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Jurisdictional control of administrative acts: limits, systems and theories of expansion

Judicial review of administrative acts: limits, systems, and theories of expansion

Adv. Adriana Moutinho Magalhães Iannuzzi - Santa Tereza College (Higher Education Professor),
advadrianammi@gmail.com

Cedella Marley Vieira dos Santos – Santa Teresa College (FST), marley_cedella@hotmail.com

David Cardoso dos Santos - Santa Teresa College (FST), davidcardosobr@hotmail.com

Lucila Ferreira Reis - Santa Teresa College (FST), lucilareissouza@gmail.com

Summary

This article examines the Brazilian Judiciary's jurisdictional review of administrative acts, highlighting the need to balance the Administration's decision-making freedom with the protection of citizens' rights. Administrative acts, by their unilateral nature, possess attributes that confer force and a presumption of legitimacy, but they also pose the risk of arbitrary action if not properly monitored. In this context, judicial intervention is an essential instrument for guaranteeing the democratic rule of law, ensuring that the exercise of public power occurs within the boundaries established by the legal system. The methodology used was based on bibliographical research and doctrinal analysis, comparing classical and contemporary understandings of jurisdictional review.

The study highlights the practical relevance of offering support for legal practitioners in the face of the challenges posed by the complexity of administrative action and its impact on the judicial sphere. The research proposes an analysis of the distinction between binding and discretionary acts, highlighting how this distinction influences the degree of permitted judicial interference. It also addresses the single jurisdiction system adopted in Brazil, which grants the judiciary exclusive jurisdiction for the definitive resolution of disputes, in contrast to the administrative litigation model present in other countries. Finally, it explores the main theories underlying the expansion of judicial review, with an emphasis on the theory of determining motives, as well as concepts such as legality, reasonableness, and proportionality. Based on legal doctrine and case law, it defends the need to reconcile the separation of powers with the effectiveness of judicial review.

Keywords: Administrative acts. Discretion. Jurisdictional control. Judiciary.

Principle of legality.

Abstract

This article examines the judicial control of administrative acts by the Brazilian Judiciary, highlighting the need to balance administrative discretion with the protection of citizens' rights. Administrative acts, due to their unilateral nature, carry attributes that grant them presumption of legality and authority, but also involve the risk of arbitrariness if not properly supervised. In this context, judicial intervention emerges as an essential instrument for safeguarding the Democratic Rule of Law, ensuring that the exercise of public power occurs within the limits imposed by the legal system. The research offers an analysis of the distinction between binding and discretionary acts, stressing how this classification influences the extent of judicial review. It also examines the single jurisdiction system adopted in Brazil, which grants the Judiciary exclusive competence for the definitive settlement of disputes, in contrast to the administrative jurisdiction system observed in other countries. Finally, it discusses the main theories supporting the expansion of judicial control, with emphasis on the theory of determining reasons, as well as concepts such as juridicity, reasonableness, and proportionality. Based on doctrine and case law, it argues for the importance of reconciling the principle of separation of powers with the effective judicial protection of fundamental rights.

Keywords: Administrative acts. Discretion. Judicial control. Judiciary. Juridical principle.

1. Introduction

The Constitution of the Federative Republic of Brazil of 1988 consolidated, in article 5, paragraph XXXV, the principle of inalienability of jurisdiction, establishing that no injury or threat to



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right may be excluded from judicial review. This guarantee applies comprehensively to all legal situations, including those arising from administrative acts. Such acts, by their essence, constitute unilateral manifestations of Public Administration and, for this very reason, have the potential to significantly interfere in the sphere of rights and duties of those administered.

The adoption of the single jurisdiction system in Brazil gives the Judiciary a central role in examining the legality and legitimacy of these acts. Unlike countries like France, which adopted dual jurisdiction with their own administrative courts, the Brazilian reality concentrates on the common Judiciary the task of overseeing the Public Administration. This model strengthens the protection of the citizen, but at the same time raises debates about the scope of this control and the risk of extrapolation on matters of administrative merit.

This article seeks to critically discuss the limits and possibilities of jurisdictional control on administrative acts, with emphasis on the tension between binding and discretion, on the nature of the system Brazilian legal framework and the theories that underpin the expansion of judicial intervention. The aim is, therefore, analyze to what extent the Judiciary can intervene without violating the separation of powers and how principle of legality broadens the spectrum of control over the Administration.

2. Nature and Attributes of Administrative Acts

Administrative acts are central instruments of State action, as they enable practice of conduct aimed at achieving the public interest. Because they are unilateral manifestations, issued by the Administration in the exercise of its functions, have the capacity to alter the legal sphere of individuals, creating, modifying or extinguishing rights and even imposing obligations.

“Administrative acts are unilateral acts produced by the Public Administration in exercise of administrative activity, with the aim of creating, modifying or extinguishing rights, in addition the possibility of imposing obligations, such as when the Administration exercises police power” (DI PIETRO, 2014, p. 114).

The doctrine recognizes that administrative acts are endowed with their own attributes that distinguish them from other legal manifestations. Among these attributes, the presumption of legality and legitimacy, the presumption of veracity, imperativeness and self-execution. However, “these powers, however, cannot be used arbitrarily, so they are limited by law (principle of legality)” (DI PIETRO, 2014, p. 114).

In addition to the attributes, each administrative act must observe essential requirements such as subject, object, form, motive and purpose. Violation of any of these elements may lead to its nullity, justifying the intervention of the Judiciary. Jurisdictional control has precisely the function of ensuring that such acts do not deviate from their public purpose and are not used as instruments of state arbitrariness.



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Therefore, administrative acts, although indispensable for the organization of the State and the implementation of public policies, are limited by clear legal guidelines. It is at this point that highlights the importance of its judicial control, ensuring that administrative activity meets the public interest without compromising the fundamental rights of citizens.

3. The Duality between Bound Acts and Discretionary Acts

The classification of administrative acts into linked and discretionary constitutes an element fundamental to understanding the extent of judicial control over Public Administration. The linked acts are those in which the administrator does not have freedom of choice, since the law has already exhaustively defined all the elements necessary for its practice.

“Bound acts are those in which there is no room for choice for the manager, since its content has already been previously established by law, this does not give space for different options to be adopted” (DI PIETRO, 2014, p. 115).

On the other hand, discretionary acts arise when the law cannot foresee all the hypotheses and, therefore, leaves a margin of freedom for the administrator to decide, in the specific case, which alternative is most appropriate to the public interest. “The law leaves a certain margin of freedom of decision in view of the specific case, so that the authority may choose one among several possible solutions, all valid under the law” (DI PIETRO, 2014, p. 115).

This space of freedom, called administrative merit, is guided by criteria of convenience and opportunity. However, this is not absolute freedom. The administrator must always be guided by the public purpose and constitutional principles, and the use of arbitrary discretion.

Jurisdictional control over linked acts is broad, since the Judiciary can verify that all legal requirements have been met. In the case of discretionary acts, the action judicial review must be more cautious, restricting itself to examining legality and juridicality, without invading the sphere of convenience and opportunity.

This differentiation proves essential for preserving the balance between the powers of the State. While binding acts are fully controllable by the Judiciary, discretionary acts require careful analysis that respects administrative merit, but without abdicating the duty to curb arbitrary acts.

4. The Brazilian System of Unified Jurisdiction

The jurisdiction system adopted by Brazil is that of single jurisdiction, also called the system English. In it, the Judiciary is the only institution with the power to decide, on a



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definitive, administrative disputes, even though the Administration itself may review internally their acts.

“According to the single jurisdiction system, only the Judiciary exercises jurisdiction, This does not mean that the Administration cannot judge controversies, it can, but that it exercises such definitive function is the judiciary” (DI PIETRO, 2014, p. 116).

This model contrasts with the French system of dual jurisdiction, which establishes courts independent administrative bodies. In Brazil, any and all litigation, whether private or administrative, is resolved by the common Judiciary. “The judicial system or single jurisdiction, also known as the English system and, in modern times, called the judicial control system, is one in which all disputes – whether administrative in nature or exclusively of interest private – are resolved judicially by the Common Justice, that is, by the judges and courts of the Power Judiciary” (MEIRELLES, 2015, p. 116).

The unified jurisdiction strengthens impartiality and ensures protection for those administered, as guarantees that the judgment will not be carried out by the Administration itself interested in the act. However, The Judiciary is required to exercise prudence so as not to overstep its supervisory function and invade the analysis of administrative merit, thus preserving the principle of separation of powers.

5. Limits of Judicial Intervention on Administrative Merit

The role of the Judiciary in controlling discretionary administrative acts must respect the limits of administrative merit. This concept involves the freedom granted to the administrator to decide, in light of the specific case, between different equally valid solutions, with based on criteria of convenience and opportunity.

“As for discretionary administrative acts, there is an area that cannot be subject to intervention by the Judiciary, the administrative merit. The judicial analysis must focus on the aspects of legality and juridicity, that is, whether the acts are in accordance with the law and the principles that govern Administrative Law” (DI PIETRO, 2014, p. 116).

Celso Antônio Bandeira de Mello defines administrative merit as follows:

“Merit is the field of freedom assumed in the law and which, in fact, remains in the case concrete, so that the administrator, according to criteria of convenience and opportunity, decides between two or more admissible solutions before it, taking into account the exact fulfillment of the legal purpose, given the impossibility of objectively recognizing which of them would be the only appropriate one” (BANDEIRA DE MELLO, 2009, p. 38).



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The case law of the Superior Court of Justice also states this:

“It is not possible for the Judiciary to review an administrative decision that rejected a request for reversal of voluntary retirement of a civil servant of the State of Mato Grosso do Sul [...] because it has not been proven that arbitrary acts capable of giving rise to the nullity of the discretionary administrative act is not the responsibility of the Judiciary analyze the administrator’s choice” (STJ, AgRg no RMS 29815/MS, Rel. Min. Sebastian Reis Junior, j. 14/02/2012).

In this way, jurisdictional control cannot advance over choices of convenience and opportunity, but must always ensure that such choices are legally grounded and guided by the public interest.

6. Expansive Theories of Judicial Control over Administrative Acts

Doctrinal and jurisprudential development has allowed the scope of control to be expanded jurisdiction over administrative acts, especially discretionary ones. This movement occurred because the simple distinction between legality and merit proved insufficient to curb arbitrariness and ensure respect for constitutional principles.

“There has been considerable evolution in judicial control over administrative acts, with great advances in the examination of the so-called merit. The examination of the facts (reasons for the act), their assessment, the its reasonableness and proportionality in relation to the ends, its morality, were seen as matter of merit, not subject to judicial control” (DI PIETRO, 2014, p. 226).

Among the theories that legitimize this expansion, the one about determining motives stands out. “This theory understands that the validity of the administrative act is directly related to the veracity and existence of the reasons presented. In such a way so that if the reason given is false or non-existent, the act will be invalid” (BRAZIL, Law No. 9,784/1999, art. 50).

The theory of the elements of the act is also relevant, as it allows for the judicial analysis of each one of the essential requirements: “The subject of the act is always linked, as it can only be practiced by someone who the law has assigned competence for this, in this case, the judicial analysis may be carried out through the appreciation of the political agent producing the act” (DI PIETRO, 2014, p. 118).

Another important formulation is the theory of misuse of power, which seeks to prevent the use of discretion for purposes other than those established by law. “It is the improper use that the administrative authority, within of its field of discretion, makes the potestas that is conferred to it to achieve a public or private purpose, different from that which the law had prescribed” (CRETELLA JÚNIOR, 2000, p. 176-177).

The Supreme Federal Court reinforces the legitimacy of judicial control even in situations involving vague concepts: “Administrative acts that involve the application of 'concepts indeterminate' are subject to examination and control by the Judiciary” (STF, RMS 24699/DF, Rel.



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Min. Eros Grau, DJ 11/30/2004).

These ampliative theories demonstrate that discretion does not confer freedom absolute, but rather a space for decision-making delimited by legality, by constitutional principles and the duty of motivation.

Final Considerations

The analysis developed shows that administrative acts are fundamental for the functioning of the State, but cannot escape judicial control. The distinction between acts linked and discretionary is central to understanding the limits of judicial intervention, as while in the former the control is integral, in the latter the space of convenience and opportunity must be respected.

The single jurisdiction system adopted by Brazil ensures that the Judiciary is the guardian of legality and juridicity, but imposes on him the responsibility of not invading the sphere of the Administration. Even so, “there was considerable evolution in judicial control over the administrative acts, with great advances in the examination of the so-called merit” (DI PIETRO, 2014, p. 226), which reveals the expansion of the field of judicial action due to the need for protection effective protection of fundamental rights.

Ampliative theories, such as that of determining motives, of legal concepts indeterminate and the link to constitutional principles, consolidate the understanding that the discretion is not synonymous with arbitrariness, but a space delimited by values constitutional.

It is concluded that the balance between separation of powers and judicial protection must be permanently sought, so that the Judiciary exercises its role as an overseer of the Administration without compromising the decision-making autonomy of the Executive, guaranteeing the supremacy of the Constitution and the effectiveness of the Democratic State of Law

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