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Extraterritorial effects of territorial self-government decisions¹

Efekty eksterytorialne decyzji samorządu terytorialnego

Abstract

As a result of expanding globalisation, states in various cases, in order to protect different interests and by reference to different principles, increasingly abandon rigid adherence to the principle of non-interference in the internal affairs of other States in the area of prescriptive jurisdiction and reciprocally accept the extension of the effects of individual legal acts issued by another State on their territory. In the conditions of the European Union, this acceptance concerns civil, criminal and administrative matters. It is individual administrative acts that are of particular interest from the point of view of the possibility of acquiring extraterritorial effects, because for several of them no specific recognition procedure is required. The aim of this paper is to characterize administrative acts with extraterritorial effects. Then to define the basic regimes for recognition and enforcement of administrative acts and to present examples of their application in the conditions of the Slovak Republic. Lastly to identify examples of administrative acts of local self-government authorities with extraterritorial effects and, following the examples thus identified, to present the regimes of their recognition and enforcement.

Keywords: Extraterritorial Administrative Acts, recognition and enforcement of administrative decisions, territorial self-government.

Streszczenie

W wyniku postępującej globalizacji, państwa w różnych przypadkach, w celu ochrony różnych interesów i odwołując się do różnych zasad, coraz częściej odchodzą od sztywnego przestrzegania zasady nieingerencji w sprawy wewnętrzne innych państw w obszarze jurysdykcji

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normatywnej i wzajemnie akceptują rozszerzenie skutków poszczególnych aktów prawnych wydanych przez inne państwo na ich terytorium. W warunkach Unii Europejskiej akceptacja ta dotyczy spraw cywilnych, karnych i administracyjnych. To właśnie indywidualne akty administracyjne są szczególnie interesujące z punktu widzenia możliwości wywołania skutków eksterytorialnych, ponieważ w przypadku kilku z nich nie jest wymagana żadna szczególna procedura uznawania. Celem niniejszego artykułu jest scharakteryzowanie aktów administracyjnych o skutkach eksterytorialnych. Następnie zdefiniowanie podstawowych systemów uznawania i wykonywania aktów administracyjnych oraz przedstawienie przykładów ich zastosowania w warunkach Republiki Słowackiej. Wreszcie, wskazanie przykładów aktów administracyjnych organów samorządu terytorialnego o skutkach eksterytorialnych oraz, w oparciu o zidentyfikowane w ten sposób przykłady, przedstawienie systemów ich uznawania i egzekwowania.

Słowa kluczowe: eksterytorialne akty administracyjne, uznawanie i wykonywanie decyzji administracyjnych, samorząd terytorialny.

1. Introduction

It follows from the principle of non-interference in the internal affairs of other States that States respect their sovereignty and do not interfere in each other's internal affairs². Thus, the essence of that principle also affects the prescriptive jurisdiction of individual States, in the sense that the effects of³ both normative legal acts and individual legal acts issued by the legislative, executive and judicial authorities of a given State are essentially limited to its territory. However, as a result of expanding globalization, states in various cases, in order to protect different interests and with reference to different principles, increasingly abandon rigid adherence to the principle of non-interference in the internal affairs of other States, including in the area of prescriptive jurisdiction, and reciprocally accept, in particular, the extension of the effects of individual legal acts issued by another State on their territory. As a rule, the so-called extraterritorial effects of individual legal acts occur only after the recognition of the act by the State to whose territory the effects of the foreign act are to be extended. However, it is not uncommon in the context of the European Union (hereinafter

² On the principle of non-interference in the internal affairs of other states, see, for example, L. Elbert, *Koncept extraterritoriality a extraterritoriálnej právomoci z pohľadu súčasného medzinárodného práva* [in:] *Transsteritoriálne (s)právne akty členských štátov Európskej únie*, ed. R. Jakab, ŠafárikPress, Košice 2019, p. 7–18 or Z. Naigen, *The Principle of Non-interference and Its Application in Practices of Contemporary International Law*, “Fudan Journal of the Humanities and Social Sciences” 2016, Vol. 9, No. 3, p. 449–464. DOI: 10.1007/s40647-016-0126-y.

³ On forms of jurisdiction and the nature of prescriptive jurisdiction, see C. Ryngaert, *Jurisdiction in International Law*, Oxford University Press, Oxford 2015 or R. Jakab, *Extraterritoriality and transterritoriality in the context of the EU and its Member States* [in:] *Extraterritoriálne účinky činnosti orgánov verejnej moci*, ed. R. Jakab, Pavol Jozef Šafárik University in Košice, Košice 2018, p. 142.

as ‘Union’) for extraterritorial effects to occur automatically, without the need for recognition of a foreign individual act by the State to whose territory the effects of the foreign act are intended to extend. The increase in the number of individual acts having automatic effects in the territory of a Member State other than that which adopted that act concerns, in particular, individual administrative acts, synonymously administrative decisions (hereinafter as ‘administrative acts’ or ‘administrative decisions’)⁴. The reason for the increase in this category is the fact that, through administrative acts, Member States authoritatively regulate those social relations, which affect the right to free movement of persons, goods, services and capital governed by the TFEU. In other words, such an increase correlates with the need to ensure the functioning of the Union's internal market.

The aim of this contribution is primarily to characterize administrative acts with extraterritorial effects. Secondly, the aim of this paper is to define the basic regimes of recognition and enforcement of administrative acts and to present examples of their application in the conditions of the Slovak Republic. Finally, the third objective of this paper is to identify examples of administrative acts of local self-government authorities which have the potential to produce extraterritorial effects and, building on the examples thus identified, to present the regimes of their recognition and enforcement.

In the elaboration of this paper, general scientific research methods will be used, especially the method of description, analysis, synthesis, abstraction, induction or deduction.

2. What is extraterritoriality and how does it relate to the decision-making activity of administrative authorities?

The concept of extraterritoriality is neither legal nor doctrinally uniformly defined. As indicated in the introduction, with a certain amount of generalization, extraterritoriality can be defined as the effect of the prescriptive jurisdiction of one State on the territory of another State⁵. Speaking of individual legal acts, synonymously decisions, extraterritoriality constitutes an exception to the principle that individual legal acts are binding and enforceable within the territory of the issuing State. In connection with extraterritoriality, the term transterritoriality

⁴ See more about the concept of individual legal acts and individual administrative acts in the T. Seman, R. Jakab, J. Tekeli, *Správne právo hmotné. všeobecná časť*, ŠafárikPress, Košice 2020, p. 143 et seq.

⁵ R. Jakab, T. Seman, L. Jančát, *Transterritoriálne správne akty v podmienkach Európskej únie a Slovenskej republiky*, ŠafárikPress, Košice 2020, p. 36.

or transnationality has also been frequently mentioned in legal doctrine in recent decades⁶. Again, with a certain amount of generalization, transterritoriality is a specific form of extraterritoriality which, in the context of individual legal acts, establishes their automatic effect on the territory of a State other than the State of its origin. This means that, as a rule, recognition of such an act under the law of the State concerned is not required⁷. Where an individual legal act acquires extraterritorial effects only by virtue of an act of recognition, legal doctrine has used the term *act per recognitionem* for such an act. Conversely, if an act acquires automatic effect in the territory of a State other than the State that issued the act, the legal doctrine refers to such an act as a transterritorial or transnational legal act⁸. For the purposes of this contribution, we will also use these already relatively established expressions.

Extraterritoriality and transterritoriality manifest itself more frequently in the conditions of the European Union than among states that do not belong to this integration grouping. This is due to the need for accelerated circulation of public authority decisions among Member States in order to ensure the full functionality of the Union's internal market. This need applies to decisions in civil, criminal and administrative matters. In order to speed up the circulation of decisions between Member States, the Union shall establish harmonised rules which facilitate more rapid recognition and enforcement of decisions given by another Member State or remove the need for their recognition altogether.

In both civil and criminal matters, cooperation between the Member States, including the Republic of Poland and the Slovak Republic, is based on the principle of mutual recognition⁹. The legislative consequence of the application of

⁶ See E. Chevalier, O. Dubos, *The Notion of "Transnationality" in Administrative Law: Taxonomy and Judicial Review*, "German Law Journal" 2021, Vol. 22, p. 325–343; J. Handrlica, *Transteritoriální správní akty*, Národohospodářský ústav Josefa Hlávky, Praha 2017, p. 217; A. Somek, *The Argument from Transnational Effects II: Establishing Transnational Democracy*, "European Law Journal" 2010, Vol. 16, No. 4, p. 375–394; A. Menon, S. Weatherill, *Transnational legitimacy in a globalising world: How the European Union rescues its states*, "West European Politics" 2008, Vol. 31, No. 3, p. 397–416 or V. Neßler, *Der transnationale Verwaltungsakt: zur Dogmatik eines neuen Rechtsinstituts* [in:] *Neue Zeitschrift für Verwaltungsrecht*, 1995.

⁷ R. Jakab, T. Seman, L. Jančát, *Transteritoriálne správne akty...*, *op.cit.*, p. 36.

⁸ See T. Seman, *Transteritorial administrative acts in Slovak administrative – law science*, "Zeszyty Naukowe Uniwersytetu Rzeszowskiego: Seria Prawnicza" ("Legal Series-Scientific Journals of Rzeszow University") 2019, Vol. 27, No. 108, p. 163–175; J.J. Pernas Garcia, *The EU's Role in the Progress Towards the Recognition and Execution of Foreign Administrative Acts: The Principle of Mutual Recognition and the Transnational Nature of Certain Administrative Acts* [in:] *Recognition of foreign administrative acts*, "Ius Comparatum-Global Studies in Comparative Law" 2016, Vol. 10, p. 15 or M. Ruffert, *The transnational Administrative Act* [in:] *The European Composite Administration*, eds. O.J. Jansen, B. Schöndorf-Haubold, 2011, p. 277–290.

⁹ The principle of mutual recognition of decisions in civil matters is enshrined in Art. 67 (4) in conjunction with Art. 81 TFEU and in criminal matters, Art. 67 (3) in conjunction with Art. 82 (1) TFEU.

this principle at the level of EU secondary law is the adoption of a series of normative legal acts regulating, in particular, a specific regime for mutual recognition of decisions in order to speed up their circulation¹⁰.

In civil matters, for example, Regulation 1215/2012 (Brussels Ia)¹¹ regulating a special regime of the recognition and enforcement of judgments given by a court of a Member State in civil and commercial matters; Regulation 2019/1111¹², which regulates a special regime of the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, or Regulation 606/3024¹³, which governs a special regime of the recognition and enforcement of decisions on protection measures in civil matters.

In criminal matters, this includes Framework Decision 2008/909/JHA¹⁴ providing for a special regime of the recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the Union; Framework Decision 2008/947/JHA¹⁵; governing a specific regime of the recognition of judgments and probation decisions for the supervision of probation measures and alternative sanctions; Framework Decision 2005/214/JHA¹⁶ laying down a specific regime of the recognition and enforcement of decisions on financial penalties; Framework Decision 2006/783/JHA, governing a specific regime of the recognition of confiscation

¹⁰ See more A. Groza, *The principle of mutual recognition: from the internal market to the European area of freedom, security and justice*, “Juridical Tribune” 2022, No. 2, p. 89–104.

¹¹ Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 (OJ L 351, 20.12.2012, p. 1). It is considered a reformed version of the Brussels I Regulation and contains a number of significant changes to the original text of the Brussels I Regulation.

¹² Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, 2.7.2019, p. 1–115).

¹³ Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters. (OJ L 181, 29.06.2013, p. 4–12).

¹⁴ Council Framework Decision 2008/909/JHA of 27th November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 327/27 of 5th December 2008.

¹⁵ Council Framework Decision 2008/947/JHA of 27th November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 337/102 of 16th December 2008.

¹⁶ Council Framework Decision 2005/214/JHA of 24th February 2005 on the application of the principle of mutual recognition to financial penalties as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 76/16 of 22nd March 2005.

orders or Directive 2011/99/EU¹⁷, which provides for a specific regime of the recognition of a protection measure under national law through the issuance of a European protection order¹⁸.

In administrative matters, there are no general harmonized rules on mutual recognition of administrative decisions within the Union. This area uses either sectoral harmonization of the rules on recognition and enforcement of certain administrative acts or, to a greater extent, the regulation of transterritoriality. This means that normative legal acts of the Union grant automatic effects to selected administrative acts that are issued by a competent authority of a Member State in accordance with its legal order also on the territory of a Member State other than the State of its origin. As a rule, the issuance of such administrative acts, also known by legal doctrine as transnational administrative acts¹⁹, takes place reciprocally²⁰. Depending on whether there is a possibility of ‘defending’ a Member State against a foreign transnational administrative act, those acts may be divided into pure or modified. If it is a purely transnational administrative act, the transterritorial effects of that act cannot be interrupted or blocked by an authority of a State other than the State which issued the act. In the case of a modified transnational administrative act, the transterritorial effects of that act may be refused, subject to additional verification, suspension or annulment²¹.

Examples of Union’s normative legal acts providing for a specific regime of the recognition and enforcement of certain administrative acts with a view to streamlining the circulation of administrative decisions in the Union include Framework Decision 2005/214/JHA, already mentioned, providing for a specific regime of the recognition and enforcement of decisions for financial penalties,

¹⁷ Council Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 328/59 of 24th November 2006.

¹⁸ Directive 2011/99/EU of the European Parliament and of the Council of 13th December 2011 on the European protection order. Official Journal of the European Union, L 338/2 of 21st December 2011.

¹⁹ On the concept see J. Handrlica, *Vybrané problémy spojené s aplikací modelu transteritoriálních správních aktů*, „Studia Iuridica Cassoviensia” 2017, Vol. 5, No. 2, p. 49–59; A. Gerontas, *Determinization in Administrative Law: Exploring Transnational Administrative Decisions*, “Columbia Journal of European Law” 2013; L. De Lucia, *Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts*, “Review of European Administrative Law” 2012 or M. Ruffert, *The transnational Administrative Act* [in:] *The European Composite Administration*, eds. O.J. Jansen, B. Schöndorf-Haubold, 2011, p. 277–290.

²⁰ On reciprocity and other conceptual features of transnational administrative acts, see R. Jakab, T. Seman, L. Jančát, *Transteritoriálne správne akty...*, *op.cit.*, p. 65–69.

²¹ R. Jakab, *Defence of an EU member state against the effects of transnational administrative acts*, “Juridical Tribune – Tribuna Juridica” 2020, Vol. 10, Special Issue, p. 32–48.

including decisions of administrative authorities, where those are subject to review by a court having jurisdiction mainly in criminal matters²², or Directive 2005/36/EC²³ governing a special regime of the recognition of professional qualifications for the pursuit of regulated professions.

An example of Union's normative legal act providing for the possibility for the competent authority of a Member State, in accordance with its law, to issue pure transnational administrative acts is Regulation 1071/2009²⁴, which provides for automatic mutual recognition of certificates and other documents necessary for admission to the occupation of road transport operator. An example of Union's normative legal acts providing for the possibility for the competent authorities of the Member States, in accordance with their law, to issue modified transnational administrative acts are Directive 2006/126/EC²⁵, which provides for automatic mutual recognition throughout the Union of driving licences issued by a Member State; Directive 2013/36/EU²⁶ governing a regime for the automatic recognition of authorizations to carry on banking activities; Regulation 810/2009²⁷ governing the universal validity throughout the Union of a uniform visa issued by a Member State or Directive 2010/24/EU²⁸ governing automatic mutual recognition of instrument permitting enforcement on the basis of which a claim relating to taxes, duties and other measures is recovered in a Member State other than that which issued the instrument permitting enforcement.

²² Council Framework Decision 2005/214/JHA of 24th February 2005 on the application of the principle of mutual recognition to financial penalties as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 76/16 of 22nd March 2005.

²³ Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications. Official Journal of the European Union, L 255/22 of 30th September 2005.

²⁴ Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC. Official Journal of the European Union, L 300/51 of 14th November 2009.

²⁵ Directive 2006/126/EC of the European Parliament and of the Council of 20th December 2006 on driving licences. Official Journal of the European Union, L 403/18 of 30th December 2006.

²⁶ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. Official Journal of the European Union, L 176/338 of 27th June 2013.

²⁷ Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13th July 2009 establishing a Community Code on Visas (Visa Code). Official Journal of the European Union, L 243/1 of 15th September 2009.

²⁸ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. Official Journal of the European Union, L 84/1 of 31st March 2010.

3. Regimes of recognition and enforcement of foreign administrative acts in the Union and the Slovak Republic

3.1. Preliminary remarks

In the previous part, we described, *inter alia*, that only certain administrative acts issued by the competent authorities of the Member States can, subject to certain conditions, take effect in a Member State other than their State of origin. Thus, they can have so-called extraterritorial or transterritorial effects. In order to define clearly the regimes for the recognition and enforcement of foreign administrative decisions in the Union, administrative acts can therefore primarily be classified according to whether they have a hypothetical potential to acquire extraterritorial effects on the:

1. **Intraterritorial Administrative Acts**, i.e. those which do not even have a hypothetical potential to acquire extraterritorial effects due to the absence of a Union normative legal basis, and
2. **Extraterritorial Administrative Acts**, i.e. those which have a hypothetical potential to produce extraterritorial effects because of the existence of Union's normative legal basis governing the rules on their recognition and enforcement.

The category of Extraterritorial Administrative Acts can be further classified according to whether the acquisition of extraterritorial effects of administrative acts requires ingerence on the part of the Member State where the administrative act is to be enforced in the form of the issuance of an act of recognition by the competent authority of the executing Member State in a recognition procedure for the:

- a) **Administrative Acts per recognitionem**, i.e. those which acquire extraterritorial effects only by virtue of an act of recognition by the competent authority of the Member State where the act is to be carried out in a recognition procedure, and
- b) **Transnational Administrative Acts**, i.e. those which acquire extraterritorial or transterritorial effects without requiring their recognition by the competent authority of a Member State in a recognition procedure.

Finally, the category of **Administrative acts per recognitionem** can be classified according to whether the recognition and enforcement of an administrative act takes place, under general or special rules on recognition and enforcement, into the:

- i) **Administrative Acts per recognitionem recognized under the general regime**, i.e. those which will be recognized and enforced under the general legislation on the recognition and enforcement of administrative acts in the national law of a Member State due to the absence of harmonized rules at the, level of EU law for the recognition and enforcement of those administrative acts, and

ii) **Administrative Acts per recognitionem recognized under a special regime**, i.e. those which will be recognized and enforced under special legislation on the recognition and enforcement of administrative acts transposed into the national law of a Member State due to the existence of harmonized rules at the level of EU law for the recognition and enforcement of those administrative acts.

Based on the above classification, a distinction can be made between three basic regimes of the recognition and enforcement of Extraterritorial Administrative Acts in the Union, namely:

1. General regime of the recognition and enforcement of Administrative Acts per recognitionem.
2. Special regimes of the recognition and enforcement of Administrative Acts per recognitionem.
3. The regime of Transnational Administrative Acts.

In the following sections, we will describe the basic differences among these regimes and present identified examples of specific Extraterritorial Administrative Acts in the conditions of the Slovak Republic.

3.2. General regime of the recognition and enforcement of Administrative Acts per recognitionem

It is characteristic of the general regime of the recognition and enforcement of Administrative Acts per recognitionem that, while an international treaty or secondary EU law lays down an obligation for Member States to recognize and enforce an administrative act, it no longer lays down specific rules under which such recognition and enforcement must take place. The power to create such rules is thus purely in the hands of the national legislator.

In the Slovak Republic, the general regime of the recognition and enforcement of Administrative Acts per recognitionem is regulated in the Chapter 7 of the Act No. 162/2015 Coll. on Administrative Court Code as amended (hereinafter as „Administrative Court Code“). The Slovak legislature conferred the power to decide on the recognition of a decision of a foreign administrative authority under Chapter 7 of the Administrative Court Code to the Administrative Court²⁹. Thus, a decision of a foreign administrative authority can be enforced in the territory of the Slovak Republic only on the basis of a decision of an administrative court, while the enforcement of the recognized decision itself will be carried out as the enforcement of any other decision of an administrative authority in the

²⁹ § 6 et seq. of the Administrative Court Code.

Slovak Republic³⁰. The very first recital of § 420 of the Chapter 7 lays down the *sine qua non* condition of the enforcement of a foreign decision of a public authority, in the form of the existence of an international obligation or an obligation arising from secondary EU law to recognize and execute an administrative act. Thus, the person may request the issuance of a decision on the enforceability of a decision of a foreign administrative authority and a decision of a foreign court in matters decided by public administrative bodies only if an international treaty by which the Slovak Republic is bound or a legally binding act of the European Union obliges the Slovak Republic to implement decisions of foreign administrative bodies. In addition to the *sine qua non* condition, the Chapter 7 governs participation in proceedings, *locus standi*, the requirements for an application, the conditions for recognition, the decision of the court and the *lex specialis derogat legi generali* interpretative rule, in the light of the primacy of the special legislation governing the recognition and enforcement of Administrative Acts per recognitionem, in so far as the legislative measure in question derogates from the Chapter 7.

In view of the membership of the Slovak Republic in the Union, the application of the regulation of the general regime of recognition and enforcement of Administrative Acts per recognitionem under Chapter 7 of the Administrative Court Code is receding into the background and priority is given to the application of special regimes for the recognition and enforcement of Administrative Acts per recognitionem or the regime of Transnational Administrative Acts³¹. A certain exception that can be abstracted from the case-law of administrative courts in the Slovak Republic can be considered the application of the regulation of the general regime of the recognition and enforcement of Administrative Acts per recognitionem under Chapter 7 of the Administrative Court Code to the recognition and enforcement of certain administrative decisions issued in the Czech Republic³² on the basis of the International Treaty between the Slovak Republic and the Czech Republic on legal aid provided by judicial authorities and on the

³⁰ § 428 of the Administrative Court Code. In the Slovak Republic, administrative decisions are mainly enforced according to Part Five of the Act No. 71/1967 Coll. on administrative procedure (Administrative Order) as amended; under Part Four, Title Five of the Act. No. 563/2009 Coll. on tax administration (Tax Code) and on amendments to certain laws as amended; Part Four of the Act No. 461/2003 Coll. on social insurance as amended or pursuant to Act No. 233/1995 Coll. on bailiffs and enforcement activities (Enforcement Order) and on amendments to other laws as amended.

³¹ See sections 2.3 and 2.4.

³² For example, decisions of universities in the Czech Republic on levying a fee for higher education studies or decisions of the Czech Telecommunications Office on monetary compensation for the provided electronic communications service.

regulation of certain legal relations in civil and criminal matters, published in the Journal of Laws under No. 193/1993 in conjunction with Regulation 883/2004^{33, 34}. However, the legality of the recognition and enforcement of decisions of administrative authorities issued in the Czech Republic on the basis of the International Treaty in question in conjunction with Regulation 883/2004 is, in our view, at least questionable, since their scope *ratione materiae* either does not concern administrative matters at all or concerns only their narrow range of social matters³⁵.

3.3. Special regimes of the recognition and enforcement of Administrative Acts per recognitionem

Unlike the general regime, the special regimes of the recognition and enforcement of Administrative Acts per recognitionem is characterized by the fact that, in addition to the obligation to recognize and enforce an administrative act, the international treaty or secondary EU law also lays down the rules under which such recognition and enforcement must take place. Thus, the national legislature is not only required to transpose into its legal order an obligation to recognize an administrative act, but is also required to transpose specific rules for the recognition and enforcement of a foreign administrative act.

Special regimes for the recognition and enforcement of administrative acts per recognitionem include, for example, the above-mentioned special regime of recognition and enforcement of decisions on financial penalties regulated by Framework Decision 2005/214/JHA or the special regime of the recognition of professional qualifications for the exercise of regulated professions regulated by Directive 2005/36/EC. In the conditions of the Slovak Republic, the special regime of recognition and enforcement of decisions on financial penalties regulated by Framework Decision 2005/214/JHA was transposed into the legal order of the Slovak Republic by the Act No. 183/2011 Coll. on the Recognition and

³³ Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. Official Journal of the European Union, L 166/1 of 30th April 2004.

³⁴ See e.g. decision of the Regional Court Bratislava, file no. 6S/147/2019 of 16.01.2020, decision of the Regional Court Trenčín, file No. 15Cudz/1/2017 of 21.06.2017 or decision of the Regional Court Bratislava, file No. 9Sp/95/2013 of 22.06.2015.

³⁵ Similarly J. Baricová, M. Fečík, M. Števček, A. Filová et al., *Správny súdny poriadok. Komentár*, C.H. Beck, Bratislava 2018, p. 1558 or L. Tomáš, *Právomoc správneho súdu v konaní o vykonateľnosti rozhodnutí cudzích orgánov verejnej správy vo veciach poplatkov za vysokoškolské štúdium* [in:] *Transteritoriálne (s)právne akty členských štátov Európskej únie. Zborník vedeckých prác*, ed. R. Jakab, Univerzita Pavla Jozefa Šafárika v Košiciach, ŠafárikPress, Košice 2018, p. 163–176.

Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts and a special regime of the recognition of professional qualifications for the exercise of regulated professions by the Act No. 422/2015 Coll. on the recognition of educational documents and on the recognition of professional qualifications and on the amendment of certain laws. In addition to general provisions, both Acts regulate, in particular, a harmonized procedure for the recognition of foreign administrative acts by the competent authorities of the Slovak Republic and, in the case of the Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts, it regulates the procedure of transmission of decisions for their recognition and enforcement to another Member State. An example of an administrative act that can be recognized and enforced in the Slovak Republic in accordance with the Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts is a final decision of an administrative authority of a Member State which has also transposed Framework Decision 2005/214/JHA in respect of an offence or infringement of road traffic rules, if a remedy has been available under the law of the issuing State, which is decided by the court having jurisdiction in criminal matters³⁶. An example of an administrative act that can be recognized and enforced in the Slovak Republic in accordance with the Act No. 422/2015 Coll. on the recognition of educational documents and on the recognition of professional qualifications and on the amendment of certain laws is, for example, a university diploma issued by a recognized educational institution under the legislation of a Member State or a third country.

3.4. Regime of Transnational Administrative Acts

Finally, the regime of Transnational Administrative Acts is characterized by the fact that, under it, an international treaty or secondary EU law lays down an obligation for Member States to automatically mutually recognize a given administrative

³⁶ On the interpretation of the term “criminal” for the purposes of Framework Decision 2005/214/JHA and criticism of the transposition of its wording into the legal order of the Slovak Republic, which narrows the scope *ratione materiae* of Framework Decision 2005/214/JHA, see L. Jančát, *Special regime for the recognition of decisions on financial penalties: complex analysis*, “Juridical Tribune” 2023, Vol. 13, No. 1, p. 93–119 or L. Jančát, *A few notes to the notion “criminal” for the purposes of the council framework decision 2005/214/JHA in the context of road traffic offences* [in:] *Bratislava legal forum 2022: administrative punishment and administrative sanctions in Europe*. Zborník vedeckých prác, Právnická fakulta UK, Bratislava 2022, p. 45–57.

act, the so-called Transnational Administrative Act. Thus, in the case of this category, neither the general nor the specific rules for the recognition and enforcement of foreign decisions of public authorities may apply, and therefore the national legislature does not have to create them for the recognition and enforcement of Transnational Administrative Acts.

An example of a pure Transnational Administrative Act issued in the conditions of the Slovak Republic is a certificate of professional competence issued by the district office at the county seat pursuant to § 42 (i) of the Act No. 56/2012 Coll on road transport as amended. Such a certificate is issued in accordance with the requirements of Regulation 1071/2009 and should therefore, given the generality of the Regulation, be accepted by all Member States automatically without the possibility of blocking its effects. At the same time, this law reciprocally in accordance with Art. 21 of Regulation 1071/2009 accepts the validity of a certificate of professional competence issued in another Member State pursuant to Regulation 1071/2009 in the Slovak Republic within the scope of acquired professional competence³⁷.

Speaking of modified Transnational Administrative Acts, in the conditions of the Slovak Republic such is, for example, a driving licence issued by an authority of the Police Force of the Slovak Republic pursuant to § 95 (1) of the Act No. 8/2009 Coll. on road traffic as amended. Such a driving licence is issued on the basis of a first or subsequent driving licence granted after fulfilling the transposed conditions from Directive 2006/126/EC³⁸ to Act No. 8/2009 Coll. on road traffic as amended³⁹ and in view of the Member States' commitment to transpose Art. 2 Directive 2006/126/EC is universally applicable in all Member States. At the same time Act No. 8/2009 The Coll. on road traffic as amended reciprocally recognizes driving licences issued in the Member States of the European Economic Area in the territory of the Slovak Republic⁴⁰. The effects of a driving licence issued in another Member State may be in the Slovak Republic in accordance with Art. 11 (2) or (4) of Directive 2006/126/EC blocked. An example of the regulation of refusal or suspension of the effects of driving licences issued in another Member State is the regulation of the withholding of a driving licence under § 70 and § 71 of the Act No. 8/2009 Coll. on road traffic as amended, which also provides for the possibility of withholding a driving licence issued in another Member State for exhaustively defined reasons.

³⁷ § 6 (10) of the Act No. 56/2012 Coll. on road transport as amended.

³⁸ Art. 7 of the Directive 2006/126/EC.

³⁹ See § 77 et seq. of the Act No. 8/2009 Coll. on road traffic as amended.

⁴⁰ § 102 (1) of the Act No. 8/2009 Coll. on road traffic as amended

4. Extraterritorial effects of selected territorial self-government decisions

Territorial self-government authorities may also issue Extraterritorial Administrative Acts within their field of competence. Examples of administrative acts, which, in our view, may potentially give rise to extraterritorial effects are, in particular, decisions of territorial self-government authorities on financial penalties and decisions of territorial self-government authorities on a local tax or charges.

4.1. Decisions of territorial self-government authorities on financial penalties

As mentioned, Framework Decision 2005/214/JHA also applies to decisions of administrative authorities on financial penalties where they are reviewable by a court having jurisdiction in particular in criminal matters⁴¹. In order for such administrative decisions to be recognized and enforced in another Member State under the special regime provided for in Framework Decision 2005/214/JHA, they must:

- i) be definitive⁴²,
- ii) impose a financial penalty on a natural or legal person pursuant to Art. 1(b) Framework Decision 2005/214/JHA⁴³,
- iii) be issued in respect of a criminal offence under the law of the issuing State or in respect of being infringements of the rules of law either exhaustively defined in Art. 5 (1) of the Framework Decision 2005/214/JHA, irrespective of the verification of the double criminality of an act or an act which, whatever its constituent elements or however it is described, is mutually regarded as an offence⁴⁴.

⁴¹ Art. 1 (a) of the Framework Decision 2005/214/JHA.

⁴² Based on the Commission document no. COM/2000/495/final of 26.07.2000, by which it communicated its position to the Council and the European Parliament in the matter of “Mutual Recognition of Final Decisions in Criminal Matters”, a final decision must be understood as an act by which a certain matter is resolved in a binding way. Above all, it is necessary to consider as such all decisions that rule on the substance of a criminal case, and against which no more ordinary appeal is possible, or, where such an appeal is still possible, it has no suspensive effect. Similarly, see J. Záhora, *Zákon o uznávaní a výkone rozhodnutí o peňažnej sankcii v Európskej únii. Komentár*, Wolters Kluwer SR s. r. o., Bratislava 2020, p. 29.

⁴³ A financial penalty pursuant to Art. 1 (b) of the Framework Decision 2005/214/JHA is in particular a sum of money on conviction of an offence imposed in a decision and a sum of money in respect of the costs of court or administrative proceedings leading to the decision.

⁴⁴ See Art. 1 (a) in conjunction with Art. 5 of the Framework Decision 2005/214/JHA.

Where a decision of an administrative authority, including a decision of a territorial self-government authority, has been issued for a financial penalty fulfilling the abovementioned criteria, such a decision may be recognized and enforced in accordance with the special regime provided for in Framework Decision 2005/214/JHA in the Member State which has transposed its provisions into national order⁴⁵ and at the same time the obliged of such a decision has property or income, is normally resident or, in the case of a legal person, has its registered seat in that Member State⁴⁶. The issuing State may then forward the decision of the territorial self-government authority on financial penalty, together with the standardized certificate under Framework Decision 2005/214/JHA, to the competent authorities of the Member State where the obliged has its property or income, is normally resident or, in the case of a legal person, has its registered seat. After transmission, the competent authorities in the executing State shall recognize such a decision without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition stipulated in the Art 7 of the Framework decision 2005/214/JHA⁴⁷. This also constitutes the essence of this special regime of recognition and enforcement, which is intended to ensure a faster circulation of decisions on financial penalties.

In our opinion, an example of a decision of a territorial self-government body on a financial penalty under Framework Decision 2005/214/JHA is an enforceable decision for an administrative offence of the vehicle keeper pursuant to § 139a (7) of the Act no. 8/2009 Coll. on road traffic and on amendments to certain acts (hereinafter as “Road Traffic Act”). Under that provision, the municipality is essentially required to impose a fine of a specified amount for infringement of the prohibition on stopping and standing under the law or a prohibition on stopping and standing resulting from a road sign or traffic device. In our opinion, this is therefore a typical example of an act under Art. 5 (1) Framework Decision 2005/214/JHA, which does not assess double criminality, namely the category designated as: ‘conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods’. A person has the right to have the decision of the municipality for this administrative offence reviewed by the administrative court in proceedings on administrative action in matters of administrative punishment. Thus, such a court,

⁴⁵ On the scope of Framework Decision 2005/214/JHA, see L. Jančát, *Special regime...*, *op.cit.*, p. 93–119.

⁴⁶ Art. 4 (1) of the Framework Decision 2005/214/JHA.

⁴⁷ Art. 6 of the Framework Decision 2005/214/JHA.

which, although not a court that decides exclusively on criminal matters, provides guarantees to a person in the context of a given procedure for administrative action in matters of administrative punishment, due to its particularities, that his case will be tried as a matter of a criminal nature pursuant to Art. 6 Convention for the Protection of Human Rights and Fundamental Freedoms⁴⁸. This means that the administrative court can, in our opinion, be substantively regarded as having jurisdiction “*in particular in criminal matters*” for the purposes of Art. 1 of Framework Decision 2005/214/JHA. Thus, in the case of a municipality’s decision to impose a financial penalty for an administrative offence committed by the keeper of a vehicle under Section 139a (7) of the Road Traffic Act, the municipality should, in principle, have the power to transfer such a decision for its recognition and enforcement to the Member State in which the obliged of such a decision has property or income, is normally resident or, in the case of a legal person, the registered seat under the harmonized procedure resulting from Framework Decision 2005/214/JHA. However, according to the Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts transposing this harmonized procedure in the Slovak Republic, such a transmission is not possible due to the limitation of the scope *ratione materiae* of the Act⁴⁹, which was chosen by the Slovak legislature due to its formalistic interpretation of the term *court having jurisdiction in particular in criminal matters*. Thus, in the case of the transmission of decisions on financial penalties, the Act applies only to the transmission of decisions on financial penalties that were issued by a court in criminal proceedings *stricto sensu* and not decisions of administrative authorities that can be reviewed by an administrative court. The Slovak legislator considered that the administrative court did not meet the requirements of Art. 1 (1) Framework Decision 2005/214/JHA. However, as we have indicated, this in our view constitutes an incorrect approach of interpretation, which narrows the scope *ratione materiae* of Framework Decision 2005/214/JHA and is contrary to its purpose⁵⁰.

⁴⁸ On the peculiarities justifying that an administrative court in the Slovak Republic may be considered as having jurisdiction in particular in criminal matters see L. Jančát, *Special regime...*, *op.cit.*, p. 93–119.

⁴⁹ The scope *ratione materiae* of the Act is regulated in § 1 (1) of the Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts. This provision stipulates that this Act governs the procedure of Slovak authorities in: a) the recognition and enforcement of a decision imposing a financial penalty issued by a court or other competent authority of an EU Member State; and b) the transmission of a judgment on a financial penalty issued by a court in criminal proceedings for recognition and enforcement in another Member State.

⁵⁰ See more L. Jančát, *Special regime...*, *op.cit.*, p. 93–119.

It is therefore appropriate for the Slovak legislator to align the wording of the Act with Framework Decision 2005/214/JHA in the future and to extend the scope *ratione materiae* of the Act so that it is possible to transmit decisions of administrative authorities of the Slovak Republic imposing a financial penalty.

Speaking of the recognition and enforcement of a decision on a financial penalty issued by a competent authority of a Member State in the Slovak Republic, in this case the Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts does not directly narrow its scope *ratione materiae* compared to the Framework Decision, since it allows recognition and enforcement of a decision for a financial penalty issued both by a court and by another competent authority of a Member State. As a matter of principle, a decision of a territorial self-government authority of a Member State on a financial penalty issued for one of the categories of offences referred to in Art. 5 (1) Framework Decision 2005/214/JHA⁵¹ including e.g. conduct which infringes road traffic regulations, can be recognized and enforced in the Slovak Republic in accordance with the Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts.

4.2. Decisions of territorial self-government authorities on local tax or charges

The Article 9 (3) of the European Charter of Local Self-Government (hereinafter as “Charter”) states that at least part of the financial resources of local authorities should derive from local taxes and charges, the rate of which they have the right to determine within the limits of the statute. Since the provisions of the Charter have also been incorporated into the legal systems of the Member States, it can be assumed that each Member State governs to some extent in its national order the competence of local authorities to levy local taxes and charges.

In the Slovak Republic, the regulation of the competence to impose local taxes and charges is enshrined in the Constitution of the Slovak Republic⁵² itself and refined by Act No. 582/2004 Coll. on local taxes and local charges for municipal waste and small construction waste, as amended (hereinafter as “Local Taxes Act”). Under the conditions laid down by the Local Taxes Act, the municipality

⁵¹ Transposition of Art. 5 (1) is subject to Section 3 (2) to (5) of the Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts.

⁵² See Art. 59 in conjunction with Art. 65 (2) of the Constitution No. 460/1992 Coll. Constitution of the Slovak Republic, as amended.

may impose the local property tax, the dog tax, the tax on the use of public space, the accommodation tax, the tax on vending machines, the tax on non-winning gaming machines, the tax on entering and staying a motor vehicle in the historic part of the city, the tax on nuclear facility and the local charge on municipal waste and small construction waste⁵³.

On the other hand, the payment of local tax and the forced execution of tax arrears on local tax, as well as other charges imposed by a decision of the municipality as the administrator of the local tax, are subject to the regulation of Act No. 563/2009 Coll. on Tax Administration (Tax Code) and on Amendments to Certain Acts (hereinafter as “Tax Code”). Such forced execution is carried out within the framework of tax enforcement proceedings by methods of tax execution⁵⁴. However, if in any of these ways the municipality, as tax administrator, could not recover the tax arrears or other charges due to the fact that the debtor has no assets in the Slovak Republic, or the enforcement would not lead to full payment of the claim, or would be associated with unreasonable difficulties, or has information that the debtor has assets in another Member State, the municipality is entitled, on the basis of an instrument permitting enforcement issued in the Slovak Republic, to send to the competent authority of a Member State a request for recovery of a claim pursuant to Act No. 466/2009 Coll. on International Assistance in the Recovery of Certain Financial Claims and on Amendments to Certain Acts, as amended (hereinafter as “International Assistance Act”), which represents the transposition of Directive 2010/24/EU⁵⁵.⁵⁶ Such an application must be accompanied by a so-called uniform instrument permitting enforcement, which takes the form of a standardized form under Directive 2010/24/EU and which, in accordance with Article 12 thereof⁵⁷, constitutes the sole basis for recovery and precautionary measures taken in the requested Member State. The competent authority of the Member State to which the request has been transmitted together with the uniform instrument permitting enforcement shall automatically recognize the uniform instrument permitting enforcement, since in accordance

⁵³ See § 2 of the Local Taxes Act.

⁵⁴ See § 98 of the Tax Code.

⁵⁵ According to Art. 2 (1) Directive 2010/24/EU it shall apply to claims relating all taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including the local authorities, or on behalf of the Union. It follows from the above that the scope *ratione materiae* of Directive 2010/24/EU also covers local taxes and charges, therefore its transposed provisions in the International Assistance Act can also be used to recover local taxes and charges levied in the Slovak Republic in the requested Member State.

⁵⁶ § 8 (4) of the International Assistance Act.

⁵⁷ § 8 (3) of the International Assistance Act.

with Art. 12 (1) Directive 2010/24/EU it is not subject to any act of recognition, supplementing or replacement in that Member State and proceed to enforcement under its national law as if it were a recovery of the same or a similar local tax or charge of the requested Member State⁵⁸. The fact that the uniform instrument permitting enforcement is not subject to any act of recognition, supplementing or replacement and Member States are obliged to recognize it automatically implies that it is a Transnational Administrative Act.

The International Assistance Act also contains the procedure of the competent authority of the Slovak Republic as the requested authority. Thus, the competent authority of the Slovak Republic is also obliged to ensure the recovery of a claim of a Member State or its local authority arising from an unpaid local tax or charge on the basis of a request for its recovery to which a uniform instrument permitting enforcement will be attached. If the request for recovery and the uniform instrument permitting enforcement are legally perfect, the competent authority of the Slovak Republic is obliged to enforce the claim arising from the unpaid local tax or charge as if it were recovering the claim from the unpaid local tax or charge in the Slovak Republic. In particular, the competent authority of the Slovak Republic will proceed in accordance with the provisions of the Tax Code governing tax enforcement proceedings, which also provide that an instrument permitting enforcement may also be a uniform instrument permitting enforcement under the International Assistance Act.

5. Conclusion

As a result of deepening integration between Member States, there has been an increase in the number of individual legal acts with extraterritorial effects in recent decades. This phenomenon has been particularly pronounced in the area of individual administrative acts, synonymously administrative decisions, where there has also been an increase in the number of administrative acts with automatic effects in the territory of a Member State other than the one which issued the act. Reflecting this development, we have presented a possible classification of administrative acts according to whether they have a hypothetical potential to acquire extraterritorial effects and, if so, under what conditions. Subsequently, based on a clear classification, we defined three basic regimes of the recognition and enforcement of Extraterritorial Administrative Acts within the Union. These regimes are:

⁵⁸ See Art. 13 (1) of the International Assistance Act.

1. General regime of the recognition and enforcement of Administrative Acts per recognitionem.
2. Special regimes of the recognition and enforcement of Administrative Acts per recognitionem.
3. Regime of Transnational Administrative Acts.

In conclusion, based on an analysis of decisions of territorial self-government authorities on financial penalties and decisions of territorial self-government authorities on local tax or charges, we concluded that these are Extraterritorial Administrative Acts. The recognition and enforcement of certain decisions of territorial self-government authorities on financial penalties may, under harmonised conditions, take place under the special regime for the recognition and enforcement of Administrative Acts per recognitionem under the Framework Decision 2005/214/JHA and the recognition and enforcement of territorial self-government decisions on local tax or charges, may take place, under harmonized conditions, under the regime of Transnational Administrative Acts under Directive 2010/24/EU.

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