REVOCATION OF ADMINISTRATIVE ACT

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Abstract
Because the revocation is totally specific for administrative law principles, I chose to talk about in this study and its impact on the cancellation of administrative acts. Revocation will be explored, in terms of the authorities which it may provide but also of the effects caused.It also would examine if revocation has a legal basis, as well as real cases to provide the impact of this principle in administrative law.

Keywords: *revocation, administrative act, the principle of parallelism of forms, the rule of contrarius actus, Romanian Constitution.*

Introduction

Administrative action is, for administrative law, the living essence of public authorities.

Government activity can take many forms, which can be classified from several points of view, depending on different criteria: ability to produce legal effects, number of stakeholders, applicable legal status, etc. Fundamental tripartite division of the forms of government activity is that presented in legal documents - legal and material facts - material-technical (administrative) operations. To these are added, according to some authors[1], and public documents. We will define them in turn and then we will make the necessary connections.

1.1 Administrative action - main form of activity of public administration authorities

Juridical acts are the wills of an administrative body, made in order to produce legal effects. A building permit, a government decision for pension indexing, a title of ownership issued with a view to reconstruction of a private property right, a local council decision to accept a donation, etc. fall into this category.

Material and juridical facts are those forms of government activity which, although not made in order to produce legal effects, they produce such effects under the law. As examples, we may generally give a misconduct or contravention of an official, failing to settle a request within the due term, etc.

Material and technical (or administrative or technical-material) operations are those forms of activity that do not produce any legal effect in themselves, they preparing an administrative action[2], giving them an enforceable character[3] or serving to the achievement of advertising formalities for the already issued deed: approvals, notification addresses, consent given by an individual in order to be issued a building permit operations are examples of such material operations.

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[1] R.N. Petrescu. *Administrative law*, (Editura Hamangiu, Bucharest, 2009), p.276.

[2] That is why some authors call them preparatory actions - see, for example, C.G. Rarincescu, *Romanian administrative court, 2nd edition,* (Editura "Universala" Alcalay & Co.., Bucharest), p. 249- 251. The author speaks of them in the context of analyzing action subject in administrative court, which must be an administrative act and not a preparatory one.

[3] It's about formalities (administrative operations) leading to the formation of complex administrative acts: administrative agreement, proper approval, acknowledgement as a synonym of the latter.

Political acts are wills of an administrative body, issued in order to produce political (but not legal) effects: message of the Romanian President addressed to Parliament (Article 88 of the Constitution), the declaration of the Prime Minister concerning the general policy of the Government [art. 107 paragraph (1) of the Constitution], etc..

As a rule, political acts come from authorities situated at the top of administrative pyramid.

Actually, the categories that matter are the legal act, as well as material - technical (administrative) operation. The other two categories are generally only mentioned, but not analyzed by the authors of administrative law. This is due to the fact that, as concerns the political acts, once defined, they fall within the subject of constitutional law rather than within administrative law.

On the other hand, *material and legal facts* (i.e. those material facts to which the law attaches legal effects[4]) have not so great practical importance. And this happens because, if we talk about illegal acts of civil servants (real wills which, by the will of the legislature produce legal effect), have too little importance to a general theory of administrative act and if we speak of unjustified refusal to settle an application, we must note that under Article 2 paragraph (2) of Law no.554/2004 of administrative court[5], it is assimilated to administrative act, as regards the legal status; therefore creating a separate category would be purely formal[6].

Fundamental difference between the legal act and material-technical operation is, as can be seen in their definition, that of the legal effect that only acts can produce. On the contrary, administrative operations do not produce such effects[7]. At most, in some cases of forming complex acts, we could say that such operations contribute to the production of legal effects by the administrative acts. Therefore, essential for such distinction are the legal effects that the expression of will of the government produces or not. Thus, as noted in legal practice[8], to the extent that the document reviewed produces legal effects, being therefore "likely to harm the rights of whom enjoyed by exercising of certain powers up to that point," it is an authority administrative act, censored in the administrative courts, even if it bears a designation specific to material-technical operations (address)[9].

If we analyze the activity of public administration structures, we find that most of their work deals not with the legal acts, but government operations and material facts, those that make up the second category mentioned above.

As we find out from the interwar doctrine, the concept of “act” comes from the Latin “actum”, meaning to work, to do, to act[10].

According to an opinion expressed in the interwar doctrine, in carrying out its essential duties of law enforcement, the executive makes a series of acts, not all being of the same nature, nor the

[4] T. Drăgan, *Administrative law acts*. (Editura Ştiinţifică, Bucharest, 1959), p.11 et sequens.

[5] Published in the Official Gazette, no. 1154 of tth December 2004 and amended by Law no. 262/2007 (Official Gazette no.510 of 30th July 2007).

[6] However, we note that, theoretically, legal documents, as well as material and legal facts differ in that, in the first case, there is a perfect concordance between the expression of will, its purpose and effects, which are not found in the case of material and legal facts - I Iovănaş, *Administrative Law*, (Ed Servo Sat, Arad, 1997), p.14.

[7] For example, in case of an assent procedure, the issuing body is free to issue or not the administrative act (in the same sense, see T. Drăganu, *Administrative law acts*, (Editura Stiintifica, Bucharest, 1959), p.127; RN Petrescu, *Administrative law,* (Ed. Hamangiu, Bucharest, 2009, p.321).

[8] C.A. Cluj, *Administrative and tax court*, civ. Dec. No. 1493 of the 9th October 2006, in (B.J. 2006, Editura Sfera Juridică, Cluj-Napoca, 2007), p.463-465.

[9] O. Podaru, *Administrativ law, vol. I. Administrativ act (I), Reference points for a different theory*, (Editura Hamangiu, Sfera Juridică, 2010) p.7.

[10] M. Văraru, *Administrative law treaty*, (Editura Librăriei Socec & Co, Societate Anonimă, Bucharest 1928), p. 182.

same meaning and legal value, nor the same scope, they being delimited into: proper administrative acts, jurisdictional administrative acts and preparatory administrative acts[11].

To evoke the idea of administrative act in the meaning of authority act, both literature and law have used several formulations, of which two asserted to be dominant, namely:

- ***Aadministrativ law acts*** (School of Cluj, by prof. Tudor Drăganu),
- ***Administrative*** acts (School of Bucharest, by prof. Romulus Ionescu).

In the optics of authors from Cluj, it was stated that the proposed formulation is likely to evoke the legal regime applicable to the act, ie elaboration regime, as well as the effects of acts of state administration bodies, issued in achieving state power. It is intended to reveal that these acts are subject to the legal regime different from that of civil acts of state administration bodies.

Authors within School of Bucharest argued that the name of administrative act evokes just the purpose for which this act is issued, namely the achievement of the administration.

According to Professor Antonie Iorgovan, one may say as well *administrative acts,* focusing on the idea of activity, in the way that are evoked acts that make public administration, or *administrative law acts,* emphasizing the idea of applicable legal regime.

It should be noted that art. 52 of the Constitution chooses the idea of an administrative act.

By administrative act shall be meant the main legal form of public administration activity, which consists of a unilateral and express willingness to create, to modify or extinguish rights and obligations, in implementing public power, under the main control of legality of the courts.

Administrative act was defined as unilateral act, expression of will of a single subject of the legal relationship, in this case that endowed with public power, issued by public authorities in order to execute or organize the law, being essentially a legal act, creating, modifying or extinguishing legal relations.

1.2 Forms of termination of the effects of administrative acts – administrative act revocation

Revocation is the legal operation by which the issuing body of an administrative act or its superior body abolishes this act. Revocation is therefore a special case of cancellation, thesis supported mainly by Prof. A. Iorgovan. If the revocation is ordered by the issuing body, it was imposed the term "withdrawal". Although there is no text to explicitly enshrine the principle of revocation, if the judiciary can correct administrative acts, it is normal that this right be owned by the government itself. Admitting that the organizational structure of government is based on certain rules, including administrative hierarchical subordination, the principle of revocability appears as a rule of functional structure of public administration. Some authors have admitted the thesis according to which the objective necessity of revocation leads to the idea according to which public authorities only have to justify this operation, that is the contrary legal act contrary of cancellation. But it must be admitted that the problem of revocation motivation is required when the administrative act created a number of legal relationships other than administrative ones. No less, the rule of *contrarius actus* requires that the revocation be ordered by an act of at least the same legal force, in compliance with the procedure of issue and in any case, by admitting the possibility of contentious action.

The principle of parallelism of forms

The content of the principle of parallelism of forms (also called of correspondence of forms or reciprocity of forms[12]) is closely linked to that of parallelism of skills[13]. The two principles are so

[11] A. Teodorescu, *Administrative law treaty, volume I, third edition*, (Institute of Graphic Arts „Eminescu" S.A., 1929) p. 376.

similar, because both establish a link between the initial act and the act of revocation, except that one does it in terms of skills and other in terms of issue formalities. Consequently, according to the principle of parallelism of forms, "the act of revocation must be given with the same forms and conditions that cover the very act whose removal is sought.[14]". So, when an administrative act must be issued under certain forms or accompanied by certain formalities, the act of revocation may not be legal unless it is issued under the same forms and according to the same procedure[15].

Defense right principle

French doctrine has emphasized the existence of an important principle under which the Government may find itself obliged to observe certain formalities in issuing acts of revocation, even in the absence of explicit legal provisions in this regard. It is about the general principle of complying with the right of defense, which, under certain conditions, it also applies in the field of administrative revocation[16].

The existence of this principle is closely related to the contradictory principle, which enjoys a full commitment in the activity of courts. But the latter principle has also extended progressively to the Government activity. Administrative procedure requires in some cases the observance of the mentioned principle. The most common such cases are found in civil function and occur especially when an administrative act has the character of a penalty. The civil servant affected by such an act have to be recognized, under the contrary principle, a few rights, such as those by which he should be notified the data of his file, to be given the opportunity to discuss the reasons justifying the measure against him.

It was also noted the fact that the contrary principle should apply whenever the revocation of administrative acts occurs as a sanction against the beneficiary of the act[17]. Such circumstances often arise, for example in connection with the revocation of an act of appointment to a public office, caused by the disciplinary violations by such official[18] or related to the revocation of various permits, whose provisions were not complied with by their beneficiaries. In the absence of legal texts, an appeal should be made to the principle of the defense right, under which recipients of revoked

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[12] G.Vlachos, *Le retrait des actes administratifs*, (RA, 1970), p.420

[13] Many times, the principle of parallelism of forms is used in a broad sense, also including the principle of parallelism of skills.

[14] Gh. Nastase, "Around revocation of administrative acts, in, the (RGP, no.3-4/1943), p.404-405. The same author also presents an interesting analysis of meanings that the notion of "form" shows in administrative law, while expressing at the same time: physical form under which administrative act appears, all conditions to be met by the administrative act to be valid; category of administrative acts to which the said act belongs, each characterized by a certain legal value, depending on the place the issuing body occupies in the hierarchy of administrative authorities.

[15] .M. Auby, *L`abrogation des actes administratifs*, (AJDA, 1967), p.135, R. Hostiou, *Procédure et formes de l`acte administratif unilatéral en droit français,* (L.G.D.J., Paris 19740, p.245-246; C. Rarincesu, *Romanian administrative court,* (Editura „Universala", Alcalay, Bucharest, 1936), p.128; R.N. Petrescu, *Administrative law*, (Editura Lumina Lex, Bucharest, 2004), p.325; I. Santai, *Administrative law and administration science,* volume II, (Editura Risoprint, Cluj-Napoca, 2003), p.181.

[16] M. Auby, *L`abrogation des actes administratifs*, (AJDA, 1967), p.135, P. Bringuier, E.Guillon, *Le puvoir de retrai des actes administratifs,* (AJDA, iunie 1978), p.309-310; Ch. Debbasch, *Droit administratif*, (Economica, Paris, 2002), p.409-492.

[17] J.M. Auby, *L`abrogation des actes administratifs,* (AJDA, 1967), p.135; C. Yannakopoulos, L*a notion de droits acquis en droit administratif français,* LGDJ, Paris, 1999, p.445.

[18] Law no.188/1999 provides a number of safeguards for the public servant liable to be disciplinary sanctioned (including dismissal action). Article 78 paragraph 3 states that "disciplinary sanctions may apply only after a preliminary investigation of the offence committed after the hearing (subl. ns. IB) of the civil servant". Such hearing is an indicative example of warranty provided by law for a better observance of the right to a viewpoint. We note that our discussion focuses only on those situations where the legal text does not provide anything in this regard or has insufficient provisions.

administrative acts should be granted some guarantees[19]. These guarantees are materialized in a series of formalities, which the Government is obliged to observe during the procedure of issuance of the revocation act, such as: informing interested parties about the proposed measure, their hearing, motivation of issued revocation acts.

Although the incidence of the defense right principle in the field of administrative act revocation is confirmed only in the French administrative law, we consider that it requires its application and the Romanian law. Its beneficial effects on the protection of administration recommend it. It should be used whenever the act of revocation has the character of a penalty. In such circumstances and in the silence of the law, the act of revocation shall be subject to additional formalities considering them as guarantees of the compliance with the defense right principle.

Revocation occurs then for all conditions of illegality, but especially for conditions related to opportunity. Grounds for revocation may be prior, simultaneous or subsequent to issuing the administrative act. In the first two hypotheses, the revocation shall produce retroactive, *ex tunc* effects, and in the third hypothesis, it would produce *ex nunc* effects.

There is a fairly widespread viewpoint in the specialized literature, according to which the revocation of administrative acts is a particular case, a species of cancellation[20]. In addition, confusion between cancellation and revocation is also produced at the level of legislation[21] and jurisprudence[22]. Such facts seem to discourage any attempt to clear delineation that could be achieved between the two methods. Revocation and cancellation are two totally separate ways from each other, with a completely independent existence, as an author of modern generation asserted, whose theory we shall present below. The main difference lies in the different authors of these transactions, to which is added a significant difference on the reasons that can justify their use.

The holder of privilege for cancellation of administrative acts is easily identifiable, it being expressly stated by the constitutional and legal texts. According to Article 52 paragraph (1) of the Romanian Constitution, "the person injured in any of its rights or in a legitimate interest, by a public authority through an administrative act or by failing to solve an application within the legal term, is

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[19] P. Bringuier, E. Guillon, *Le puvoir de retrai des actes administratifs*, (AJDA, June 1978), p.309.

[20] A. Iorgovan, *Administrative Law Treaty*, vol.II, (Ed. All Beck, Bucharest, 2005), p. 58; V. Vedinaş, *Administrative Law,* (Ed. Lumina Lex, Bucharest, 2004), p.68; D.A. Tofan, *Administrative Law,* vol . II, (Ed. All Beck, Bucharest, 2003), p.58. It should be noted that the terminology used is "special case of nullity" and from the immediate context results that the authors put the equals sign between the cancellation and nulity (being also used the phrase "particular case of cancellation"). We deem that this overlap is not correct, being actually made a confusion between a way to get out of force (cancellation) and a penalty which may affect the provisions of a specific administrative act (nullity). Likewise, O. Podaru, "Lapse of expression of will in the Romanian public law, doctoral dissertation, ("Babes-Bolyai" University of Cluj-Napoca, 2002,) p. 9.

[21] Law no.90/2001 on organization and operation of the Romanian Government and ministries (published in the Official Gazette of Romania, Part I, no. 164 of April 2nd, 2001) contains an interesting provision in Article 28, second paragraph, according to which "in exercising hierarchical control, the Government has the right to cancel illegal or inappropriate administrative acts issued by public authorities subordinated to it, as well as those of the prefects". Since this is an abolition of an administrative act arising from an authority of the Administration, the correct name of this operation would have been, as we shall see below, that of revocation. The same confusion is reflected by GEO no. 194/2002 on the aliens regime in Romania (republished in the Official Gazette of Romania, Part I, no. 201 of March 8th, 2004 and substantially amended by Law nr.56/2007), which, at art. 32 shows that the cancellation and revocation of the Romanian visa (which is an authorization, undoubtedly an administrative act, as is stated in the Article 2 letter (d) can be done by the same administrative authorities (diplomatic missions or consular offices of Romania, the General Directorate of Consular Affairs within the Ministry of Foreign Affairs), the difference between these two operations being that cancellation produces retroactive effects and the revocation produces effects only for the future.

[22] For example, decision of the Supreme Court no. 2800 of the 1st October 2002 which provides that a Land Ownership Certificate, entered into civil circulation, can not be canceled by the issuing body, such a power belonging to the administrative court. Or Supreme Court decision no. 666 of the 28th February 2000, according to which "if at the appointment of a lawyer, the said lawyer's situation is known, that is his conviction, subsequent cancellation of appointment for this reason is illegal".

entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the act and repair of damage". Supplementing this provision to those contained in Article 21 paragraph (1) and Art. 126, paragraph (6) of the same law, but also with the provisions of organic law, namely Law no.554/2004 of administrative court, it clearly results the author of cancellation of an administrative act: court exclusively[23]. If the texts of the Constitution and organic law reserve this terminology to describe the retroactive abolition of administrative act by the courts, we believe this option should be strictly complied with. Consequently, the cancellation of administrative acts must evoke only the dissolution of administrative act by the competent court.

As regards the revocation, there have been some uncertainties regarding the precise determination of the competent authority to rule it. Revocation is a way of abolishing an administrative act whose holder is only the Government.

First, it must be mentioned the numerous legal provisions using the term "revocation" to describe the abolishing of an administrative act by a Government authority. Administrative court law regulates the possibility of revocation of administrative acts only by issuing public authority or the hierarchically superior one. Generally, this fundamental act of administrative law promotes distinction between the revocation and cancellation based on different holders of two ways: the court in case of cancellation, the Government in case of revocation.

Exceptions to the revocability principle - categories of documents:

- ❖ administrative acts declared irrevocable by an express disposition of law;
- ❖ administrative acts of a judicial nature;
- ❖ administrative acts for applying appropriate sanctions for the forms of liability in the administrative law;
- ❖ administrative acts for enforcement of criminal procedural acts;
- ❖ administrative acts giving rise to civil contracts;
- ❖ administrative acts which are issued as a result of the existence of civil contracts;
- ❖ administrative acts giving rise to subjective rights guaranteed by law in terms of stability;
- ❖ administrative acts that have been materially performed.

Exception of administrative acts which give rise to civil contracts concerns the relationship between administrative law and civil law. Civilist thesis states that individual administrative act, which conditions the creation of civil relations, may be revoked until the conclusion of civil contract. But administrative acts giving rise to such contracts are more than just legal conditions of the contract, they continuously conducts the civil law effects. Therefore, such acts will be always subject to revocability principle. The civil law ability of the parties in such cases is subject to administrative law capacity of the body who has issued the document. Professor T. Drăganu supports the thesis of civil law authors, admitting as arguments: the principle of civil law according to which the contract may be terminated only by judicial proceedings and that government body was able to verify the legality and appropriateness of a civil legal relationship when it issued the administrative act. This argument can not cover all categories of administrative acts prior to concluding some civil contracts

[23] It can also be mentioned other regulations which expressly provide the possibility of cancellation of an administrative act by the court. For example Law no. 401/2006 for the approval of GEO no.35/2006 (published in the Official Gazette of Romania, Part I, no. 911 of November 9th, 2006 which provides that "the Competition Council shall request the competent courts to cancel the administrative acts by which ..." . Law no. 95/2006 on Health Reform (published in the Official Gazette of Romania, Part I, no. 372 of May 2nd, 2006), whose art.451 states that "Against the decision of sanctioning the superior discipline commission, within 15 days from notification, the sanctioned doctor may institute an action of repeal at the administrative department of the court in whose jurisdiction it operates." Law no. 360/2002 on the policeman statute (published in the Official Gazette of Romania, Part I, No. 440 of the 24th June 2002): "policeman who is unsatisfied by the sanction applied may appeal the administrative court, requesting the cancellation or amendment, where appropriate, of sanctioning order or disposition "(art. 61 paragraph 3).

by individuals. Administrative acts which do not cease their effects upon termination of civil contract remain revocable anytime. These types of contracts are subject to a legal regime controlled by public law, that is a legal regime derogating from the common law, without being exclusively about a power regime. In some cases, civil contract and administrative act form a unity and therefore, any change in the sphere of the administrative conditions of legality of administrative act directly impacts the civil contract. The withdrawal of an assent procedure entails, for example, revocation of the administrative act and consequently, the civil contract termination. The individual which is part in the civil contract, has opened the action in the administrative court against the act of revocation and may request its cancellation and compensation or just compensation. As long as the law provides otherwise, the Government body will have a patrimonial liability for the revocation of administrative act for exclusively opportunity reasons.

Exemption from revocability principle of administrative acts issued based on a prior civil contract. This time, administrative legal regime is made available to the parties by a contract, its effects being attached to those of the contract. In this case, the administrative act is a legal instrument, strictly necessary to fulfill the contract and revocation of the administrative act would be similar to a termination of the contract. Administrative act can not be abolished in its legal existence, except once with the contract and on the means provided by law for this purpose, but not by revocation of the administrative body.

Exemption of administrative acts which gave rise to a subjective right is guaranteed by law through stability. These acts are irrevocable and are divided into two categories, as the subjective right occurs in the sphere of an administrative legal relationship (eg. birth certificates), as well as a civil one. In case of civil subjective rights, the law understood to give them a special protection, except for the administrative act underlying them, from the revocability principle, because they require the recipient's engaging to substantial expenses. It would be unfair that the administrative body revoke the act after performing such expenses. But not every administrative act creating subjective rights is irrevocable, the act acquires such character only when the subjective right which it generated is protected by law so effectively that, from its content or its purpose results that it understood to deprive the administrative body from the possibility of dismembering it.

Exemption of acts that have been materially made. The most common administrative acts within the scope of this category are authorizations, giving rise to subjective rights that are not specially protected. For example, our law protects residential construction made without permits, which can not be demolished except by an authorization document, issued by municipalities or prefectures. This category of exceptions regards only individual administrative acts that are carried out materially by means of an operation (action) or several specific operations. In this category do not fall those administrative acts that are made by actions or inactions on a continuing basis (for example the authorization for the exercise of a job). Such documents are revocable, because the rights and obligations of the beneficiary of act require continuing and successive operations. It's about free permits, which, being given on a basis of a right of appraisal of the government body, are precarious and revocable by definition. Beneficiary of such permit, as well as parts of civil contracts conducted by an administrative act, have assumed the risk of some damages when requesting authorization, as well as conclusion of the contract and thus it cannot be invoked the issue of patrimonial liability of the government bodies. The injured party has the way open for submitting an action to the administrative court, as well as for an indemnification action, according to common law.

Finally, we stress once again that "This principle of revocability[24] of administrative derives from the Constitution and Administrative Litigation Law, no.554/2004[25]. Although in the Romanian

[24] Elena Emilia Stefan, *Revocation of administrative acts- theoretical and practical aspects*, published in CKS -eBook, p. 669-676 and in Lex et Scientia International Journal (LESIJ) no. XVIII. Vol 1/2011, (Ed. Prouniversitaria), p.121-128, ISSN 1583-039X.

Constitution, it is not expressly regulated, however it derives from the corroboration of several articles: 52, 21, 126, etc."

"Regarding the reflection of legality principle into the European legislation, we mention that, at European level, there is the right to a good administration[26] in operation of public authorities.

The right to a good administration is laid down in the EU[27] Charter of Fundamental Rights proclaimed within Nice Summit in December 2000, but also in the European Code[28] of Good Administrative Conduct approved by Parliament on the 6th of September 2001 and currently it serves as a guide and source[29] of information for the staff of all Community institutions and bodies. "

1.3 Conclusions

This study aimed at highlighting the importance of the concept of revocation, as a specific form of termination of effects for administrative law.

There were thus spotlighted the implications of revocation, the authorities who have the jurisdiction to pronounce it, effects produced in the legal circuit, and in synthesis were presented exceptions to the revocability principle, just to emphasize the importance of the concept of revocation in administrative law. We hope that this analysis will be useful to specialists in administrative law by trying to highlight all the characteristic notes of this institution.

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[25] Law no.554/2004 on administrative proceedings, published in the Official no. 1154/2004 (with latest amendment by Law nr.202/2010 on measures to accelerate settlement processes and Constitutional Court Decision no. 302/2011, published in Official Gazette 316/2011).

[26] Elena Emilia Stefan, *quoted work,* p.121-128*;* For complete details, see also Elena Stefan, *European Ombudsmnaul in the light of European Constitution,* Public Law Magazine no. 1/2006, (Ed. CH Beck, Bucharest, 2006), p.106 .

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