

# THE CONCEPT OF ADMINISTRATIVE MEASURES FOCUSING ON POLICE MEASURES

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**Abstract:** The administration, a part of which is police, passes diverse legal acts. A prominent place among these belongs to material acts, which include administrative actions and administrative measures. It should be noted that the issues related to administrative measures have not been properly addressed so far in expert legal literature. This paper therefore presents an attempt to provide additional information about the very concept of administrative measures in legal theory and existing legislation, focusing on police measures taken to protect public order.

**Key Words:** administrative acts, legal acts, administrative act, material act, administrative actions, administrative measures, police, the principle of lawfulness, public order.

## 1. Introduction

Administration acts are not only legal, but also material ones. Unlike administrative acts as a form of exercising administrative authority, which present statements of will by which legal relationships are created, modified or abolished and therefore have immediate and independent legal effects, material acts are bodily acts legally relevant or irrelevant that have no immediate or independent legal effect.

It is well known that the activity of the administration does not only include the passing of administrative acts but also a range of individual acts and actions that have no immediate legal effect. These acts and activities greatly vary in character and range from simple material actions to acts provided for by the law, but the crucial fact about all of these is that they have no immediate legal effect. As some authors have pointed out, “legal effects must stem directly from the very act, or they are not immediate.”\*

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\* E. Forsthoff, *Traite de droit administratif allemand*, Bruxelles, 1969, p. 313.

These acts are referred to by various terms in legal theory. Thus the most commonly used terms include: material acts (Puguit), individual non-legal acts (Debbash), unilateral acts without legal effect (Vedel), and even natural acts (Eisenmann).<sup>†</sup>

In our legal theory the most frequently used terms include: material acts, administrative actions, concrete act of administration outside administrative act, etc., whereas the existing legislation most frequently uses expressions such as individual acts, actions and measures.<sup>‡</sup>

Besides, material acts of administrative organs have been given an extremely modest consideration in both national and international professional literature, especially when compared to the administrative act.

Legal theory and legislation refer to both administrative actions and administrative measures. However, the same pattern of giving a less prominent role to administrative actions as compared to administrative acts also prevails here and administrative measures are given less attention than both administrative actions and administrative acts.

## 2. The Notion of Administrative Measures

The term administrative measures can be encountered in literature, but without pretensions to define it clearly and make a distinction between them and administrative acts or administrative actions. S. Popovic thus points out that “coercive and restrictive measures as a rule are performed by state organs (law enforcement organs, national defense, courts by pronouncing sentences of imprisonment or other sentences)... the implementation of coercive measures and restrictions can be performed by individual acts, but also through administrative actions.”<sup>§</sup>

P. Dimitrijevic emphasizes that performing actions of law enforcement is necessarily governed by legal rules – regardless of whether they are performed contrary to the will of the subject to which they pertain, or they do not have legal character. This author concludes that the administrative actions are such a form of law enforcement actions “which includes performing the measures of coercion or restriction based on the law in specific cases toward specific subjects.”<sup>\*\*</sup>

The existing law also recognizes the term administrative measures. Thus the Constitution of the Republic of Serbia (Section 202) envisages that in emergency or state of war departures from human or minority rights granted by

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<sup>†</sup> M. Stassinopoulos, *Traite des actes administratifs*, Paris, 1954., p. 75. This author also calls them decisions that cannot be carried out.

<sup>‡</sup> D. Milkov, *Pojam upravnog akta* (doctoral thesis, unpublished), Novi Sad, 1983, p. 289-292.

<sup>§</sup> S. Popović, *Upravno pravo (opšti deo)*, Beograd, 1995, p. 332-334.

<sup>\*\*</sup> P. Dimitrijević, *Osnovi upravnog prava*, Beograd, 1989, p. 276.

the Constitution are allowed, but only to an extent that is necessary. These departures must not lead to discrimination based on race, sex, language, religion, nationality or social background. The measures involving departure from human and minority rights shall cease upon ending the state of public emergency or war. These measures must in no way refer to the rights provided for in Sections 23, 24, 25, 26, 28, 32, 34, 37, 38, 43, 45, 47, 49, 62, 63, 64 and 78 of the Constitution. It is to that effect that the Law on State Administration of the Republic of Serbia (Section 12) provides that state administration authorities draw bills and other regulations and general acts for the Government and propose development strategies and other measures that mould the Government policy. Section 18, paragraph 1 provides that state administration authorities supervise the enforcement of the Law and other regulations through inspection and direct insight into actions of both physical and legal persons, prescribing, within their powers, certain measures on the basis of results of such supervision. Section 19 envisages that the state administration authorities are to see to it that the work of public services is in keeping with the law. Here also the state administration authorities take measures within their legal powers.

There are numerous examples of such and similar cases in the norms of the existing legislation. However, it is generally recognized that the authors of these legal acts have used the concept of measures very broadly and inaccurately, without any intention to embark upon defining the notion.

As we can see, the concept of administrative measures is more frequently used in regulations and in practice than in theoretical literature. The practical use requires that the concept and contents of administrative measures be studied, as well as their planning for specific purposes. It is vital to explore specific activities involved in these measures, the issues of jurisdiction and responsibility for their implementation, as well as legal rules, tactical aspects and other relevant issues. From the legal point of view, it is vital to ensure legal grounds for all activities related to administrative measures including the very decision to take the said measures. Naturally, there should be a valid reason for making such a decision. However, the decision will primarily depend on the quality of available information and successful estimates of situations, that is, on converting the information into appropriate decisions. When assessing the situation, the legal aspect of the problem should be restricted to most important questions – the ones related to the scope, contents and range of available powers that the authorities are entitled to, as well as their applicability and effect in the specific situation. Problems arise on the level of principles on which successful administrative measure is based, then with respect to the method of managing used in the realization of such a measure in the given situation, and, finally, with respect to finding objective criteria for evaluating the results of the applied measures in the context of achieving the topmost aim of administrative authorities' entire activity.

An administrative measure is not something apart from an administrative act or administrative procedures. It is most frequently imposed by an administrative act and enforced by administrative procedures or stems directly from the law. Administrative measures present certain activities performed by the state administration authorities the purpose of which is to achieve the goal set for performing tasks and jobs that is within their jurisdiction, and this goal is achieved by passing an administrative act or instituting administrative procedures, or even sometimes in both of these ways. From the legal point of view, administrative measures should be seen primarily as implementation of a larger number of administrative actions with a view to achieving a specific goal in a given situation, all in keeping with the law. The implementation of a number of administrative actions within an administrative measure should lead to a concrete goal for the purpose of which it has been taken, just as the implementation of a single measure. Still, the form of an administrative measure cannot be independent from and above the legal form, and its actual effect cannot be more important than legal grounds. Measures, as a rule, involve legal activity of the administrative authority, i.e. the passing of such legal acts and implementing such material acts as may be relevant.

The administrative measures that are thus understood are characterized by a number of important elements. Firstly, the administrative measures are strictly legally envisaged and governed, based on the law. Their legality is twofold: it refers both to the contents and the form. The contents-related legal aspect of administrative measures primarily concerns legal prerequisites for their application and respect for certain legal purpose. On the contrary, if an administrative measure is aimed at achieving another purpose (which is not envisaged or is illegal) than we can speak about misuse (or abuse) of the right to take administrative measure. The formal aspect to the legality of administrative measures refers to the clear and precise legal jurisdiction for the implementation thereof, as well as to the legality of the procedure, the manner and development of the implementation.

Secondly, the purpose of administrative measures is to enforce law, which means to achieve specific public goals in legal ways. It does not have to refer to the very enforcement of the law, but also to preparing conditions for creating law.

Thirdly, administrative measures are characterized by authoritativeness typical of administration as a function of state authority. Authoritativeness of administrative measures can be more or less prominent. They may be taken for preventive purposes, but this does not imply an absence of authoritativeness.

Fourthly, administrative measures are taken only in keeping with certain principles. There are a number of these principles. The principle of lawfulness implies that the administrative measures are taken in keeping with the law. The principle of proportionality presumes that the administrative authority usually has

a number of legally possible and appropriate measures at its disposal but that it should choose the one or ones that will serve the specific purpose or goal causing at the same time as little damage to the subjects involved as possible. This principle is explicitly referred to in the General Administrative Procedure Act in the part related to execution (Section 263), to the effect that if it is possible to execute an order in more than one way and using different means, it will be executed in such a way and using such a means as to achieve the set goal and be the mildest towards the subject. This article emphasizes that on Sundays, during state holidays and at night the orders can be executed only if there is a danger in their postponing and if the authority in charge of execution has issued a written warrant. The principle of limited time duration of an administrative measure means that the duration of a measure is restricted to the period of time necessary to achieve the goal for the purpose of which the measure was taken. In keeping with the principle of independence, the state administration authority takes only necessary, most favourable and legally possible measures bearing in mind jobs and tasks assigned to it in keeping with its function performed in the system of government.

### **3. Administrative Measures of Police in Executing their Duty Related to Protection of Public Order**

The implementation of administrative measures on the part of administrative authorities, within their powers, is inevitable. The same should be understood in the case of administrative measures enforced by police in the execution of their duties and within the powers vested in them.

It is widely known that one of police jobs is to protect public order. It implies organized and continued activity on the part of police aimed at ensuring stable public order, or the optimal state of security in this sphere<sup>††</sup>.

We can distinguish the following activities in the process of protecting public order:

1. Monitoring and considering the state of public order;
2. Estimates and prognosis of the state of public order;
3. Decision-making related to measures for the protection of public order and planning of such measures;
4. Preparing and organizing implementation of planned measures ;
5. Supervising, coordination and control of planned measures implementation;

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<sup>††</sup> D. Vasiljević, *Osnovi prekršajnog prava sa zaštitom javnog reda i mira (Introduction to Offence Law and Public Order Protection)*, Beograd, 1998, p.102

6. Informing, analyzing and documenting phenomena and events and measures taken.

In this paper we shall focus on police activities mentioned in items 3, 4, 5, and 6 which concern measures.

### **3.1. Decision-making related to measures for protection of public order and planning of such measures**

All measures taken by police in order to secure public order may be either preventive or repressive.

Preventive measures are aimed at preventing certain manifestations and events that jeopardize security. They are regarded to be primary measures because the basic goal in all security activities, including public order, is to prevent manifestations and events that present security threats.

Preventive police measures are manifest in constabulary and patrol activities, permanent duty activities, traffic regulation and control, operative monitoring of persons presenting security threats with respect to public order (multiple recidivists, alcoholics, mentally deranged persons, etc.), operative monitoring of facilities and places most frequently related to violations of public order (catering facilities, railway stations, bus terminals, crowded streets and squares, public transportation means, etc.), initiating independent or joint activities with other authorities and institutions (inspection organizations, institutions of culture and education, health institutions, etc.) whose activities, beside the primary function, also has preventive role with respect to maintaining stability in the sphere of public order.

Repressive measures primarily comprise efficient prosecution of perpetrators of criminal acts and offences against the public order as well as adequate policy of sanctioning by relevant authorities in proceedings instituted for both summary and indictable offences. The repressive measures include performing special operations in a specific time and a specific place (police raids, blockings, stepped-up surveillance of persons and facilities, etc.)

Decision-making related to the type and scope of measures to be taken will depend on the results of monitoring, evaluation and prognosis of further developments regarding security issues in the sphere of public order. A decision to take measures in order to protect public order specifies the types and scopes of measures to be taken. It is upon the senior officer in charge to choose which types of measures are to be taken, what their scope is to be and what intensity is to be applied. For instance, urban environments will call for 24/7 foot and patrol beats, occasionally combined with patrolling in keeping with security estimates. Certain endangered facilities may also call for a raid or stepped-up control of persons at some point in time.

On the other hand, patrolling as a rule will be planned in rural areas, but permanent or temporary beat sectors can also be defined on the basis of security estimates.

A decision principally defines the measures that will be taken, their scope and intensity, which depend on the state of security in a specified area. The decision must be subject to changes in keeping with the state of security. However, frequent changes and extensions are not good because they may indicate certain flaws in monitoring and evaluating the state.

Based on the decision on the type and scope of envisaged measures in a certain area, the plan for their implementation is drawn. The plan of measures presents the implementation of the decision and its practical implementation. The plan refers to the area, time, forces and means to be engaged in the activities of protecting public order.

Depending on the security issues and other relevant factors, long-term plans can be made for beat and patrol activities, operative surveillance of certain categories of persons and facilities, whereas certain, mostly repressive measures, are planned depending on the trends and developments of security issues for shorter periods of time, on a weekly or monthly basis.

The plan of measures is subject to changes depending on the development of security situation.

### **3.2. Preparing and organizing implementation of planned measures**

Implementation of the planned measures calls for thorough preparation which includes both preparation of the manpower to be engaged and the technical means which are to be used.

The preparation of manpower includes providing timely information on the content of the planned measures, aims to be achieved and modalities in which the planned measures are to be carried out, specific tasks and deadlines for their performance, checking the competence of police officers for the efficient performance of the planned measures, the examination of their medical status, both physical and psychological, the preparation of senior officers.

The preparation of technical means comprises the checks of vehicles, equipment, arms and communications, as well as efforts to ensure that all of these are fully operational.

Following a high standard preparation for implementing the planned measures, the organization of their implementation is to be undertaken. This organization includes assigning specific tasks and jobs clearly stating the dynamics of their realization, the making of daily, weekly, and, where possible, monthly schedules for all police officers, as well as the organization of adequate dispatching of officers engaged to perform specific tasks.

### **3.3. Supervising, coordination and control of planned measures implementation**

Supervising of police officers' activities in the realization of the planned measures is an important factor in the work officers in managerial positions. The supervision aims to ensure that the officer in charge is immediately and continuously informed of the quality and dynamics of the planned measures implementation. The supervision ensures the timely evaluation of the quality and scope of realization and allows possible correction in the plan and changes of the decision if necessary.

Supervision activities are diversified and include constant and immediate reading of reports and other documents created in the process (reports on offences and criminal acts, official notes, etc.), direct communication with law enforcement officers and exchange of spoken information, evaluation and conclusions on both regular and emergency meetings and debrief sessions, using the regular information system and realizing the plan of control activities.

Coordination in the process of realization of the planned measures focuses on harmonizing activities of different organization units or parts of the same organizational unit engaged in the performance of the task. The coordination achieves and ensures unified acting of all organizational parts in the engaged structure and rational use of forces and means with maximum of efficiency. In the process of coordination the required expert assistance is provided for the engaged forces and possible changes in activity plans are made if the need arises.

Control of the realization of planned measures is a planned activity aimed at ensuring direct insight into the quality and scope of performed tasks of each and every engaged police officer. It is performed in keeping with the set plan which defines the aim of control, the time and the person in charge. A special form of control is daily survey of reports, offence and crime records, official notes, and other documents produced in the course of routine procedures.

### **3.4. Informing, analyzing and documenting phenomena and events and measures taken**

The realization of planned activities related to maintaining public order must be accompanied by an efficient system of informing. This system has its normative and practical framework on the level of all organizational units of the Ministry of the Interior and it is involved in all stages of the realization of planned measures.

Regarding the analysis, it is vital to ensure its objectivity, which means that all elements of the process must be critically evaluated. The evaluation must be based on accurate and factual reports and possible flaws that may be observed



must not be tolerated or passed by, but their causes should be established so as to use them for improving further activities.

The analysis comprises the quality of monitoring and defining the security situation, the quality of security evaluation, the correctness of the decision and quality of activity planning, preparatory activities, ways of organizing and implementing the planned measures, coordination, managing and functioning of the information system.

Documenting the phenomena and events and the measures taken concerning them is performed in keeping with the existing normative acts (books of regulations, guidelines, etc.). Namely, there are provisions for the ways of documenting every element of activity, the distribution of these documents and their storage.

#### **4. Conclusion**

We have briefly discussed the police measures related to public order protection. However, there are substantially more measures of the same complexity that the police are in charge of. In any case, administrative procedures must be based on and limited by law, i.e. they can be performed only in keeping with regulation, they are of authoritative character, their purpose is to implement law and they are performed in keeping with certain principles. However, they should be distinguished from those that have no explicit norms and frequently do not require such norms. Such measures are also included in police work. For example, the preparedness of necessary police force for major sports manifestations and public meetings, the contacts between police and the organizers of such events who are responsible for maintaining order at such conventions, informing citizens for better protection against criminal acts and the like. Since secrecy is a prerequisite of successful police activities, certain police measures cannot be observed at all. However, this does not mean that such measures do not have legal grounds. Legislation in some countries contains specific provisions regarding this matter, whereas statutes of some other countries are more or less indirect. The former group of laws refers to these secret measures by using terms such as “making photographs and sketches”, “analyzing audio recordings”, “technical means of secret surveillance”, “using reliable persons and informers”, which all point to secret intelligence gathering which provides police with necessary information. The essence of such secret intelligence gathering is that it cannot be observed as police activity. The latter group of countries, including ours, has statutes which contain provisions from which it can be more or less indirectly inferred that there are certain undercover police operations, not to be observed when practically used. These statutes

contain provisions referring to “means and methods”, “departing measures”, and the like. In fact, police cannot successfully perform its functions related to prevention or repression of crime unless parts of their activities remain secret.

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## РЕЗИМЕ

У овом раду пажња је посвећена појму управних мера са освртом на мере полиције и то на оне мере које полиција предузима у обављању послова заштите јавног реда и мира.

Управна мера не представља нешто што је одвојено од управног акта и управних радњи. Најчешће се она намеће управним актом, а принудно остварује вршењем управних радњи, или пак следи непосредно на основу закона. Управне мере представљају одређене активности органа државне управе које су усмерене ка циљу који треба постићи у вршењу послова и задатака из њихове надлежности, а тај циљ се остварује или доношењем управног акта, или вршењем управних радњи, а некада заједно и једним и другим. Управне мере са правног становишта треба посматрати пре свега као истовремену примену у некој конкретној ситуацији већег броја управних радњи ради постизања одређеног циља а све у складу са законом. Примена више управних радњи у склопу неке управне мере треба баш као и појединачна примена једне мере да доведе до стварног циља због којег је и предузета. При томе, појавни облик управне мере не може бити независан и

изнад правне форме, а фактички ефекат важнији од правног основа. Мере по правилу подразумевају правну активност органа управе, тј. доношење одговарајућих правних и предузимање одређених материјалних аката.

Познато је да је један од послова полиције и заштита јавног реда и мира. То подразумева организовану и континуирану активност полиције са циљем да се обезбеди стабилан јавни ред и мир, односно оптимално стање безбедности у овој области.

Укратко смо изложили мере полиције у вези са заштитом јавног реда и мира. Међутим, овако сложених мера које предузима полиција има знатно више. У сваком случају управне мере морају имати правни основ и оквир, тј. могу се предузимати само у складу са прописима, ауторитативног су карактера, служе примени права и предузимају се у складу са одређеним начелима.

### SUMMARY

This paper focuses on the concept of administrative measures with special reference to the measures undertaken by the police while performing the jobs related to the protection of public order and peace.

The administrative measures do not represent something which is separate from the administrative acts and administrative actions. It is most often imposed by the administrative act and enforced by performing administrative actions, or it is pursued directly based on law. The administrative measures represent certain activities of the state administrative entities which are directed towards the goal to be achieved in performing jobs and tasks within their jurisdiction, and the goal is achieved either by the enactment of the administrative act or performing of administrative actions, sometimes by both. From the legal point of view, the administrative measures should be regarded primarily as a simultaneous application of a number of administrative actions in a specific situation in order to achieve a certain goal and all pursuant to the law. The application of several administrative actions within an administrative measure should lead to the real goal because of which it was taken in the first place in the same way as the application of an individual measure. The form of administrative measure at that cannot be independent and above the legal form, while the actual effect is more important than the legal basis. The measures as a rule imply the legal activities of the administrative entities, i.e. the enactment of the corresponding legal acts and undertaking of certain material acts.

It is well known that the police work includes the protection of public peace and order. This implies organized and continuous police activities aimed at providing stable public peace and order, i.e. the optimum condition of security in this area.

We have briefly presented the police measures related to the protection of public peace and order. However, there are many more complex measures undertaken by the police. In any case, the administrative measures must have legal basis and framework, i.e. they can be undertaken only in accordance with the regulations, they are of authoritative character, serve to apply the law and they are undertaken in accordance with certain principles.