights and interests of the affected persons [8, p. 94].

The structure of the principle is tripartite [12, p.120]:

1. Suitability: the adopted measure must objectively be capable of achieving the intended aim;
2. Necessity: among several equally effective measures, the administration must choose the least restrictive one for the affected person;

3. Proportionality *stricto sensu*: the benefits obtained through the administrative act must outweigh the sacrifices imposed, so that the intervention is justified in light of the general interest.

The application of the principle of proportionality is particularly relevant in matters concerning administrative acts of a sanctioning or restrictive nature: contraventional sanctions, access restrictions, suspensions of activity. In the case law of the European Court of Human Rights and the Court of Justice of the European Union, proportionality has acquired the status of a criterion for reviewing the legality of administrative acts, profoundly influencing Romanian administrative doctrine and practice. Moldovan doctrine, through the work of Professor Maria Orlov, has embraced this evolution, establishing proportionality as a condition for the validity of restrictive administrative acts [7, p.16].

3.3. The Principle of the Right to Defense and Prior Hearing. The principle *audi alteram partem* – the right to be heard before the adoption of an unfavorable administrative act – constitutes a fundamental requirement of good administration and a concrete expression of the rule of law in executive activity. It requires that the person targeted by an administrative act capable of affecting his or her rights or legitimate interests be informed in due time about the pending procedure and be given the opportunity to present facts, arguments, and evidence in his or her defense [9, p.70].

The obligation of prior information has a dual content [14, p.55], on the one hand, the administrative authority must inform the interested person about the existence of the procedure and his or her right to participate therein; on the other hand, it must communicate the facts, arguments, and evidence on which it intends to base its decision, so that the person may formulate a useful and effective defense.

Professor Antonie Iorgovan, analyzing the French tradition in this field, demonstrated that the right to defense in administrative proceedings constitutes a mitigated expression of the adversarial principle, and that its infringement may entail the relative nullity of the act – a sanction distinct from the absolute nullity applicable in cases of incompetence or defects of substantive legality [9, p.75]. Professor Lucia Catană further adds that, in practice, the guarantee of the right to defense is also ensured through the possibility for the person to be represented or assisted before the administrative authority, without the procedure becoming inaccessible to the interested party due to excessive complexity or costs [12, p.124].

3.4. The Principle of Transparency in the Adoption Procedure. The principle of transparency requires that the procedure for adopting administrative acts be open to interested persons and to the public, within the limits established by law. It manifests itself through the right of every person to information, which the public authority is obliged to provide within a reasonable time and by effective and appropriate means [8, p.98].

Transparency fulfills a dual function in the process of adopting the administrative act [10, p.152]: a preventive function – discouraging the adoption of arbitrary or unreasoned acts by exposing the decision-making process to public scrutiny; and a corrective function – providing affected persons with the necessary tools to identify potential defects in the act and challenge them through legal remedies. The unjustified refusal to disclose relevant information concerning the issuance of an administrative act may, in itself, constitute grounds for annulment of the act.

In the Republic of Moldova, transparency in public administration is constitutionally enshrined and regulated by special laws, and the principle obliges authorities to communicate to interested persons both administrative directives and the reasons and criteria underlying individual decisions, within a reasonable time and by appropriate means, so that they may be challenged if necessary.

3.5. The Principle of Equality and Non-Discrimination. The principle of equality requires administrative authorities to treat equally persons placed in objectively similar situations and not to apply discriminatory criteria – such as sex, race, ethnic origin, religion, political opinion, or other personal status – in the adoption of administrative acts. It does not prohibit every differentiation in treatment, but only those not justified by an objective difference in circumstances.

Professor Maria Albu highlights that the principle of equality has both a negative dimension – the prohibition of discrimination – and a positive dimension – the obligation of consistency in administrative practice: objectively identical situations must be treated in the same manner [3, p.48]. The inconsistency of administrative practice – whereby identical factual situations lead to different solutions depending on subjective factors – constitutes a form of institutional discrimination contrary to the rule of law and liable to review through administrative litigation.

The principle of equality cannot be invoked in order to extend an unlawful practice: if the administration has previously adopted unlawful acts in relation to other persons, this circumstance does not create a right for others to benefit from the same unlawful acts. Equality operates only within the sphere of legality, not outside it.

IV. Fundamental Principles in the Phase of Implementation of the Administrative Act.
4.1. The Principle of Binding Force and Enforceability of the Administrative Act. Once entered into force, the administrative act becomes binding and must be complied with both by the natural and legal persons to whom it is addressed and by the issuing authority itself. Its binding force derives from the fact that the act is issued on the basis and in execution of the law, enjoying the presumption of legality – a presumption *iuris tantum*, which may be rebutted through administrative litigation [14, p.67].

The corollary of binding force is immediate enforceability: the administrative act becomes enforceable from the moment it enters into force, without the need for an enforcement order or the completion of additional formalities, unlike judicial decisions. Professor Ovidiu Podaru emphasizes that this feature represents the clearest expression of the public authority regime under which the administration operates: “the intrinsic enforceability of the administrative act fundamentally distinguishes it from any private law act”.

The presumption of legality produces important procedural effects: a person challenging an administrative act cannot, in principle, suspend its execution merely by filing a complaint. Suspension of the effects of the act requires either an express provision of law or a court decision issued upon the request of the interested person, under the conditions established by administrative litigation legislation [15, p.28].

4.2. The Principle of Communication and Publication of the Administrative Act. The production of the legal effects of the administrative act is conditioned upon bringing it to the attention of its addressees. Doctrine and legislation establish the rule that “the moment when legal effects are produced is that of communication of individual administrative acts and publication of normative acts”, because only from that moment can subjects become aware of the content of the act and be required to comply with it [10, p.157].

Communication – specific to individual acts – is the operation through which the act is transmitted to the interested person or authority. It determines the moment from which the time limits for contestation begin to run and from which concrete rights and obligations arise for the addressee. Publication – specific to normative acts – is generally carried out through the Official Gazette or other means of public dissemination, without excluding situations where the law requires the publication of certain individual acts of

general interest as well (for example, decrees concerning citizenship) [9, p.80].

The consequence of failure to communicate or publish is that the act, although lawful and binding in abstracto, is not opposable to its addressees: they cannot be required to comply with an act they had no possibility of knowing. This rule constitutes an essential guarantee of legal certainty and of the principle of legality, preventing the administration from imputing to addressees conduct contrary to an act that was not communicated to them.

4.3. The Principle of Revocability and Stability of the Administrative Act. The principle of revocability of administrative acts – developed through doctrinal and jurisprudential generalization, without being explicitly codified in all legal systems – establishes the right and, in certain cases, the obligation of the issuing authority to withdraw the act for reasons of illegality or inexpediency. It expresses the idea that the administration is not definitively bound by its own acts and that the adaptation of executive activity to changes in fact or law is a requirement of good administration [8, p.101].

Revocation produces different legal effects depending on its cause [14, p.73]: revocation for illegality has, in principle, retroactive effect (*ex tunc*) – the act is deemed never to have produced valid legal effects; revocation for inexpediency produces effects only for the future (*ex nunc*) – the act produced valid effects until the date of its withdrawal. This distinction, formulated by professor E.D. Tarangul and later consecrated by doctrine as a whole, has essential practical consequences for the rights acquired by the addressees of administrative acts.

Revocability is subject to important limitations imposed by the principle of protection of legitimate expectations: acts creating subjective rights in favor of addressees may not be arbitrarily revoked, especially where the addressees have executed them in good faith or have modified their legal situation on the basis thereof [12, p.128]. This limitation of revocability is recognized both in Romanian doctrine and in the case law of the Court of Justice of the European Union and aims to protect individuals against arbitrary changes in the administration's positions.

4.4. The Principle of Judicial Review of the Legality of the Administrative Act. The principle of judicial review of the legality of administrative acts constitutes the institutional guarantee that all the other principles analyzed are respected in practice. It expresses the idea that no public authority may be the judge of its own legality and that the addressees of administrative acts must have access to external, independent, and effective review.

Judicial review of legality is exercised through two major complementary mechanisms. Internal administrative review – hierarchical and supervisory – allows superior authorities to verify, *ex officio* or upon complaint, the legality of the acts issued by subordinate authorities. This mechanism has the advantage of speed, but also the disadvantage that the reviewing body belongs to the same administrative structure as the reviewed authority [7, p.18].

External judicial review – exercised through administrative courts – offers the supreme guarantee of legality through the independence of the judge from the administration. The establishment of administrative litigation represented “an evident necessity of the time,” because only judicial review ensures effective protection of citizens' rights and freedoms against unlawful administrative acts.

An indirect, yet highly effective mechanism, is the plea of illegality, which allows any person to invoke, within the framework of any dispute, the nullity of an administrative act opposed to him or her, without the court annulling the act, but merely disregarding it in

resolving the case. This instrument, analyzed by professor Tudor Drăganu, strengthens the principle of legality even outside the sphere of administrative litigation proper, extending judicial review over administrative activity to the entire field of legal disputes [9, p.85].

Conclusions. The analysis of the fundamental principles governing the adoption of administrative acts through the prism of the three phases of their existence – drafting, adoption/issuance, and implementation – leads to several synthetic conclusions of both theoretical and practical value.

First, principles do not operate in isolation, but rather form a coherent and hierarchical system of legal guarantees. Legality and competence are absolutely necessary conditions – any act issued in breach thereof is null; proportionality, reasoning, and the right to defense are conditions of validity whose consequences may vary depending on the gravity of the defect; expediency and efficiency are principles of good administration, reviewable through means other than legality litigation. Knowledge of this hierarchy is essential both for legal practitioners and for citizens confronted with administrative acts.

Second, principles have an irreducible threefold role: they guide the administration regarding what and how to draft the act (drafting phase); they impose procedural and substantive standards at the moment of adoption (issuance phase); and they guarantee that the resulting act produces predictable and reviewable legal effects with respect to its addressees (implementation phase). Treating principles as relevant only in one of these phases would constitute a serious methodological error.

Third, the doctrinal convergence between the Republic of Moldova and Romania in identifying and consecrating these principles demonstrates the existence of a common body of administrative values of European origin, transcending specific legislative differences. Both systems are committed to the trajectory of alignment with the standards of good administration promoted by the Council of Europe and by the case law of the European Court of Human Rights, and this alignment is achieved precisely through the strengthening of the legal regime of the principles examined.

Finally, from a *lege ferenda* perspective, the study confirms the conclusion reached by the most authoritative doctrine in both states: the adoption of clear, accessible, and comprehensive administrative procedure codes – which would uniformly transpose these principles into enforceable legal norms – remains one of the most urgent necessities for the modernization of public administration both in the Republic of Moldova and in Romania.

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