Ius Comparatum - Global Studies in Comparative Law

Jaime Rodríguez-Arana Muñoz *Editor*

Recognition of Foreign Administrative Acts

Springer

Ius Comparatum - Global Studies in Comparative Law

Volume 10

More information about this series at http://www.springer.com/series/11943

Academie Internationale de Droit Compare
International Academy of Comparative Law

Jaime Rodríguez-Arana Muñoz
Editor

Recognition of Foreign Administrative Acts

Springer

Editor
Jaime Rodríguez-Arana Muñoz
Full Professor of Administrative Law
Universidade da Coruña
Coruña, Spain

ISSN 2214-6881 ISSN 2214-689X (electronic)
Ius Comparatum - Global Studies in Comparative Law
ISBN 978-3-319-18973-4 ISBN 978-3-319-18974-1 (eBook)
DOI 10.1007/978-3-319-18974-1

Library of Congress Control Number: 2015957255

Springer Cham Heidelberg New York Dordrecht London

Printed on acid-free paper

Springer International Publishing AG Switzerland is part of Springer Science+Business Media (www.springer.com)

Prologue

The topic we had to confront today is unusual to public law scholars, because it is somehow both old-fashioned and postmodern, as sometimes happens.

It is old-fashioned because from its origin administrative law is obviously a domestic branch of law: therefore since the very beginning of its history administrative acts have traditionally been interpreted as strictly circumscribed in terms of force, efficacy and binding effects, to the national territory or, in a few cases, to national citizens living or occasionally finding themselves abroad, or at most to colonial territories subject to national sovereignty, though colonies used to have special regimes, including peculiar administrative law rules applicable to their individual territories (for instance, according to Spanish, English and Italian laws). Therefore, since the earliest season of its life, administrative law excluded any influence of foreign administrative acts inside its own sphere.

It is, though, a very recent issue due to globalization, because this cluster of phenomena has made more and more frequent the circulation of persons all over the world and made borders less and less important, more and more permeable and osmotic. Administrative law has necessarily had to open itself to the recognition of at least some effects of non-national administrative acts, even though they are expression of the sovereignty of other countries or even of international or anyhow supranational authorities.

Not occasionally, from this viewpoint, the new branch of administrative law, born and grown up in the last 20 years or so, is global administrative law, concerning networks of independent authorities and other phenomena of this same kind.

The national reports and the general one, as of a consequence, have tried to move in the space remaining between these two extremes: the historical local-territorial-sovereign nature of administrative law and the rising of a new star whose dimension and capacity of diffusing light is not yet clear: global administrative law.

National and general rapporteurs have started from the classical formulations of the notions of force, effects, publication, service of the administrative act, in other words from the sphere of the external efficacy of the act; then, they have moved to some extraterritorial or super-national forms of administrative act, like

those of Mercosur and the EU, and to their relevance or execution in domestic administrative laws.

In this field some relevant aspects had to be underlined: first, the balancing between national parameters like, e.g. public order and supranational principles imposed by the supremacy of EU law (though some of them, like proportionality or the ends/means relationship were already active in the national context of many member states, such as Germany); secondly the enduring importance of mutual recognition according to EU law itself (the Italian experience of 1865 was overturned by the 1942 code); third, the existence of transnational administrative acts, viz of acts adopted in a member state that are declared automatically applicable in the others, like in the pharma sector, while others, similar in nature (such as in the agricultural and OGM sector) are left to rigorously individual decisions of every state; fourth, the peculiar issue of administrative sanctions, becoming more and more important with the growing circulation of persons (mostly in the road traffic sector, due to the increasing number of persons travelling abroad).

Finally, the focus has been put on international treaties on the recognition and execution of international administrative acts: which proves beyond any evidence that the topic still deserves much attention and is still subject to much elaboration at the domestic level before being considered "mature".

The scholarly condition of the topic, yet, is not satisfying at the moment. Much work has to be done still. We hope that this session will significantly contribute to the development of this part of administrative law.

Milano, Italy Giuseppe Franco Ferrari

Contents

Biographical Notes

István Balázs, Ph.D. Head of research unit of public administration at HAS Centre for Social Sciences, Institute for Legal Studies Associate Professor and Head of the Department of Administrative Law, University of Debrecen, Faculty of Law

Carlos Aymerich Cano, Ph.D. Professor of Administrative Law, Universidade da Coruña, Coruña, Spain

Giacinto della Cananea Full Professor of Administrative Law at Università degli Studi di Roma "Tor Vergata"

Alexandra E. Douga Research Associate, Hellenic Institute of International & Foreign Law, Athens, Greece

Attorney at Law, Athens Bar Association, Athens, Greece

Giuseppe Franco Ferrari, Ph.D. Full Professor of Public Comparative Law in Università Bocconi, Milano, and President of the Association of Comparative and European Public Law

Romeu Felipe Bacellar Bacellar Filho, Ph.D. School of Law, Universidade Federal do Paraná (UFPR), Centro, Curitiba, Brazil

Przemysław Florjanowicz-Błachut Department of European Law, Supreme Administrative Court, Warszawa, Poland

Tatyana Scheila Friedrich, Ph.D. School of Law, Fordham University, Bronx, NY, USA

Juan José Pernas García, Ph.D. Professor of Administrative Law, Universidade da Coruña, Coruña, Spain

Justice John Griffiths Federal Court of Australia, Sydney, Australia

Zbigniew Kmieciak Faculty of Law and Administration, University of Łodź, Kopcińskiego, Łodź, Poland

Mikael Koillinen University Lecturer, LL.D. in the Faculty of Law, University of Turku

Dulce Lopes Faculty of Law, Universidade de Coimbra, Pátio da Universidade, Coimbra, Portugal

Michael Mirschberger Ass. Jur. is fully qualified German Lawyer and Research Fellow at the German Research Institute for Public Administration – Speyer

Marianna Nagy Assistant Professor of Administrative Law at the Law School of Eötvös Loránd University, Budapest

Vallo Olle, Ph.D. Faculty of Law, University of Tartu, Tartu, Estonia

M. Timothée Paris Magistrat administratif (Cour administrative d'appel de Paris), professeur associé à l'Université de Paris-est Créteil, secrétaire général de la Société de législation comparée

Marta García Pérez, Ph.D. Professor of Administrative Law, Universidade da Coruña, Coruña, Spain

Triinu Rauk Faculty of Law, University of Tartu, Tartu, Estonia

John C. Reitz, Ph.D. College of Law, University of Iowa, Iowa City, IA, USA

Jorge Enrique Santos- Rodríguez Professor of Administrative Law at Universidad Externado de Colombia

Libardo Rodríguez-Rodríguez, Ph.D. Professor of Administrative Law. President of the International Association of Administrative Law – AIDA

Jaime Rodríguez-Arana Muñoz, Ph.D. Full Professor of Administrative Law, Universidade da Coruña, Coruña, Spain

Krisztina Rozsnyai Assistant Professor of Administrative Law at the Law School of Eötvös Loránd University, Budapest

Myriam Senn, Ph.D. Professor at the University of St. Gallen. Expert for institutions such as the REA, ESF or Cepal

Robert Siuciński Faculty of Law and Administration, University of Łodź, Kopcińskiego, Łodź, Poland

Ulrich Stelkens, Ph.D. Prof. Dr. Iur. is Full Professor of Public Law at the German University of Administrative Sciences Speyer and Fellow of the German Research Institute for Public Administration – Speyer

Çağla Tansuğ Assistant professor, Département de Droit administratif, Université Galatasaray, Istanbul, Turkey

Henrik Wenander, Ph.D. Faculty of Law, Lund University, Lund, Sweden

Chapter 1
Foreign Administrative Acts: General Report

Jaime Rodríguez-Arana Muñoz, Marta García Pérez, Juan José Pernas García, and Carlos Aymerich Cano

Abstract Most countries recognise the notion of "administrative act" as an individual decision taken by a public authority to rule a specific case, submitted to public law and immediately enforceable and, in general, they also identified a foreign administrative act as the one issued by a foreign or international authority and submitted to foreign or international law. However, the existence of a international legal framework does not prevent the existence of broad differences on service, recognition and execution of these foreign administrative acts. It is necessary, to deepen the study of the transnational administrative act, paying special attention to how it affects the conception of the administrative act in different legal cultures and its potential impact on procedural rights and judicial guarantees of the recipients of such acts.

The Concept of an Administrative Act and Its Classification as 'Foreign'

In Brazilian, Estonian, Finnish, French, German, Greek, Hungarian,[1] Norwegian, Spanish, Portuguese, Swedish, Swiss and Turkish law, an administrative act—either "unilateral" or "individual"—could be defined as an individual decision taken by a public authority to rule a specific case, submitted to public law and immediately executed without judicial intervention, understanding that, except in the case of a specific statutory reserve, it refers to the decision, the final act—the one that ends a process—and not to the intermediary ones. Even without its formal legal recognition, this concept is also known in the laws of Russia—as the administrative class of the general category of "legal acts"—Australia—under the form of "administrative action" or, more exactly, "non statutory administrative action"—and US—where

[1] The Hungarian Administrative Procedure Code (APC) uses the term "administrative affaire".

J. Rodríguez-Arana Muñoz (✉)
Full Professor of Administrative Law, Universidade da Coruña, Coruña, Spain
e-mail: jaime.rodriguez-arana.munoz@udc.es

M. García Pérez • J.J. Pernas García • C. Aymerich Cano
Professor of Administrative Law, Universidade da Coruña, Coruña, Spain

J. Rodríguez-Arana Muñoz (ed.), *Recognition of Foreign Administrative Acts*,
Ius Comparatum - Global Studies in Comparative Law 10,
DOI 10.1007/978-3-319-18974-1_1

the US federal law concept of "order" largely operates as equivalent of the "administrative act" even though in this case judicial review, if any, is restricted to the record made by the administrative authority that issued the order. Usually, the concept of "administrative act" is equated with "decision", the act that ends a procedure. However, law tends to expand the concept to include—at least for the purpose of judicial review—intermediate acts that harm individual rights and interests and could be, for this reason, directly challengeable.

Many countries differentiate between administrative and state, political or cabinet acts that are not—or, at least, not entirely—submitted to judicial review due to their political nature. Other countries, like Hungary, differentiate the acts produced by public institutions, i.e., in the educational field, from the ones issued by the general administration, submitting the former to specific review systems and not recognizing them as enforceable.

It can be said that, in general, administrative decisions enjoy the presumption of validity and have immediate enforceability since they are published or notified to the addressees, at least those whose efficacy does not depend on the assistance of a judicial authority which is, in countries like Australia or Norway, the general case.

Another relevant issue is the scope of judicial review, considering that the very concept of administrative act was built in response to this question. From this point of view, Europe has a broadly accepted definition for administrative act, contained in the Recommendation Rec (2004) 20 of the Committee of Ministers of the Council of Europe on the judicial review of administrative acts, including both individual and normative administrative acts, an identification not shared in many countries' laws for which only the former ones can be considered properly as administrative acts. According to this Recommendation, judicial review, conducted by an impartial tribunal of judicial or administrative nature, should be available at a reasonable, non-discouraging cost, through adversarial and public proceedings.

In general, administrative acts issued by (and on behalf of) a foreign administrative authority and/or submitted to a foreign law are considered to be foreign administrative acts. However, it should be stressed that the conceptual and practical differences between transnational or trans boundary acts—an administrative act issued by the authority of one country which aims to have effects in the territory of a different country—and international or global act—an administrative act produced by an international, regional or global, organisation—are commonly recognised.

General Considerations on the Usual Administrative Procedure for Adopting an Administrative Act

Taking into account the great diversity between them, a general regulation of administrative procedure exists in most countries except Australia, France[2] and Turkey. However, this general regulation has very different scopes depending on the legal tradition and the Unitarian or federal form of State.

[2] Where, however, an Administrative Procedure Act is, currently, being drafted.

Expressing what can be defined as universal principles, often recognized at a constitutional level ("due process", "fair procedure" or "good administration"), those procedure statutes are used to guarantee the parts' rights to initiate a procedure, to be heard, to be informed, to make submissions, to propose evidences, to access files and documents, to express themselves in their native language, to get a reasoned decision, to be personally notified and to challenge the decision before impartial judicial or administrative courts. Addressees of an administrative act are usually considered parts as well as any other person whose interest is "direct" or, in any case deemed to be legally protected. Some countries' laws, like the Finnish, Norwegian and Swedish ones, recognize the rights of non-direct interest holders to intervene, in a limited way, in the procedure, enjoying inter alia, the right to be heard or even to appeal the decision.

In relation to the international gathering of evidence in penalty procedures, this possibility is generally not regulated by internal law but through international agreements of mutual recognition and enforcement of decisions in the field of traffic licenses and offences.

The Service of Administrative Acts: Special Consideration for Their Service in Other Countries

The service of administrative acts is, normally, regulated as part of the administrative procedure in the corresponding general administrative procedure, acts or, less often, in specific acts on service and notification of administrative acts. There are also countries where this issue is indirectly treated, by remission or analogy, through judicial procedure statutes.

It can be said that, generally, notification does not affect the validity and existence of administrative acts but its effectiveness, especially with regard to periods in which challenges can be filed. Most countries provide personal (through police officers or agents, depending on the nature of the matter), or postal (regular or registered mail) notification or, though less often, by electronic means and, when all the other means are impracticable, through the publication of edicts in an official journal.

As regards the service of administrative acts abroad, it is necessary to take into account different assumptions:

Notification to an addressee who lives abroad in case of procedures initiated by him or herself: in this case, most countries' laws require the indication of a domicile of a representative inside the country or, when this is not possible, proceed to the publication of an edict in an official journal. When it comes to nationals who live abroad, the service of administrative acts use to be made through diplomatic or consular means. It is also the normal means of notification when the addressees are public agents from the State that issued the act.

Apart from those cases, national laws do not normally regulate the service of administrative acts abroad. This issue is regulated, more frequently, in international

agreements like the European Convention on the Service Abroad of Documents relating to Administrative Matters (CETS no. 094), the agreement on legal assistance concerning service and testimony between Nordic countries (SopS 26/75) or the aforementioned one regarding the field of traffic licenses and offences.

However, those agreements have a limited scope due to the scarce number of countries that have ratified them[3] or to the limited range of materials covered by them.[4] This reality contrasts with the wide scope enjoyed by international agreements on the service of documents in judicial matters[5] which point the way forward in many fields, especially in relation with the language—or the translation—of the documents serviced.

On the Recognition and Execution of Administrative Acts

In the majority of legal systems that the national reporters refer to, National Law does not regulate in general terms, the issues related to validity, efficacy and execution of foreign administrative acts. Hungary is the only country with general regulations on matters related to validity, efficacy and execution of foreign administrative acts, this is included in articles 137 and 138 of the *Code Général de la Procédure Administrative*, of 2014 (hereinafter CPA).

In many cases, the recognition of foreign administrative acts is supported by the standards of international agreements.

In the USA, recognition depends first and foremost on whether the foreign administrative act is subject to mutual recognition agreements (MRAs) that the United States enters into with its trading partners. In the absence of an MRA or a treaty like an MRA, recognition depends on the common law, which does not provide as clear a basis for recognition.

In Russia, the *Code of Administrative Offenses* (CAO) regulates in its chapter 29.1, issues related to legal assistance in cases of administrative infractions.

Also, the Federal Law of 22.07.2008, n° 134-F3 has ratified the convention on the mutual recognition and enforcement of judgments in administrative traffic violation cases.[6]

---

[3] The European Convention on the Service Abroad of Documents relating to Administrative Matters has only been ratified by eight countries (Spain, Belgium, France, Germany, Austria, Italy, Estonia and Luxembourg).

[4] That is the case, for example, of the Schengen Convention of 1990 that supplies the former Schengen Agreement, in the field of free movement of persons.

[5] Inter alia, Council Regulation (CE) 1348/2000, of 29 May 2000, on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters and Council Directive 2003/8/CE of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

[6] Signed on March 28, 1997 (Moscow). The contracting parties were: Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia and Tajikistan. Russia ratified the Convention with the proviso that it shall, in accordance with Article 3 of the Convention, receive

The opinions and positions held by the reporters regarding the convenience of incorporating a national law that regulates the validity, efficacy and execution of foreign administrative acts, are many, even in cases where the proposed legislation is considered to be convenient, and they also differ in regard to the type of rule that should contain those provisions.

The majority of reporters express the convenience of the law regulating this issue. In many cases, regulations of International Law are alluded to, even though it is pointed out that it will be an excessively general and principal regulation, if it aspires to adapt to the different internal rules, in which the concepts of the foreign administrative acts may turn out to be very different. In the case of Switzerland, over the presented adversities that approving this regulation of International range, this country considers as a realistic alternative, the implementation of a system based on reciprocity.

In the case of France there is no national rule referring to the validity, efficacy or execution of foreign administrative acts. There is a principle that envisages that foreign administrative acts are not applicable or able to be executed directly in French territory, unless an internal rule foresees this situation, a practically nonexistent hypothesis; except in the case of the EU, or in the case of a forecast included in that sense in a special regulation. Norway adopts a similar position.

Some reporters alluded to the existence of non general rules on the recognition of sectorial administrative acts that are also specified in another section of the report. For example, in the field of education, there are national rules for the recognition of diplomas, degrees, foreign professionals, and driver's licenses (Finland); or the authentication processes and apostilles for foreign acts that must be taken into account in national notary documents (Estonia).

As a general consideration, the reporter from Switzerland emphasizes that the process of globalisation has given rise to an even higher number of requests and a diversification of cases. Particularly, the developments in the financial sector following the financial crisis of 2007–2009, the increasing role of administrative assistance both in the fields of finance and taxation represent important economic issues. Thus, on the one hand, the sovereign position of the state should be reinforced, and on the other hand the country should be in a position to cooperate with other countries, particularly when handling transnational matters.

In general basis, the reports in which the existence of a forecast about the competent authority to recognize and execute administrative acts to other states is denied or for the processing of applications for recognition and enforcement from other states. In some cases, the reporters are inclined to base the response on the subject matter on which the application for recognition and enforcement is about.

In some States there is a specific provision in this regard. Thus, in the case of Hungary, where there is a law that directly addresses this issue, it provides that the Government shall designate an authority (Art. 137 CPA), but this designation has not been done yet.

---

and consider materials concerning violations of traffic rules provided in the Annex to the Convention.

In Russia, issues of legal assistance in the case of administrative offenses regulated by the CAO are provided via the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, the Ministry of Justice of the Russian Federation and via the Ministry of Internal Affairs, the Prosecutor General's Office and the Federal Service.

In Brazil, competence is attributed to the Ministry of Justice to mediate and enforce the requirements of other states, and the Ministry of Foreign affairs is authorized to submit requests to another state. In the case of MERCOSUR, the Protocol of "LAS LEÑAS" envisages the designation for each State of a "central authority" to receive and follow up on requests for judicial assistance in civil, labor, commercial and administrative matters.

In the case of Estonia, a Minister of Justice is appointed as the competent authority to receive and process applications before requests from other states, under the Convention on the Service Abroad of Documents relating to Administrative Matters[7] (art. 2), but it does not indicate who is competent to make requests to another State. The reporter deduces that any administrative authority holds that competence.

In Switzerland, the competent authorities for requesting the recognition and execution of administrative acts in other countries are either the Federal Department of Justice and/or the specialised competent authorities based on the application of the federal statutes they are in charge of. The competent authorities for handling requests from other countries are determined by the subject matter.

In any cases where competence is not attributed, the reporter proposes formulas for this attribution. For example, in the case of Finland, it is understood that the Council of State is the competent authority to whom domestic law attributes by default all powers not constitutionally attributed to the President of the Republic.

Generally, all the reports refer to the general requirements to provide validity and effectiveness of national administrative acts: with respect to certain formal matters, jurisdiction of the court, motivation, signature or signatures of the competent authority, service of process….

Brazil refers to four conditions that a foreign administrative act should accomplish in order to have effect in the national territory; the act shall be issued by the competent authority; according to the required form specified in the law of the venue; it should be authenticated in the Brazilian Embassy or Consulate of the country where the act was signed; and it shall be registered by a Brazilian notary.

In the report from France a "presumption of authenticity" of foreign acts in the absence of a specific regulation about this matter is invoked. So, unless there is doubt about its authenticity, an apostille to give validity to a foreign act cannot be demanded. This statement, included in the French Civil Code related to acts of private law (art. 47), could be applied by analogy to administrative acts.

In the case of Hungary, Article 52 CPA requires the authentication by the agent of the Hungarian diplomatic mission in the country where the act was issued.

[7] It was signed in Strasbourg on November 24, 1977, and entered into force on November 1, 1982. The Contracting parties were Austria, Belgium, Germany (FRG), Greece, Spain, Italy, Luxembourg, Malta, Portugal, France, Switzerland, and Estonia.

Russia has specific provisions on requests for legal assistance in cases of administrative offenses directed to a foreign country: the request and the annexed documents must be accompanied by a certified translation into the official language of the requiring State.

Regarding the role that the EU could play in this area, the answers are diverse.

In some cases, it is considered that the EU has problems to manage these issues, because of the major differences between the various countries that are members of this organization, as well as on the very concept of administrative acts; probably its role does not go beyond developing simple recommendations. For other reporters, the EU could regulate these issues on the basis of Article 298 of the TFEU (Poland), and there is evidence that there have already been some legislative initiatives to develop a law on administrative procedures for the EU.

Possible actions that could be undertaken by the EU include adopting measures oriented toward standardizing procedures and facilitating simplification, by introducing defined criteria to establish the authenticity of administrative acts, for example. In one case it goes one step further and states that the EU may be provided with competence for the certification of administrative acts of authorities corresponding to the countries considered members of this entity, competence that could be exercised even by an on line procedure in favour of a rapid response to requests for certification.

A reporter (Switzerland) proposes that the standardization and coding of these issues should come from an international instrument, while recognizing some important fields of action that could be undertaken within the EU.

In a few cases the law of the countries that have been reviewed does not establish substantial requirements for foreign administrative acts to have an effect in the national territory.

Some reports allude to certain limitations that must be considered: respecting public policies, the defence of national sovereignty, decency or morality (Brazil); respecting fundamental rights (Sweden); respecting the law and international treaties, the sovereignty and national security (Russia); among others.

In the case of Switzerland, the basic requirement is compliance with the criterion of double criminal liability. However, there are some rare exceptions to its application such as in the case of an embargo.

In the case of France, on a theoretical level because it does not exist and having a general rule in that sense is not even considered. Two conditions are established for the recognition of foreign acts: first, the authenticity of the act, ruling in its favor a presumption of authenticity that would, only in case of doubt, and by the French authorities, require certification by the public authorities of the State of origin; second, respecting the "*règles impératives du droit public français*", and of course, including those contained in the constitutional law, general principles of law, fundamental rights guaranteed by international treaties to which France is party and other rules that may be included, depending on the affected sector.

Public order is recognized, not only as unique but as an important limit for the recognition of the effects of a foreign administrative act.

Although only one report recognizes that respect of public policies is a legal requirement for the recognition of foreign administrative acts (Brazil), in almost all cases public order is declared as an enforceable limit, even in the absence of a legal forecast for it. The act shall not contravene the public order of the state where it should be enforced (Switzerland).

The report from the USA defines this issue, maintaining that the recognition of foreign court judgments is universally subject to an exception for judgments that violate the enforcing state's public policy (*ordre public*), so of course the same rule should apply to the recognition of foreign administrative acts. International systems of obligation for nations generally provide some kind of escape valve so that nations can protect their most vital interests. Thus the exception for public policy is necessary and reasonable as long as it is construed narrowly so that it applies only to matters that are so important that recognition of the foreign administrative act would effectively frustrate the host jurisdiction's protection of its most fundamental values, like basic aspects of democracy and environmental protection and other fundamental human rights.

Now, as the U.S. reporter states, the public policy exception is a limit on the doctrine of the State Acts: the exception for public policy (ordre public) applies only in those cases where there is a true conflict of law, but this exception is itself subject to the important exception created by the Act of State doctrine, which in effect eliminates the exception of public policy for the cases to which it applies. As the Supreme Court held in Banco Nacional de Cuba v. Sabbatino, "[T]he Judicial Branch will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law". It is the executive branch, not the courts, that should have control of conducting relations with other countries, and the point of the doctrine is to prevent litigants from pursuing lawsuits in the United States that might hinder the executive branch in its conducting of foreign affairs. The effect of the doctrine is to remit litigants who claim to be harmed by illegal acts by foreign governments to their remedies either in the courts of the foreign country or through the U.S. executive branch's diplomats. The chief effect of the doctrine applied to foreign administrative acts is thus to override the public policy defence and related defences that challenge the legality of the foreign administrative act, such as the lack of jurisdiction or competence. If the doctrine is not a constitutional requirement, then it is a prudential limitation that the federal courts have adopted as part of the federal common law.

Under the proposals de lege ferenda, the reporter from Turkey proposes that the legislator is inspired by a law that is already in force (Act No. 5718) where it is stated that for the Turkish court to recognize a foreign judgment, the judge must verify that it is does not clearly disagree with the public order. The jurisprudence of the Turkish Court of Cassation whereby to reject a demand of recognition it requires that the judgment contains an order of execution or enforcement that is "clairement inconven-

able par les règles fondamentales juridiques, morales et consciencielles qui sont à respecter obligatoirement pour que la vie de la société soit harmonieuse et béat".

In the case of foreign administrative acts with punitive effects, in some of the reports Recommendation No. R (91) of the Committee of Ministers of the Council of Europe concerning repressive administrative sanctions, which has been adopted all European states is cited.

The precepts of various national constitutions in which guarantees are established for the infringement procedure and particularly the defence rights are also cited. This is, for example, the case of the Brazilian Constitution (Articles 5 and 37) and the Swiss Constitution (art. 29).

Among the principles and procedural guarantees to be respected in relation to the administrative act, the following are invoked: legality, morality, impersonality, publicity, efficiency (Brazil); fairness, participation, right to present evidence, reasons for decisions, right to appeal (Poland); etc.

International Conventions on the Recognition and Execution of International Administrative Acts and on the Legalization of Public Documents

International conventions develop different models for recognizing administrative acts in supranational fields of interest. Along this line, there are agreements that establish standard procedures for the recognition of administrative acts, and other models that foresee mutual recognition.

However, as highlighted by the USA report, not all the mutual recognition agreements of foreign administrative acts involve recognition. On the one hand, the conformity assessment bodies (CABs) are not considered administrative acts by private bodies whose actions may be performed under the law of the country where they operate. On the other hand, mutual recognition agreements may require the exchange of mutual data gathered by inspections, not the recognition of the assessment that the foreign regulator makes on the basis of that data.

In the European region, a number of international conventions that develop systems of mutual recognition for acts or administrative documents have been approved. Beyond the European setting, some countries have signed and ratified international agreements on limited recognition and enforcement of administrative measures, as pointed out in the report from Brazil, while others deployed intense international cooperation in this field, as seems to be the case of Australia.

Institutionally, the work of the Council of Europe is highlighted. Also noteworthy is the role of other international organizations such as the North American Free Trade Area (NAFTA), the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) that have driven and even pressured——as it is stated in the US report related to the activity NAFTA and WTO——the States to negotiate mutual recognition agreements (MRAs).

In the USA, recognition depends first and foremost on whether the foreign administrative act is subject to mutual recognition agreements (MRAs) that the United States enters into with its trading partners. MRAs may include for each participating nation the commitment to recognize, with respect to goods and services imported from partner nations, the partner nations' inspections and certifications with regard to various standards, including, most importantly, matters of health and safety and environmental or consumer protection, in lieu of its own inspections. Some of these inspections or certifications may constitute administrative acts. By entering into MRAs to minimize duplicative inspections and certifications in foreign trade, the United States thus agrees to recognize certain kinds of foreign administrative acts, a commitment that is usually implemented by domestic legislation and regulation, thereby providing a clear legal basis for recognition.

The US report emphasizes issues that condition the MRAs to a resource, such as the reluctance of the agencies to accept foreign regulations or conformity assessments instead of their own, to share information with other national regulators. Also, the adoption of internal regulations derived from the MRAs can represent a loss of legitimacy in the administrative action because of the limitation or elimination of the participation paperwork or regulatory proceedings.

There are some significant examples of international conventions on the recognition and/or enforcement of certain foreign administrative acts, which are listed below:

Convention on Road Traffic, Vienna, 8 November 1968.
European Convention on the Academic Recognition of University Qualifications, Paris, 14 December 1959; Convention on the Recognition of Qualifications concerning Higher Education in the European Region, Lisbon, 11 April 1997.
Convention on Mutual Administrative Assistance in Tax Matters, Strasbourg, 25 January 1988.
European Agreement on the abolition of visas for refugees, Strasbourg, 20 April 1959.
European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe, Paris, 12 December 1957.

As highlighted by the Italian reporter, some of these agreements foresee mutual recognition models, such as the case of the Road Traffic Convention (Vienna, 8 November 1968). According to the self-scheme of the regulatory model the member States admit the validity and efficacy in their territory of the permits issued by other parties in the agreement. They cannot submit these acts to recognition procedures. However, the states can reject the recognition of licenses, for reasons such as age or the violation of the rules of national traffic. As mentioned when speaking of Community secondary legislation, this agreement provides the possibility to except the automatic recognition system when overriding reasons of general interest are at risk, such as the protection of road safety.

Also highlighted at a regional level is the recognition of agreements of administrative acts signed between the Nordic countries, on tax matters, higher education, or driver's licenses. Also in the APEC group several initiatives have been developed in areas of mutual recognition, for example, of electronic and telecommunications

equipment. These foresee the automatic recognition of the assessment reports and the certificates of conformity of the products for export, by the national bodies of conformity assessment. The aim is to avoid duplication of controls and reduce export costs.

The recognition of foreign administrative acts is also evidenced through bilateral agreements between States, as expressed profusely in the national reports from Germany, Australia, Poland, Portugal, Russia, Turkey and the USA. These agreements are projected on the same topics covered by international conventions of regional scope: foreigners; free movement of persons; recognition and enforcement of sanctions; mutual administrative assistance, consumer protection; recognition of registration certificates; product approvals; social security; decisions on the stock market, etc.

The Australian national report provides information on the agreements or mutual recognition agreements between Australia and the EU, which apply to administrative acts for the verification of conformity of products. These bodies verify the compliance at source of the target regulation by certain products that are exported. In this case the transnational element of the acts does not only bring us to the efficacy of the act in the country or countries of destination but also the fact that the foreign administrative act itself applies the proper regulation of the country or market of destination.

The USA report alludes, among other things, to the bilateral agreement with Australia, adopted in 2008 which involves a mutual equivalency regime for stock brokers and stock exchanges. Australian and USA exchanges and brokers are exempt from the usual national registration requirements. The national report mentions that this type of agreement allows the recognition of foreign administrative acts, also they show the difficulty of sustaining or expanding such programs of mutual recognition.

Besides the issue of recognition of foreign administrative acts, the questionnaire that has been the basis for this comprehensive report has raised issues about the level of implementation of international conventions that legalize administrative documents. There are multiple international agreements that eliminate the requirement of the legalization of administrative documents, highlighting among them the role of the Apostille Convention.

There are also international agreements that eliminate the requirement of legalizing certain administrative documents, such as the documents executed by the diplomatic—European Convention on the Abolition of the System of Legalization of Documents Executed by Diplomatic Agents or Officers, London, June 7, 1968—; requests for notification of foreign administrative acts—European Convention on the Service Abroad Documents relating to Administrative Matters,, 24 November 1977—; or requests for administrative assistance from other States—European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, of 15 March 1978.

Most of the countries analyzed have joined the Hague Convention abolishing the requirement of legalizing foreign public documents, concluded on 5 October 1961 in The Hague (Apostille Convention). As noted, the agreement eliminates the requirements of legalization of administrative documents, which is replaced by the Apostille authentication. This certifies the authenticity of the signature of the public

document and the capacity of the person signing it, but it does not prove the authenticity of the content of the document.

Administrative documents are authenticated by an Apostille, depending on the country and the nature of the document, by a notary, judicial authority or administrative body. In any case, the allocation of the power to grant the Apostille is linked to the legal nature of the documents to be annotated and the nature of the authority or institution of origin (courts, notaries or public administrations). The Australian report notes that Apostille service may, in addition to public authorities, be provided by private companies.

Some States that have been analyzed, as is the case of Spain and France, have an electronic procedure to issue the Apostille and electronic records for its register. In Spain the implementation of the electronic Apostille procedure is gradually spreading among the different administrative authorities with competence to issue them. Other States have foreseen this possibility in their internal regulation of the Convention but they have not developed the system yet. In general, we can conclude that the development of electronic procedures is not widespread in this field, as shown by the fact that most of the reports warn that this is not foreseen in their national legislation.

In accordance with the acts issued by states that are not considered party to the Apostille Convention for public documents that fall outside its scope, the States foresee specific procedures of legalization designed to ensure that the act has been issued by the competent authority of the foreign transmitting State of the decision, as emphasized, for example, in the reports from Australia, Finland, Greece and Portugal. In these processes the consular authorities of the state of destination or ad hoc national certification authorities are involved. Some national reports consider that these legalization proceedings are expensive and slow, but of great importance for countries with special ties with regions or countries adhered to the Apostille Convention. This is the case of Portugal, since most of the Portuguese-speaking countries are not party to the Apostille Convention.

National reports also describe procedures and rules for the certification of translations of foreign public documents, as the Portuguese or Swedish reports indicate. Furthermore, there are procedures oriented to certify documents or the signing of national acts that aim to produce effects abroad, as is credited in the Finnish report.

Doctrinal Treatment of the Subject of Foreign Administrative Acts

In general, the specific matter of the transnational administrative act has been poorly treated by the administrative doctrine of the countries that have been analyzed, except in some countries like Germany or Sweden. Professors of private international law have addressed this issue further, as indicated in the reports from France or Portugal.

In recent years, a progressive development of the doctrine in related matters, such as the issue of global public law (Spain, France, Greece, Poland, Portugal) has

been appreciated. Also, the administrative doctrines of different countries that have been analyzed is paying increasing attention to the European administrative law and its implications for the general dogma on the act and the administrative procedure.

The development of the questionnaire and the findings of the national reports allows us to conclude that it is necessary to deepen the study of the transnational administrative act, paying special attention to how it affects the conception of the administrative act in different legal cultures and its potential impact on procedural rights and judicial guarantees of the recipients of such acts. It is also necessary to give greater impetus, in some countries, to legal research on the impact of Community law in the characterization and extraterritorial effects of national administrative acts.

Chapter 2
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

Juan José Pernas García

Abstract The EU has promoted the mutual recognition of national administrative acts and therefore helped provide extraterritorial effectiveness to the administrative decisions of the Member States. This phenomenon has been carried out in the EU through secondary legal norms, in areas where the EU has intense competence or powers. These community norms of secondary legislation are an expression of the principle of mutual recognition, which has been the axis around which the EU internal market has been built.

General Considerations About the Principle of Mutual Recognition

The principle of mutual acknowledgement allows the free circulation of goods and services in the EU resulting from a lack of harmonized legislation within the EU. In general terms, the member States cannot prohibit the sale of a product legally manufactured or sold in another Member state, even when the technical or qualitative conditions are different from the national technical norms, provided that it guarantees an equivalent level of protection of the legitimate interests.

The regulations and administrative decisions of the State or origin prevail. This prevents the establishment of a detailed community norm and guarantees that the principle of subsidiarity is respected. The European Commission has stated that the mutual recognition constitutes a pragmatic and powerful means of economic integration.[1] However, exceptionally, as we will see later, States can adopt administrative decisions that restrict the import of products or the rendering of services,

[1] Communication from the Commission "Mutual recognition in the context of the follow-up of the action plan for the single market" (COM (1999) 299 final).

J.J. Pernas García (✉)
Professor of Administrative Law, Universidade da Coruña, Coruña, Spain
e-mail: jpernasg@udc.es

J. Rodríguez-Arana Muñoz (ed.), *Recognition of Foreign Administrative Acts*,
Ius Comparatum - Global Studies in Comparative Law 10,
DOI 10.1007/978-3-319-18974-1_2

based on imperative decisions of general interest and provided that the principle of proportionality is respected.[2]

The EU has promoted the mutual recognition of national administrative acts and therefore helped provide extraterritorial effectiveness to the administrative decisions of the Member States. This phenomenon has occurred in the EU through secondary legal norms, in areas where the EU has intense competence or powers. These community norms of secondary legislation are an expression of the principle of mutual recognition, which has been the axis around which the EU internal market has been built.

The content and significance of this principle has been developed by the Court of Justice of the European Union, which has played an essential role in the development of a mutual recognition model of the European Union. Particularly, its origin is in the sentence *Cassis de Dijon*, of 20 February 1979. This sentence acknowledged the Right to sell a product legally traded in a Member State in the remaining EU Member States.

The EU has focused its initial efforts on implementing the model of mutual recognition in some sectors identified as priority due to their importance for the execution and proper functioning of the domestic market. Thus, the Council, in 1999, indicated that it was necessary to make efforts in the field of products (particularly food products, electromechanics, construction and motor vehicles), services (particularly financial services) and professional qualifications (recognition of degrees).[3]

On the other hand, the EU has entered into mutual recognition agreements with third countries to reduce, and even eliminate, hurdles on international trade.[4] At the end of the twentieth century, the European Commission decided to boost the signing of agreements for mutual recognition in the framework of the General Agreement on Tariffs and Trade (GATT), as well as with regard to goods in the context of the World Trade Organisation (WTO).[5] Its aim is to guarantee the effective access to markets throughout the territory of the parties for all the products covered by the agreements.[6]

Premises for a System of Mutual Recognition for Administrative Acts

The Co-existence of a High Level of Harmonization

The principle of mutual recognition presupposes a high level of legal harmonization or agreement between national rules governing the administrative actions with a transnational potential effect, such as authorizations of economic activities or the placing on the market of goods or wares.

---

[2] Ibidem.

[3] Council Resolution of 28 October 1999 on mutual recognition [Official Journal C 141 of 19/5/2000].

[4] Specifically there exist mutual recognition agreements between the EU and Australia, Canada, New Zealand and the United States of America.

[5] Communication from the Commission "Mutual recognition in the context of the follow-up of the action plan for the single market" (COM (1999) 299 final).

[6] Council Resolution of 24 June 1999 on the management of agreements on mutual recognition [Official Journal C 190 of 7/7/1999].

Once a certain level of harmonization or agreement of norms between the EU Member States has been reached, the mutual recognition of the administrative acts dictated in application of the mentioned norm represents a rule whose aim is to speed up legal transactions and administrative simplification.[7] Its purpose is to prevent the duplication of controls in the receiving State with regard to those already executed by the State of origin who issues the administrative act that authorizes a product or service.[8]

As has been shown by some national reports, legal harmonization is essential to ensure mutual trust among States,[9] which is the basis of any system for the mutual recognition of acts,[10] as well as to prevent the harmful effects of this regulatory model as the regulatory dumping. States with a lower level of demand or with simpler administrative procedures will be more attractive for the financial agents who wish to offer goods or services in the European Union. This can generate and encourage a downward levelling of the legal protection of the general interest.[11]

Legal harmonization facilitates the acceptance of reasonable differences between national rules and legal standards, on behalf of the States involved in a mutual recognition model, consequently, the elimination of national barriers for the free international movement of goods.[12]

The community secondary legislation, which is based on models of mutual recognition, should harmonize the material requirements for the adoption of administrative acts, setting a minimum and substantive and common standard.[13] Shortages in this sense are appreciated in the Community secondary legislation establishing systems of mutual recognition of onerous administrative acts, which does not produce a substantive or procedural harmonization.

---

[7] Bocanegra Sierra and García Luengo, "Los actos administrativos transnacionales", *Revista de Administración Pública*, No. 177, Madrid, September–December, 2008, p. 15.

[8] Sentence by the Court of Justice of 22 January 2002, Canal Satélite Digital SL, case C-390/99, section 36.

[9] The lack of mutual trust in the acts of the other Member States has been one of the most prominent obstacles for the free rendering of services in the EU (Communication from the Commission "Mutual recognition in the context of the follow-up of the action plan for the single market" (COM (1999) 299 final).

[10] It has been highlighted by the reports of Germany (Stelkens, U., Mirschberger, M., *The recognition of foreign administrative acts: a German perspective*), Italy (Della Cananea, Giacinto, *From the recognition of foreign acts to trans-national administrative procedures*) *or* USA (Reitz, J., *Recognition of Foreign Administrative Acts in the United States*).

[11] Bocanegra Sierra and Sierra Luengo understand, correctly, that regulatory dumping "(…) clearly distorts the principle of equality and the public interests at stake, with the *de facto* result of the establishment of a downward harmonization, by using the processing and regulation of the less demanding State in the protection of public interests" ("Los actos administrativos transnacionales", *Revista de Administración Pública*, No. 177, Madrid, September–December, 2008, p. 27).

[12] Communication from the Commission "Mutual recognition in the context of the follow-up of the action plan for the single market" (COM (1999) 299 final).

[13] It has been highlighted by national reports from Germany (Stelkens, U., Mirschberger, M., *The recognition of foreign administrative acts: a German perspective*.) or Greece (Douga, A. E., *On the recognition of foreign administrative acts in Greece.*).

The Availability of Means and Information Exchange Networks Between National Administrations

The trans-European information exchange systems are essential to ensure transnational effectiveness of administrative acts. Thus, the implementation of systems of mutual recognition of administrative acts through European secondary law makes it necessary for there to be a greater exchange of information between Member States and the implementation of a mechanism of inter-administrative cross-border cooperation. In fact, the mutual recognition of acts poses problems for the States precisely because of the lack of information on legislation or verification processes by other Member States.[14]

This need is clearly reflected in Regulation No 764/2008 of the European Parliament and of the Council, of 9 July 2008, laying down procedures relating to the application of certain national technical rules for products lawfully marketed in another Member State. This norm specifies requirements and procedures that competent authorities of a Member State must follow when making or intending to make a decision, which would hinder the free circulation of a lawfully marketed product in another Member State, and establishes mechanisms of information exchange between Member States through national contact points. These contact points provide information on the products and technical norms applicable to products to the competent authorities of other Member States or to a State member of the AELC signatory of the EEA Agreement

Under the European Economic Area, the Information System of the Internal Market has been launched. It is an electronic tool that supports administrative cooperation in the field of internal market legislation, as per Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, or Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the domestic market. Member States have adopted national procedures for handling requests for administrative assistance and information provided by foreign administrative authorities.

Administrative cooperation and the trans-European exchange of information between administrative authorities play an equally important role in immigration matters. Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals foresees measures to guarantee that the member states exchange information that is crystallized by the second generation Schengen information system (SIS II), developed by Regulation (EC) No. 1987/2006 of 20 December.

[14] Council Resolution of 28 October 1999 on mutual recognition (Official Journal C 141, 19/05/2000).

Models of Mutual Recognition in the EU Secondary Legislation

General Conditions

As noted by the German reporter, the EU secondary legislation[15] developed several models of "transnational administrative acts".[16] First, rules that recognize the extra-territorial effect of national acts and prohibit or limit the need for new mandatory decisions in the State of destination, when the activity or product has been authorized

[15] Without being exhaustive, we quote below a list of Community secondary legislation based on a model of mutual recognition that specifies the conditions of extraterritorial effectiveness of certain administrative acts:

- Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC; Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.
- Directive 1999/5/CE of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity; Directive 2002/46/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to food supplements; Regulation No. 258/97 of the Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients.
- Regulation No 883/2004 on the coordination of social security systems; Regulation No 987/2009 laying down the procedure for implementing Regulation No 883/2004 on the coordination of social security systems; Regulation No. 1231/2010 extending Regulation (EC) No. 883/2004 and Regulation No. 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.
- Directive 2001/40/CE of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.
- Council Framework Decision 2002/584/JHA of 13 June 2002 on European arrest warrant and surrender procedures between Member States.
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.
- Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.
- Directive 2006/126/CE of the European Parliament and the Council of 20 December 2006 on driving licenses.
- Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures and the implementation of Regulation 1189/2011 of 18 November 2011; Council Directive 2011/16 of 15 February 2011 on administrative cooperation in the field of taxation.
- 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.
- Regulation No 952/2013, of 9 October 2013, laying down the Union Customs Code.

[16] Bocanegra Sierra and García Luengo informs of the "inevitable need, imposed by reality itself, of the existence of this figure and of its legal delimitation and construction ("Los actos administrativos transnacionales", *Revista de Administración Pública*, No. 177, Madrid, September–December, 2008, p. 13)."

in another Member State.[17] In general, in this case, we could mention a "model of automatic transnational effect".[18]

Second, we find ourselves with community rules that declare the validity of national administrative acts in the remaining member countries of the EU, but also a process of national recognition in the State of destination is envisaged to verify the existence, content and comparability of the measure with national administrative decisions.[19] In this case we would be dealing with a model of recognition of extra-territorial efficiency further to the national verification of conformity. As per these assumptions, the transnational effectiveness of the administrative act is conditioned by an act of national recognition.

Third, there will be the community rules that besides providing the extraterritorial effect of certain administrative acts, materialize its contents and effects.[20] In this case the competent authorities of the State of destination may review the issued administrative act in accordance, as appropriate, with the provisions contained in the applicable Community rules. In this case we would be dealing with a model of recognition of effectiveness and extraterritorial control. The transnational nature of these acts extends to its control. An example of regulation according to this perspective resides in Regulation 810/2009 of 13 July 2009 establishing Community on Visas or the legal norms of the space of Schenghen.

Bocanegra Sierra and García Luengo propose a more complex categorization for transnational administrative acts.[21] Firstly, transnational administrative acts can be considered as such because of their effectiveness beyond the territory of the issuing State and where the act was notified to the receiver. Secondly, the transnational quality would be derived not only from the trans-border production of the effects, but also if the receiver resides in a different State.[22] Thirdly, we can refer to administrative decisions, which in addition to being effective outside the national territory, are adopted by an administrative organ in the territory of a different State.[23]

---

[17] Stelkens, U., Mirschberger, M., *The recognition of foreign administrative acts: a German perspective*.

[18] This is the case of the authorisations for credit activities (D. 2013/36), driving licenses (D. 2006/126), the decision for the marketing of food ingredients (R. 258/97) or decisions on the use and marketing of biocides (R. 528/2012).

[19] *Ibidem.*

[20] The German reporter alludes in this case to a real transnational effect (Stelkens, U., Mirschberger, M., *The recognition of foreign administrative acts: a German perspective*).

[21] "Los actos administrativos transnacionales", *Revista de Administración Pública*, No. 177, Madrid, September–December, 2008, p. 20 et seq.

[22] Bocanegra Sierra and García Luengo state that these type of acts "affect the sovereignty of the country that "receives" the act in a more intense manner, whereby it is not easy to find examples of these assumptions". The authors use as an example the transfer of waste (idem, pp. 20 and 21). An example of transnational decisions of this type can be seen in Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on the shipment of waste. This norm establishes a notification procedure that requires that the competent authorities of the countries affected by the shipment (country of dispatch, country of transit and country of destination) give their consent prior to any shipment. The countries of destination and of transit adopt decisions that have effects in other territories and for people who reside in another country.

[23] Under this type of assumption, Bocanegra Sierra and García Luengo point out that it is "(…) difficult to identify assumptions for transnational acts in the strict sense, because the Administration's